

PUBLIC RECORD

Date: 15/03/2021

Medical Practitioner's name: Dr Damian DUFFY

GMC reference number: 7406614

Primary medical qualification: MB ChB 2013 University of Leeds

Type of case	Outcome on impairment
Review - Misconduct	Not Impaired

Summary of outcome

Suspension revoked

Tribunal:

Legally Qualified Chair	Mr Colin Chapman
Medical Tribunal Member:	Dr Christopher Simpson
Medical Tribunal Member:	Dr Ann Smallldridge
Tribunal Clerk:	Mr Michael Murphy

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Richard Partridge, Counsel, instructed by Carson McDowell
GMC Representative:	Mr Alan Taylor, 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 Impairment - 15/03/2021

1. The Tribunal has to decide in accordance with Rule 22(1)(f) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules') whether Dr Duffy's fitness to practise is impaired by reason of misconduct.

Background

2. Dr Duffy qualified in 2013 and prior to the events which are the subject of the original hearing in 2020 he held various positions, including as a Foundation Year 1 (FY1) and Foundation Year 2 (FY2) doctor, across various Trusts in Northern Ireland. At the time of the events in the original Allegation, Dr Duffy was practising as a locum specialty doctor in the Acute Care at Home Team (ACHT) at the Western Health and Social Care Trust ('the Trust'). He began this employment on 15 August 2016 and was dismissed on 9 June 2017.

3. The facts admitted by Dr Duffy and found proved by the 2020 Tribunal were that he submitted timesheets to his locum agency for hours he claimed he had worked between 6 February 2017 and 9 May 2017. Dr Duffy also signed timesheets purporting to have been signed off by the appropriate clinician. As a result of these actions, Dr Duffy received payments to which he was not entitled whilst being aware that he was not entitled to these payments. The 2020 Tribunal therefore found Dr Duffy's actions to have been dishonest. In addition it was found proved that Dr Duffy dishonestly submitted travel sheets for journeys, which he claimed he had made between 21 October 2016 and 17 February 2017, in connection with his employment. The previous Tribunal determined that Dr Duffy's dishonest conduct brought the medical profession into disrepute and breached fundamental tenets of the profession.

4. The 2020 Tribunal noted that Dr Duffy had continued to practise medicine without further concerns and there was no evidence before it of any concerns relating to his clinical practice. He was regarded as a good doctor and well-liked by his colleagues and patients. There was no evidence that Dr Duffy had ever behaved in a dishonest way prior to the events in question.

5. Regarding insight, the 2020 Tribunal took into account his admissions at the beginning of the proceedings and a reflective statement in which he accepted that his actions were dishonest, and within which he spoke of the measures and strategies he had put in place to help him manage his personal and financial circumstances.

6. The 2020 Tribunal considered that, at that time, Dr Duffy had only begun to take steps to address the concerns, although it acknowledged that he recognised the seriousness of his actions and that he had taken steps to remediate. These steps included undertaking CPD courses and training relating to ethics and propriety and he had apologised to his former colleagues for his dishonest behaviour. The 2020 Tribunal considered that the steps he had taken to address the concerns were not comprehensive and had been trialled only over a limited period of time.

7. The 2020 Tribunal accepted that Dr Duffy had demonstrated some evidence of insight but that it was limited and without depth. There was modest evidence that he understood how his actions had the potential to adversely affect the reputation of the profession or to damage public confidence in it. The 2020 Tribunal considered that Dr Duffy's insight was only developing and, at best embryonic. The Tribunal could not exclude that there was a risk of Dr Duffy repeating his misconduct.

8. The 2020 Tribunal concluded that Dr Duffy's conduct would be considered unacceptable, unprofessional and deplorable by members of the profession and the public alike. It considered that his behaviour had brought the medical profession into disrepute and had breached a fundamental tenet of the profession. The Tribunal concluded that a finding of impaired fitness to practise was required in order to maintain public confidence in the profession and to promote and maintain proper professional standards and conduct for the members of the profession.

9. In considering sanction, the 2020 Tribunal noted that aggravating factors were that Dr Duffy's dishonest actions were consistent and multiple and included forging a colleague's signature. It was concerned that his apology and steps towards remediation had only been made one month prior to the hearing. The 2020 Tribunal noted that he had not discussed the Allegation in his appraisal nor had he been open and honest at previous meetings when he had the opportunity to be.

10. The 2020 Tribunal also noted the mitigating factors in the case. Dr Duffy had admitted the more serious paragraphs of the Allegation. The 2020 Tribunal considered the steps that had been taken to remediate his misconduct, and that he had no previous adverse history, being of previous good character. There was a body of powerful testimonial evidence from Dr Duffy's colleagues and patients which spoke of him as a highly regarded, well-liked and competent doctor. Also, Dr Duffy had continued to practise without further concerns, that he had put in place measures to address his difficult personal and financial circumstances and that he had a good support network to help should similar situations arise in the future.

