

PUBLIC RECORD



Dates: 03/12/2018 - 06/12/2018

Medical Practitioner's name: Dr Ahmadreza BARKHORDARIAN

GMC reference number: 4474683

Primary medical qualification: MB BS 1997 University of London

Type of case
New - Misconduct

Outcome on impairment
Impaired

Summary of outcome

Erasure

Immediate order imposed

Tribunal:

Legally Qualified Chair	Mr Stuart McLeese
Lay Tribunal Member:	Mrs Michele Clare
Medical Tribunal Member:	Dr Maria Dyban

Tribunal Clerk:	Rowan Barrett
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Attendance and Representation:

Medical Practitioner:	Not present and not represented
GMC Representative:	Mr David Toal, Counsel

Attendance of Press / Public

In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held in public.

Overarching Objective

Throughout the decision making process the tribunal has borne in mind the statutory overarching objective as set out in s1 Medical Act 1983 (the 1983 Act) to protect,

promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

Determination on Facts - 04/12/2018

Background

1. Dr Barkhordarian is alleged to have applied for a post in Cardiothoracic surgery at Health Education England on 13 November 2017, falsely indicating on an application form that he had a valid licence to practice, when in fact his licence had been withdrawn from 24 January 2017. He had been informed by letter on 20 December 2016 that this was going to happen. He had subsequently appealed the withdrawal of his licence to practise and lost that appeal on 14 July 2017. Dr Barkhordarian is further alleged to have been dishonest in his responses to subsequent enquiries from the GMC.
2. The initial concerns were raised with the GMC in January 2018 by Dr A, Postgraduate Dean at Health Education England.

The Allegation

3. The Allegation made against Dr Barkhordarian is as follows:

That being registered under the Medical Act 1983 (as amended):

1. On 13 November 2017 you applied for a post in Cardiothoracic Surgery to Health Education England - Wessex ('the Application') and you:
 - a. answered yes to the following question, 'Do you have a FULL registration with a Licence to Practise awarded by the GMC?'; **Found proved**
 - b. agreed to a declaration that stated, 'I declare that the information I have given in support of my application, including the information supplied on this form and any attached appendices, is, to the best of my knowledge and belief true and complete.' **Found proved**
2. On 29 January 2018 you applied for a post in Cardiothoracic Surgery at St. Barts Hospital and stated on the application form, 'I have full registration with a licence to practise'. **Found proved**
3. On 30 May 2018, you wrote a letter to the GMC stating, in regard to the Application: 'I must have been under the impression that I had a licence when that was not the case in this Nov 2017 application'. **Found proved**
4. On 3 July 2018, you wrote a letter to the GMC stating, in regard to the Application: 'The Oriel online application 2017 in Cardiothoracic Surgery was not working properly for me as some sections eg: the specialty and registered

with licence was locked and I was unable to change or edit them.' **Found proved**

5. The answer you provided at paragraph 1a and information you provided at paragraphs 1b - 4 above was:
 - a. untrue; **Found proved**
 - b. known by you to be untrue. **Found proved**
6. Your conduct as described at paragraphs 1-5 was dishonest. **Found proved**
7. The GMC wrote to you on the following dates requesting that you complete and return a Work Details Form ('WDF'):
 - a. 19 February 2018; **Found proved**
 - b. 22 February 2018; **Found proved**
 - c. 26 February 2018. **Found proved**
8. You failed to provide the GMC with a completed WDF within a reasonable time. **Found proved**

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

Documentary Evidence

4. The Tribunal had regard to all the documentary evidence provided by the parties. This evidence included, but was not limited to:
 - Referral from Health Education England Wessex
 - Copies of application forms completed by Dr Barkhordarian for Health Education England on 13 November 2017 and St Barts Hospital on 29 January 2018
 - Copies of letters sent to Dr Barkhordarian by the GMC in relation to the withdrawal of his licence to practise and his subsequent appeal, various dates
 - Witness statement of Mr B, dated 25 July 2018
 - Witness statement of Mr C, dated 20 August 2018
 - Correspondence between Dr Barkhordarian and the GMC, various dates including communication on 3 July 2018, 3 September 2018 and 20 September 2018.

The Tribunal's Approach

5. The Tribunal heard and accepted the advice of the Legally Qualified Chair, which included the matters below.

5. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Barkhordarian does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e. whether it is more likely than not that the events occurred.

6. When considering dishonesty, the Tribunal bore in mind the relevant legal test, particularly the principles as set out in paragraph 74 of *Ivey v Genting Casinos 2017*, namely:

"74. ...When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held... once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

7. The Tribunal bore in mind the principle that, in general, the more serious the allegation the more cogent would be the evidence required. Dishonesty is regarded as a serious matter. The Tribunal was mindful that it should subject the GMC's evidence to a critical, anxious and heightened scrutiny.

