

**Dates:** 03/09/2018 - 07/09/2018

**Medical Practitioner's name:** Dr Dominique AH-KYE

**GMC reference number:** 2926401

**Primary medical qualification:** BM 1984 University of Southampton

**Type of case**  
New - Misconduct

**Outcome on impairment**  
Impaired

**Summary of outcome**

Suspension, 1 months.

**Tribunal:**

Legally Qualified Chair	Mr Rob Ward
Lay Tribunal Member:	Mrs Carrie Ryan-Palmer
Medical Tribunal Member:	Dr Janet Nicholls

Tribunal Clerk:	Mr Stuart Peachey
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**Attendance and Representation:**

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Dr Keith Lomax, Solicitor, of FHF Consulting.
GMC Representative:	Ms Susanna Kitzing, Counsel.

## **Record of Determinations – Medical Practitioners Tribunal**

### **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 and Impairment - 05/09/2018**

#### **THE FACTS**

##### **Background**

1. Dr Ah-Kye qualified in 1984 and registered with the General Medical Council ('GMC') in 1985.
2. At the time of the events Dr Ah-Kye was practising as a Locum Consultant Physician at Calderdale & Huddersfield NHS Foundation Trust ('the Trust'), referenced erroneously as '*Calderdale and Huddersfield Royal Infirmary*' in the Allegation.
3. The Allegation that has led to Dr Ah-Kye's hearing can be summarised as concerns relating to clinical employment that he undertook whilst administratively erased. This included Dr Ah-Kye making untrue and dishonest statements to his Locum agency about the nature of the work being undertaken at the Trust.
4. The initial concerns were raised with the GMC through a letter on 3 June 2016 by the Trust, where a local investigation had been carried out prior to referral.

##### **The Allegation and the Doctor's Response**

5. The Allegation made against Dr Ah-Kye is as follows:
  1. On 21 March 2016 you were notified by the GMC that your name had been removed from the GMC's register with immediate effect.  
**Admitted and Found Proved**

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2. On 24 March 2016 you agreed with ID medical not to return to work at Huddersfield Royal Infirmary until your registration was reinstated.  
**Admitted and Found Proved**
3. You undertook clinical work which required GMC registration at 'Calderdale and Huddersfield Royal Infirmary' on one or more of the dates listed in Schedule 1. **Admitted and Found Proved**
4. You worked on one or more of the dates listed in Schedule 1, when:
  - a. you knew that your registration with the GMC had been withdrawn; **Admitted and Found Proved**
  - b. you had agreed with ID medical that you would not work. **Admitted and Found Proved**
5. You advised ID medical that you were undertaking 'non-clinical work at Huddersfield' by:
  - a. telephone on 20 April 2016; **Admitted and Found Proved**
  - b. email dated 21 April 2016. **Admitted and Found Proved**
6. The statements referred to at paragraph 5 above were:
  - a. untrue; **Admitted and Found Proved**
  - b. known by you to be untrue. **Admitted and Found Proved**
7. Your conduct as described at paragraphs 3 – 6 was dishonest.  
**Admitted and Found Proved**

### The Admitted Facts

6. At the outset of these proceedings, through his Solicitor, Dr Keith Lomax, Dr Ah-Kye made admissions to the entirety of the Allegation, as set out above in accordance with Rule 17(2)(d) of the GMC (Fitness to Practise) Rules 2004, as amended ('the Rules').

7. In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced the entirety of the paragraphs and sub-paragraphs of the Allegation, as admitted and found proved.

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### **IMPAIRMENT**

8. Having determined the Facts in this case following Dr Ah-Kye's admissions to the entirety of the Allegation, in accordance with Rule 17(2)(l) of the Rules, the Tribunal has considered whether, Dr Ah-Kye's fitness to practise is impaired by reason of misconduct.

### **Witness Evidence**

9. The Tribunal received evidence on behalf of the GMC from the following witnesses:

- Dr A, Consultant at the Trust, witness statement, dated 12 December 2016;
- Ms B, Governance Manager at ID Medical, witness statement, dated 20 April 2017;
- Ms C, Applications Advisor within the Voluntary Erasure Restoration and Licencing Team at the GMC, witness statement, dated 12 December 2017;
- Ms D, Head of Fees and Billing and Project Management within the Finance Department of the GMC, witness statement, dated 18 July 2018 and a supplemental witness statement, dated 8 August 2018.

10. The Tribunal received evidence on Dr Ah-Kye's behalf from the following witness:

- Ms E, Consultant Nurse at The Queen Elizabeth Hospital, in person.

11. Dr Ah-Kye also provided his own witness statements, dated 6 July 2018 and 13 August 2018. Numerous testimonial letters and emails were also provided.

### **Dr Ah-Kye's Oral Evidence**

12. Dr Ah-Kye gave oral evidence to the Tribunal on day one of the hearing. The following is a brief summary.

13. Dr Ah-Kye told the Tribunal that his registration with the GMC dates back to 1985 and there have not been any issues or disciplinary matters during the course of that time up until 2016. Dr Ah-Kye told the Tribunal that he works as a Locum and in substantive posts.

