

**Record of Determinations
Medical Practitioners Tribunal
Review on Papers**



PUBLIC RECORD

Date: 05/06/2020

Medical Practitioner's name: Dr Andrea MCFARLANE

GMC reference number: 3343694

Primary medical qualification: MB ChB 1989 University of Aberdeen

Type of case

Misconduct

Outcome on impairment

Not impaired

Summary of outcome

Order revoked

Tribunal/Legally Qualified Chair:

Legally Qualified Chair:	Mr Charles Thomas
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Review on the Papers

This case was reviewed on the papers, with the agreement of both parties, by a Legally Qualified Chair.

Overarching Objective

Throughout the decision making process the Legally Qualified Chair 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

1. I have noted the background to Dr McFarlane's case, which was first considered by a medical practitioner's tribunal in December 2018.
2. Dr McFarlane qualified in 1989. Prior to the events which were the subject of the hearing in 2018, Dr McFarlane worked as a GP at the Crown House Surgery in Retford ('the Surgery'). Between 2004 and December 2008, Dr McFarlane was Patient A's GP (an elderly female). During the same period, a friendship developed

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between Dr McFarlane and Patient A which crossed the proper professional boundary that should have existed between them. Dr McFarlane received gifts, including a diamond ring, from Patient A.

3. The 2018 Tribunal found that in November 2008 Dr McFarlane had acted dishonestly by seeking to conceal the true nature of her relationship with Patient A by encouraging Patient A to change her GP without any clinical justification and to give the other doctors in her practice a false reason for her request to change G.Ps. At the same time, Dr McFarlane also disclosed personal information relating to other patients to Patient A.

4. The 2018 Tribunal also found that in the period between April 2008 and January 2014 Dr McFarlane had received several gifts and payments (totalling over £189,000) from Patient A. The Tribunal did not find that the payments had been made because of influence by Dr McFarlane over Patient A. The evidence was that Patient A, although vulnerable, had had capacity to make the payments and had done so voluntarily.

5. The Tribunal did find that Dr McFarlane had failed to decline or return any of the gifts she received, failed to notify and/or discuss these matters with her GP partners and failed to exclude herself from clinical decision making in relation to Patient A. The Tribunal found that Dr McFarlane's actions were dishonest in respect of these failures.

6. The Tribunal concluded that its findings of fact constituted serious misconduct. There had been repeated dishonesty on the part of Dr McFarlane, the sums involved were significant and Dr McFarlane's conduct breached several principles of Good Medical Practice ('GMP').

7. The 2018 Tribunal found that Dr McFarlane's fitness to practise was impaired. The Tribunal noted that Dr McFarlane had practised medicine for some years and had no previous fitness to practise history. It was presented with no evidence that Dr McFarlane had acted in this way in the past or had repeated such behaviour since the events considered by the 2018 Tribunal, which took place over six years previously. It further noted that Dr McFarlane had given notice of her resignation from the partnership at the Surgery in October 2018. The 2018 Tribunal was satisfied that Dr McFarlane posed no significant risk of repeating her misconduct. It also took into account that Dr McFarlane made significant admissions at the outset of the hearing and had regard to the testimonials from patients and colleagues who spoke highly of her. It also noted the certificates of attendance at various courses Dr McFarlane had attended, including several maintaining professional boundaries courses.

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8. The 2018 Tribunal was satisfied that Dr McFarlane had taken some steps to address her misconduct and dishonest behaviour. However, the 2018 Tribunal determined that Dr McFarlane's remediation and insight was limited to her personal actions. The 2018 Tribunal had been provided with no evidence to demonstrate that Dr McFarlane had fully reflected upon the impact on the profession as a whole and on the wider public confidence in the profession. The 2018 Tribunal noted that Dr McFarlane appreciated the seriousness of her misconduct and was genuinely remorseful but determined that she still had some way to go before she achieved full insight and remediation. The 2018 Tribunal was of the view that her dishonest conduct, although difficult to remediate, was potentially remediable.

9. The 2018 Tribunal determined that a period of suspension was the appropriate and proportionate sanction. The Tribunal was of the view that Dr McFarlane posed no significant risk to patients. It noted her genuine remorse and that she had provided evidence of some insight into the concerns raised, although it found that she still had some way to go in achieving full insight.

10. The 2018 Tribunal was of the view that a period of suspension would sufficiently mark the seriousness of Dr McFarlane's misconduct, mark the public concern over her conduct, maintain public confidence in the profession, and declare and uphold proper standards of conduct and behaviour for members of the profession. The Tribunal determined that erasure would be a disproportionate sanction in the circumstances.

11. The 2018 Tribunal determined that Dr McFarlane's registration should be suspended for a period of twelve months. It considered that the period of suspension would give Dr McFarlane time to reflect on her misconduct and engage in a period of further remediation and develop full insight into the impact of her misconduct on her colleagues, the medical profession, and on the wider public interest and public confidence in the medical profession.