The Tribunal's Analysis of the Evidence and Findings

8. The Tribunal has considered each outstanding paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts.

The Tribunal's Overall Determination on the Facts

9. The Tribunal has determined the facts as follows:

Paragraph 1a

10. The Tribunal has had regard to a printout of an application form for a post within Health Education England completed in Dr Barkhordarian's name, in which the question 'Do you have a FULL registration with a Licence to Practice awarded by the UK GMC?' is clearly answered 'Yes.'

11. The Tribunal has had regard to the fact that although Dr Barkhordarian clearly takes issue with this specific allegation he has never sought to suggest that he did not submit the application for this post.

12. Although the application form is undated, the Tribunal has noted the email to the GMC from Dr A, dated 19 February 2018, in which he confirmed that Dr Barkhordarian's application was submitted on 13 November 2017.

13. Accordingly, the Tribunal found this sub-paragraph of the Allegation proved.

Paragraph 1b

14. The Tribunal has again referred to the printout of Dr Barkhordarian's application form. The declaration, as set out in Paragraph 1a, is at end of the form and there is a ticked box beneath which states 'I agree to the above declaration.' The Tribunal has therefore found this sub-paragraph of the Allegation proved.

Paragraph 2

15. The Tribunal has had regard to a printout of a second application form completed by Dr Barkhordarian in relation to a post in cardiac surgery at St Barts Hospital. On this form, the section reading 'Please state your GMC registration status' has been completed with the answer 'I have full registration with a licence to practice.' The Tribunal also had sight of a screen printout confirming that the application was submitted on 29 January 2018. The Tribunal has therefore found this paragraph of the Allegation proved.

Paragraph 3

16. The Tribunal referred to the letter dated 30 May 2018 Dr Barkhordarian wrote to Ms D, solicitor for the GMC. Within this letter, Dr Barkhordarian stated 'I must have been under the impression that I had a licence when that was not the case in this Nov 2017 application.' The Tribunal has therefore found this paragraph of the Allegation proved.

Paragraph 4

17. In a letter to the GMC, seen by the Tribunal and dated 3 July 2018, Dr Barkhordarian stated that, 'The Oriel online application 2017 in Cardiothoracic Surgery was not working properly for me as some sections eg: the speciality and registered with licence was locked and I was unable to change or edit them.' The Tribunal therefore found this paragraph of the Allegation proved.

Paragraph 5a in respect of Paragraph 1a

18. The Tribunal has had regard to two letters from the GMC sent to Dr Barkhordarian on 20 December 2016 and 3 August 2017. The first stated that Dr Barkhordarian's licence would be withdrawn on 24 January 2017, and that this meant that he must not practice in the UK and outlined his right of appeal. The second letter is in response to Dr Barkhordarian's unsuccessful appeal of this decision, and includes the full decision by the Registration Appeal Panel. Dr Barkhordarian wrote a response to that decision on the day it was issued and so was clearly aware of the contents of the decision. The Tribunal is therefore satisfied that Dr Barkhordarian's statement that he held a full registration with licence to practice was untrue, and finds this subparagraph of the Allegation proved in respect of paragraph 1a.

Paragraph 5a in respect of Paragraphs 1b - 4

19. The Tribunal has considered these subparagraphs of the Allegation together. Given that Dr Barkhordarian received and responded to letters and emails from the GMC regarding the withdrawal of his Licence to Practice and an unsuccessful appeal against this decision lodged by him, the Tribunal is satisfied that Dr Barkhordarian knew that he did not have a licence to practise. In particular, he responded to the decision of the Registration Appeal panel immediately and so was clearly cognisant of the contents of that decision. In his response he referred to specific paragraphs of the decision. The Tribunal therefore finds Paragraph 5a in respect of Paragraphs 1b – 4 proved.

Paragraph 5b in respect of Paragraph 1a

20. The Tribunal has had regard to the communication between Dr Barkhordarian and the GMC regarding the withdrawal of his licence to practice between December 2016 and August 2017. It considers that the letters from the GMC made it very clear that Dr Barkhordarian's licence was being withdrawn. In particular, the letter Dr Barkhordarian received on 3 August 2017, and the accompanying decision, notified him that his appeal had not been upheld. The Tribunal noted the bold text in the letter, stating the date on which Dr Barkhordarian's licence would be withdrawn, and advising him 'You must not practice in the UK.' The Tribunal is therefore satisfied that Dr Barkhordarian knew that he did not have a licence to practice, when he stated on the Health Education England application form that he did.

Paragraph 5b in respect of Paragraphs 1b - 4

21. In addition to the letters from the GMC notifying Dr Barkhordarian of the withdrawal of his licence to practice, the Tribunal has also considered a copy of the decision of the Registration Appeal Panel which was enclosed with the letter dated 3 August 2017. Whilst it has disregarded all sections of the document which are not relevant to the matters under consideration by this Tribunal, the Tribunal did note that the concluding paragraphs very clearly set out the decision of the Panel:

'Having considered all the information before it, including the provisions of the Medical Act and Regulations, the Panel is not satisfied by the evidence that Dr Barkhordarian has provided that he remains up to date and fit to practise.

