Record of Determinations – Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 05/12/2016- 08/12/2016 and 10/05/2017 -12/05/2017

Medical Practitioner’s name: Dr Anoop PATEL
GMC reference number: 6148938
Primary medical qualification: MB BS 2006 University of London
Type of case Outcome on impairment
New - Misconduct Impaired

Summary of outcome
No action

Tribunal:
Legally Qualified Chair Mrs Fiona Barnett
Medical Tribunal Member: Dr Mojisola Gesinde, Dr David Wrigley

Tribunal Clerk: Miss Rosanna Sheerin

Attendance and Representation:
Medical Practitioner: Present and represented
Medical Practitioner’s Representative: Mr Marios Lambis, Counsel, instructed by RadcliffeLeBrasseur
GMC Representative: Ms Susanna Kitzing, Counsel

Allegation and Findings of Fact
That being registered under the Medical Act 1983 (as amended):

1. Between 6 and 9 March 2015 you were contracted by the NHS to work as an ST5 Anaesthetic Registrar at Charing Cross Hospital (‘Charing Cross’). Admitted and found proved

2. You agreed to provide locum cover to the private unit at Charing Cross (‘the private unit’) on 7, 8 and 9 March 2015 when you knew that you were already working for the NHS as set out in paragraph 1. Found proved
3. On 10 March 2015 you submitted a claim form for locum work undertaken at the private unit from 20:00 on 6 March 2015 to 08:00 on 9 March 2015 inclusive when you:

a. did not work on 6 March 2015; **Admitted and found proved**

b. knew that you had:

   i. not worked in the private unit on 6 March 2015; **Admitted and found proved**

   ii. worked overlapping shifts for the NHS on 7, 8 and 9 March 2015. **Admitted and found proved**

4. Your actions at paragraphs 2 and 3 above were:

a. misleading; **Admitted and found proved in relation to paragraph 3**
   **Found proved in relation to paragraph 2**

b. dishonest. **Admitted and found proved in relation to paragraph 3**
   **Found proved in relation to paragraph 2**

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct.

**Attendance of Press / Public**
The hearing was all heard in public.

**Determination on applications made- 05/12/2016**

**Defence application for Tribunal to invite GMC to withdraw paragraph 2 of the Allegation**

Mr Lambis:

1. You submitted on behalf of Dr Patel, that the Tribunal has an inherent power to invite the GMC to withdraw paragraph 2 of the Allegation. You stated that there is only one act or ‘mischief’ to be considered in this matter and therefore submitted that paragraph 2 gave rise to no additional culpability in relation to paragraphs 3 and 4 of the Allegation.

2. Ms Kitzing, on behalf of the GMC, submitted that she did not agree with the application being proposed by you. She stated that, whilst paragraphs 2 and 3 are
Record of Determinations –
Medical Practitioners Tribunal

interrelated, Dr Patel agreeing to work privately as set out in paragraph 2 and then putting in a claim form for the private work under paragraph 3, are two separate matters and that paragraph 2 does allege additional culpability on Dr Patel’s part.

Tribunal Decision

3. In reaching its decision, the Tribunal considered the submissions made by both you and Ms Kitzing. Having read the documentation provided the Tribunal has determined that, on the face of it, there are two separate matters alleged. Firstly, Dr Patel’s state of mind in allegedly agreeing to provide locum cover at the private unit at Charing Cross and secondly, his state of mind in allegedly submitting the claim form for private work.

4. The Tribunal has therefore determined that paragraph 2 should remain and consequently it did not grant your application.

Application to amend the Allegation - 5 December 2016

Ms Kitzing:

5. You made an application, on behalf of the General Medical Council (GMC) under Rule 17(6) of the Rules, to amend paragraph 2 as follows:

"You agreed to provide locum cover to the private unit at Charing Cross (‘the private unit’) on 7, 8 and 9 March 2015."

Be amended to:

"You agreed to provide locum cover to the private unit at Charing Cross (‘the private unit’) on 7, 8 and 9 March 2015 when you knew that you were already working for the NHS as set out in paragraph 1."

6. You submitted that amending paragraph 2 in the manner proposed makes the foundation of paragraph 4 clearer in relation to paragraph 2. You stated that the proposed amendment is not based on any new evidence or facts.

7. Mr Lambis, on behalf of Dr Patel, opposed your proposed application to amend paragraph 2 of the Allegation. He submitted that the addition of the words proposed by the GMC would “bolster” the Allegation.

Tribunal Decision

8. The Tribunal has considered Rule 17(6) of the Rules which states:

"Where, at any time, it appears to the Medical Practitioners Tribunal that—
Record of Determinations – Medical Practitioners Tribunal

(a) the allegation or the facts upon which it is based and of which the practitioner has been notified under rule 15, should be amended; and

(b) the amendment can be made without injustice,

it may, after hearing the parties, amend the allegation in appropriate terms.”

9. The Tribunal was satisfied that the proposed amendment did not give rise to any injustice for the following reasons:

- It would, in the Tribunal’s view, particularise the Allegation in a way which adds greater clarity in respect of Dr Patel’s state of mind when he allegedly agreed to provide locum cover.

- The Tribunal has had the benefit of reading the documents provided by the GMC. It was satisfied that the proposed amendment is not based on any new facts or evidence and does not introduce a new allegation which the doctor has not had the opportunity to answer.

- Mr Lambis accepted that the defence team had been on notice of the proposed amendment for some time.

10. Accordingly, for the reasons set out above, the Tribunal granted the application to amend paragraph 2.

11. You also made an application to amend paragraph 3 by deleting paragraph 3bii. Paragraph 3 currently reads as follows:

"On 10 March 2015 you submitted a claim form for locum work undertaken at the private unit from 20:00 on 6 March 2015 to 08:00 on 9 March 2015 inclusive when you:

c. did not work on 6 March 2015;

d. knew that you had:

   i. not worked in the private unit on 6 March 2015;

   ii. called in XXX on 6 March 2015 to your NHS job at Charing Cross;

   iii. worked overlapping shifts for the NHS on 7, 8 and 9 March 2015."