14. Dr Ah-Kye told the Tribunal that he made arrangements to pay his registration fee by direct debit to the GMC. However, he said that *'things went wrong in 2016'* and that there were a *'lot of things happening'* in his personal life. Dr

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Ah-Kye told the Tribunal that his bank account and emails had been hacked and that he was a victim of fraud. Further, Dr Ah-Kye offered to provide the crime reference number from the police to corroborate this.

15. Dr Ah-Kye admitted having not updated his registered postal and email address to the GMC. He accepted that the GMC had no means to inform him of the lapsing of his registration. Dr Ah-Kye told the Tribunal that, when he discovered that his registration had lapsed (and it only came to light when he was teaching an ST6 doctor who wanted him to be a sponsor of his acumen), Dr Ah-Kye said that it was through this doctor he found out there was something wrong with his registration as he could not give the student a referral due to a notice on his own registration.

16. Dr Ah-Kye told the Tribunal that when he found out about his administrative erasure, he made attempts to sort it out as soon as possible. He said that on 24 March 2016, he informed the GMC about his change of telephone number, email address and registered address. Dr Ah-Kye went on to explain that he had informed the GMC that he was prepared to pay straight away to restore his registration as he had done successfully in 2009. Dr Ah-Kye told the Tribunal that he completed an application for restoration and understood that, in the meantime, he could carry on his duties at the Trust. Later in his evidence, he said that his restoration was completed on 17 May 2016, which took a longer period of time than he expected given his previous experience of the same process in 2009.

17. Dr Ah-Kye acknowledged to the Tribunal that he carried out clinical and non-clinical work when he was unregistered. He told the Tribunal that his main duty was *'to do most of the paperwork'*, but he didn't want to *'let his colleague down'* and put her in a difficult situation where she was working on her own seeing patients. Dr Ah-Kye said that he has learnt his lesson in this regard.

18. Dr Ah-Kye told the Tribunal that he had let the department and his colleagues down. He expressed remorse and explained that he had taken responsibility for his actions and he had apologised to the Trust for his mistake. Dr Ah-Kye told the Tribunal that honesty and transparency were important qualities. He reassured the Tribunal that his dishonesty would not happen again and explained that he had suffered from it. In response to questioning, he told the Tribunal that working whilst unregistered had not been a financially motivated decision; he wanted to help his colleagues and patients due to the pressure in the department, the backlog of work and the absence of other staff due to their health issues.

19. Dr Ah-Kye told the Tribunal that he wants to do clinical work for experience as he does not want to lose his license. He said that if the case was to *'finish today or tomorrow'*, he would continue to train for work and continue the trial for his wireless patient monitoring device. Dr Ah-Kye told the Tribunal that he would like to retire to Mauritius, his place of birth, as he wants to help people who cannot afford healthcare through charity work.

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20. Dr Ah-Kye told the Tribunal in response to its questioning in relation to his admission of Paragraph 2 of the Allegation, at the Facts stage, that he was now not sure that 24 March 2016 was the correct date. He said that he had a discussion with Mr J, *'but it was not about them telling me to stop work, it was not conveyed to me [Dr Ah-Kye] in that manner'*.

### Documentary Evidence

21. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included, but was not limited to:

- Dr Ah-Kye's Work Details Form, dated 26 October 2016;
- Telephone note between GMC and Dr Ah-Kye, dated 24 March 2016;
- Online application submitted by Dr Ah-Kye to the GMC, dated 11 April 2016;
- UD8 form, dated 15 April 2018;
- The GMC Registration Fees Regulations 2015;
- Various screen-shots of the GMC database *'Siebel'* regarding correspondence to Dr Ah-Kye in relation to payment of an annual fee;
- Letter from the GMC to Dr Ah-Kye, dated 21 March 2016;
- Email correspondence from ID Medical and Huddersfield Royal Infirmary, dated 11 April 2016; and a record of correspondence dated 20 to 21 April 2016;
- Email correspondence from Dr Ah-Kye to ID Medical, dated 21 April 2016;
- Email correspondence between Dr A and ID Medical, dated 4 May 2016;
- ID Medical Handbook;
- Email correspondence between colleagues at ID Medical;
- Time Sheets of Dr Ah-Kye's work undertaken at the Trust, dated between March and April 2016;
- Work rotas at the Trust, dated between 21 March 2016 and 2 May 2016;
- Dr Ah-Kye's job plan;
- Email correspondence between colleagues at the Trust, dated 4 May 2016;
- Chronology of events; and
- License to Practise – Factsheet.

