

**Dates:** 05/09/2018 - 12/09/2018

**Medical Practitioner's name:** Dr Frank BORET

**GMC reference number:** 4276366

**Primary medical qualification:** Vrach 1987 Rostovskij O D N Medicinskij  
Institute

**Type of case**  
New – Misconduct

**Outcome on impairment**  
Not Impaired

**Summary of outcome**  
No action (warning not considered)

**Tribunal:**

Legally Qualified Chair	Mrs Laura Paul
Lay Tribunal Member:	Mr Colin Sturgeon
Medical Tribunal Member:	Dr Farhan Munawar
Tribunal Clerk:	Ms Zaheda Razvi

**Attendance and Representation:**

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Robert Wastell, Counsel, instructed by Clyde & Co Solicitors
GMC Representative:	Mr Charles Garside, QC, instructed by GMC Legal

**Attendance of Press / Public**

In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held partly in public and partly in private.

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

### **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 - 12/09/2018**

#### **Background**

1. Dr Boret is a private Consultant Obstetrician and Gynaecologist, practising at the West Hertfordshire Hospitals NHS Trust and on a private basis at the Spire Hospital, Bushey. The GMC allegation in this case arises from his conduct towards Patient A during two consultations and a telephone call. Patient A was a private patient of Dr Boret since 2010 and he delivered her three children. As well as a doctor/patient relationship, a friendship ensued between them. When the hospital where Dr Boret worked was about to close Patient A engaged in a campaign to prevent its closure. She also recommended him to various people. The friendship continued until the alleged incidents in 2017. The GMC alleged that whatever happened was consensual but submitted that it should not have happened as it breached the doctor/patient relationship.

2. The GMC case is that the Tribunal will be obliged to rely on the evidence of Patient A as only two people were present in the room at the consultation on 22 June 2017. Mr Garside on behalf of the GMC accepted that her allegations are not in themselves independent but submitted that there is consistency save for her one email where she retracted her allegation. He submitted that the crux of this case is that Patient A attended Dr Boret and had done a great deal to help him with his private practice; he then decided to pursue a sexual relationship with her and subsequently lied about it, and continues to lie about it.

#### **Chronology**

3. The Tribunal was provided with an agreed chronology of events. This chronology accurately reflects the documents presented to the Tribunal. It can be summarised as follows:

In 2010 Patient A becomes Dr Boret's patient

In March 2017 Patient A's third child is born

On 27 April 2017 Patient A has an appointment with Dr Boret

On 2 June 2017 Patient A has an appointment with Dr B (private GP)

On 8 June 2017 Patient A has an appointment with Dr Boret

On 12 June 2017 Patient A has a hysteroscopy

Between 19 June 2017 and 21 June 2017 there is an email exchange between Patient A and Dr Boret in relation to clinical matters

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### **On 22 June 2017 there is a consultation between Patient A and Dr Boret (the date of the alleged allegation at paragraph 1)**

On 23 June 2017 Patient A sends an email to Dr Boret

On 23 June 2017 Patient A makes an appointment to see Dr Boret (Dr Boret says that he calls Patient A)

On 24 June 2017 Patient A says that Dr Boret calls her and leaves a voicemail  
Patient A also tries to text Dr Boret

### **On 26 June 2017 there is a consultation between Patient A and Dr Boret (the date of the alleged allegation at paragraph 2)**

On the same date Patient A emails Dr Boret and she tries to text him

On 27 June 2017 Patient A tries to text Dr Boret – she calls Spire Hospital twice

On 28 June 2017 Dr Boret telephones Patient A – Patient A tells her husband about the alleged incidents

On 29 June 2017 Patient A says that she emails Dr Boret's PA and Dr Boret phones Patient A

On 3 July 2017 Patient A contacts Dr C

On 6 July 2017 Patient A emails Dr Boret and calls Spire leaving a message for Dr Boret to call urgently

### **On 7 July 2017 Dr Boret telephones Patient A (the alleged allegation at paragraph 3)**

On 8 July 2017 Patient A asks for her notes to be transferred and goes on holiday

From 9 July to 18 July 2017 there are numerous emails sent between Patient A and Dr Boret and also communication from Dr Boret and his PA and a telephone call on 15 July 2017