12. Mr Lambis, on behalf of Dr Patel, did not oppose the proposed amendment to paragraph 3 of the Allegation.
Record of Determinations –
Medical Practitioners Tribunal

13. In reaching its decision the Tribunal considered whether the amendment could be made without injustice. It noted that the application was not opposed by Mr Lambis on behalf of Dr Patel. It concluded that the unopposed removal of paragraph 3bii would not cause any injustice and accordingly the Tribunal granted the application to amend paragraph 3 as proposed.

Application to hear evidence of Dr A via video link- 5 December 2016

14. You made an application, on behalf of the GMC, to hear the evidence of Dr A, by video link. You informed the Tribunal that Dr A is currently in Mauritius and that in the circumstances she should be able to provide her evidence in the manner proposed. You stated that Dr A has been aware of this hearing taking place since July 2016 and was due to return to the UK to give evidence to the Tribunal. You stated that it was then agreed with Dr Patel’s legal representative prior to the commencement of this hearing that it would be acceptable for Dr A to provide her evidence via video link.

15. Mr Lambis, on behalf of Dr Patel, did not oppose the application made.

Tribunal Decision

16. In reaching its decision, the Tribunal bore in mind that whilst it is always preferable for a witness to attend in person before the Tribunal, Dr A was abroad in Mauritius and there had been no objection from the defence to her evidence being adduced via video link. The Tribunal noted that if Dr A gives evidence via video link it will still have an opportunity to assess her demeanour and her response to questions. The Tribunal therefore determined that it is fair and relevant for Dr A’s evidence to be admitted as proposed and it granted your application.

Determination on Facts - 08/05/2017

Dr Patel:

1. At the outset of the proceedings, Mr Lambis, Counsel, made a number of admissions on your behalf and the Tribunal announced the following paragraphs as having been admitted and found proved. Paragraph 1, 3 in its entirety, paragraphs 4a and 4b in relation to paragraph 3 in its entirety.

2. Paragraph 2 was admitted on a limited basis which was not accepted by the GMC.

3. In reaching its decisions in relation to paragraph 2 and paragraph 4 (in relation to paragraph 2), the Tribunal considered all of the documentary and oral evidence adduced in this case. It has taken account of the submissions made by
Record of Determinations – Medical Practitioners Tribunal

Ms Kitzing on behalf of the GMC, and the submissions made by Mr Lambis on your behalf.

Tribunal approach

4. The Tribunal has borne in mind that the burden of proof rests upon the GMC throughout and that the standard of proof is the civil standard which means on the balance of probabilities. Accordingly, it has made the following findings on the facts.

Assessment of witness evidence

5. At the outset of its deliberations, the Tribunal considered the evidence provided by all the witnesses. The Tribunal heard oral evidence from Dr A, Locum SHO, Medacs Healthcare, Ms D, Head of Operations at Imperial Private Healthcare, and your own oral evidence. The Tribunal has had to assess the reliability of all the evidence placed before it.

6. The Tribunal has determined that the oral evidence provided by both Dr A and Ms D was generally credible. It noted that Dr A had made it clear to the GMC when she made her witness statement that she couldn’t recall every detail of the events in question. She was willing to accept during her evidence when she could not remember events about which she was questioned.

7. The Tribunal’s view was that you were a willing and forthcoming witness, keen to assist the Tribunal by telling your version of events. However, the Tribunal noted that on a number of occasions you did not directly answer the questions that were put to you. The Tribunal could not be certain whether this was as a result of you being nervous, or because you were deliberately avoiding answering those questions.

Background

8. This case concerns your alleged misconduct whilst you were working as an anaesthetic registrar at the Imperial College Healthcare NHS Trust in March 2015.

9. The Tribunal has been informed that you had been working at Charing Cross Hospital ("The Hospital") as an anaesthetist since February 2015. You were due to be on call for the NHS in the anaesthetic department at the Hospital working day shifts from 08.00 to 20.00 on Friday 6 March, Saturday 7 March and Sunday 8 March 2015. On Friday 6 March 2015 XXX you called in XXX to the anaesthetic department. On Saturday 7 March 2015 you returned to work. Over that weekend you provided locum on call cover to the private unit at the hospital when you knew you were already rostered to work for the NHS during that period.
10. On 10 March 2015 you submitted a claim form for locum work undertaken at the private unit from 20:00 on 6 March 2015 to 08:00 on 9 March 2015 inclusive. This was submitted when you had not worked on 6 March 2015 at all, when you knew that you had not worked in the private unit on 6 March 2015 and had worked shifts for the NHS on 7, 8 and 9 March 2015.

Facts

Paragraph 2:
“You agreed to provide locum cover to the private unit at Charing Cross (‘the private unit’) on 7, 8 and 9 March 2015 when you knew that you were already working for the NHS as set out in paragraph 1.”

Found proved

11. You admitted paragraph two. Your admission was made on the basis set out by your solicitors in a letter to the GMC dated 22 November 2016. Your solicitors stated:

"Allegation 2 is admitted in so far as Dr Patel agreed to make himself available to assist on the private unit but only to the extent that he could do so without prejudicing his commitments to his NHS role at the same site”.

12. Ms Kitzing, on behalf of the GMC, did not accept the basis on which your admission was made. She said the GMC’s case was simply that you had agreed to provide locum cover to the private unit at Charing Cross on 7 to 9 March 2015 when you knew that you were already working for the NHS.

13. The Tribunal was therefore required to decide whether it accepted your admission on the basis advanced by your solicitors, or whether the events were more likely than not to have occurred as alleged by the GMC.

14. The Tribunal carefully considered all the documentary and oral evidence before it, in particular, the email correspondence between you and “Locums Admin”. The Tribunal heard relatively lengthy evidence and submissions about the booking of the private work but sets out below those parts of the evidence which it considers relevant to the issues it must decide.