11. The 2020 Tribunal was satisfied that Dr Duffy had begun a process of remediation and developing insight. It was of the view that although it had determined that it could not exclude the risk of repeating the misconduct, it considered the risk of repetition to be low. The 2020 Tribunal determined that erasure was not the appropriate response taking into account all the mitigating factors and that a suspension of 12 months would be the appropriate sanction to address the misconduct. This would give Dr Duffy a period of time to further develop insight, to show evidence of this, and to show additional reflection on his dishonest conduct.

12. The 2020 Tribunal recommended that a review Tribunal may be assisted by receiving the following:

- Evidence that Dr Duffy has kept his medical knowledge and skills up to date;
- Evidence of personal reflection on his dishonest actions and further insight developed, for example, in the form of a diary/log, continuing professional development (CPD) and through further probity and ethics training;
- Reports from Dr Duffy as to the current state of his strategies in managing his personal and financial circumstances;
- Any other information that Dr Duffy considers might assist such as a statement from a mentor or senior colleague including discussion and consideration of their perspective on his remediation and insight.

The Evidence

13. The Tribunal has taken into account all the evidence received which included, but was not limited to:

- Email correspondence between the GMC and Dr Duffy dated 15 - 16 April 2020;
- Letters from the GMC to Dr Duffy dated 17 April 2020, 14 January 2021 and 4 February 2021;
- Numerous CPD certificates;
- Dr Duffy's monthly personal reflections;
- Personal Development Plan;
- Reports on Dr Duffy's coping strategies, dated November 2020;
- Correspondence between Dr Duffy and the Western Health and Social Care Trust and Direct Medics;
- Report from Dr Duffy's mentor, Dr A, dated 19 February 2021;
- Testimonials.

Submissions

14. On behalf of the GMC, Mr Taylor referred the Tribunal to the following paragraphs of the Sanctions Guidance (2020)(SG):

'163. It is important that no doctor is allowed to resume unrestricted practice following a period of conditional registration or suspension unless the tribunal considers that they are safe to do so.

164. In some misconduct cases it may be self-evident that, following a short suspension, there will be no value in a review hearing. However, in most cases where a period of suspension is imposed, and in all cases where conditions have been imposed, the tribunal will need to be reassured that the doctor is fit to resume practice – either unrestricted or with conditions or further conditions. A review hearing is therefore

likely to be necessary, so that the tribunal can consider whether the doctor has shown all of the following (by producing objective evidence):

- a. they fully appreciate the gravity of the offence*
- b. they have not reoffended*
- c. they have maintained their skills and knowledge*
- d patients will not be placed at risk by resumption of practice or by the imposition of conditional registration.'*

15. Mr Taylor submitted that the GMC is neutral on the issue of impairment in this case.

16. On behalf of Dr Duffy, Mr Partridge submitted that Dr Duffy has, through his efforts, reflections and evidence provided all the evidence recommended by the 2020 Tribunal. He stated that Dr Duffy's reflections demonstrate maturity and professionalism and are compelling evidence that he has reflected long and hard on the index events.

17. Mr Partridge submitted that Dr Duffy's fitness to practise is no longer impaired and that he could and should return to unrestricted clinical practice. Further, he stated that the risk of repetition is small given the progress that Dr Duffy has made.

The Relevant Legal Principles

18. The Tribunal reminded itself that the decision of impairment is a matter for its judgement alone. As noted above, the previous Tribunal set out the matters that a future Tribunal may be assisted by. This Tribunal noted that there is a persuasive burden on the doctor to show that he would be safe to return to unrestricted practise.

19. This Tribunal must determine whether Dr Duffy's fitness to practise is impaired today, taking into account his 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.

The Tribunal's Determination on Impairment

20. In its deliberations, the Tribunal noted that Dr Duffy has provided everything recommended by the 2020 Tribunal. The Tribunal noted the high quality and comprehensive nature of his reflections, that they were done on a monthly basis and that he openly and regularly engaged with Dr A in doing so. In these reflections, Dr Duffy has provided detailed accounts on how he has addressed all aspects of the misconduct identified by the 2020 Tribunal. In addition, Dr Duffy completed 41 modules on ethics and he integrated this theoretical learning into his reflections and how he would conduct himself in the future. The Tribunal was impressed by the volume of the CPD and reflections provided in this case.

21. The Tribunal noted that Dr Duffy has kept his clinical knowledge and skills up to date during his suspension, which is clearly evidenced by the extensive CPD provided. Positive testimonials have been received from Dr Duffy's colleagues and the impression is that they

will welcome him back to clinical practice. A post is available to him as soon as he is able to practise again.

22. The Tribunal bore in mind that no patient safety concerns have arisen in this case and that no evidence has been provided by the GMC to show that Dr Duffy's fitness to practise is still impaired. It concluded that Dr Duffy has discharged the persuasive burden upon him and that a period of suspension would no longer be required to maintain public confidence in the medical profession or to promote and maintain proper professional standards and conduct for members of the profession.

23. This Tribunal has therefore determined that Dr Duffy's fitness to practise is not impaired by reason of misconduct.

24. Accordingly, the Tribunal determined that the order of suspension currently imposed on Dr Duffy's registration should be revoked with immediate effect.

25. That concludes the case.

Confirmed

Date 15 March 2021

Mr Colin Chapman, Chair