

## PUBLIC RECORD

Dates: 19/05/2023

Medical Practitioner's name: Dr Evgeniy KUZMIN  
GMC reference number: 6060706  
Primary medical qualification: Med Dip 1997 Bukovinian State Medical Academy

Type of case: Review - Misconduct  
Outcome on impairment: Not Impaired  
Summary of outcome: Suspension to expire

## Tribunal:

Legally Qualified Chair	Ms Margaret Obi
Lay Tribunal Member:	Mr Martyn Green
Medical Tribunal Member:	Dr Anita Clay
Tribunal Clerk:	Miss Racheal Gill

## Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Jamas Hodiwalla, KC, instructed by Gunnercooke LLP
GMC Representative:	Mr Lewis Kennedy, 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 - 19/05/2023

1. At this review hearing the Tribunal now 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 Kuzmin's fitness to practise remains impaired by reason of misconduct.

## The Outcome of Applications Made during the Impairment Stage

2. Mr Hodivala made an application, on behalf of Dr Kuzmin, pursuant to Rule 34(1) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to admit further evidence in the form of a remediation bundle. Mr Kennedy on behalf of the GMC raised no objection to the admission of the bundle.

3. The Tribunal noted that the bundle had not been provided to the General Medical Council until yesterday (18 May 2023) and therefore had not been served in accordance with the case management directions. The Tribunal accepted that the delay was caused because Dr Kuzmin was awaiting the outcome of his appeal which did not conclude until December 2022 and was unable to attend a probity and ethics course until 7 May 2023. The Tribunal was satisfied that an acceptable reason for the delay had been provided and that it was in the interests of justice for Dr Kuzmin to be able to rely on the contents of the remediation bundle.

## Background

4. Dr Kuzmin qualified in Ukraine in 1997. Prior to the events which are the subject of this review hearing, he undertook training roles in Ukraine before registering with the General Medical Council ('GMC') in 2006 and moving to the United Kingdom to practise as a doctor. Dr Kuzmin primarily practised in the field of Obstetrics and Gynaecology before commencing the General Practitioner ('GP') Vocational Training Scheme in 2011.

5. In February 2016, Dr Kuzmin began work as an ST2 GP Registrar at the Portchester Medical Centre. His ST2 training was extended by the Annual Review of Competence Progression ('ARCP') in March 2016 due to his e-portfolio failing to meet all the requirements of the curriculum. From August 2016 Dr Kuzmin was appointed as an ST2 GP Registrar at the

Southsea Medical Centre, Portsmouth. His ST2 training was extended again in October 2016. He became an ST3 GP Registrar in April 2017.

6. In February 2018 Dr Kuzmin started an ST3 GP Registrar role at the Forrest Surgery. He obtained his Certificate of Completion of Training in respect of his speciality training as a GP on 10 August 2018. From October 2018 to April 2020 Dr Kuzmin worked at the Urgent Care Centre at Kingston Hospital and, from February 2019, he had undertaken a sessional position there working two to three days per week. In April 2020 Dr Kuzmin started working for the Groves Medical Group for two days per week and also worked as a sessional GP at the Vineyard Hill Surgery, Wimbledon.

7. At the time of the events leading up to his Medical Practitioners Tribunal (MPT) hearing, Dr Kuzmin had recently become a ST3 GP Registrar. As part of Dr Kuzmin's training at ST2 level, he had been required to perform a certain amount of out of hours work. In August 2016 Dr Kuzmin registered with Hampshire Doctors On Call Service ('HDOCS'), who are a GP out of hours service.

8. Concerns were raised about Dr Kuzmin's clinical performance, and a referral was made to the GMC in 2016. On 15 November 2016, an MPTS Interim Orders Tribunal (IOT) hearing took place and interim conditions were placed on Dr Kuzmin's registration. The interim conditions were reviewed and maintained unchanged at an IOT hearing on 3 May 2017, which Dr Kuzmin attended. The GMC investigation that arose in 2016 led to a Medical Practitioners Tribunal (MPT) hearing in January 2018, where the Tribunal found no misconduct and therefore Dr Kuzmin's fitness to practise was not impaired.