Email correspondence

15. The Tribunal noted the email correspondence beginning with the email dated 11 February 2015 sent by you to XXX at 10.49am titled: “RMO, Private Patients, 15th Floor, Charing Cross Hospital, NIGHTS”. In this email you state:

"Dear locums
Record of Determinations –
Medical Practitioners Tribunal

I am already down to cover 9th March night at CXH

I can also cover 11th March Night
Please confirm asap...

16. The Tribunal noted the email dated 11 February 2015 sent at 10.59am (10 minutes later) from Ms E, Doctor’s Bank, P&OD Transformation Team, Human Resources Charing Cross Hospital which stated:

"Dear Dr Anoop can you also please confirm that you are interested in covering the weekend vacancy starting from 6th/03 to 8th/03- nights?"

17. The Tribunal also noted the email dated 11 February 2015, sent by you in response at 11.03am titled: “RM0, Private Patients, 15th Floor, Charing Cross Hospital, NIGHTS”. In this email you state:

"I can confirm that I can cover this weekend from Friday 6th March night to Monday 9th March morning”

18. The Tribunal noted the email dated 9 March 2015 sent by you to “Locums Admin” at 7.03am titled: "Locum cover" in which you state:

"Dear Locum team

I am already booked to cover this weekend from 6th March to 9th March weekend and have started the on call!…"

19. The Tribunal heard from you that you sent this email in response to an email sent during the night seeking a doctor to cover the weekend shift.

20. You then received an email from “Locums Admin” asking you who sent you the confirmation for the weekend shift. You responded by sending an email dated 9 March 2015 at 10.44am titled: "Locum cover” in which you state:

"Dear XXX

Booked by Amani Mohammad and confirmed on 11th Feb 2015. I have spoken with Rachna today and she has advised me what to do…”

21. The Tribunal then considered the email dated 9 March 2015 sent at 11.04am from Ms E to you in which it states:

"Dear Dr Patel,
Record of Determinations – Medical Practitioners Tribunal

We did not confirm you for the shifts starting from the 6th March, as we were still waiting for you to respond.

The previous email is what I sent to you on the 11th of Feb, asking you to confirm your availability and interest for the weekend shift (from the 6th)...”

22. In your email dated 9 March 2015 sent at 11.06am to Ms E titled: “RMO, Private Patients, 15th Floor, Charing Cross Hospital, NIGHTS”. You state:

"Dear XXX

I sent a reply straight away confirming
I could cover the shift.

I have covered it anyway...”

23. The Tribunal has considered the content and context of the emails as a whole and the language you used in this email correspondence. This includes phrases such as: “Booked by Ms E and confirmed on 11th Feb 2015” and “I am already down to cover 9th March night at CXH”. The Tribunal’s view is that it is clear from the correspondence as a whole that you were discussing bookings of private locum work and that you believed that you were booked to provide locum cover over the weekend of 7 to 9 March 2015. This is because the majority of emails sent to you originate from "Locums Admin" and make reference in the subject lines to "RMO, Private patients 15th Floor...". You made no comment in these emails about your NHS work.

24. The Tribunal has considered your evidence in which you said that the emails sent by you on 7 and 9 March 2015 were referring to your NHS work and not your private locum cover. However, for the reasons set out above, it does not accept your explanation that you were not referring to private work in the email correspondence. It was clear to the Tribunal that you were offering yourself for private shifts and that whilst, in fact, you were not formally booked for the private shifts, you believed yourself to be so. When asked by the Tribunal about your use of the word “booked” you accepted that you would not use this word in relation to your NHS work. You said that you believed you had not been booked for private work that weekend but the Tribunal’s view was that this assertion was not borne out by the documentary evidence.

Dr A

25. You informed the Tribunal that you told Dr A that you had only provided emergency cover to the private unit whilst you covered your NHS shift. Dr A’s evidence was that she did not recall this. She stated in her oral evidence to the Tribunal that if you had told her this, it would have “registered” immediately. She
also stated that she has never previously had anyone tell her that they have provided private cover whilst working for the NHS and that she would have remembered if you had told her this. She informed the Tribunal that she had dealt with at least fifty doctors providing cover to the private unit. She said it would have registered because she would have thought covering both would be too exhausting. The Tribunal has accepted the evidence of Dr A in this regard. It found her response to be spontaneous, genuine and credible. She had a valid and plausible reason for her explanation that she would have remembered such a fact.

26. The Tribunal also had regard to an email dated 9 March 2015, and timed at 7.47am from Dr A to Medacs and Ms D. This email was sent by Dr A after you had covered the weekend on call shifts in the private unit. Dr A stated:

"Hello all,

I have been informed by Anoop Patel that this week-end (Friday 06th to Monday 09th) had shifts that were double booked again...

Dr Patel had assumed he had been booked in for a whole week-end as previously agreed…"

27. You denied telling Dr A that you had assumed you had been booked private cover for the whole weekend. The Tribunal accepted that this email had been produced after Dr A had given her evidence and she had not therefore had an opportunity to comment on it. However, the Tribunal noted that it was written soon after Dr A received the handover from you, and that she had no axe to grind or reason to misrepresent what you had said to her. Further, this email makes sense when considered in the context of the email correspondence as a whole. The correspondence shows that you thought you had been booked for private cover that weekend and attended for your on call cover but another locum had in fact been booked.

NHS Rota

28. You told the Tribunal that when you offered to cover the private shift, you had received your NHS rota but had not looked at it. You agreed that this was foolish and irresponsible. When questioned by the Tribunal you explained that you had a system for maintaining a record of your NHS rota commitments. You said you kept them in your own spread sheet in which you inserted the details from your NHS rota as soon as possible. You were unable to explain why you had not done so on this occasion.