Accordingly, the Panel has determined to dismiss Dr Barkhordarian's appeal against the decision of the Assistant Registrar to withdraw his licence to practise under the General Medical Council (Licence to Practise and Revalidation) Regulations 2012.

The Panel would remind Dr Barkhordarian that should he wish to practise in the United Kingdom in the future he can apply to have his licence to practise restored.'

22. The Tribunal has therefore determined that Dr Barkhordarian knew at all times that his licence to practise in the UK had been withdrawn by the GMC and that his appeal against this decision had not been successful. It follows, therefore, that Dr Barkhordarian knew that the statements he made on the two applications forms, which related to paragraphs 1 and 2 of the Allegation were false. In addition, his later explanation to the GMC that he 'must have been under the impression' he had a licence to practise, which forms the basis of Paragraph 3 was also false.

23. The Tribunal then considered Paragraph 4, which related to Dr Barkhordarian's assertion on 3 July 2018 that there had been technical issues and the section of the application form which asked applicants to confirm they held full registration with a licence to practice was locked and that he had been unable to change it. The Tribunal noted that there was no evidence before it to show that Dr Barkhordarian had made any attempts to notify anybody of this issue.

25. The Tribunal also considered that this was inconsistent with Dr Barkhordarian's previous explanations, firstly on 24 May 2018 in a letter to the GMC, where he stated in relation to the application that it 'may have been hacked', and on 30 May 2018 that he 'must have been under the impression' that he did hold a licence to practise.

26. The Tribunal further noted the evidence of Mr B that the online application system does not lock data in place and it is always possible for an applicant to overwrite or change any previously entered information. It also noted Mr B' statement that he was not aware of any reports of similar issues from any other applicant who had used the online system. The Tribunal therefore considered, on the balance of probabilities, that Dr Barkhordarian knew that the statement he made to the GMC was untrue.

24. The Tribunal has therefore found Paragraph 5b proved in relation to 1a and 1b – 4 of the Allegation.

Paragraph 6

25. In light of the Tribunal's findings, it has concluded that Dr Barkhordarian could not have genuinely believed that he was acting honestly. It is clear that Dr Barkhordarian could not have believed that he had a licence to practise at the time of completing the application forms, or that the subsequent explanations he provided to the GMC were true.

26. The Tribunal considered that, on the evidence before it and without engaging in speculation, there is no other satisfactory explanation, for example carelessness, which would explain Dr Barkhordarian's actions in falsely stating that he had a licence to practise on these two application forms. The Tribunal also had regard to the fact that Dr Barkhordarian then went on to give inconsistent explanations to the GMC as to the reasons for this. On the balance of probabilities, the Tribunal has therefore concluded that Dr Barkhordarian's actions were dishonest by the standards of ordinary and decent people.

Paragraph 7a

27. The Tribunal has had regard to a copy of a letter sent to Dr Barkhordarian on 19 February 2018 by the GMC, requesting that the Work Details Form be completed and returned. The Tribunal also notes the response from Dr Barkhordarian, dated 21 February 2018, in which he provided unrelated documents but did not provide a completed Work Details Form. The Tribunal has therefore found this sub-paragraph of the Allegation proved.

Paragraph 7b

28. The Tribunal has had regard to a further email from the GMC to Dr Barkhordarian, dated 22 February 2018, in which a further request for the Work Details form is made. The Tribunal noted that this email states that failure to do so would be considered as a potential additional allegation of misconduct.

29. The Tribunal had regard Dr Barkhordarian's email correspondence with the GMC during the course of that day. He initially stated that he did not intend to complete the Work Details Form. On receipt of the GMC's email, referred to in the previous paragraph, Dr Barkhordarian confirmed that his position had not changed and made reference his earlier email in which he stated in terms he would not be returning the form. The Tribunal has found this sub-paragraph of the Allegation proved.

Paragraph 7c

30. The Tribunal has also taken note of an email dated 26 February 2018, in which a final request for the Work Details Form was made by the GMC. The Tribunal notes that Dr Barkhordarian again replied to this email the same day, forwarding his

previous email of 22 February. The Tribunal has found this sub-paragraph of the Allegation proved.

Paragraph 8

31. The Tribunal noted that Dr Barkhordarian had been informed that he had a professional obligation to complete and return the Work Details form to the GMC within the covering letter sent to him with the form. It also had regard to the repeated warnings in the GMC's emails to Dr Barkhordarian that, if the Work Details Form was not returned, this may constitute a separate investigation and could be considered at this MPT hearing. The Tribunal also noted that Dr Barkhordarian was given additional time to complete the form, and that he chose not to do so. The Tribunal therefore finds this paragraph of the Allegation proved.

Determination on Impairment - 05/12/2018

1. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved as set out before, Dr Barkhordarian's fitness to practise is impaired by reason of misconduct.