9. This review relates to the outcome of a fitness to practise hearing which was considered by a separate MPT and concluded on 10 March 2022 ('the 2022 Tribunal'). Dr Kuzmin attended the hearing and was represented. At that hearing, Dr Kuzmin made admissions to some paragraphs of the allegation. It was admitted and found proved that on 15 November 2016, interim conditions were imposed on Dr Kuzmin's registration, which were then reviewed and maintained unchanged by the IOT on 3 May 2017. The 2022 Tribunal determined and found proved that Dr Kuzmin failed to inform HDOCS, the out of hours service, with whom he was registered, of conditions 1-7 of the interim order, as required by condition 8 of that order. It was determined and found proved that Dr Kuzmin failed to provide details of the full conditions imposed on his registration in response to an email request made on 4 July 2017 by an Associate Postgraduate Dean. The 2022 Tribunal determined and found proved that Dr Kuzmin's actions were dishonest.

## Impairment

10. The 2022 Tribunal had found that the failure to disclose the existence of the conditions was deliberate and that this had been done because Dr Kuzmin wanted to start his out of hours training quickly. While the dishonesty represented a single incident, the 2022 Tribunal determined that Dr Kuzmin's actions represented a clear breach of one of the fundamental tenets of the medical profession. It was of the view that an informed member of

the public, knowing that Dr Kuzmin had acted deliberately and for his own advantage, would consider his actions deplorable. The 2022 Tribunal concluded that Dr Kuzmin's conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct which was serious.

11. The 2022 Tribunal was clear that it did not have any evidence of insight or remediation before it from Dr Kuzmin. Dr Kuzmin's Counsel submitted that it would have been dishonest for Dr Kuzmin to have shown insight and remediation when he continued to deny the Allegation. However, the 2022 Tribunal was of the opinion that Dr Kuzmin could have displayed some insight and undertaken some remediation activities, such as professional courses, and still maintain his position. It would be possible for Dr Kuzmin to recognise that there were two opposing interpretations of what had happened and reflect on the implications of these, which had not been done. The 2022 Tribunal was of the view that denial was not incompatible with some expression of insight and remediation.

12. Whilst the 2022 Tribunal accepted that Dr Kuzmin's misconduct represented a single episode where there was no evidence of recurrence, it concluded that the public interest required a finding of impairment to be made in this case in order 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. The 2022 Tribunal found no patient safety issues. The 2022 Tribunal determined that Dr Kuzmin's fitness to practise was impaired by reason of his misconduct.

#### Sanction

13. Turning to the issue of sanction, the 2022 Tribunal determined that Dr Kuzmin's actions clearly represented a serious breach of the principles of GMP but it was also conscious that those actions were related to a single episode that took place almost five years ago and where there was no evidence of recurrence.

14. The 2022 Tribunal took account of Dr Kuzmin's work with the London Ambulance Service, British Ukrainian Aid, and of his personal circumstances. It also had regard to the positive testimonials from colleagues and employers about his clinical competence. Whilst the 2022 Tribunal was not satisfied as to the insight shown by Dr Kuzmin at the time of the hearing, it was of the opinion that there was potential for him to develop this in the future. The 2022 Tribunal was of the view that it would be appropriate to allow Dr Kuzmin an opportunity to demonstrate insight and undertake steps to remediate.

15. The 2022 Tribunal determined that a six-month suspension was the necessary and appropriate sanction in Dr Kuzmin's case. It was of the view that this period would adequately address the seriousness of the findings and ensure that Dr Kuzmin had sufficient time to take steps to remediate and develop insight.

16. The 2022 Tribunal directed a review of Dr Kuzmin's case to be convened shortly before the end of the period of suspension. The 2022 Tribunal emphasised that at the review

hearing, the onus would be on Dr Kuzmin to demonstrate how he has taken steps to remediate and develop insight. The 2022 Tribunal suggested that the reviewing Tribunal would be assisted if Dr Kuzmin were to provide the following:

- Evidence of how his insight has developed in the light of these events and the Tribunal's findings;
- Evidence of remediation - steps taken to show remediation, including Continuing Professional Development;
- Any other information that he considers will assist.