On 20 July 2017 Patient A makes allegations to her private GP, Dr B and emails him

On 21 July 2017 Patient A emails Dr C

On 24 July 2017 Patient A sees Dr B and she sends an email to Dr Boret

On 25 July 2017 Patient A sends her email retracting her allegation

On 26 July 2017 Patient A's husband calls Dr B to ask him not to report Dr Boret to the GMC. Patient A sends the email to Dr Boret retracting her retraction

On 27 July 2017 Patient A contacts Sexual Assault Referral Centre. She also attends Dr C in person for the first time

On 28 July 2017 Dr Boret first learns of the allegations made by Patient A

On 29 July 2017 Dr Boret replies to the retraction email sent from Patient A

On 30 July 2017 there is a further email from Patient A to Dr Boret

On 1 August 2017 the Medical Director is informed and speaks to Dr Boret

On 9 August 2017 Patient A emails Dr Boret

On 11 August 2017 Dr Boret's statement sent to the Spire Investigation

On 28 September 2017 Patient A makes her first statement to the GMC.

## **The Outcome of Applications Made during the Facts Stage**

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4. The Tribunal refused an application made on behalf of Dr Boret for Mrs F to be permitted to be an observer prior to her giving evidence in order to provide support to Dr Boret. The Tribunal's full decision is included at Annex A.

### The Allegation

5. The Allegation made against Dr Boret is as follows:

#### Paragraph 1

On 22 June 2017 during a consultation with Patient A you:

- a. said she was looking beautiful, or words to that effect; **To be determined**
- b. asked Patient A how she knew a mutual acquaintance and if she had dated him in the past, or words to that effect; **To be determined**
- c. told Patient A that you had cheated on your wife, or words to that effect; **To be determined**
- d. told Patient A other patients fancied you, or words to that effect; **To be determined**
- e. said that you and Patient A could go for coffee so she could tell you about someone she liked, or words to that effect; **To be determined**
- f. said that you and Patient A could exchange cryptic emails, or words to that effect; **To be determined**
- g. asked Patient A how she would feel about having an affair, or words to that effect; **To be determined**
- h. kissed Patient A on the lips on at least one occasion; **To be determined**
- i. put your hands up Patient A's top and touched her breasts on top of her bra. **To be determined**

#### Paragraph 2

On 26 June 2017 during a consultation with Patient A you:

- a. warned Patient A to be very careful with what she said as there may be video cameras watching her, or words to that effect; **Admitted and Found Proved**
- b. said you were glad that Patient A had not been wearing a skirt on 22 June 2017 because you did not want to just stick it in and it be over in three seconds, or words to that effect; **To be determined**

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c. said you wanted to take Patient A to a hotel, make love to her and give her an orgasm, or words to that effect. **To be determined**

### Paragraph 3

On 7 July 2017 you made one or more phone calls to Patient A and you:

a. told Patient A that she was beautiful and that you did want to take her to a hotel and sleep with her but that wanting and actually doing something are two very different things, or words to that effect; **To be determined**

b. said to Patient A that if she was not your patient for a year then something could possibly happen between you, or words to that effect. **To be determined**

### Paragraph 4

Your comments as described at paragraphs 1, 2b, 2c and 3 above were sexually motivated. **To be determined**

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct. **To be determined**

### Documentary Evidence

6. The Tribunal had regard to the documentary evidence provided by the GMC. This evidence included the Witness Statements of the following factual witnesses relied upon by the GMC:

- Patient A;
- Patient A's husband;
- Mr G – Manager of the Sexual Assault Referral Centre;
- Dr B – private practitioner; and
- Dr C.

7. The GMC also adduced documents which are listed on pages 68-70 of the bundle and in particular included the following:

- Patient A's initial account of the allegation;
- Emails between Patient A and Dr Boret;
- Drawing of Dr Boret's consulting room;
- Patient A's mobile phone log and bill;
- Patient A's medical records;
- Statements given to the Spire Hospital investigation; and
- Testimony given on behalf of Dr Boret.

8. The Tribunal also took account of the documents submitted on behalf of Dr Boret, which contained the following:

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- Witness statement of Dr Boret;
- Dr Boret's CV;
- News report and petition;
- Letter from Patient A's private GP;
- Diagram of consulting room;
- Testimonials; and
- Patient Billing Information.

