

# Regulator gives irresponsible doctors green light to say false and harmful things to the public

written by Clive Bates | 22 June 2015



But who holds you to account for what you say?

What stops a doctor going on to the radio, appearing as a trusted voice of the medical profession and representative of the BMA, but making false and misleading statements about an important public health issue? What if the factual errors and misleading advice cause people to smoke who would otherwise have quit? We know that in Britain doctors are held to account by the General Medical Council and sometimes the courts for professional negligence in their surgeries and hospitals, but who holds them to account for negligent statements to the public?

*No-one it seems.* In Britain, the following case shows that doctors can say just about anything, no matter how wrong, irresponsible and harmful, and escape any professional accountability. The GMC simply washes its hands and lets them off.

(Note: just looking for the complaint? It's [here](#))

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# 1. Background: doctor makes false statements about e-cigarettes on the radio

On 31 March 2015, Dr George Rae a high profile [general practitioner from Whitley Bay](#) appeared on [BBC Radio Newcastle](#) in his capacity as Chair of the British Medical Association in the North East. In the course of a short interview, Dr Rae made a number of irresponsibly false claims about the comparative health risks of e-cigarettes and cigarette smoking. These included, but were not limited to, the following three statements:

*1. Rae: But you've got to realise that there are chemicals within e-cigarettes, particularly a group of chemicals called nitrosamines, and nitrosamines actually can cause cancer. They can be even more cancer forming than what you're getting within cigarettes themselves.*

*2. Presenter: We often hear of tar, you know, in the adverts of years ago really, it's all about the tar causing the problems, but with the e-cigarettes if there's different types of chemicals, by the sounds of it they can cause the same types of problems.*

*Rae: Absolutely, there's absolutely no doubt about that at all, and that is the whole point.*

*3. Rae: But no [e-cigarette use is] not better, because what I'm actually trying to get across, and I'll say it again, there are potentially more cancer forming chemicals within e-cigarettes than you've actually got in cigarettes per se themselves.*

So there you have it - a prominent doctor claiming that e-cigarettes are as dangerous or more dangerous than smoking, speaking as representative of the BMA and to an audience of tens of thousands. There is no question that this is completely wrong and highly misleading. You can read the [transcript](#) or listen to an [audio recording](#) - there is no dispute he said these things.

## 2. Complaint to GMC: false, misleading and harmful claims refuted

So working with [David Dorn, a prominent vaper and commentator from the North East](#) who had heard the broadcast live, we decided to formulate a complaint to the General Medical Council (GMC). The GMC is in theory the body that regulates the professional conduct of doctors. Our view was, and remains, that professional standards apply to doctors even when they are outside the consulting room and that making recklessly false statements to the public is a form of professional misconduct, or 'public health negligence' as one expert described it privately. We considered a complaint to this body was justified because of what GMC says about [Duties of a doctor](#), which include:

- *Keep your professional knowledge and skills up to date*
- *Never abuse your patients' trust in you or the public's trust in the profession*

...and in [Complaints and the role of the GMC](#), which states that the GMC can take action to stop or limit a doctor's right to practise or to issue warnings:

- *We take action to prevent a doctor from putting the safety of patients, or the public's confidence in doctors, at risk.*
- *This might be for example because they ... have not kept their medical knowledge and skills up to date and are not competent.*

We believe these competence and confidence criteria unambiguously apply in this case, so we formulated a detailed complaint that examined Dr Rae's claims in detail and provided referenced evidence showing his views to be false, and by a large margin. In the covering letter to the GMC we say:

*7th April 2015*

*Dr Rae asserted that e-cigarette use was as dangerous as smoking or more so. This is incorrect by a large margin and potentially harmful if it influences smokers' perceptions of risk. Beyond that, I will not repeat the complaint in this covering email but I would respectfully like to request that GMC reviews the detailed complaint.*

*The complaint concerns an important aspect of the role of GPs in public health: that being public statements made when speaking as doctors and medical authorities. Doctors command high levels of public trust and are often permitted to speak as unchallenged authorities (as in this case): real damage can be done by a doctor making misleading or false statements via the media.*

*The complaint addresses what I hope is an important issue for the GMC - the responsibility of doctors to be factually accurate and evidence-based in what they say to the public via the media, and their professional accountability if they make false or harmfully misleading statements.*

See: [Full text of complaint \(PDF\)](#)

I won't repeat the complaint here - please take a look at the details in the linked PDF - I hope you agree it was thoroughly and politely done. Then return to the exchanges that followed.

### **3. First response from GMC: he was only expressing an opinion**

This reply from GMC attempts to excuse Dr Rae by claiming that: (1) his statements are merely an expression of opinion (they are were factual assertions); (2) to state e-cigarettes are sometimes unregulated (incorrect and not the basis of the complaint anyway); (3) that e-cigarettes may not be as safe as first thought (nonsensical and not the basis of the complaint).