22. Further, the Tribunal noted testimonials provided on Dr Ah-Kye's behalf:

- Mrs F, the wife of a patient, dated 12 September 2016
- Ms E, Consultant Nurse at The Queen Elizabeth Hospital, dated 31 October 2017 and a subsequent email verification, dated 3 July 2018;

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- Dr G, a former colleague, dated 3 July 2018;
- Dr H, Consultant Physician in General Medicine and Respiratory Medicine at The Sandringham Hospital, dated 16 July 2018;
- Dr I, STR Respiratory Medicine in East of England Deanery, dated 11 July 2018;
- Mr J, Senior Recruitment Consultant at ID Medical, dated 4 July 2018; and
- Dr K, a former colleague, dated 8 August 2018.

### Submissions

#### Submissions on behalf of the GMC

23. Ms Susanna Kitzing, Counsel, submitted that Dr Ah-Kye's fitness to practise is impaired by reason of his misconduct. She directed the Tribunal's attention to paragraphs 65, 66, 68 and 76 of Good Medical Practise (2013 edition) ('GMP') when making its determination.

24. Ms Kitzing submitted that Dr Ah-Kye covered up his administrative erasure which led to the Trust using his services for a period of 2 months, when he did not have a licence to practise. She submitted that practising without a licence when not being registered is a serious matter and is a criminal offence.

25. Ms Kitzing submitted that the Tribunal should consider that there are potential consequences for patients and the profession as a whole and Dr Ah-Kye's actions could have a significant and detrimental effect on public confidence and the profession that practitioners are not being properly regulated.

26. Ms Kitzing submitted that there is dishonesty in this case, in that the Trust utilised Dr Ah-Kye's services without knowing that he did not have a license to practise.

27. In relation to insight, Ms Kitzing submitted that the Tribunal should look at the totality of evidence, namely that Dr Ah-Kye admitted all the Paragraphs of the Allegation but, during the course of his oral evidence, the admissions became equivocal and has limited the potential of making any findings of insight.

28. Ms Kitzing submitted that there has been limited remediation, and noted that Dr Ah-Kye has not produced any evidence of attendance at any medical ethics courses or a reflective log.

29. Ms Kitzing submitted that this is not a case where patients were put at risk. However, she submitted that the misconduct that occurred could have potentially put patients at risk.

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30. Ms Kitzing submitted that the Allegation admitted and found proved by the Tribunal clearly constitutes serious misconduct in that Dr Ah-Kye has breached the standards outlined in GMP above and breached the fundamental tenets of the medical profession.

31. Ms Kitzing submitted in order to fulfil the overriding objective, protecting the public interest and upholding proper professional standards of conduct, a finding of serious misconduct and a finding of impairment should be made.

### Submissions on behalf of Dr Ah-Kye

32. Dr Keith Lomax, Solicitor, submitted on behalf of Dr Ah-Kye that his fitness to practise is not impaired by reason of misconduct.

33. Dr Lomax submitted that much of the submission made by Ms Kitzing was accepted by Dr Ah-Kye. Dr Lomax acknowledged that this amounted to misconduct which was accepted, acknowledged and fully taken to heart by Dr Ah-Kye.

34. Dr Lomax submitted that Dr Ah-Kye did not set out on a course of dishonest activity for personal gain. He submitted that Dr Ah-Kye found himself in a very difficult situation following unfortunate circumstances in his personal life in that there was fraud on his bank and email account. Dr Lomax submitted that this is not raised as an excuse, moreover the context in which Dr Ah-Kye found himself to have been deregistered, because the direct debit had not been paid. He submitted that if the direct debit was paid, this case would not be before the Tribunal today.

35. Dr Lomax submitted that Dr Ah-Kye immediately took steps to rectify the situation as soon as he was made aware to get the payment made. He directed the Tribunal's attention to the UD8 form from ID Medical which was sent on 15 April 2016 (the same day that Dr Ah-Kye's restoration had been assigned for someone to process) and it was not received by the GMC until 27 April 2016. Dr Lomax submitted that Dr Ah-Kye had passport difficulties when getting confirmation from the GMC and attended the offices on three separate occasions. This was particularly frustrating for Dr Ah-Kye as the GMC had accepted the same passport as verification of his identity in 2009.

36. Dr Lomax submitted that throughout this period, the restoration was delayed by *'one hiccup after another'*. He submitted that Dr Ah-Kye did *'not sit back'* as he knew it was important and a serious matter. Dr Lomax submitted that this process went on for approximately 2 months and it was not because Dr Ah-Kye's actions took so long.

37. Dr Lomax submitted that Dr Ah-Kye was faced with the difficulty of the decision he needed to make. Factors relevant to this included what work he was going to do and the risk of letting his colleagues down in a situation where they

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were seriously short staffed. Dr Lomax conceded on Dr Ah-Kye's behalf that despite his best intention to only carry out non-clinical work, this was in fact incompatible with the needs of the department and, therefore, Dr Ah-Kye undertook clinical duties. Dr Lomax submitted that Dr Ah-Kye is highly valued by patients and colleagues and is known to be a doctor that goes *'the extra mile'*, has the patients' interests in mind and uses every opportunity to innovate or benefit the patients, profession and the National Health Service. Further, he submitted that Dr Ah-Kye is innovating a device that could potentially save the National Health Service £30,000,000,000 pounds a year.