9. The Tribunal was also presented with the witness statements from a number of witnesses, listed on page 25 of the bundle and included the following:

- Ms D – Consultant Obstetrician and Gynaecologist;
- Ms E – Secretary at Spire Bushey Hospital and Dr Boret's PA; and
- Mrs F – XXX.

### **Oral Evidence**

10. In addition to their witness statements, the Tribunal also received oral evidence from:

- Patient A;
- Dr C – via telephone;
- Dr B – via telephone;
- Dr Frank Boret;
- Ms D;
- Ms E; and
- Mrs F.

### **GMC Closing Submissions On The Facts**

11. Mr Garside addressed the Tribunal in relation to each of the disputed paragraphs in this case and referred it to the relevant evidence to support his contention that the GMC had proved its case. He submitted that the facts are dependent on one central question – is it more likely than not that the evidence of Patient A is correct and therefore that given by Dr Boret is incorrect?

12. Mr Garside invited the Tribunal to consider the background, namely that Patient A was a patient of Dr Boret; he dealt with her gynaecological problems and delivered her three children. He submitted that it is clear from the documents that the two of them developed a friendly relationship and one of trust. He added that it was clear Patient A valued Dr Boret's treatment and recommended him to her friends. When the private unit was to close at Watford General Hospital, Patient A engaged in a campaign to keep them open, partly for Dr Boret's benefit. Mr Garside submitted that therefore the background is one of a close but entirely appropriate relationship that had lasted a long time and produced benefits for both parties.

13. Mr Garside invited the Tribunal to consider the circumstances that led to the breakdown of that relationship and to consider why, against this background, Patient A would suddenly choose to make false and highly damaging allegations against a doctor whom she liked and trusted. He asked the Tribunal to consider which of the

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various competing narratives was more likely. He reminded the Tribunal that Patient A confessed to her husband that she had developed feelings for Dr Boret and told him that he had reciprocated the kiss and touched her breast. He asked the Tribunal to consider whether it is likely that Patient A, who lives in a tight knit community, would maintain the allegation and pursue the complaint knowing she could have been subjected to rigorous cross-examination.

14. Mr Garside submitted that it was clear that Patient A found the whole experience difficult and was emotional and the Tribunal has to consider whether she told lies on oath and for what purpose. He submitted that that if it was revenge for being spurned then there was no evidence to support that defence.

15. Mr Garside submitted that the GMC case is that Dr Boret, who he acknowledged has no GMC history and is highly regarded by his patients, got carried away because of the overly close relationship between the two and that he reciprocated her feelings, albeit retaining enough self-control not to engage in sexual activity.

16. Mr Garside then referred to alleged inconsistencies in Dr Boret's account of the kiss and also to peripheral matters which have been raised during the course of these proceedings, but which form no part of the allegation.

17. Mr Garside concluded his submissions by inviting the Tribunal to rely on the account given by Patient A in finding the allegation against Dr Boret proved.

### **Submissions on Behalf of the Practitioner**

18. Mr Wastell commenced his submissions by stating that the allegation made against Dr Boret must be "*every clinician's nightmare*"; having a long career seeing thousands of female patients and then to face an allegation by a single patient which has to be investigated. He submitted that due to the salacious nature of the allegations, they have found their way to the newspapers and to the patients with whom Dr Boret has built a strong relationship. Mr Wastell reminded the Tribunal of its duty to restore justice following the "*mantra emanating solely from the mouth of Patient A*". He submitted that there is not a shred of any other evidence or any other complaints from anyone and that Dr Boret is a man of outstanding reputation. He invited the Tribunal to look at the two individuals at the heart of this case and to not lose sight of that in the detail of the case.

19. Mr Wastell submitted that the allegations are a product of false allegations made by Patient A, who was entrenched in her position. To support his contention, Mr Wastell made the following points:

- Dr Boret is a man of good character with no fitness to practise history. There has been no other complaint in the context of seeing female patients on a daily basis. He is a longstanding consultant who is highly valued. He is seen by many as upstanding and charismatic. He has been a consultant since 2001

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and had been a Clinical Director for 7 years. Neither of his two employers stopped him practising notwithstanding these allegations.

