


The Duty of Candour in the Fitness to Practise Process Deny Liability Advice – How One Impacts the Other

ANDREW PAYNE

An abstract graphic design on the right side of the page. It features a vibrant orange background with several overlapping geometric shapes in black and white. These shapes include a large white circle on the left, a black circle on the top right, and various triangular and curved forms that create a dynamic, layered composition. The text 'A REGULATORS DUTY' is centered within this graphic area.

**A
REGULATORS
DUTY**



Janice loved to travel.

TWO FOIA QUESTIONS TO THE HEALTHCARE SERVICE REGULATORS

1/ Please describe the number of cases in which a breach in the duty of candour was the main body of misconduct under consideration in your fitness-to-practice process, in the period since the enactment of this duty up to the date this FOIR is received.

2/ Please describe the number of cases in which a breach in the duty of candour, was deemed as being of sufficient seriousness to meet your organisation's threshold and be included as part of the case to be forwarded in your fitness-to-practice process, in the period since the enactment of this duty up to the date this FOIR is received.

“In so far as it relates to fitness to practise, duty of candour does not have any particular special category and, in broad terms, would fall within ‘misconduct’, and being similar in nature to issues relating to honest and integrity. Each case would, of course, have to be considered on its own merits and, in so doing, we would ask ourselves not only if a professional fell short of what was expected, but also whether that shortcoming was of a nature and scale to call into question their fitness to practise “

13th August 2024

DUTY OF CANDOUR IN THE STANDARDS OF REGULATORS

HOW CAN THE **DUTY OF CANDOUR** BE DULY REPRESENTED IN THE **FITNESS TO PRACTICE** PROCESS - IF IT IS NOT PROPERLY PRESENTED IN THE STANDARDS OF THE REGULATORS?

PSNI (The Code)

Pharmaceutical Society of Northern
Ireland

Outline Code

Principle 1: Always put the patient first

Principle 2: Provide a safe and quality
service

Principle 3: Act with professionalism and
integrity at all times

Principle 4: Communicate effectively and
work properly with colleagues

Principle 5: Maintain and develop your
knowledge, skills and competence.

Expanded

1. Make the safety and welfare of patients your prime concern.
2. Respect and protect confidential information.
3. Show respect for others.
4. Exercise professional judgment in the interests of patients and public.
5. Encourage patients (and/or their carers as appropriate) to participate in decisions about their care.
6. Maintain and develop professional knowledge and competence.
7. Act with **honesty and integrity**.
8. Provide a high standard of practice and care at all times.

Actual Advice on an insurer's website – January 2020.

**“WHATEVER YOU DO,
DON'T REFER TO THE
PROBLEMS YOUR
PATIENT MAY BE
EXPERIENCING”**

I also found this advice published elsewhere, so it will have been broadly read by clinicians and professionals.

Deny Liability

I challenged the insurer in my case to remove the reckless error advice from their website. Their response was this;

“I am not of the opinion that the advice outlined by Mr xxxxxxxx on the XXX website contradicts or conflicts with the professional duty of candour. The advice is standard for any parties where investigations are required to establish the full facts of case in anticipation of a potential complaint/claim. I do not consider this element of your complaint justified.”

Queries that likely go through the mind of a professional in an error circumstance;

- If I fully follow my duties relating to candour, will my insurer guarantee my cover?
- If my action has been negligent, to what extent would negligence invalidate my cover?
- If my competence is in question, is there a level of incompetence that would invalidate my cover?
- If I have been dishonest, would this invalidate my cover?
- What kind of mitigating factors will impact on considerations of validation?
- Should I speak to my insurer before addressing the patient?

Considering these thoughts, it is not surprising that a registrant would first consult their indemnity provider before attending to their patient?

Less surprising that an insurer will be counselling a form of deny liability.

Should the action of a professional calling their insurers before addressing the patient, be a consideration in the FtP process and the advice given to the registrant examined?

Topics for Q&A

- 11. Section of 'A Compendium of Candour'.**
- 13. Freedom of Information Request – Responses.**
- 13. Time for a new joint statement?**
- 14. A Case for a Coordinated Set of Standards?**
- 15. A Proposed Template.**

From: A compendium on candour - Factors that can discourage/encourage candour – Amy Hopwood PSA Feb 2020

2. Fear

Fear of litigation/negligence or even criminal proceedings (impacted by high-profile cases and negative media coverage) and potential impact on the cost of indemnity insurance are all factors which can discourage candour.



3. Timeliness

A mistake may not come to light immediately. The professional may feel that too much time has lapsed to be candid and/or high pressured working conditions may mean focus quickly turns to other patients/problems.



Has this acknowledgment of a 'fear' of registrants translated into an engagement into the complexities of this aspect of candour?

The consideration here is the cost of insurance as being a potential concern to registrants and not the validation of the insured's cover by the factors included in the error.

Freedom of Information Request

I expected that the answer to the first question would be zero and the second question would be answered with data in which 'honesty, openness and other personal traits would be included as substituting or associating these to candour as well as others that describe it directly.

I will report on the responses of the regulators and set the responses against a sampling of published fitness-to-practice cases.

Early Synopsis;

- GDC declined to respond. GPhC declined to respond, yet provided a form of response. SWE said I would receive a response but has not responded to date. PSNI requested an extended period to respond and has not responded to date.
- The NMC provided the most comprehensive response and set good examples.
- Regulators have no category in their FtP process describing a breach in the duty of candour,

Time for a new ‘Joint Statement’?

YES. I would like to see the first principle of the duty to emphasize the priority of ensuring a patient's safety, health, and wellbeing.

further examples of what I would propose as an exploratory template.

A Case for a Coordinated Set of Standards for the Healthcare Industry

Recognising that each profession will have standards that are particular to these, does not mean that a template cannot be produced which see's the main and universal standards as agreed across the healthcare sector and for this to be broadened as required by each regulator.

This will provide for a consistent presentation of the duty.

A Proposed Template

An apology is not a part of my proposal

Duty of candour should replace mentions of honesty and openness in the outlined standard.

Your Duty of Candour

Your duties to your patients and colleagues are;

- To ensure that the safety, health and wellbeing of your patient is your priority.
- You must act with honesty and integrity.
- You must be professional, following your training to ensure the best outcome for your patient.
- When something has gone wrong, which has caused or had the potential to cause harm, you must be honest with your patients and/or their representatives.
- You must clearly set out the events leading to this circumstance, identifying (if possible), where a fault or problem occurred. DO NOT hypothesize.
- You must set out what should have happened but did not.
- You must make clear your role in the event and the roles of colleagues who may have contributed to the error or fault circumstance.
- You must not be dishonest by omission.
- You must set out the possible consequences to the patient, as well as actions needed to alleviate and/or avoid these.
- You must correctly and honestly answer the questions of the patient, or representatives to the best of your knowledge.
- You must demonstrate an understanding of the patient's concerns and worries.
- You must as soon as possible establish the point of contact for the patient and/or representatives.
- You must following, cooperate fully and honestly with the investigation and/or determination process.