29. The Tribunal found your evidence that you had not looked at your NHS rota, to be implausible. You are an experienced doctor who has worked in the NHS for a number of years. You accepted that you have a system for ensuring that you inform
Record of Determinations – Medical Practitioners Tribunal

yourself of your NHS commitments and you agreed that your NHS work is your priority. In the Tribunal’s view, having received your NHS rota, it was more likely than not that you were aware of your NHS commitments but had nonetheless offered yourself to provide private locum cover at the same time.

30. For all the reasons set out above, the Tribunal decided that it did not accept the basis on which you admitted paragraph 2 of the Allegation. It was satisfied that your attendance at the private unit on the morning of 7 March 2015 was in response to your belief that you had been booked for the weekend shifts on the private unit and not in response to any last minute request for weekend cover.

Paragraph 4:

“Your actions at paragraphs 2 and 3 above were:

c. misleading;

d. dishonest.”

Paragraph 4a in relation to paragraph 2 found proved

31. In reaching its decision, the Tribunal reminded itself that it must apply the ordinary everyday meaning to the word "misleading", and that it should consider whether others had been misled by your actions.

32. The Tribunal had regard to its findings in relation to paragraph 2. It was satisfied that in behaving in this way, your actions were misleading for the following reasons:

- You accepted that you had not told anyone in the NHS that you were providing cover to the private unit during your NHS shifts.
- Consequently, your NHS employers had no knowledge that when you were working for them between 7 to 9 March 2015, you had offered your services, and believed yourself to be booked for on-call work on the private unit.
- In the circumstances, your actions created a false impression to your NHS employers, who would have no reason to doubt your commitment to them during that period. They would reasonably have believed and expected that you were available to cover your NHS contractual responsibilities at all times during your NHS rostered shifts; they had no reason to suspect that you had committed yourself to providing medical cover elsewhere and that you might at some point during your NHS shift, be absent and unable to meet your NHS commitments by virtue of your presence in the private unit.
Record of Determinations –
Medical Practitioners Tribunal

33. Your employers in the NHS were therefore misled by your actions. The Tribunal found paragraph 4(a) proved in relation to paragraph 2.

Paragraph 4b in relation to paragraph 2 found proved

34. The Tribunal next considered whether your actions at paragraph 2 were dishonest. The Tribunal reminded itself that it must apply the ordinary everyday meaning to the word “dishonest”. Further, it was mindful that it must consider your state of mind when agreeing to provide locum cover knowing that you were already due to work for the NHS.

35. The Tribunal had regard to the following factors which it found relevant to the issue of your state of mind and whether you acted dishonestly.

- You admitted that you knew you had NHS commitments when you agreed to provide private locum cover.
- You accepted that you should not have agreed to provide private on-call cover whilst rostered for NHS work, which you agreed was your main priority.
- You must have known that it is not possible to carry out your duties as a Doctor in two places at the same time. This is self-evident.
- You accepted that you had not informed your NHS employers that you would be providing on call cover to the private unit from 7 to 9 March, and agreed that you should have done so.
- You must have known that you would be paid for your NHS work for the weekend of 7 to 9 March 2015, because this was your permanent substantive salaried role. You must have also known that bookings on the private unit attracted separate locum fees; consequently, you must have known that your commitments to both would give rise to payments from both sources. The Tribunal noted that you completed the locum claim form on 10 March 2015, which was immediately after you had completed your private locum work. You also emailed the claim form to Ms D on 10 March 2015, with a request that she let you know when it had been processed. You made an explicit mention in that email of the “extra hours spent on the unit.”

36. It was reasonable to infer from the matters set out above, that you knowingly and intentionally withheld information about your commitments to the private unit from your NHS employers. Whilst there was no internal guidance about “cross-cover”, you were aware that it was not expected that a doctor would cover NHS and private work simultaneously, and so you had chosen not to inform your employers. By virtue of your omission, you placed yourself in a position whereby you could provide cross-cover and be remunerated for your commitments to the NHS and the private unit. In the Tribunal’s view, the only reasonable inference that could be drawn from these facts was that you had acted dishonestly.

37. The Tribunal found paragraph 4(b) proved in relation to paragraph 2.
Record of Determinations –
Medical Practitioners Tribunal

Determination on Impairment - 11/05/2017

Dr Patel:

1. The Tribunal has considered under Rule 17(2)(j) of the General Medical Council (GMC) (Fitness to Practise) Rules Order of Council 2004 whether, on the basis of the facts found proved, your fitness to practise is impaired.

Submissions

2. The Tribunal does not intend to fully rehearse the submissions made by Ms Kitzing, Counsel, on behalf of the GMC, and Mr Lambis, Counsel, on your behalf, as they are a matter of public record.

3. Ms Kitzing submitted that the findings of fact amount to misconduct and that your fitness to practise is currently impaired as a result. She submitted that by booking locum work and submitting a claim form for locum work which you knew contained false information your actions were contrary to paragraphs 65, 71 and 77 of Good Medical Practice (2013 edition)(GMP).

4. She drew the Tribunal’s attention to the Dame Janet Smith’s criteria for impairment set out in her fifth Shipman report and cited in CHRE v NMC and Grant [2011] EWHC 927 (Admin) and sought to rely on paragraphs b, c, d of those criteria. She said that the GMC did not rely on paragraph (a) but the fact that you had placed patients at risk was an aggravating factor.

5. Mr Lambis conceded on your behalf that your actions did amount to misconduct but that this does not necessarily mean that a finding of impairment is made as a result. He drew the Tribunal’s attention to the remediation documentation which has been submitted on your behalf at this stage of the proceedings. He submitted that no patients were put at harm and that your dishonest behaviour will not be repeated. He also drew the Tribunal’s attention to the document- “Dishonest behaviour by health and care professionals: Exploring the views of the general public and professionals- A report for the Professional Standards Authority for Health and Social Care”. Mr Lambis also compared your case to the case of Professional Standards Authority for Health and Social Care v (1) General Medical Council (2) Parven Kaur Uppal [2015] EWHC 1304 (Admin) (Uppal). He informed the Tribunal that in that case, the court decided that a finding of no impairment for a junior doctor who had acted dishonestly was not unduly lenient.