*23 April 2015*

*Dear Mr Bates*

*Thank you for contacting us with your concerns about Dr Rae and his interview regarding his opinion on the use of e-cigarettes.*

*We have carefully considered your complaint but have decided not to take the matter any further. I am sorry if this is not the outcome you were hoping for.*

#### *The reasons for our decision*

*We understand that you are unhappy with comments made by the doctor during a radio interview about e-cigarettes and vaping. We note that you are concerned that some of the doctor's comments and views appeared to be contrary to other published advice about e-cigarettes and their safety.*

*Having considered all of the information provided we feel that the doctor has expressed an opinion about e-cigarettes in this interview and highlighted that, as in some cases they may currently be unregulated, there may be instances where they may not be as safe to use as first thought.*

*While we note your concerns that these comments may be contrary to other information about vaping, there is no information to indicate that these comments would suggest that the doctor's fitness to practise is impaired or that the GMC needs to take action against the way he can work as a doctor.*

*We have no powers to regulate a doctor's opinion in this way and we cannot compel Dr Rae to retract his opinions and statements in this matter. We will therefore be taking no further action against his at this time.*

*The matter will remain on the doctor's record for future reference. You may wish to contact the programme makers to voice your concerns about their interview.*

#### *About our role*

*Our role is to ensure that doctors who are registered to practise medicine in the UK are safe to do so. We only take action where we believe we may need to restrict or remove a doctor's registration to protect patients or the reputation of the medical profession.*

*Would you like to know more?*

*I understand that you may be disappointed by our decision not to undertake any further investigation. I enclose a factsheet that gives more information about the type of cases we do investigate that may help you understand why we have*

*made this decision.*

*I appreciate that making a complaint can be difficult and we are grateful to you for bringing this matter to our attention. I hope this letter has been helpful to you in understanding the reasons for our decision.*

*I am sorry that the GMC is not able to help you at this time.*

*Yours sincerely,*

*[GMC staff]*

*Enc: [‘Your complaint and the GMC’ factsheet](#)*

## **4. First reaction from complainants: he was making false factual statements**

The attached factsheet invites those who are unhappy with the GMC to discuss the case: *If you are not happy with the way we have handled your complaint, please discuss the problem with the person who handled your complaint.*

So we decided to discuss the case, responding as follows – pointing out that it was not a matter of opinion but several incorrect factually-based assertions; reminding GMC of the harmful consequences of smokers acting on Dr Rae’s advice; the precedent of allowing doctors to say anything to the public, however wrong or dangerous; the inappropriate attempt to shift responsibility to the broadcasters.

*24th April 2015*

*From: Clive Bates*

*Dear [GMC staff]*

*Thank you for this response to this complaint. I am of course disappointed, but I am also very surprised and concerned that this decision suggests that doctors seem to be unaccountable for what they say to the public about health issues. In good faith I will follow the guidance in the leaflet you attached: “please discuss the problem with the person who handled your complaint.”*

*I would be grateful for your reaction to the following points:*

*1. Dr Rae was not expressing opinions but making false assertions*

*Dr Rae made fact-based affirmative claims, he was not merely expressing opinions. An opinion is of the form: "I dislike the smell of e-cigarettes", "I wouldn't recommend them", "I prefer people to quit completely". Dr Rae made factual claims about the toxins in e-cigarette vapour and the risk of using these products compared to smoking. These claims are false, misleading and likely to cause harm.*

*The three affirmative claims that I highlighted were as follows (please refer to the original complaint):*

*Rae: But you've got to realise that there are chemicals within e-cigarettes, particularly a group of chemicals called nitrosamines, and nitrosamines actually can cause cancer. They can be even more cancer forming than what you're getting within cigarettes themselves.*

*Presenter: We often hear of tar, you know, in the adverts of years ago really, it's all about the tar causing the problems, but with the e-cigarettes if there's different types of chemicals, by the sounds of it they can cause the same types of problems.*

*Rae: Absolutely, there's absolutely no doubt about that at all, and that is the whole point.*

*Rae: But no [e-cigarette use is] not better, because what I'm actually trying to get across, and I'll say it again, there are potentially more cancer forming chemicals within e-cigarettes than you've actually got in cigarettes per se themselves.*

*These are not opinions, they are factual claims that can be easily refuted with the most basic grasp of the evidence. The first is wrong by a factor of 1800 times. The second is incorrect: there is no similarity physically or chemically between e-cigarette vapour and the tar in cigarette smoke, and no equivalence in the health risk. The third asserts that e-cigarette use poses a higher cancer risk than smoking, and that is completely untrue - we can be certain of that because e-cigarette vapour contains far fewer carcinogens and at much lower*

concentrations.