### Today's Review Tribunal

#### **The Evidence**

17. The Tribunal has taken into account all the evidence received, both oral and documentary.
18. The Tribunal took account of all the documentary evidence adduced during the course of these proceedings, which included but was not limited to:
  - Record of Determinations of the MPT hearing which concluded on 10 March 2022;
  - Telephone notes of calls between GMC and Dr Kuzmin, various dates 2022;
  - Various emails between Dr Kuzmin's representative, various dates 2022;
  - A remediation bundle enclosing:
    - Various CPD Certificates, dates 2022-2023, which included a Probity and Ethics course;
    - Diary of reflections and learning from Dr Kuzmin from the CPD courses, various dates 2022-2023;
    - Testimonial from Dr B, CEO of SMART Medical Aid, dated 11 May 2023;
    - Testimonial from Dr A, mentor, dated 17 May 2023.
19. Dr Kuzmin provided his own witness statement, dated 18 May 2023 and also gave oral evidence at the hearing.

#### **Submissions**

##### On behalf of Dr Kuzmin

20. Mr Hodivala submitted that Dr Kuzmin's fitness to practise is no longer impaired.
21. Mr Hodivala submitted that Dr Kuzmin has addressed the outstanding concerns and recommendations of the 2022 Tribunal. He submitted that Dr Kuzmin's remediation is complete, and he has developed the level of insight to satisfy the Tribunal. He submitted that the evidence provided to the Tribunal, including the extensive documentary evidence, testimonials and Dr Kuzmin's oral evidence, demonstrate that he has full insight into his

behaviour, and his mindset at the time and the steps he needs to take to prevent any recurrence.

22. Mr Hodivala stated that the misconduct was almost six years ago, and Dr Kuzmin has had time to reflect on the impact of his conduct. Mr Hodivala submitted that Dr Kuzmin's current mindset is now very different from the mindset he had when he appeared before the 2022 Tribunal.

23. Mr Hodivala referred to the positive testimonials regarding Dr Kuzmin's clinical competence and honesty and integrity.

24. Mr Hodivala submitted that Dr Kuzmin has retained his clinical skills and knowledge, as reflected in his extensive CPD. Mr Hodivala reminded the Tribunal that Dr Kuzmin is a good clinician who posed no risk to patient safety.

25. Mr Hodivala submitted that considering all the material provided, there is no risk of repetition. He submitted that there has been a sating of public confidence in the profession by the completion of the six-month suspension.

#### GMC's submissions

26. On behalf of the GMC, Mr Kennedy submitted that the GMC was neutral on the matter of current impairment and that it was a matter for the Tribunal's judgement alone.

27. Mr Kennedy submitted that Dr Kuzmin has provided a wealth of evidence of personal reflection and insight into his prior dishonesty. He submitted that there was only a single episode that there has been no recurrence.

#### **The Relevant Legal Principles**

28. In a review case there is a persuasive burden upon the doctor to demonstrate that all the concerns which have been identified have been adequately addressed, and that remediation has taken place. If so, a Tribunal might then conclude that the doctor's fitness to practise is no longer impaired.

29. The Tribunal reminded itself that the decision of impairment is a matter for the Tribunal's judgement alone. As noted above, the previous Tribunal set out the matters that a future Tribunal may be assisted by. This Tribunal is aware that it is for Dr Kuzmin to persuade the Tribunal that he would be safe to return to unrestricted practice.

30. This Tribunal must determine whether Dr Kuzmin's fitness to practise is impaired today, taking into account Dr Kuzmin's conduct at the time of the events and other relevant factors such as the level and scope of his insight, the steps that have been taken to remediate his misconduct and the likelihood of repetition.