Submissions

2. On behalf of the GMC, Mr Toal submitted that Dr Barkhordarian's behaviour has brought the medical profession into disrepute, and would be regarded by members of the medical profession and by members of the public as wholly inappropriate. Mr Toal referred the Tribunal to the relevant sections of *Good Medical Practice ('GMP')*, particularly paragraphs 1, 65, 66 and 71, 73 and 74.

3. Mr Toal submitted that, given the nature and seriousness of Dr Barkhordarian's misconduct, a finding of impairment would be necessary to reaffirm clear standards of professional conduct, as well as to uphold public confidence in the medical profession.

The Relevant Legal Principles

4. The Tribunal has heard and accepted the advice of the Legally Qualified Chair which included the matters below. Mr Toal was asked for his comments on the legal advice and did not have any.

5. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision of impairment is a matter for the Tribunal's judgement alone.

6. In approaching the decision, the Tribunal was mindful of the two stage process to be adopted. The Tribunal must first consider whether the facts as found proved amounted to misconduct and then whether the finding of that misconduct which was serious could lead to a finding of impairment.

7. The Tribunal must determine whether Dr Barkhordarian's fitness to practise is impaired today, taking into account Dr Barkhordarian's conduct at the time of the events and any relevant factors since then, such as whether the matters are remediable, have been remedied and any likelihood of repetition.

8. The Tribunal had regard to the approach set out in *CHRE v NMC and Grant [2011] EWHC 927 (Admin)* to the determination of impairment, which involves consideration of both past conduct and the future.

The Tribunal's Determination on Impairment

Misconduct in relation to Paragraphs 1-6

9. The Tribunal first considered whether the facts admitted and found proved amounted to misconduct.

10. The Tribunal considered that Dr Barkhordarian had engaged in dishonesty, which he has yet to acknowledge and accept. Initially, he lied to two prospective employers about the status of his registration as a doctor.

11. He then provided his regulator with several conflicting and false explanations for this original dishonest action.

12. In coming to these conclusions and in grading the seriousness of Dr Barkhordarian's actions, the Tribunal considered and bore in mind the following evidence:

- On 24 January 2017, Dr Barkhordarian's licence to practise was withdrawn
- On 14 July 2017, the Appeals Panel refused Dr Barkhordarian's appeal against the decision to withdraw his licence to practise;
- On 3 August 2017, Dr Barkhordarian received the decision of the Appeals Panel and wrote the same day demanding an apology and the correction of their decision. Dr Barkhordarian was therefore clearly aware of the decision of the Panel;
- On 13 November 2017, Dr Barkhordarian made an application for a post in cardiothoracic surgery at Wessex Deanery, indicating that he had a full registration with a licence to practise;
- On 22 January 2018, Dr A, Postgraduate Dean of Health Education England at Wessex Deanery, wrote to Dr Barkhordarian alerting him to the inaccuracy in his application of 13 November 2017;
- On 22 January 2018, Dr Barkhordarian emailed Cardiothoracic Surgery Recruitment at the Wessex Deanery, indicating he had received a letter and email from them on that day. In that email he did not address the content of Dr A's letter;

- On 29 January 2018, Dr Barkhordarian submitted an application for a post in cardiac surgery at Bart's Heart Centre, stating he had a full registration with licence to practise;
- On 13 February 2018, Dr A again wrote to Dr Barkhordarian regarding his licence to practise;
- On 13 February 2018, Dr Barkhordarian emailed Dr A stating he had received a 'threatening email' from Dr A. Dr Barkhordarian indicated if Dr A did not stop sending him such emails he would report him to the GMC. During the course of that email, Dr Barkhordarian again provided information regarding his concerns relating to recruitment processes;
- On 19 February 2018, Dr Barkhordarian was sent notice by the GMC that Dr A had raised a concern in relation to him and was asked to return a Work Details Form;
- On 22 February 2018, Dr Barkhordarian emailed the GMC with information relating to his concerns about recruitment. He did not return the Work Details Form. He also, under cover of separate email, sent his CV to the GMC on the same day;
- On 22 February 2018, Dr Barkhordarian was again emailed by the GMC, requesting his Work Details Form, and was informed of the consequences of not doing so. He made clear during the course of correspondence that he would not be sending the form;
- On 26 February 2018, the GMC again requested the Work Details Form, and Dr Barkhordarian responded by sending an earlier email containing previous correspondence which confirmed he would not be sending the form;
- On 24 May 2018, in correspondence with the GMC, Dr Barkhordarian continued to send information about his experience and concerns regarding recruitment. In relation to his application form of November 2017, which is the subject of Paragraph 1 of the Allegation, he said 'it may have been hacked';
- On 16 April 2018, Dr Barkhordarian attended an interview for the post at Bart's which was as a result of his inaccurate application on 29 January 2018;
- On 30 May 2018, in correspondence with the GMC's legal team, Dr Barkhordarian indicated 'I must have been under the impression that I had a licence when that was not the case in this November 2017 application. I must have been also in the process of trying to get revalidated';
- On 3 July 2018, Dr Barkhordarian in correspondence with the GMC said 'the Oriel online application 2017 in Cardiothoracic surgery was not working properly for me, as some sections e.g. the speciality and registered with licence was locked and I was unable to change or edit them'.