38. Dr Lomax submitted that this is an unfortunate aberration from Dr Ah-Kye's normal high standards, which arose because of his feeling of duty to colleagues and patients when his overriding responsibility was to not work outside his registration. He submitted that Dr Ah-Kye has been completely open and transparent to the extent that he has admitted that it should never have happened and will not happen again, which is evidenced by the witness testimonial evidence of Ms E, where she attested to Dr Ah-Kye's openness and transparency with these proceedings.

39. Dr Lomax submitted that Dr Ah-Kye fully understands the need to be honest and is wholly remorseful that there has been a failing to the Trust and that he sees himself as someone who can be trusted. He submitted that this was an aberration in a career of over 30 years. Dr Lomax submitted that there is no risk of repetition in that Dr Ah-Kye will not breach the tenets of the profession, bring the medical profession into disrepute or act dishonestly in the future. Dr Lomax reminded the Tribunal that the crux is that Dr Ah-Kye's future fitness to practise is not impaired.

40. Dr Lomax submitted that Dr Ah-Kye has not taken the approach of *'nit-picking'* or seeking to extract himself from the Allegation against him. He submitted that Dr Ah-Kye has been open and transparent with colleagues and prospective employers.

41. Dr Lomax submitted that there is no need for the Tribunal to make a finding of Impairment because what Dr Ah-Kye has done has been *'very seriously felt by him'*. He submitted that Dr Ah-Kye poses no risk to the profession and will continue to give to the profession, as he has done for over 30 years.

### The Relevant Legal Principles

42. The Legally Qualified Chair reminded the Tribunal that at this stage of proceedings, there is no formal burden or standard of proof and the decision on impairment is a matter for the Tribunal's judgment alone.

43. In approaching its decision, the Tribunal was mindful of the two stage process to be adopted: first whether the Facts as found proved amount to misconduct which is sufficiently serious to call the doctor's fitness to practise into question. If so, it

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must then consider whether the doctor's fitness to practise is currently impaired by reason of such misconduct.

44. The Tribunal has been mindful of the overarching statutory objective of the GMC set out in Sections 1A and 1B of the Medical Act 1983 (as amended) to protect the public, by pursuing the following objectives:

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

45. Whilst there is no statutory definition of impairment, the Tribunal is assisted by the guidance set out by Dame Janet Smith in the Fifth Shipman Report as endorsed and adopted as the approach in *CHRE v NMC and Paula Grant [2011] EWHC 927 QBD (Admin)*. This recognises that as part of the process in determining whether a doctor is fit to practise today it must take account of past actions or failures to act. In particular, relevant considerations as to whether Dr Ah-Kye's Fitness to Practise is impaired and whether he:

- a. *'Has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b. *Has in the past or is liable in the future to bring the medical profession into disrepute; and/or*
- c. *Has in the past breached or is liable to breach in the future one of the fundamental tenets of the medical profession; and/or*
- d. *Has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

46. The Tribunal was also guided by the cases of:

- *Cheatle v GMC [2009] EWHC 645 (Admin);*
- *Nwachuku v GMC [2017] EWHC 2085 (Admin);*
- *Roomi v GMC [2009] EWHC 2188 (Admin)*

47. The Tribunal must determine whether Dr Ah-Kye's fitness to practise is currently impaired by reason of misconduct, taking into account Dr Ah-Kye's conduct at the time of the events and any relevant factors such as whether the matters are

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remediable, have been remedied, any development of insight and the likelihood of repetition.

### **The Tribunal's Determination**

48. In considering the question of impairment, the Tribunal has taken account of all of the evidence, and the submissions of Ms Susanna Kitzing, on behalf of the GMC and those of Dr Keith Lomax, on behalf of Dr Ah-Kye.

49. The Tribunal recognised that Dr Ah-Kye was involved in an evolving situation regarding his registration (his previous experience of the same process in 2009) and his relationship with the Trust, ID Medical and the GMC between March and May 2016. The Tribunal has been provided with conflicting evidence pertaining to the issue of whether ID Medical told Dr Ah-Kye to stop practising clinically but, his admission to Paragraph 2 of the Allegation settled the issue sufficiently.

50. The Tribunal found Dr Ah-Kye's oral evidence to be credible and sincere. It also found Ms E's oral evidence to be credible and helpful to its deliberations. Ms E's evidence, which was corroborated by written testimonials, demonstrated to the Tribunal that Dr Ah-Kye is a highly regarded clinician. In Ms E's evidence, she explained the shortage of expertise in Respiratory Medicine in the United Kingdom. She also commented that the NHS is chronically understaffed and all staff feel pressured to go to work, rather than taking time off, even if they are feeling ill.

51. The Tribunal considered the hearsay evidence adduced in email exhibits concerning alleged conversations on 24 March 2016. It recognised that Dr Ah-Kye was not party to these emails. The Tribunal attached little weight to this evidence in making its findings because the evidence was not be able to be tested.

