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PUBLIC RECORD  

Date: 13 May 2020  

Medical Practitioner’s name: Dr David SMITH  

GMC reference number: 4120331  
Primary medical qualification: BM BCh 1994 Oxford University  
Type of case  
Outcome on impairment  

Summary of outcome  
Conditions for 9 months  

Tribunal/Legally Qualified Chair:  

| Legally Qualified Chair: | Mr Kenneth Hamer |

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 reviewed the background to Dr Smith’s case, which was first considered by a Medical Practitioners Tribunal (the Tribunal) in August 2019. Dr Smith qualified in 1994 from Oxford University, obtaining full registration with the
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General Medical Council (GMC) in 1995. In January 1999, Dr Smith joined the Locking Hill Surgery (the practice) as a full time GP partner.

2. The Allegation that led to Dr Smith’s hearing before the Tribunal can be summarised as that between 30 July 2014 and 28 July 2017, Dr Smith pursued an improper emotional relationship with Patient A whilst she was a patient at the surgery, which continued after she had left the practice and had registered with another surgery. It was also alleged that on 29 October 2017, Dr Smith issued a private prescription to Patient A for Diazepam. It was further alleged that on 30 October 2017, Dr Smith attempted to inappropriately access Patient A’s medical records when she was no longer in his clinical care, whilst well knowing Patient A was vulnerable due to a mental health condition.

3. At the outset of the proceedings Dr Smith, through his counsel Ms Felix, admitted the entirety of the Allegation, and in accordance with Rule 17(2)(e) of the General Medical Council (Fitness to Practise) Rule 2004 (the Rules), the Tribunal announced that the Allegation as admitted was found proved. Further, on behalf of Dr Smith, Ms Felix said that she did not suggest that Dr Smith’s conduct did not amount to misconduct.

4. Dr Smith gave oral evidence and the Tribunal was satisfied that Dr Smith was a caring and dedicated doctor and throughout his treatment of Patient A genuinely believed that he was acting in her best interests. The Tribunal found some mitigating factors:

- Dr Smith’s behaviour involved a single patient and at all times he believed that he was acting in her best interests
- Dr Smith had shown a considerable amount of insight and remorse and had taken steps to avoid a repetition of his misconduct
- Dr Smith made an early admission of the facts
- Dr Smith’s previous good character and the testimonial evidence.

But the Tribunal were also concerned about aggravating factors:

- Dr Smith’s misconduct continued over an uninterrupted period of 3 years
- The nature of Dr Smith’s misconduct escalated during this time
- Dr Smith seriously abused his professional position
- Patient A was a vulnerable patient.
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5. The Tribunal, which I chaired, found Dr Smith’s fitness to practise to be impaired by reason of his misconduct. The Tribunal determined that Dr Smith failed to appreciate the professional boundaries that he had breached, which he ought to have appreciated and should have recognised when he breached them. In addition this was particularly important in the case of a vulnerable patient who was fragile and at a risk of dependency. The Tribunal was concerned that as a consequence of the relationship ending Patient A suffered harm. The Tribunal said it was in no doubt that Dr Smith’s conduct fell well below the standards of conduct expected by fellow practitioners and that his actions amounted to misconduct.

6. The Tribunal was satisfied that Dr Smith’s conduct put Patient A at unwarranted risk of harm, had brought the medical profession into disrepute and was a breach of a fundamental tenet of the profession. Dishonesty did not arise in this case. The Tribunal determined that despite Dr Smith’s genuine remorse, contrition and his level of insight, which it accepted was substantial, together with the medical and testimonial evidence before it, there remained some risk of repetition. Dr Smith had only recently returned to work against a lengthy period and catalogue of breaches of professional boundaries. The Tribunal was not satisfied that sufficient time had elapsed to say that Dr Smith’s fitness to practise was not currently impaired.

7. The Tribunal noted that XXX. Dr Smith remained under agreed undertakings with NHS England until May 2019, XXX. Additionally, Dr Smith was continuing to receive support from his workplace supervisor and his mentor.

8. The Tribunal was mindful of the overarching statutory objective of the GMC in sections 1A and 1B of the Medical Act 1983 (as amended), of the need to uphold proper professional standards and maintain public confidence in the medical profession. The Tribunal considered that public confidence in the profession would indeed be undermined if a finding of impairment were not made in this case at that point in time, in circumstances where the events were still relatively recent and where Dr Smith was rightly continuing to receive support.