13. It does not form part of the Allegation that the Tribunal has been asked to consider, but in relation to insight and risk of repetition of Dr Barkhordarian's behaviour, the Tribunal noted that correspondence contained within the evidence shows that Dr Barkhordarian was continuing to apply for and attend interviews for positions in cardiac surgery in the early part of 2018 despite not having a licence to practise.

14. In the letter referred to above of 24 May 2018 sent to the GMC, Dr Barkhordarian said, 'I am currently applying for NHS jobs in cardiothoracic surgery and your letter of 23 May 2018 is lots of distraction and stressful. I am happy to send you my work details/CV again if you are able to consider this again please.'

15. The Tribunal considered that Dr Barkhordarian's dishonesty did not fall at the lower end of the scale. The Tribunal determined that Dr Barkhordarian's dishonest conduct was in clear contravention of the guidance set out in GMP, specifically in relation to the duties of a doctor registered with the General Medical Council:

'Be honest and open and act with integrity'

16. The Tribunal also considered that Dr Barkhordarian had breached GMP in relation to paragraphs 1, 65, 68 and 71:

'Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law.' (1)

'You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.' (65)

'You must be honest and trustworthy in all your communication with patients and colleagues. This means you must make clear the limits of your knowledge and make reasonable checks to make sure any information you give is accurate.' (68)

'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)'

17. Patients expect their doctors to be honest and trustworthy, and through his dishonest conduct Dr Barkhordarian betrayed this expectation.

18. The Tribunal therefore concluded that Dr Barkhordarian's conduct fell so far short of the standards of conduct expected of a doctor as to amount to misconduct.

Failure to return Work Details Form (Paragraphs 7 and 8)

19. The Tribunal has had regard to paragraph 73 of GMP, which states:

'You must co-operate with formal inquiries and complaints procedures and must offer all relevant information while following the guidance in *Confidentiality*.'

20. The Tribunal considered that GMP makes clear there is a duty upon doctors to comply with requests from the GMC in relation to formal investigation procedures. It further notes that Dr Barkhordarian was made aware of this professional obligation on more than one occasion by the GMC, and that he showed a wilful disregard for this obligation, both in his correspondence with the GMC and by not complying with the requests made of him.

21. Where he appeared to consider simply sending his CV to be appropriate, he continued to disregard the specific requests made for him to send the Work Details Form.

22. The Tribunal is satisfied that fellow professionals would find his conduct in this regard deplorable.

23. The Tribunal has therefore concluded that Dr Barkhordarian's conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct.

Impairment

24. Having found that the facts found proved amounted to misconduct, the Tribunal went on to consider whether, as a result of that misconduct, which was serious, Dr Barkhordarian's fitness to practise is currently impaired.

25. It is clear from the evidence the Tribunal has before it that Dr Barkhordarian has concerns about the conduct of certain NHS Trusts and of Health Education England in his dealings with them when applying for vacancies. In particular, this appears to be in relation to the processes and methodology used for recruitment.

26. The Tribunal does not pass any comment upon those concerns. It is of no relevance to this Tribunal's task or the Allegation before it to consider or adjudicate on those matters. Whatever grievances Dr Barkhordarian may have, the Tribunal wishes to make clear that these do not condone or excuse the behaviour that it has found proved.

27. The Tribunal has seen no evidence of any reflection on Dr Barkhordarian's part or evidence to suggest that he has developed any level of insight into his dishonest conduct. The Tribunal has also seen no evidence of any expression of remorse.

28. On the contrary, the doctor has made no admissions, and has sought in his correspondence with the GMC to deflect blame for the content of the applications. In addition he has not engaged appropriately with his regulator in relation to its investigation of complaints made against him. The Tribunal must conclude therefore that there is a real risk that Dr Barkhordarian may repeat his past conduct in the future.

29. The Tribunal is cemented in that view by the fact that Dr Barkhordarian attended for interview at St Bart's Hospital in April 2018, which was after he was made aware of the concerns with the accuracy of his November 2017 application to the Wessex Deanery and the GMC's enquiries in relation to that application.

30. The Tribunal bore in mind at all times the overarching objective. In addition to considering the protection of patients, it is necessary for the Tribunal to give a balanced consideration to its responsibilities to maintain the public's confidence in the medical profession and to declare and uphold proper standards of conduct and behaviour for members of the profession.

31. The Tribunal determined that a reasonable member of the public, in possession of the facts of the case, would consider that Dr Barkhordarian's actions in being dishonest in applications made to prospective employers about his registration status to be deplorable. In addition, the public would have grave concerns about his subsequent dealings with his regulator in relation to these matters. The Tribunal also considered that Dr Barkhordarian's conduct fell far below the standards of conduct to be expected of doctors.