### **Misconduct**

52. In determining whether Dr Ah-Kye's fitness to practise is currently impaired by reason of misconduct, the Tribunal first of all considered whether the Facts found proved amount to professional misconduct by reference to the rules and standards required to be followed by a medical practitioner. It went on to consider whether that misconduct constituted a serious departure from those standards and is therefore misconduct likely to impair Dr Ah-Kye's fitness to practise.

53. The Tribunal considered that Good Medical Practice sets out the standard that a doctor must meet and continue to meet, throughout their professional career. It had regard to paragraphs 66 and 68 of GMP that states:

**66** *'You must always be honest about your experience, qualifications and current role.'*

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**68** *'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.'*

54. The Tribunal noted that it was admitted on Dr Ah-Kye's behalf that his actions were dishonest, his own fault that his details were not updated and that he practised clinically when his registration with the GMC had been withdrawn.

55. GMP sets out the standards that a doctor must meet and continue to meet, throughout their professional career. The Tribunal found that in respect of Paragraphs 1 to 7 of the Allegation, Dr Ah-Kye was dishonest regarding his registration and worked performed, which amounted to a clear breach of paragraphs 66 and 68 of GMP above. It determined that his conduct fell seriously below the expected GMP standard and taken as whole, constituted misconduct that is likely to impair his fitness to practise.

### Impairment by reason of Misconduct

56. Having determined that the Facts found proved amounted to misconduct, the Tribunal went on to consider whether, as a result of this, Dr Ah-Kye's fitness to practise is currently impaired by reason of his misconduct. In determining whether a finding of current impairment of fitness to practise is necessary, the Tribunal first looked for evidence of insight and remediation, and the likelihood of repetition, balanced against the three elements of the overarching statutory objective.

57. The Tribunal had regard to Dr Ah-Kye's admissions to the Allegation during the Facts stage, and the context provided by his explanation of it during his oral evidence during the Impairment stage.

58. The Tribunal noted that in 2009, according to Dr Ah-Kye, the Human Resources Department at his employer at the time highlighted to him that he was not registered and instructed him to resolve the issue whilst maintaining his employment. The Tribunal has received no evidence to dispute Dr Ah-Kye's version of events in regard to 2009. The Tribunal accepted Dr Ah-Kye's evidence that he assumed, therefore, that he could resolve the issue in the same way in 2016 in that he would *'just pay my money and it is sorted out'*.

59. The Tribunal had regard to the guidance set down by *Dame Janet Smith* in her *Fifth Shipman Report* and the more recent approach in *CHRE v NMC and Paula Grant* (in Paragraph 45 above) in considering how a doctor is likely to act in the future, it is relevant to take into account how they have acted in the past. The Tribunal considered that b, c and d of this paragraph are engaged in this case.

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60. The Tribunal is of the view that honesty is a cornerstone of the profession. It considered that patients expect doctors to be honest and for the registration and regulatory processes, to be complied with by all practitioners. The Tribunal, based on the evidence before it and Dr Ah-Kye's own admissions, accepted that he had been dishonest regarding his registration status and work performed in 2016.

61. The Tribunal considered that Dr Ah-Kye's professional duty, as far as he was concerned, was not to let down his colleagues and patients at the Trust. The Tribunal determined that there is no evidence before it to suggest that Dr Ah-Kye has posed a risk to patient safety nor that he practised on the dates outlined in Schedule 1 of the Allegation motivated by personal or financial gain. However, the Tribunal considered that practising whilst unregistered is clear breach of the fundamental tenets of the profession.

62. The Tribunal has been provided with evidence to suggest that Dr Ah-Kye has gained insight into the gravity of his conduct. He is remorseful that he has let his colleagues and the Trust down. He understands his mistakes, and has given assurances that he would not repeat his conduct. The Tribunal was of the view that, if faced with a similar situation, Dr Ah-Kye would be unlikely to repeat his misconduct.

63. The Tribunal acknowledged that Dr Ah-Kye had attempted to address the fact that he was not returned to the register immediately. It found, however, that by continuing to work once he had realised that the process was going to take some time was a breach of the fundamental tenets of the profession.

64. The Tribunal concluded that Dr Ah-Kye's actions risked bringing the profession into disrepute. Further, it also risked undermining public confidence in the profession and the need to maintain proper professional standards and conduct for members of the profession.

65. Therefore, the Tribunal determined that Dr Ah-Kye's fitness to practise is currently impaired by reason of his misconduct.

### **Determination on Sanction - 07/09/2018**

1. Having determined that Dr Ah-Kye's fitness to practise is impaired by reason of his misconduct, the Tribunal has considered what action, if any, it should take with regard to his registration, in accordance with Rule 17(2)(n) of the Rules.

### **The Evidence**

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2. In so doing, the Tribunal gave careful consideration to all the evidence adduced together with the submissions on behalf of Ms Kitzing, Counsel on behalf of the GMC and Dr Lomax, Solicitor, on behalf of Dr Ah-Kye.