The Tribunal’s Approach

6. The Tribunal has given careful consideration to all of the evidence that has been adduced during the course of these proceedings which includes documentary
Record of Determinations –
Medical Practitioners Tribunal
evidence and the evidence you gave to enable the Tribunal to ask you some
questions. It has also taken account of submissions made by both Counsel.

7. In deciding whether your Fitness to Practise is impaired, the Tribunal has
exercised its own judgement. It has borne in mind the statutory overarching
objective which is to protect the public. This includes: to protect and promote the
health, safety and wellbeing of the public; to promote and maintain public
confidence in the medical profession and to promote and maintain proper
professional standards of conduct for members of the profession.

8. In considering this matter the Tribunal reminded itself that it must follow a
two-step process. It must first consider whether the facts admitted and found
proved amount to misconduct and if so it must then decide whether your fitness to
practise is impaired by reason of that misconduct.

Misconduct

9. In considering whether the facts admitted and found proved amount to
misconduct the Tribunal had regard the case of Roylance v GMC [2001] 1 AC 311.
Lord Clyde stated at p.331:

"Misconduct is a word of general effect, involving some act or omission which
falls short of what would be proper in the circumstances. The standard of
propriety may often be found by reference to the rules and standards
ordinarily required to be followed by a medical practitioner in the particular
circumstances... it is not any professional misconduct which will qualify. The
professional misconduct must be serious”.

10. The Tribunal also noted the standards in GMP (2013 edition) and in particular
paragraphs 65, 71 and 77 which relate to probity. These state:

"You must make sure that your conduct at all times justifies your patients’
trust in you and the public’s trust in the profession” (65)

"You must be honest and trustworthy when writing reports, and when
completing or signing forms, reports and other documents. You must make
sure that any documents you write or sign are not false or misleading.

a. You must take reasonable steps to check the information is correct.

b. You must not deliberately leave out relevant information. (71)

"You must be honest in financial and commercial dealings with employers,
insurers and other organisations or individuals “(77)
Record of Determinations –
Medical Practitioners Tribunal

11. The Tribunal has provided a detailed determination on facts and has taken this into account. In summary, the Tribunal has found proved that between 6 and 9 March 2015 you were contracted by the NHS to work as a ST5 Anaesthetic Registrar at Charing Cross Hospital (‘Charing Cross’) when you had been working at Charing Cross as a ST5 Anaesthetist for two months.

12. It has found proved that you agreed to provide locum cover to the private unit at Charing Cross (‘the private unit’) on 7, 8 and 9 March 2015 when you were already contracted to work for the NHS on those dates.

13. It has been found proved that you did not work on 6 March 2015 and you knew that you had not worked in the private unit on 6 March 2015. You also knew that you had worked overlapping shifts for the NHS and the private unit on 7, 8 and 9 March 2015. On 10 March 2015 you subsequently submitted a claim form for the private locum work; this contained a false claim for payment which you knew to be false. Your actions in this regard were found to be misleading and dishonest.

14. In the Tribunal’s view you breached the principles of probity contained within GMP as outlined above. You behaved dishonestly twice and could have profited personally from your dishonest claim for payment if it had been processed. The Tribunal was in no doubt that this falls seriously short of the standards of conduct that the public and patients are entitled to expect from all registered medical practitioners. It concluded (and it was accepted by you) that the matters admitted and found proved were sufficiently serious to amount to misconduct.

Impairment

15. Whilst the Tribunal has considered the submissions of both Ms Kitzing, Counsel, for the GMC and Mr Lambis, Counsel, on your behalf, the matter of impairment is one for it to determine, exercising its own judgement.

16. In considering the matter of impairment, the Tribunal has noted the case of Cohen v GMC [2008] EWHC 581 (Admin) in which Silber J stated, at paragraph 65:

"...It must be highly relevant in determining if a doctor’s fitness to practise is impaired that first his or her conduct which led to the charge is easily remediable, second that it has been remedied and third that it is highly unlikely to be repeated."

17. It also noted Dame Janet Smith’s criteria for impairment set out in her fifth Shipman report and cited in CHRE v NMC and Grant [2011] EWHC 927 (Admin):
"Do our findings of fact in respect of the doctor’s misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or

b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or

c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

d. has in the past acted dishonestly and/or is liable to act dishonestly in the future."

18. Mr Lambis submitted that your actions in simultaneously covering your NHS role and the private unit did not put patients at risk because you were on call for the NHS that weekend in any event. However, in the view of the Tribunal, your actions in agreeing to cover your NHS role and simultaneously provide private locum cover did place patients at risk of harm because:

- You had not informed your NHS employers about your commitment to the private unit that weekend, and
- At some point during your NHS shift you could have been absent and unable to meet your NHS commitments by virtue of your presence in the private unit.

19. The Tribunal nonetheless accepted that there was no evidence of actual harm to patients.

20. The Tribunal has determined that your actions brought the profession into disrepute, that you acted dishonestly in two respects and thus breached a fundamental tenet of the medical profession. All four criteria outlined by Dame Janet Smith for a finding of past impairment are therefore satisfied.

Remediation

21. The Tribunal acknowledges that dishonest behaviour is by its very nature difficult to remediate, however it accepts that it is possible to do so.