32. The Tribunal concluded that Dr Barkhordarian's fitness to practise is impaired by reason of misconduct. The need to promote and maintain standards of conduct and behaviour and to promote and uphold public confidence in the medical profession demands that a finding of impairment be made in this case.

Determination on Sanction - 06/12/2018

1. Having determined that Dr Barkhordarian's fitness to practise is impaired by reason of his misconduct, the Tribunal now has to decide in accordance with Rule 17(2)(n) of the Rules on the appropriate sanction, if any, to impose.

Submissions

2. On behalf of the GMC, Mr Toal submitted that erasure was the appropriate sanction in this case.

3. Mr Toal referred the Tribunal to the relevant sections of the Sanctions Guidance. He outlined the guidance on situations where a period of suspension may be sufficient, pointing out that this is often appropriate in cases where a doctor had demonstrated a level of insight into their misconduct and had taken significant steps to remediate. He submitted that, in this case, there had been no such remediation.

4. Mr Toal submitted that this was a case where the dishonesty had been serious and that Dr Barkhordarian had persisted in trying to cover it up. He reminded the Tribunal that it had found there was a real risk of repetition in Dr Barkhordarian's case.

5. Mr Toal went on to direct the Tribunal to the sections of the Sanctions Guidance which deal with erasure. He submitted that erasure may be appropriate even where the doctor does not present a risk to patient safety. He submitted that this is a case of misconduct so serious that action is necessary to maintain public confidence in the profession.

The Tribunal's Determination on Sanction

6. The Tribunal heard and accepted the advice of the Legally Qualified Chair.

7. 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 into account its findings of fact and its decision on impairment, all the evidence adduced in the case and the submissions made by Mr Toal on behalf of the GMC.

8. The Tribunal has had regard to the Sanctions Guidance, bearing in mind its 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 and conduct for members of the profession.

9. The Tribunal was mindful that the purpose of sanctions is not to be punitive, although they may have a punitive effect.

10. In making its decision, the Tribunal also had regard to the principle of proportionality, and it weighed Dr Barkhordarian's interests with those of the public.

11. Although it is not a mitigating factor, the Tribunal is cognisant of the fact that Dr Barkhordarian has been unable to secure his preferred employment. On the evidence before the Tribunal, Dr Barkhordarian believes his failure to find work is as a result of flaws and difficulties in recruitment processes. On the evidence the Tribunal has seen he suggests, not surprisingly, that this has caused some financial hardship.

12. The Tribunal does not, as it has made clear before, make any comment upon Dr Barkhordarian's grievances. It is clear from the correspondence that Dr Barkhordarian believes there have been issues beyond his control which he feels have had a negative effect on his career.

13. The Tribunal also considered and balanced the mitigating and aggravating factors in this case.

Mitigating

- At the time of his dishonest actions, Dr Barkhordarian appears from the correspondence seen by the Tribunal to have been under stress as a result of his failure to find work
- The Tribunal has seen evidence, contained within Dr Barkhordarian's CV, that he practised in the UK consistently, without any previous issues with his fitness to practise, from 1998 – 2013. It was also accepted by Mr Toal on behalf of the GMC that this was the case.

Aggravating

- Dr Barkhordarian has shown a lack of regard for his regulator's removal of his licence
- The Tribunal has found that these charges involved serious and repeated dishonesty
- Dr Barkhordarian repeated his dishonest behaviour despite having been alerted to concerns about his probity by the GMC
- Dr Barkhordarian also continued to apply for jobs and to attend interviews in the period after being made aware by the Wessex Deanery and the GMC of concerns raised in relation to misconduct.
- Dr Barkhordarian sought in his correspondence with the GMC to deflect responsibility for his conduct and in so doing tried to cover up his behaviour
- Dr Barkhordarian has not accepted that his behaviour was dishonest and has not offered any apology
- Dr Barkhordarian has demonstrated no insight into his misconduct
- The Tribunal has found that there is a real risk of repetition of his dishonest conduct.

No action

14. The Tribunal first considered whether to conclude the case by taking no action. Taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances. Given the seriousness of the misconduct found and Dr Barkhordarian's apparent lack of insight into his wrongdoing, the Tribunal considered that it was necessary to take action in order to protect the public, maintain public confidence in the medical profession and promote proper professional standards.

Undertakings

15. Dr Barkhordarian has not offered any undertakings. In any event, undertakings are only likely to be appropriate in cases of deficient professional performance or health cases.

Conditions

16. The Tribunal considered whether to impose conditions on Dr Barkhordarian's registration. In so doing, it bore in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable. Paragraphs 81 and 82 of the Sanctions Guidance set out situations where conditions might be appropriate, and the Tribunal considers that none of these criteria are met.

17. The Tribunal concluded that it would not be possible to formulate conditions which would address the gravity of Dr Barkhordarian's misconduct. Given the nature of the Allegation and the fact that Dr Barkhordarian does not currently have a licence to practise, the Tribunal has determined that conditions would be inappropriate.