*Has the GMC asked Dr Rae to substantiate these specific claims? Has the GMC validated that these claims are correct and acceptable for a medical professional to make in public?*

*None of the rationalisations provided in your reply address these concerns. The statement in your email, “there may be instances where they may not be as safe to use as first thought” does not provide any basis for legitimising the statements made by Dr Rae. In fact most adults greatly overstate the risks, and e-cigarettes are much less dangerous than most people think.*

## *2. This is a case of professional negligence with real harms involved*

*The heart of the public health concern in this case is that people who smoke or vape may act on the false assertions that Dr Rae was making on the radio. If they did respond rationally to the statements made by Dr Rae, then smokers would not try to switch to e-cigarette, e-cigarette users may consider relapsing to smoking and young people just beginning to smoke might be deterred from trying e-cigarettes instead. In each case those who respond rationally to Dr Rae’s false assertions of fact will suffer far greater toxic exposure and harm. These are real risks, not just a matter of debate or contending opinions. In making such statements, Dr Rae is in our view committing acts of public health negligence – and these are made more serious because his statements reached thousands of people simultaneously through a radio programme.*

*Does the GMC believe statements made by Dr Rae pose no risk to health or will not adversely affect smoking behaviour? If Dr Rae’s false and misleading claims do pose a risk to health, on what basis can his actions be considered acceptable rather than negligent practice for a doctor?*

## *3. The classification of false statements as legitimate opinion sets an unacceptable precedent*

*It would be wise to consider the wider precedent established by the GMC’s decision in this case. If statements like this can be considered legitimate opinion, it implies that doctors have no accountability for anything they say to the public, however factually inaccurate and whatever the public health consequences. If a doctor asserted in the face of all evidence to the contrary*



*that a particular diet could cure cancer, that vaccines were harmful to children, or that condoms were ineffective in protecting against HIV infection, would that be considered as just expressing an opinion and a matter of indifference for the GMC?*

*I would be grateful if you could explain or give an example of where a doctor's statement about a public health issue would be considered a matter for the GMC.*

*4. Irresponsible statements made by doctors are not the responsibility of broadcasters*

*In suggesting that I "may wish to contact the programme makers to voice your concerns about their interview", the GMC appears to be transferring responsibility from a negligent doctor to the broadcaster, and by inference to the broadcasters' regulators, the BBC Trust and OFCOM. This is extremely concerning. Doctors have a high degree of trust in society and strong professional ethos. In this case the BBC assumed that a doctor accepting an invitation to speak about an important public health issue would give a reliable account of the state of knowledge about these issues.*

*I would be grateful if you could explain by what means doctors are held to account if they make false or misleading public statements which plausibly cause adverse health consequences.*

*We did take some care in making this complaint and provided an extensive reasoned and evidence based case demonstrating the Dr Rae had made false and misleading claims of fact. The response from the GMC and the reasoning provided is disappointing and wholly unconvincing. I hope you will respond by taking this complaint seriously and, in the spirit of the discussion suggested in your leaflet, that you will respond to the points and questions set out above.*

*I look forward to hearing from you.*

*Yours sincerely,*

*Clive Bates.*

## 5. Second response from GMC: not serious enough and out of scope

To which the GMC replies changing its argument. This time it claims that the issue is both too trivial for them to deal with or falls outside its remit. None of this holds water: the complaint was made against a specific doctor for his public statements.

*24 April 2015*

*Dear Mr Bates*

*Thank you for your recent correspondence. We are sorry that you are unhappy with our decision to close your complaint.*

*All complaints received are considered with the upmost seriousness, however not all complaints are matters that would require our action. In this case we do not feel that the concerns you have raised may require us to take action against the doctor's registration at this time or fall within our remit for investigation.*

*At this point it may be helpful to reiterate that the GMC can only consider the fitness to practise of individual doctors. We are not a general complaints body and cannot provide answers to specific points such as those referenced in your email as it is not within our role to do so.*

*We appreciate that you strongly disagree with the comments made by the doctor but we do not consider there to be any suggestion that his fitness to practise medicine is impaired to warrant GMC action to restrict or remove his registration. As such does not fall within our remit to consider your complaint further at this time.*

*We are sorry that we are unable to assist you further.*

*Yours Sincerely*

*[GMC Staff]*

## **6. Second reaction from complainants: the reasoning is is completely inadequate**

We respond with exasperation and ask under what circumstances doctors can be held to account for what they say in public.