22. The Tribunal has considered the considerable amount of relevant evidence you have submitted in relation to your reflection on your actions and the continuous professional development (CPD) activities you have undertaken both before your initial hearing in December 2016 and since it adjourned. This included:
Record of Determinations –
Medical Practitioners Tribunal

- two detailed reflective statements dated 19 December 2016 and 25 April 2017,
- your comprehensive personal development plan which includes sections on
courses you have undertaken, reflective practice and online e-learning

23. The Tribunal considered the oral evidence you gave on answering questions
from the Tribunal members. It noted that even though you were not intending to
give evidence at this stage of the proceedings, you were willing to answer questions
which the Tribunal had for you. The Tribunal considered your answers to be
truthful, credible and open. It found you to be full of remorse for your actions and
shameful about your misconduct. It was satisfied that although you denied some
allegations at the outset, you fully accepted the Tribunal’s findings in relation to
these. It recognised that you were humbled by the findings made at the first stage
of the proceedings and by the entire regulatory process.

24. You provided evidence of your reflective learning and examples you have
used to assist you in developing insight into your actions. It noted that your personal
development plan is directly related to GMP in the areas in which you fell short and
has been tailored to address the misconduct in this case.

25. The Tribunal has noted the compelling and positive testimonial documentation
provided on your behalf. This includes testimonials from senior colleagues who were
aware of the admissions you made in these proceedings. Many of your colleagues
attest to your excellent skills as a doctor. It was also evident that many of these
colleagues recognised that these events have given you cause to reflect at length on
your behaviour and to take steps to improve yourself both personally and
professionally. Many of your colleagues commented that you are now a better doctor
as a result of the steps taken to reflect on your behaviour.

26. The Tribunal noted in particular the letter dated 25 April 2017 from Dr B,
Associate Dean, Professional Support Unit, NHS Health Education England, who
assisted you in putting together a programme of learning to help you address the
concerns raised about your misconduct and probity. The Tribunal was impressed
that you had had sufficient insight to seek assistance from the Associate Dean.

27. The Tribunal has considered the steps you have taken to address your
shortcomings to ensure that you would not repeat your misconduct. It considered
that these steps are significant and well documented. Further, it was satisfied that
your insight into your misconduct is highly developed and that your remorse and
regret are genuine. There was also no evidence before the Tribunal of any similar
misconduct since these events. It concluded therefore that the risk of repetition is
low.
Tribunal Decision

28. The Tribunal was mindful that it must also have regard to the overarching objective and whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment was not made.

29. Doctors occupy a position of privilege and trust in society and are expected to uphold proper standards of conduct. Members of the public are entitled to place complete reliance upon doctors to behave honestly. The relationship between the profession and the public is based on the expectation that medical practitioners will act at all times with absolute integrity. Dishonesty, even where it does not result in direct harm to patients, is particularly serious because it can undermine the trust the public place in the medical profession.

30. The Tribunal had regard to the case of Uppal which Mr Lambis brought to its attention. Its view however was that this case could be distinguished from Uppal in that you have acted dishonestly twice, you stood to profit from your dishonest behaviour, and further, you are a more experienced doctor than Dr Uppal. Dr Uppal also admitted all of the allegations made against her.

31. The Tribunal acknowledged that reasonable and fully informed members of the public would be aware that you have taken considerable steps to satisfy this Tribunal that you will not repeat your misconduct. However, its view was that your actions fell so far short of expected standards and given that you behaved dishonestly twice and may have profited from your dishonest behaviour, the Tribunal was satisfied that this was not an exceptional case which would justify a finding of no impairment. It decided that public confidence in the profession would be seriously damaged and proper professional standards would not be maintained if a finding of impairment was not made. It therefore found your fitness to practise impaired on that basis.

32. In the circumstances, the Tribunal has determined that your fitness to practise is impaired by reason of your misconduct pursuant to Section 35C(2)(a) of the Medical Act 1983, as amended.

Determination on Sanction - 12/05/2017

Dr Patel:

1. Having determined that your fitness to practise is impaired by reason of your misconduct, the Tribunal has now considered what action, if any, it should take with regard to your registration, in accordance with Rule 17(2)(n) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended (‘the Rules’).
Record of Determinations –
Medical Practitioners Tribunal

Evidence

2. At this stage of the hearing you provided further oral evidence to the Tribunal. You agreed that your actions were a significant departure from the standards expected of registered doctors and that you accept the findings of the Tribunal. You told the Tribunal that your actions had impacted greatly on your family and that there had been a ‘grey cloud’ over you.

3. You also told the Tribunal that you were in your final year of a seven year training program at the end of which, if successfully completed, you would be eligible to become a consultant in anaesthetics. You stated that if you were suspended for even a short period of time you would lose your training number. You said the practical reality of this would be that you would be considered ‘over qualified’ to apply for some less senior jobs and that it would be very difficult for you to get back into training. You said that if suspended you would not be able to return to your current post and could only reapply for your national training number with the support of the Dean; you would have to compete with others nationally to get back on the training programme and you would not now be eligible to become a consultant.

4. Mr Lambis adduced an email dated 11 May 2017 from Dr C, Head of the London School of Anaesthetics. In this email she confirmed that if your national training number was removed you could only reapply for one with the support of the Post Graduate Dean which she stated would be likely (but not guaranteed) in your case given the good progress that you have made and the support offered by local trainers. She further outlined that if your national training number was removed you could apply for a new training number but this would be in open competition and in the past recruitment processes, there have generally been one post for every two to three applicants. She said that the recruitment process is an annual one usually taking place in December to January for anaesthetics for a start the following August. She said that re-entry at ST3 level would be likely to prolong your training by a number of years.

Submissions

5. Ms Kitzing, on behalf of the GMC, submitted that the appropriate sanction in your case is one of suspension. She drew the Tribunal’s attention to the relevant paragraphs of the GMC’s Sanctions Guidance (July 2016) (the SG).

6. Ms Kitzing submitted that this is not an exceptional case where no action would be justified given the Tribunal’s findings at facts and impairment. She said that you acted dishonestly twice and public confidence in the profession would be damaged if the Tribunal determined to take no action. Ms Kitzing further submitted that this is not a case where the Tribunal would be able to formulate appropriate, proportionate, workable and measurable conditions as the matters at issue are not
ones where a period of retraining, for example, would be required nor did they relate to your health.