Suspension

18. The Tribunal referred to the Sanctions Guidance, specifically paragraphs 91, 92, 93 and 97.

19. The Tribunal considered Dr Barkhordarian's actions resulted in serious breaches of Good Medical Practice. The Tribunal has seen no evidence that Dr Barkhordarian has any insight at all into his misconduct and is concerned that there is a real risk that this behaviour will be repeated. Further, the Tribunal notes that there is evidence to suggest that Dr Barkhordarian has continued to seek positions in cardiac surgery since the applications which form the basis of part of the GMC's Allegation.

20. The Tribunal has seen no evidence of any steps taken by Dr Barkhordarian toward remediation or any reflection on his part.

21. In all the circumstances of this case, the Tribunal concluded that suspension would not be sufficient in order to maintain public confidence in the medical profession, and to uphold standards of conduct expected of doctors.

Erasure

22. The Tribunal considered that the following sections of the Sanctions Guidance were relevant to this case:

109 Any of the following factors being present may indicate erasure is appropriate

- a.** A particularly serious departure from the principles set out in Good Medical Practice where the behaviour is fundamentally incompatible with being a doctor
- b.** A deliberate or reckless disregard for the principles set out in Good Medical Practice and/or patient safety

- h.** Dishonesty, especially where persistent and/or covered up
- j.** Persistent lack of insight into the seriousness of their actions or the consequences

124 Although it may not result in direct harm to patients, dishonesty related to matters outside the doctor's clinical responsibility (eg providing false statements or fraudulent claims for monies) is particularly serious. This is because it can undermine the trust the public place in the medical profession. Health authorities should be able to trust the integrity of doctors, and where a doctor undermines that trust there is a risk to public confidence in the profession. Evidence of clinical competence cannot mitigate serious and/or persistent dishonesty.

128 Dishonesty, if persistent and/or covered up, is likely to result in erasure.

23. The Tribunal determined that Dr Barkhordarian's conduct showed a wilful disregard for the safeguards put in place to protect patients and maintain an appropriate standard of conduct expected of registered medical practitioners. He did this specifically by applying for positions in cardiothoracic surgery at a time when he did not have a licence to practise. The Tribunal considered that Dr Barkhordarian had put his own interests in securing employment in cardiothoracic surgery before the interests of patients.

24. Dr Barkhordarian's misconduct represented a serious departure from the principles set out in Good Medical Practice, and could undermine public confidence in the medical profession. He showed a reckless disregard for these principles, which exist to protect the public and to ensure that the trust patients have in doctors is well placed.

25. Given that Dr Barkhordarian has not accepted his dishonesty, shown any remorse or insight, and the fact that the Tribunal had seen no evidence of remediation, the Tribunal found there was a real risk of repetition of Dr Barkhordarian's dishonesty.

26. In all the circumstances of this case, the Tribunal has concluded that Dr Barkhordarian's misconduct is fundamentally incompatible with continued registration. The Tribunal has therefore determined to erase Dr Barkhordarian's name from the medical register.

Determination on Immediate Order - 06/12/2018

1. Having determined that Dr Barkhordarian's name be erased from the Medical Register, the Tribunal has now considered whether to impose an immediate order of suspension on Dr Barkhordarian's registration in accordance with Section 38(1) of the Medical Act 1983, as amended.

GMC Submissions

2. Mr Toal submitted that an immediate order was necessary in this case in order to uphold the public interest. He told the Tribunal that Dr Barkhordarian was currently suspended as a result of an interim order. Mr Toal submitted, given the risk of repetition of Dr Barkhordarian's misconduct identified by the Tribunal, it was necessary to impose an immediate order of suspension until the substantive order of erasure takes effect.

The Tribunal's Determination

3. In making its decision the Tribunal exercised its own judgement.

4. The Tribunal took account of paragraph 173 and 178 of the Sanctions Guidance, which state:

'The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor...'

'Having considered the matter, the decision whether to impose an immediate order will be at the discretion of the tribunal based on the facts of each case. The tribunal should consider the seriousness of the matter that led to the substantive direction being made and whether it is appropriate for the doctor to continue in unrestricted practice before the substantive order takes effect.'

5. The Tribunal considered the submissions made by Mr Toal.

6. In all the circumstances, the Tribunal determined to impose an immediate order of suspension on Dr Barkhordarian's registration. It was satisfied that this was necessary for the protection of the public and in the public interest. Whilst Dr Barkhordarian would not be in unrestricted practice, should an immediate order not be made, the Tribunal would be concerned about the risk of repetition in the appeal period.

7. In particular, and of primary importance, given the facts of this case, the Tribunal determined that the public interest, which encompasses maintenance of confidence in the profession and declaring and upholding proper standards of behaviour demanded an immediate suspension.