### Dr Ah Kye's Oral Evidence

3. Dr Ah-Kye gave oral evidence to the Tribunal at the Sanction stage of the hearing. The following is a brief summary.

4. Dr Ah-Kye told the Tribunal that the due date for his revalidation is in February 2019. He explained to the Tribunal that he must complete a certain amount of clinical work in order to revalidate. Dr Ah-Kye said that the current year has been difficult as he has not been able to seek employment due to his suspension, which was between December 2017 and April 2018.

5. Dr Ah-Kye apologised profusely about his actions in 2016, he said it is something that he regrets wholeheartedly and he will never do it again. He told the Tribunal that openness and transparency are the two words that '*come at the forefront of anything I [Dr Ah-Kye] do*'. Dr Ah-Kye told the Tribunal that he had admitted his wrongdoing immediately, when challenged, by the Trust staff. He '*came clean*' not making any excuses and said that he '*deserved to be sacked*' and would accept any punishment.

## Submissions

### Submissions on behalf of the GMC

6. Ms Kitzing, Counsel, submitted that the appropriate sanction in Dr Ah-Kye's case would be one of erasure from the Medical Register. She directed the Tribunal's attention to the Sanctions Guidance (February 2018 edition) ('SG') and the following cases when making its decision:

- *Theodoropoulos v GMC [2017] EWHC 1984 (Admin)*;
- *Nyamasve v GMC [2018] EWHC 1689 (Admin)*; and
- *Bolton and Law Society [1993] EWCA Civ 32*.

7. Ms Kitzing submitted that erasure is necessary to promote and maintain public confidence in the medical profession and to promote and maintain proper professional standards and conduct for the members of the profession. She submitted that this would meet the statutory overarching objective.

8. Ms Kitzing submitted that Dr Ah-Kye's development of insight and acceptance of his dishonesty has only been recent. She highlighted that Dr Ah-Kye's admissions to the Allegation were at the beginning of this hearing, over 2 years after the

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misconduct involved. However, Ms Kitzing conceded that there is evidence that Dr Ah-Kye apologised to the Trust at the time.

9. Ms Kitzing submitted that, for the Tribunal to take no action would be wholly inappropriate in the circumstances of this case, given that Dr Ah-Kye breached the fundamental tenets of the profession. Further, she submitted that taking no action would not uphold proper standards of conduct and maintain confidence in the profession. Ms Kitzing said that the necessary exceptional circumstances, which would be required to justify taking no action, do not exist in this case.

10. Ms Kitzing submitted that this is not a case where conditions would be appropriate. She submitted that conditions would not meet the need to protect the reputation of the profession. Ms Kitzing also recognised that addressing probity issues is more difficult to remediate therefore workable, measurable conditions could not be imposed.

11. Ms Kitzing submitted that Dr Ah-Kye has significantly breached GMP, therefore a sanction of suspension would not be sufficient to protect the public interest and maintain and uphold proper professional standards. She submitted that Dr Ah-Kye's acknowledgement of fault was only recent and that at the time of the misconduct, his primary concern was not patient care. Ms Kitzing argued that Dr Ah-Kye's behaviour had circumvented the '*checking procedures*' and that demonstrated a blatant disregard for the importance of public confidence in the profession.

12. Ms Kitzing submitted that paragraph 109(a)(b)(d)(h) and (i) of SG are engaged in this case. She submitted that Dr Ah-Kye's dishonesty was persistent and that he had covered it up. Ms Kitzing also asked the Tribunal to note that Dr Ah-Kye was practising whilst erased and this was not consistent with continuing to be a doctor. She drew the Tribunal's attention to paragraph 128 of the SG, making a similar point. Ms Kitzing referred to the cases of *Theodoropoulos* and *Nyamasve* and, although conceding that the facts of those cases were not identical to Dr Ah-Kye's case, drew the Tribunal's attention to erasure having been imposed in both cases. She argued that these cases emphasised that dishonesty was such a serious matter that it required erasure for the protection of the reputation of the profession and the upholding of standards.

### Submissions on behalf of Dr Ah-Kye

13. Dr Lomax, Solicitor, directed the Tribunal's attention to the following cases when making its decision on Sanction:

- *Watters v NMC [2017] EWHC 1888 (Admin)*;
- *Lusinga v NMC [2017] EWHC 1458 (Admin)*; and
- *Wisniewska v NMC [2016] EWHC 2672 (Admin)*.

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14. Dr Lomax emphasised the inappropriateness of erasure as a sanction in broadly similar cases. He drew the Tribunal's attention to the principle applied by Mr Justice Kerr in the case of *Lusinga*, namely that the public interest requires the return to practise of a competent doctor even where dishonesty has been found.

15. Dr Lomax argued that the case of *Bolton and Law Society* pre-dates the Human Rights Act 1998, which has been in force for 18 years. He emphasised that the right to respect to private life, including employment, could only be interfered with if necessary and proportionate. Dr Lomax commented that '*case law has moved on enormously in 18 years*'.

16. Dr Lomax submitted that erasure must be preserved for the most serious of misdemeanours, on the scale of proportionality. He submitted that the Tribunal should take into account different levels of dishonesty and the significance of it in terms of its impact on professional standards of behaviour.