7. Ms Kitzing submitted that your dishonesty was serious in nature and the only appropriate sanction was one of suspension. She said given the serious breaches of Good Medical Practice (2013) (GMP) this was not a case where the possible impact on your career should prevent the Tribunal taking this course of action. She submitted that suspension would be the proportionate outcome given the misconduct found proved and whilst the Tribunal will have regard to Dr C’s information with regard to the possible negative consequences to your career, suspension continues to be the proportionate sanction in this case.

8. Mr Lambis, Counsel, on your behalf submitted that, in this particular case no action is necessary. He accepted that integrity, probity and honesty are important principles for those who practise medicine and dishonesty is something which is taken very seriously. However, he said that you have accepted your wrongdoing from the outset, self-referred to the GMC, have demonstrated insight into your wrongdoing and have actively engaged in this regulatory process. He said that there are circumstances in this case where the Tribunal could justify a finding of no action.

9. In relation to conditions, he accepted that whilst your case did not immediately fulfil the criteria required, as outlined in the SG, he submitted that the Tribunal could impose some conditions preventing you from undertaking private or locum work.

10. Mr Lambis submitted that this is not a case that requires suspension, he said that the finding of misconduct and impairment should not be underestimated and are of significance in their own right. He reminded the Tribunal of the evidence adduced that if you were suspended for any length of time you would lose your national training number and would face considerable difficulties in your future career as you may find it difficult to regain a training number. He said you have nearly completed your training and are eligible to become a consultant next year. Mr Lambis submitted that it would be a tragedy for you and a major loss to the profession if you were not able to continue with your career. He drew attention to the positive testimonials which have been adduced on your behalf and the impact that suspension may have upon you and your family.

11. Mr Lambis reminded the Tribunal that the matter of sanction was up to the judgement of this Tribunal and that guidance, such as the SG, was just that, guidance. He submitted that the Tribunal must deal with each case separately and on its own merits, otherwise the Tribunal would serve no purpose.
Record of Determinations –
Medical Practitioners Tribunal

Aggravating Factors

12. In relation to aggravating factors the Tribunal had regard to the following:

- Your dishonest actions were premeditated. A number of months in advance, you agreed to provide locum cover in the private wing of the hospital for a number of days, full in the knowledge that you were contracted to work in your NHS post on these days;
- Patients were placed at risk of harm by your actions.

Mitigating Factors

13. The Tribunal balanced those with the mitigating factors in this case:

- Your high level of insight into your misconduct as demonstrated in your evidence and reflective logs, and your extensive remediation;
- You have apologised for your actions and expressed genuine remorse and shame;
- You have taken this opportunity to develop yourself both professionally and personally. You have undertaken coaching training and have now developed those skills so that you take a more ‘holistic’ approach to your role as a doctor; you actively provide support to your colleagues as a consequence of your personal development during this process. The Tribunal noted that you were nominated as the ‘best individual coach amongst the students present’ on the coaching course;
- Your previous good character and that you are held in high esteem by patients and your colleagues both senior and junior, including your Assistant Postgraduate Dean who has been very supportive of you;
- You have been open about this hearing with colleagues, you have had full and frank discussions with many of them as demonstrated by their comments in the testimonial documentation adduced;
- It has been over two years since the events explored in this hearing and the Tribunal has been presented with no evidence of repetition of similar actions.

Tribunal’s Approach

14. The decision as to the appropriate sanction, if any, to impose in this case is a matter for this Tribunal exercising its own judgement. In reaching its decision, the Tribunal has taken account of the SG and the statutory overarching objective, which includes protecting and promoting the health, safety and wellbeing of the public, promoting and maintaining public confidence in the profession, and promoting and maintaining proper professional standards and conduct.
Record of Determinations –
Medical Practitioners Tribunal

15. The Tribunal recognises that the purpose of a sanction is not to be punitive, although it may have a punitive effect. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing your interests with the public interest.

16. The Tribunal has already given detailed determinations on impairment and it has taken those matters into account during its deliberations on sanction.

Tribunal’s Decision

17. In deciding what sanction, if any, to impose the Tribunal reminded itself that it must consider each of the sanctions available, starting with the least restrictive, to establish which was appropriate and proportionate in this case.

No Action

18. The Tribunal first decided whether this was a case which could be concluded without any further action. It reminded itself of Mr Lambis’ submission that, given the exceptional circumstances of this case, including the inevitable loss of your national training number if you were suspended, this was such a case. The Tribunal reminded itself of the need to act proportionately, always balancing the interests of the public with your interests. The SG states that it is possible to justify a Tribunal taking no action where there are exceptional circumstances.

19. In reaching its decision, the Tribunal considered all the submissions from Counsel and the documentary and oral evidence it had received throughout the duration of this case; it carefully weighed the aggravating and mitigating factors.

20. The Tribunal found that your actions had been pre-mediated and had put patients at risk. As against this, it had identified a number of mitigating factors; these are set out above, however the Tribunal will now address the key mitigating factors in more detail. It received extensive documentary evidence at the impairment stage of the proceedings, the breadth and depth of which it found to be compelling and impressive.

21. The Tribunal reminded itself of para 63 of the SG which stated that insight and remediation were unlikely, on their own, to result in no action being taken.

‘63 To find that a doctor’s fitness to practise is impaired, the tribunal will have taken account of the doctor’s level of insight and any remediation, and therefore these mitigating factors are unlikely on their own to justify a tribunal taking no action.’