9. The Tribunal considered that conditions were appropriate and that it was possible to formulate appropriate and workable conditions which adequately addressed Dr Smith’s misconduct and the concerns of the Tribunal whilst at the same time maintaining public confidence in the profession consistent with the GMC’s statutory overarching objective. The Tribunal determined to impose conditions on Dr Smith’s registration for a period of 18 months with a review.

10. In order to provide assistance to any reviewing Tribunal it recommended that Dr Smith provide the following information:
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- a log of his reflections  
- examples of meeting notes with his workplace/clinical supervisor  
- evidence of engagement with his mentor  
- XXX  
- evidence of his Personal Development Plan (PDP) and subsequent completion/achievement of those objectives.

11. Dr Smith and the GMC have agreed that this review should be considered on the papers in accordance with Rule 21B of the Rules. They have provided agreed terms of an order which I could make at this review.

12. Dr Smith has continued to work at the practice, under the supervision of a senior partner following the original Tribunal hearing. His review hearing was originally due to take place on 12 February 2021.

13. Dr Smith’s current conditions (conditions 6 and 7) provide amongst other things that, save in relation to his work as football club doctor, he must only work in a group practice setting where there is a minimum of two GP partners or employed GPs (excluding himself); and that Dr Smith must also have a workplace/clinical supervisor who is on site for 40% of Dr Smith’s clinical time.

14. Dr Smith has now been asked to work from home as part of his employer’s response to the COVID-19 outbreak. As this would be contrary to condition 7, as imposed by the Tribunal, Dr Smith’s representative has requested an early review of the conditions. An assistant registrar at the GMC has subsequently directed an early review of Dr Smith’s conditions, which is now listed for 8 June 2020.

15. I have considered all of the evidence presented to me. The bundle is voluminous. Dr Smith’s representative has sent several documents to the GMC in support of the application to vary his conditions. These include approved PDPs for 2019 and 2020, an up-to-date patient log, a draft appraisal for 2020 (which has yet to be completed and signed off) and confirmation from both Dr Smith’s clinical supervisor and mentor that Dr Smith continues to engage with each of them. The GMC has also been provided with Dr Smith’s reflective notes on various courses and related materials.

16. Earlier in the year, the GMC received positive feedback from NHS England regarding the progress Dr Smith has made since the Tribunal hearing in August 2019. This positive feedback was supported by evidence through reflective notes provided by Dr Smith. In addition to this, the GMC has received evidence that Dr Smith continues to engage with his clinical supervisor, and his workplace reports which have been provided to date have been positive and raised no concerns.

17. I have received agreed submissions made on behalf of Dr Smith and the GMC. The parties agree that Dr Smith’s fitness to practise remains impaired by
reason of his misconduct and that pursuant to section 35D(12)(c) and (d) of the Medical Act 1983 (as amended), Dr Smith’s registration should be conditional on his compliance with the following varied requirements, for a further 9 months, commencing 28 days from the date on which notification of the decision is served upon him (in the absence of an appeal).

18. At this time, both parties are seeking reasonable adjustments to Dr Smith’s conditions to enable his ongoing supervision whilst working remotely due to the COVID – 19 outbreak.

19. I have taken into account that since the order was made by the Tribunal COVID – 19 has occurred. This change of circumstances necessitates varying Dr Smith’s conditions for the duration of the existing order. A variation will also ensure patient safety, whilst allowing Dr Smith to work and remediate from home due to the ongoing coronavirus pandemic.

20. In reaching my decision, I have taken account of the Sanctions Guidance. I have borne in mind that the purpose of the sanction is not to be punitive, but to protect patients and the wider public interest, although it may have a punitive effect.

21. I have applied the principle of proportionality, weighing Dr Smith’s own interests with the public interest. The public interest includes amongst other things, the protection of patients, the maintenance of public confidence in the profession, and declaring and upholding of proper standards of conduct and behaviour.

22. I am satisfied that the proposed varied conditions would be proportionate and sufficient to protect the public and the public interest. I have therefore determined that Dr Smith’s registration be made subject to the following conditions for a period of 9 months, to coincide with the expiration of the existing order which expires on 5 March 2021:

   1. He must personally ensure the GMC is notified of the following information within seven calendar days of the date these conditions become effective:

      a. the details of his current post, including:

         i. his job title

         ii. his job location

         iii. his responsible officer (or their nominated deputy)
b. the contact details of his employer and any contracting body, including his direct line manager

c. any organisation where he has practising privileges and/or admitting rights

d. any training programmes he is in

e. of the organisation on whose medical performers list he is included

f. of the contact details of any locum agency or out of hours service he is registered with.