12. The 2018 Tribunal directed a review of Dr McFarlane's case. That Tribunal determined that a reviewing Tribunal may be assisted by Dr McFarlane providing the following:

- Evidence of her insight into the impact her actions had on public confidence on the medical profession and her colleagues
- Evidence of what she has done during the period of suspension to maintain her medical knowledge and skills up to date. This may include training courses attended or undertaken, pertinent to her misconduct, and her learning from them
- Any other evidence Dr McFarlane considers may be of assistance to the reviewing Tribunal.

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13. Dr McFarlane's case came before a review Tribunal initially in December 2019 and then on the 15th January 2020. The review Tribunal heard evidence from Mr B, Patient A's son, relating to the lack of progress from Dr McFarlane in settling the claim for the monies improperly paid to her by his mother.

14. The review Tribunal also heard evidence from Dr McFarlane. Her evidence, as noted in detail by the Tribunal in its determination, focussed in large part on the further development of her insight since the previous hearing. The Tribunal also had before it testimonials and other documentation to evidence how she had maintained her knowledge and skills during her suspension.

15. The review Tribunal concluded that Dr McFarlane's fitness to practise remained impaired by reason of her misconduct. Whilst the Tribunal was mindful that there had been no repetition and that Dr McFarlane had put considerable time and effort into the courses she had attended and addressing the issue of insight, the Tribunal concluded that her remediation and insight were not yet complete. The Tribunal was concerned that she had not reflected fully on some aspects of her dishonesty, the impact her actions had had on Patient A at the end of her life and the impact on other members of Patient A's family. The Tribunal was also concerned that Dr McFarlane had only taken limited steps to reach a financial resolution with the family by the time of the hearing. The Tribunal took the view that Dr McFarlane did not appreciate fully that failing to repay what money she could would have an impact on the reputation of the profession as a whole.

16. The Tribunal determined that a further period of suspension of six months was appropriate and proportionate. The Tribunal was of the view that this period should provide sufficient time for Dr McFarlane to demonstrate the additional steps she has taken to achieve full insight and remediation.

17. In order to provide assistance for this review the Tribunal at the previous review recommended that Dr McFarlane provide:

- Evidence of her developing insight into the impact her actions have on public confidence in the medical profession and how her actions promote and maintain proper professional standards.
- Evidence of what she has done during the period of suspension to maintain her medical knowledge and skills up to date.

18. Dr McFarlane and the GMC have agreed that this review should be considered on the papers in accordance with Rule 21B of the General Medical Council (Fitness to Practise) Rules 2004. They have provided agreed terms of a decision which I could make at this review.

19. I have considered all the evidence presented to me, and the agreed submissions made on behalf of Dr McFarlane and by the GMC. In the submissions,

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Dr McFarlane and the GMC agree that Dr McFarlane's fitness to practise is not impaired and that the sanction currently in place should be revoked.

20. I have borne in mind the statutory overarching objective which is 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 the medical profession.

21. I have determined that Dr McFarlane's fitness to practise is no longer impaired by reason of her misconduct.

22. In reaching this decision, I have had regard to the further documentation that has been provided to me for this review. This consists of a further statement and reflection from Dr McFarlane, evidence of her Continuing Professional Development ('CPD'), testimonials and confirmation that the financial claim on behalf of Patient A's family has now been settled.

23. The reflective statement from Dr McFarlane demonstrates that she has further developed her insight in the months since the last review and has reflected particularly on the impact of her actions on the reputation of the medical profession. The reflective note is impressive in respect of the breadth of reading that Dr McFarlane has undertaken. Dr McFarlane has also attended a further relevant course concerning on maintaining professional boundaries. I am satisfied that Dr McFarlane now has full insight into the causes and effect of her misconduct. The satisfactory settlement of Patient A's family's claim is also an important step towards remediation.

24. There is no suggestion that there has been any repetition of this or similar misconduct. The events that we are concerned with ended in 2014. The 2018 Tribunal considered that there was little risk of repetition. I consider that there is now no risk of repetition.

25. The extensive programme of CPD undertaken by Dr McFarlane demonstrates that she has taken the necessary steps to maintain her knowledge and skills during her suspension. The reflective comments on each of the courses she has undertaken shows that she has actively engaged in the material. Dr McFarlane has sensibly ensured that some of her learning deals with practice within the COVID environment. This was not a case that involved clinical concerns. The testimonials on behalf of Dr McFarlane, many of them from GP colleagues, speak of her clinical competence. I am satisfied that Dr McFarlane is safe to return to practice.

26. Dr McFarlane has been suspended now for 18 months. That sanction is sufficient to serve the public interest of marking the seriousness of her misconduct and maintaining proper standards and confidence in the profession. She has developed insight, remediated her misconduct and is safe to return to work. For

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these reasons I conclude that Dr McFarlane's fitness to practice is no longer impaired.

27. In light of my decision, I direct that Dr McFarlane's current period of suspended registration be revoked with immediate effect.

28. Notification of this decision will be served on Dr McFarlane in accordance with the Medical Act 1983, as amended.

Confirmed Mr Charles Thomas, Chair

Date 05 June 2020