8. This means that Dr Barkhordarian's registration will be subject to the immediate order of suspension from when notification is deemed to have been served. The substantive direction, as already announced, will take effect 28 days from when written notice of this determination has been served upon Dr Barkhordarian, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.

9. The interim order currently imposed on Dr Barkhordarian's registration will be revoked when the immediate order takes effect.
10. That concludes this case.

Confirmed

Date 06 December 2018

Mr Stuart McLeese, Chair

ANNEX A – 06/12/2018

Service and Proceeding in Absence

1. Dr Barkhordarian is neither present nor represented at this hearing. The Tribunal therefore first considered whether notice of this hearing had been properly served on him in accordance with Rules 20 and 40 of the GMC's (Fitness to Practise Rules) Order of Council 2004, as amended ('the Rules') and paragraph 8 of Schedule 4 to the Medical Act 1983, as amended.
2. The Tribunal was provided with a service bundle of papers which included:
 - A copy of a letter sent to Dr Barkhordarian by the GMC in accordance with Rule 34(9) of the Rules
 - Emails between Dr Barkhordarian and the GMC dated 20 September 2018
 - Minutes of a pre-hearing meeting, dated 14 September 2018
 - MPTS Notice of Hearing dated 15 October 2018
 - MPT attendance form from Dr Barkhordarian, dated 16 October 2018

Submissions

3. Mr Toal submitted that Dr Barkhordarian was well aware of the date that the hearing would be taking place, and had clearly indicated that he did not intend to be present.

Service

4. The Tribunal noted that the MPTS Notice of Hearing was sent to Dr Barkhordarian's registered address by Special Delivery on 15 October 2018. The Tribunal had regard to Dr Barkhordarian's response, dated 16 October 2018, in which he indicated that he was not planning to attend the hearing.
5. Having considered the evidence before it and Mr Toal's submissions, the Tribunal was satisfied that the Notice of Hearing had been served on Dr

Barkhordarian in accordance with Rules 20 and 40, and paragraph 8 of Schedule 4 to the Medical Act 1983, as amended.

Proceeding in Dr Barkhordarian's absence

6. The Tribunal then went on to consider whether it would be appropriate to exercise its discretion to proceed with this hearing in Dr Barkhordarian's absence pursuant to Rule 31 of the Rules. The Tribunal was conscious that the discretion to proceed in the absence of a doctor should be exercised with the utmost care and caution, balancing the interests of the doctor with the wider public interest.

7. In deciding whether to proceed with this hearing in Dr Barkhordarian's absence, the Tribunal carefully considered all the information before it, which included Mr Toal's submissions and the evidence of Dr Barkhordarian's communication with the MPTS and the GMC.

8. The Tribunal considered that the Allegation was serious, involving dishonesty, and that there was a public interest in dealing expeditiously with such cases. The Tribunal bore in mind that Dr Barkhordarian had had the benefit of and had engaged in a telephone conference on 2 July 2018 and a pre-hearing meeting in September 2018. During the course of those events the doctor was informed of ways in which he could participate and preparations he could make for this hearing, but beyond reference to some documents he wished the Tribunal to consider, he made clear that he was not intending to participate in the hearing.

9. The Tribunal had regard to the fact that Dr Barkhordarian has been appropriately served with two formal notifications of the hearing, and has confirmed in writing his intention to absent himself from the proceedings. The Tribunal has borne in mind that Dr Barkhordarian provided written documents for consideration by the Tribunal. The Tribunal also noted that, during the telephone conference of 2 July 2018, Dr Barkhordarian was told that it was open to him to apply to provide evidence by Videolink or telephone. No such application has been received.

10. The Tribunal considered the MPTS Notice of Hearing letter of 15 October 2018 made clear that Dr Barkhordarian had the opportunity to attend the hearing and to secure representation, as well as explaining the possible outcomes of the hearing and referring him to the Sanctions Guidance. The Tribunal has noted that, on the day after he was served with this notice, Dr Barkhordarian submitted an attendance form to the MPTS in which he indicated he would not be attending the hearing and would not be legally represented.

11. The Tribunal has found that Dr Barkhordarian has voluntarily absented himself from these proceedings and that there would be no advantage in adjourning them. The Tribunal considered that the wider public interest outweighed the interests of the doctor, particularly in light of Dr Barkhordarian choosing not to attend the hearing. Accordingly, the Tribunal determined to proceed in Dr Barkhordarian's absence.

ANNEX B – 06/12/2018

Admission of Written Decision of Registration Appeal Panel 14 July 2017

114. During the course of Mr Toal's opening address it became clear to the Tribunal that a document referred to by Dr Barkhordarian in his letter to the GMC of 3 August 2017 had not been provided to this Tribunal. It was felt, particularly as Dr Barkhordarian was neither presented nor represented that it was in the interests of justice for the Tribunal to see that document, as it had clearly been appended to the letter sent by the GMC to Dr Barkhordarian dealing with his licence withdrawal appeal. That letter specifically stated 'please find enclosed the final decision of the Appeals Panel in respect of your appeal.'