2. He must personally ensure the GMC is notified:

a. of any post he accepts, before starting it

b. that all relevant people have been notified of his conditions, in accordance with condition 11

c. if any formal disciplinary proceedings against him are started by his employer and/or contracting body, within seven calendar days of being formally notified of such proceedings

d. if any of his posts, practising privileges, or admitting rights have been suspended or terminated by his employer before the agreed date within seven calendar days of being notified of the termination

e. if he applies for a post outside the UK.

3. He must allow the GMC to exchange information with any person involved in monitoring his compliance with his conditions.

4. a. He must have a workplace reporter appointed by his responsible officer (or their nominated deputy).

b. He must not work until:

i. his responsible officer (or their nominated deputy) has appointed his workplace reporter

ii. he has personally ensured that the GMC has been notified of the name and contact details of his workplace reporter.
5.  a. He must design a Personal Development Plan (PDP), with specific aims to address the deficiencies in the following areas of his practice:
   - maintaining professional boundaries
   - managing patients with attachment, personality or similar disorders
   - dealing with vulnerable patients

b. His PDP must be approved by his responsible officer (or their nominated deputy).

c. He must give the GMC a copy of his approved PDP within three months of these substantive conditions becoming effective.

d. He must give the GMC a copy of his approved PDP on request.

e. He must meet with his responsible officer (or their nominated deputy), as required, to discuss his achievements against the aims of his PDP.

6. He must get the approval of the GMC before working in a non-NHS post or setting.

7. Save in relation to his work as a football club doctor, he must only work in a group practice setting where there is a minimum of two GP partners or employed GPs (excluding himself). The GPs must be partners or permanently employed GPs who are on the GP register (this excludes locum staff).

8. a. He must be supervised in all of his posts by a clinical supervisor, as defined in the Glossary for undertakings and conditions. His clinical supervisor must be appointed by his responsible officer (or their nominated deputy).

b. He must not work until:
   i. his responsible officer (or their nominated deputy) has appointed his clinical supervisor and approved his supervision arrangements
ii. he has personally ensured that the GMC has been notified of the name and contact details of his clinical supervisor and his supervision arrangements.

9. a. He must keep a log of any patients he carries out consultations with, including those carried out remotely
   b. He must discuss this log with the workplace/clinical supervisor at the next available meeting
   c. He must submit his supervisor’s summary comments of each supervision meeting, every six months.

10. He must have a mentor who is approved by his responsible officer (or their nominated deputy).

11. He must personally ensure the following persons are notified of the conditions listed at 1 to 10:
   a. his responsible officer (or their nominated deputy)
   b. the responsible officer of the following organisations:
      i. his place(s) of work, and any prospective place of work (at the time of application)
      ii. all of his contracting bodies and any prospective contracting body (prior to entering a contract)
      iii. any organisation where he has, or has applied for, practising privileges and/or admitting rights (at the time of application)
      iv. any locum agency or out of hours service he is registered with
      v. if any of the organisations listed at (i to iv) does not have a responsible officer, he must notify the person with responsibility for overall clinical governance within that organisation. If he is unable to identify that person, he must contact the GMC for advice before working for that organisation.
   c. the responsible officer for the medical performers list on which he is included or seeking inclusion (at the time of application)
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d. his immediate line manager and senior clinician (where there is one) at his place of work, at least 24 hours before starting work (for current and new posts, including locum posts).

XXX

23. In reaching this decision, I have borne in mind that Dr Smith’s misconduct was deemed to be serious by the Tribunal. The Tribunal gave careful consideration to the appropriate sanction, which has now only effectively been in place for less than half of the period imposed by the Tribunal. However, both parties have sought reasonable adjustments to Dr Smith’s registration to enable his ongoing supervision whilst working remotely at home due to the COVID – 19 outbreak. I have myself reviewed the proposed varied conditions which the parties have agreed and am satisfied that they are proportionate and sufficient to protect the public and the public interest on the evidence before me and in the particular circumstances of this case.

24. The effect of this direction is that, unless Dr Smith exercises his right of appeal, the conditions will take effect 28 days from when written notice of this determination has been served upon him. The current order of conditions will remain in place until the appeal period has ended, or in the event that he does appeal, that appeal is decided. A note explaining Dr Smith’s right of appeal will be provided to him.

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

Confirmed
Date 13 May 2020

Mr Kenneth Hamer, Chair