*To: GMC Fitness to Practise*

*2nd May 2015*

*Dear [GMC staff]*

*I am surprised and somewhat exasperated by your reply. I was taking up the offer to discuss the case that was made in the leaflet enclosed by your colleague [GMC staff]. My purpose is to obtain an explanation of GMC's reasoning in making its decision in this specific case. I am not making general enquiries.*

*The reasoning provided in [GMC staff] response bears little relationship to the substance of the complaint, so I think it is reasonable to ask some simple questions about how the decision was reached. Dr Rae was not 'expressing opinions' he was making affirmative statements of fact about toxic exposures and the comparative risk between smoking and e-cigarette use - these assertions were unambiguously wrong and potentially harmful. There is no evidence anywhere to support any of his statements, and I presented evidence to show that he was wrong by a very large margin. The issue is not a difference of opinion, any more than erroneous and potentially dangerous beliefs about medical treatment can be dismissed as matters of opinion.*

*The more general questions I asked were intended to help you explain the reasoning in this specific case. It is not unreasonable to ask in what circumstances a doctor's public statements would be deemed a matter for intervention by the GMC. If the answer is 'in no circumstances are the public statements of doctors a matter for the GMC' then please just clarify that is the case - is that what you mean by 'or fall within our remit for investigation'? Alternatively, please clarify where a doctor's public statements are deemed a matter for the GMC. At present, I am left with the impression that doctors can make any public statement, no matter how incorrect, irresponsible or damaging, without any professional accountability.*

*As I was invited to, I am trying to discuss the case with the investigator. I would like to see some reasoning for the decision in this specific case that addresses the actual complaint made and to understand GMC's decision-making in this case by reference to GMC's general approach to factually incorrect public statements made by doctors. There is nothing that I have asked that falls outside the GMC's charitable purposes.*

*I look forward to hearing from you.*

*Yours sincerely*

*Clive Bates*

## **7. Final response from GMC: we rarely take action on statements by doctors**

The final GMC response came in the form of a [scanned letter](#). The key paragraphs are:

### *Public statements*

*Typically, a complaint about comments made by a doctor in public is less likely to lead to action being taken than a complaint about a clinical incident. However, we look at each complaint we receive on its own merit and we do not prejudge them based on the nature of the complaint. If the doctor's comments were particularly offensive or unprofessional, we may decide to look into them further.*

### *Reason for closure*

*In this instance, we did not open an investigation into your concerns because we do not believe they are serious enough to suggest we may need to restrict or remove Dr Rae's registration or ability to work. We do not believe that in making these comments Dr Rae has put current or future patient safety at significant risk.*

So if a doctor's comments are "*particularly offensive or unprofessional*" then GMC

*“may decide to look into them“*. We take this to mean that:

- for comments that are just *ordinarily* offensive or unprofessional there is no accountability or means to complain about professional conduct
- that even particularly offensive or unprofessional comments sometimes *may not* attract interest from the GMC
- that being wrong by a factor of more than 1000 times and saying things that are clearly false, misleading and harmful to the public does not qualify as particularly unprofessional commentary.

## **8. Final reaction from complainants: doctors are unaccountable for their public statements**

We declined to pursue this further on the basis that it is a waste of time and that GMC is primarily concerned with protecting the GP rather than upholding professional standards or holding him to account. However, so that others can judge whether this was unprofessional conduct, we decided to make this record public. We draw the following conclusions:

1. The main concern emerging from the responses from the GMC is that doctors appear to have no professional accountability for what they say publicly, however false or damaging, even though they have to abide by professional standards throughout all other aspects of their work.
2. The concept of ‘public health negligence’ is not taken seriously, yet making misleading statements about smoking to thousands of people via broadcast media has the potential to harm many people by adversely modifying their smoking-related behaviour.
3. The GMC did not attempt to justify Dr Rae’s statements, did not seek a justification from Dr Rae and did not investigate the issue. However, Dr Rae’s statements unambiguously breach GMC guidance on what is expected of doctors (professional competence, knowledge and skills) and gives cause for the public to distrust the medical profession more generally – itself a basis for action by the GMC.
4. The GMC argued that the case was insufficiently serious to warrant an investigation – but only after incorrectly claiming his views were a matter

of opinion and offering other inadequate reasons. We are concerned that the case was closed with a cursory dismissal. Subsequent correspondence simply served to shore up that decision without any rigorous argument. The GMC refused to be drawn on the principles it applies to assessing false or misleading public statements by doctors.

5. One argument was that the concerns were too trivial to warrant further investigation. Many doctors would recognise smoking as the single most important source of preventable disease, and [GPs are collectively paid over £80 million through their contracts to reduce smoking](#) around £10,000 for the average sized practice. It seems to us to be the height of irresponsibility to give the public demonstrably false information and so exaggerate the risks of alternatives to smoking.
6. We have no wish to stop Dr Rae seeing patients at his surgery: that would be a sanction poorly targeted at this particular irresponsible behaviour. However, the GMC has the option to issue a warning and could have limited Dr Rae's freedom to make public statements as a professional doctor until he has acquainted himself with the evidence related to the issues he is discussing.

Dr Rae or the BMA are welcome to reply to justify Dr Rae's statements or put his case on the record. Space is reserved below for a reply.