22. In the Tribunal’s view, however, a particularly striking feature of the remediation was the fact that you have not only taken steps to remediate your
misconduct such that it was unlikely to be repeated, but that many of your colleagues believed you have taken such extensive steps to improve yourself that you are now a better doctor and a role model to others. The Tribunal was satisfied that given the significant steps taken by you to remediate your misconduct, you could have done no more in this respect. Further, in the Tribunal’s view and in the view of your colleagues, many of whom are senior to you, you are an asset to the profession and the public. A key factor for this Tribunal when applying its mind to paragraph 63 of the SG, was that you had not merely remediated your misconduct, but that the impact of your remediation had far-reaching consequences for your personal attributes and professional abilities. In the view of the Tribunal this extended beyond the act of remediation. Ultimately, you have put right your wrongs and will not repeat them, but you are now a better professional. This will inevitably benefit junior doctors in your team and those members of the public who need your services. In the Tribunal’s view, this particular outcome is uncommon in these proceedings in cases where dishonesty has been found and where there are no clinical issues.

23. The Tribunal also had regard to the evidence it had seen and heard in relation to the impact of a suspension on your training. It was evident from the Reference Guide for Postgraduate Specialty Training in the UK (the Gold Guide, 6th edition) that any suspension in these proceedings, for any length of time, will result in the loss of your national training number. The Tribunal carefully considered the email from Dr C dated 11 May 2017. She confirmed that once the training number is lost, you may be able to apply to re-enter the training programme, but only with the support of your Postgraduate Dean, and even then, you would be obliged to apply to re-enter the programme at the level of ST3, (whereas you are currently at ST7 level).

24. The Tribunal was aware that suspension is frequently considered to be an appropriate and proportionate sanction in a case of dishonesty where there has been insight and remediation. Further, it was aware that many doctors in these Tribunals will suffer the loss of a national training number if their registration is suspended. However, it’s view was that the position in which you will find yourself, should a suspension be imposed in this case, was unusual and uncommon. This is because you have undergone many years of training in the anaesthetics training programme. You are now in your final year of training and will be eligible to apply for a consultant post relatively soon. Should your registration be suspended, you may not be able to return to the training programme at all; if you receive the requisite support and are permitted to reapply, you will then have to compete with others nationally to regain a place and can only apply for a place which is five years behind where you are now in your training. In the Tribunal’s view, this means that you would be in a worse position than, for example, a trainee doctor at the ST2 or ST3 level, who (if given an opportunity to re-apply) would not have to regress 5 years in their training programme. The Tribunal was in no doubt that whilst you have acted dishonestly, and behaved in a pre-mediated way in the past, such a consequence, should it occur, would be wholly disproportionate because a suspension, even if
Record of Determinations – Medical Practitioners Tribunal

short, could effectively ruin your career. It was evident, from the documentation before the Tribunal, that you are a competent and trusted trainee who has a promising career ahead of you.

25. The Tribunal reminded itself of the well-known case of Bolton v Law Society (Bolton v The Law Society [1993] EWCA Civ 32). It was acutely aware that the fortunes of an individual doctor must not be given more weight than the need to maintain the reputation of the profession. However, it was similarly aware of the public interest in ensuring that the career of a competent doctor is not ended (Giele v GMC [2005] EWHC 2143 (admin). It was evident to the Tribunal from the testimonials provided that your colleagues held you in high esteem, for example Dr F (Consultant Anaesthetist and Honorary Senior Lecturer Imperial College Healthcare) said:

'Dr Patel has all the attributes to make an excellent Consultant Anaesthetist and there is no doubt in my mind that he will continue to develop his specialty, and to teach and train the next generation of doctors and allied medical professionals. For him not to be able to fulfil this would be a complete travesty'

26. If you were suspended in these proceedings, even briefly, you may be able to return to practice as a doctor in a junior role; however, the loss of your training number would result in the loss of a doctor who could perform the role of a senior trainee, one who is close to reaching consultant level and one who is already trusted by your colleagues to work independently and lead a team.

27. Overall, the Tribunal had regard to the far-reaching effects of the remediation undertaken by you, and the inevitable loss of your training number and its allied consequences if your registration was suspended. Its view was that the loss of your training number in the event of a suspension and the connected consequences was a powerful and persuasive argument when deciding the proportionality of any sanction. It concluded that this was a case in which exceptional circumstances prevailed which would justify it in taking no action. In relation to paragraph 63 of the SG, this states that the Tribunal should consider:

a. What the exceptional circumstances are:
The far-reaching impact that these proceedings and the remediation undertaken have had on your abilities as a professional and an individual. Also, the potential loss of your career as a consultant anaesthetist should your registration be suspended.

b. Why the circumstances are exceptional:
This is because in the Tribunal’s view, it is uncommon for a doctor who has acted dishonestly in a case where there were no clinical issues to take such significant steps to remediate his practice that they have led to an
improvement in his overall abilities and qualities as a person and as a professional. In relation to your national training number, your position is exceptional because given your current seniority in the training programme, the loss of the number, (if you were suspended) would set your career progression back by at least 5 years and could damage your opportunities to become a consultant at all in the future.

c. **How the exceptional circumstances justify taking no action:**
The exceptional circumstances identified have persuaded the Tribunal that given your insight, remediation, current skill level, ability to lead tea and the high esteem in which you are held by your colleagues, the public interest would be best served by allowing you to return to practice. The Tribunal concluded that conditions would serve no useful purpose, given that there is low risk of repetition, and a suspension would have far-reaching adverse consequences for your career which would be disproportionate in all the circumstances and particularly serious for you at such an advanced stage in your career.

28. The Tribunal was also mindful that a finding of impaired fitness to practise has been made, and that whilst the Tribunal has decided to take no action, this finding will remain with you. The Tribunal was satisfied that public confidence in the profession and the need to maintain proper standards of conduct and behaviour would not be undermined by its decision to take no action. Fully informed and reasonable members of the public would know about your misconduct but equally, they would know about the steps you have taken to put things right, the positive impact of these steps on your skills and abilities as a doctor and the devastating consequences for you and your potential patients, if your national training number was removed.

29. Accordingly, the Tribunal has determined that the appropriate and proportionate response is for no action to be taken on your registration.

That concludes your case.

**Confirmed**

**Date** 12 May 2017

Mrs Fiona Barnett, Chair