17. Dr Lomax did not seek to argue that no action should be taken against Dr Ah-Kye. Indeed, Dr Ah-Kye acknowledged and accepted that a sanction was necessary given the Tribunal's findings on Impairment.

18. Dr Lomax submitted that in 2016, Dr Ah-Kye was in shock once he found out that he was administratively erased and spent time and repeatedly tried to resolve the issue upon learning of it. He submitted that Dr Ah-Kye's position on 4 May 2016 was one of apology and remorse. Dr Ah-Kye '*squared up to what he did wrong*' and immediately apologised to the Trust. Dr Lomax submitted that this is an example of high professional behaviour by Dr Ah-Kye.

19. Dr Lomax submitted that the cases of *Theodoropoulos* and *Nyamasve* are significantly different from the circumstances of Dr Ah-Kye's wrongdoing. He distinguished those two cases as being '*in a different league*', which involved carefully planned deception and fraud in contrast to Dr Ah-Kye's wrongdoing. Dr Lomax went on to highlight that in the case of *Nyamasve* the registrant provided a short letter of apology during the proceedings, whereas Dr Ah-Kye's acceptance of responsibility was within 6 days of his wrongdoing. He highlighted that Dr Ah-Kye has accepted responsibility and expressed remorse ever since that date.

20. Dr Lomax directed the Tribunal's attention to the fact that Dr Ah-Kye was suspended on 14 December 2017 and his suspension continued until 23 April 2018. Dr Ah-Kye's appeal was conceded by the GMC on 23 April 2018, and the GMC removed the suspension on his registration from its website, on 27 April 2018. Dr Lomax submitted that it is pertinent that the above is taken into account as Dr Ah-Kye has already been suspended for 4 months, albeit Dr Lomax clarified that he was not requesting an arithmetical reduction.

## **Record of Determinations – Medical Practitioners Tribunal**

21. Dr Lomax submitted that Dr Ah-Kye is, on all accounts, a good clinician who is in high demand as there is a shortage in his field of practice. He submitted that it is in the public interest that Dr Ah-Kye is returned to the register in order that he continues to practice medicine and develop innovative solutions for the benefit of the NHS.

### **The Relevant Legal Principles**

22. The Tribunal took into account all of the documentary evidence adduced during the course of these proceedings and the submissions of Ms Kitzing, Counsel, on behalf of the GMC, and those of Dr Lomax, Solicitor, on Dr Ah-Kye's behalf.

23. The decision as to the appropriate sanction is a matter for this Tribunal's own independent judgement. In reaching its decision, the Tribunal took into account the SG and the statutory overarching objective, which includes protecting and promoting the health, safety and wellbeing of the public, promoting and maintaining public confidence in the profession, and promoting and maintaining proper professional standards and conduct.

24. The Tribunal recognised that the purpose of a sanction is not to be punitive, although it may have a punitive effect. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Ah-Kye's interests with the public interest.

25. The Tribunal has already provided a detailed determination on Facts and Impairment and it has taken those matters into account during its deliberations on sanction.

### **The Tribunal's Determination on Sanction**

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

#### **No Action**

27. The Tribunal first considered whether to conclude the case by taking no action.

28. The Tribunal was satisfied that there were no exceptional circumstances in Dr Ah-Kye's case which would justify taking no action. It determined that, given the seriousness of the actions that led to a finding of misconduct, taking no action would be inappropriate, inadequate and would not be in the public interest.

## **Record of Determinations – Medical Practitioners Tribunal**

29. The Tribunal considered that Dr Ah-Kye demonstrated insight through his understanding, that his misconduct required a proportionate sanction.

### Conditions

30. The Tribunal considered whether imposing an order of conditions on Dr Ah-Kye's registration would be appropriate. It bore in mind that any conditions imposed should be appropriate, proportionate, workable and measurable.

31. Given the nature of the misconduct, the Tribunal could not envisage being able to formulate workable conditions to address the issue of Dr Ah-Kye's misconduct.

32. The Tribunal concluded that a period of conditional registration would not be appropriate as it would not adequately address the main concerns raised in Dr Ah-Kye's case, namely the maintenance of public confidence in the medical profession and the maintenance of proper professional standards and conduct for members of the profession.

### Suspension

33. The Tribunal next considered whether a period of suspension would be an appropriate and proportionate sanction to impose on Dr Ah-Kye's registration.

34. The Tribunal had regard to paragraph 91 of the SG and acknowledged that a sanction of suspension has a deterrent effect and can be used to send a signal to Dr Ah-Kye, the profession, and the public about what is regarded as behaviour unbecoming a registered doctor. It also acknowledged that suspension is an appropriate response to misconduct which is sufficiently serious that action is required in order to protect members of the public and maintain public confidence in the profession, and it is potentially the least restrictive sanction which serves this immediate purpose.

35. The Tribunal considered the dishonesty in this case as an episode, which spanned approximately 1 month, in an otherwise unblemished medical career of over 30 years.