## The Tribunal's Determination on Impairment

31. The Tribunal noted that, in directing a review hearing, the 2022 Tribunal stated that Dr Kuzmin would have the opportunity to demonstrate evidence of how his insight has developed in the light of the relevant events, the 2022 Tribunal's findings, evidence of remediation including CPD and any other information that he considered would be of assistance.

32. In reaching its decision on impairment, this Tribunal also considered paragraph 164 of the SG, which states:

*“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.”*

33. The Tribunal concluded that Dr Kuzmin's insight has deepened considerably since the 2022 Tribunal and that he has demonstrated that he now fully understands the impact of his actions. In his reflections and oral evidence, Dr Kuzmin described clearly how his behaviour impacted public trust, patients, colleagues, the medical profession, and himself. The Tribunal considered that Dr Kuzmin had demonstrated remorse for his actions and a desire to move on in a positive and constructive way.

34. The Tribunal considered that Dr Kuzmin has taken full advantage of the recommendations as set out by the 2022 Tribunal. He has undertaken appropriate courses, including attending medical conferences and a Probity and Ethics course. He stated in his witness statement that *“this experience has helped me to grow both personally and professionally and has reinforced my commitment to providing the best possible care to my patients.”* The Tribunal took the view that his written reflections on ethics were sufficiently detailed and thorough and it accepted that these reflections were genuine.

35. The Tribunal was satisfied that Dr Kuzmin does now fully understand the gravity of his dishonesty and has a deeper understanding of its impact on his personal standing as a registered doctor and the potential impact on public trust and confidence. In both his written and oral evidence, he has admitted and accepted his *“behaviour was not in line with the standards of honesty and integrity expected of a medical professional.”*

36. Accordingly, the Tribunal determined that Dr Kuzmin has done all that could reasonably be expected and has remedied his dishonest conduct.
37. In terms of his clinical skills and knowledge, the Tribunal was satisfied that, on the evidence before it, he had taken appropriate steps to maintain his skills and knowledge. Dr Kuzmin has undertaken regular reading of the BMJ and relevant CPD including a range of courses and GP update courses. He provided the Tribunal with a list of his activities with relevant reflection. In any event, the Tribunal acknowledged that Dr Kuzmin has only been out of practice for six-months and was unlikely to have become de-skilled. In reaching this conclusion, the Tribunal noted that this case does not relate to patient safety concerns.
38. The Tribunal also bore in mind the positive testimonials provided on Dr Kuzmin's behalf by two of his colleagues who continue to attest to his clinical competence.
39. The Tribunal noted the significant lapse of time since the events in question. It was satisfied that there has been no repetition and that Dr Kuzmin has not reoffended. In his witness statement, Dr Kuzmin stated that *"this is valuable learning for approaching any situation in the future. Where there is any doubt in the future as to how to act, I will always be transparent thinking how my actions could be perceived by the reasonable person."* The Tribunal determined that on the basis of the evidence before it, the risk of future repetition in this case was low. The Tribunal was reassured by the reflections and evidence given by Dr Kuzmin and the steps he has taken to remediate.
40. The Tribunal considered whether a finding of impairment was necessary to uphold the overarching objective, noting that the period of suspension was imposed 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, but also to allow Dr Kuzmin time for further reflection and to develop further insight. The Tribunal was of the opinion that Dr Kuzmin has met all of the outstanding concerns and recommendations of the 2022 Tribunal and that the public interest would not be served by any further finding of impairment or sanction.
41. This Tribunal has therefore determined that Dr Kuzmin's fitness to practise is no longer impaired by reason of misconduct.
42. The Tribunal noted that Dr Kuzmin's suspension expires on 31 May 2023 and considered that whilst Dr Kuzmin's fitness to practise is no longer impaired, the 2022 Tribunal's decision to impose a 6-month period of suspension was to mark the seriousness of Dr Kuzmin's dishonesty and maintain public confidence. Accordingly, the Tribunal determined that Dr Kuzmin's suspension should not be revoked immediately but be left to expire on 31 May 2023 in order to uphold the statutory overarching objective.
43. That concludes this case.