36. The Tribunal had regard to the context of Dr Ah-Kye's dishonesty. It considered that his motivation was not to leave the department short staffed and let patients and colleagues down. The Tribunal accepted that Dr Ah-Kye's actions were not for personal and/or financial gain. The Tribunal considered, based on the evidence before it, and the GMC concessions in submissions at the Impairment stage, that Dr Ah-Kye does not pose a risk to patient safety.

## **Record of Determinations – Medical Practitioners Tribunal**

37. In his evidence, Dr Ah-Kye detailed his actions and acceptance of responsibility by '*coming clean*' immediately upon the misconduct coming to light. The Tribunal accepted this. His evidence was supplemented and compounded by Ms E's evidence that Dr Ah-Kye has always been open and honest in his employment alongside her in 2016 and 2017. Throughout his oral evidence, the Tribunal found Dr Ah-Kye to be a genuine and credible witness who demonstrated significant remorse. The Tribunal concluded from his evidence, and the testimonial evidence, that it is unlikely Dr Ah-Kye will repeat his actions.

38. Whilst the Tribunal acknowledges that Dr Ah-Kye has developed insight and taken some steps to address his behaviour, practising when administratively erased in a medical environment is serious and can never be excused. The Tribunal considered suspension as the appropriate sanction for Dr Ah-Kye in this case. It is necessary to reflect the gravity of his behaviour and whilst the Tribunal acknowledges this would deprive the public of a highly regarded doctor, no lesser sentence would adequately serve the public interest in maintaining public confidence and upholding proper professional standards.

39. The Tribunal attached no weight to Dr Ah-Kye's evidence regarding revalidation.

40. In determining the duration of Dr Ah-Kye's suspension, it considered that a period of 1 month is the appropriate period in all the circumstances of this case. The Tribunal noted that Dr Ah-Kye has already previously served 4 months' suspension on a sanction which has since been quashed.

41. The Tribunal considered whilst Dr Ah-Kye's behaviour fell short of what is expected of doctors, it is not fundamentally incompatible with continued registration such as to justify erasure. It recognised that there had been a departure from the standards outlined in GMP but concluded that suspension addressed these proportionately. The Tribunal did not view Dr Ah-Kye's misconduct as an abuse of position of trust. It recognised that Dr Ah-Kye's dishonesty was a 1 month aberration in a long career.

42. The Tribunal therefore concluded that it was necessary to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards of conduct for the members of the profession, to direct that Dr Ah-Kye's name be suspended from the Medical Register. In light of all the evidence presented to it, the Tribunal was satisfied that suspension is the necessary, proportionate and appropriate sanction.

### **Determination on Immediate Order - 07/09/2018**

## **Record of Determinations – Medical Practitioners Tribunal**

1. Having determined that Dr Ah-Kye's registration be suspended for a period of 1 month, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether his registration should be subject to an Immediate Order.

### **Submissions**

#### Submissions on behalf of the GMC

2. Ms Kitzing, Counsel, submitted that given the nature of this case, an Immediate Order on Dr Ah-Kye's registration should be imposed to protect the public interest and maintain confidence in the medical profession.

#### Submissions on behalf of Dr Ah-Kye

3. Dr Lomax, Solicitor, submitted that it would be wholly disproportionate to impose an Immediate Order of suspension, on Dr Ah-Kye's registration. He submitted that the imposition of an Immediate Order is not in the interest of Dr Ah-Kye and would not allow time for him to put his affairs in order.

### **The Tribunal's Decision**

4. In reaching its decision, the Tribunal has exercised its own judgement, and has taken account of the principle of proportionality. The Tribunal has borne in mind that it may impose an Immediate Order where it is satisfied that it is necessary for the protection of members of the public, is in the public interest, or is in the best interests of the practitioner. The Tribunal had regard to the submissions of Ms Kitzing, Counsel on behalf of the GMC, and those of Dr Lomax, Solicitor, on Dr Ah-Kye's behalf.

5. The Tribunal had regard to paragraph 178 of the SG, and reiterated that the 1 month suspension imposed by the Tribunal marks the seriousness of Dr Ah-Kye's misconduct. The public interest does not require an Immediate Order of suspension; the substantive sanction is sufficient to satisfy the overarching objective. Further, as there were no patient safety risks in this case, the Tribunal determined that an Immediate Order is not necessary.

6. The substantive direction for suspension will take effect 28 days from when the written notice is deemed to have been served upon Dr Ah-Kye, unless an appeal is lodged in the interim.

7. That concludes this case.

### **Confirmed**

**Date** 07 September 2018

Mr Rob Ward, Chair

## **Record of Determinations – Medical Practitioners Tribunal**

### **SCHEDULE 1**

29 March 2016

6 April 2016

7 April 2016

8 April 2016

11 April 2016

12 April 2016

13 April 2016

14 April 2016

15 April 2016

18 April 2016

19 April 2016

20 April 2016

21 April 2016

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25 April 2016

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