- The burden is on the GMC to prove the allegation – Dr Boret does not have to prove anything.
- The standard of proof is on the balance of probabilities – the more serious the allegation the less likely it occurred and that strong cogent evidence is required to prove the allegation. He referred the Tribunal to relevant case law regarding the burden and standard of proof and submitted that the Tribunal will have in mind inherent probabilities and all the other circumstances such as the fact that Dr Boret is a happily married man and that there is no evidence to show he is likely to behave in the manner alleged.
- The evidence of what is said to other people by Patient A is not independent evidence of what happened; it is only evidence of what she said occurred.

20. Mr Wastell submitted that the difference in demeanour between Patient A and Dr Boret when giving evidence could not have been more marked. He submitted that she was evasive and argumentative and simply repeated the allegations like a mantra. He reminded the Tribunal that she denied it was a fantasy of hers to pursue a sexual relationship with Dr Boret but later accepted it as true. She also wanted the Tribunal to pick which of her emails were to be relied upon. He submitted that her evidence had all the hallmarks of a dishonest account and a rehearsed story. She kept repeating the three things she was alleging like a mantra which was "*bizarre*". Mr Wastell also submitted that Patient A had been dishonest as she would not accept that she was "*gutted*" when a relationship did not ensue and that it was him telling her 'no' but then accepted it as true later in her evidence. In contrast, Mr Wastell submitted that Dr Boret was a straightforward witness who was able to answer all the questions put to him. He was open, honest and candid and acknowledged when he felt his judgement had let him down. He spoke of the shock of the allegation and described some of his actions as foolish.

21. Mr Wastell submitted that Patient A was a highly unusual character who clearly had some good sides as she worked hard to campaign against the closure of the private unit but was equally bordering on the side of hysterical, demanding, rude, aggressive and highly strung. He submitted that the Tribunal saw flashes of her hysteria in evidence, in particular her reactions when a wrong date was put to her. Mr Wastell submitted that her actions in writing an email in the third person and reporting her allegation to a sexual assault referral centre was manipulative as she was laying a trail.

22. Mr Wastell referred the Tribunal to her email sent on 17 July 2017 where she uses the word 'revenge' and submitted that this was a "*startling*" piece of evidence in the context of a case of false complaint. He submitted that the other startling piece of evidence is her retraction email sent on 25 July 2017, in which Patient A admits that she made up the allegation. Mr Wastell invited the Tribunal to believe Dr Boret's account that it was Patient A who came onto him; he rebuffed her advances

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and having ill judgedly given her the chance to apologise rather than expose her, he arranged for her notes to be transferred to another clinician.

23. Mr Wastell then alluded to the possible motivation for Patient A in making the allegation, including self-preservation and revenge. He invited the Tribunal to consider Patient A's actions after the alleged incident on 22 June 2017 and her attempts to get hold of Dr Boret, which clearly shows that it was Patient A who was continuing to pursue Dr Boret as she was gutted about his rejection of her.

24. Mr Wastell concluded his submissions by urging the Tribunal to reject Patient A's account which he submitted simply cannot be relied upon. He invited the Tribunal to read the testimonials submitted on Dr Boret's behalf, which he submitted could "*scarcely be more glowing*".

### **The Tribunal's Approach**

25. In reaching its decision on facts, the Tribunal has accepted the advice of the Legally Qualified Chair (LQC) that the burden of proof rests on the GMC. Dr Boret does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e. whether it is more likely than not. She agreed to the reference to the case law made by Mr Wastell in his submissions.

26. In addition, the Tribunal accepted the advice on the good character evidence of Dr Boret with which it has been presented, and it has borne in mind that it is a relevant factor in its assessment of both the likelihood of Dr Boret behaving as alleged and of his credibility. The Tribunal noted that Dr Boret has no criminal convictions and has had no previous fitness to practise findings made against him. The Tribunal accepted that Dr Boret is of good character

### **The Tribunal's Analysis of the Witness Evidence**

27. The Tribunal commenced its deliberations by assessing the evidence and credibility of the witnesses in this case. It made the following observations:

#### **Patient A**

28. The Tribunal found Patient A to be evasive. There were inconsistencies in her written and oral accounts and also inconsistencies in the account she gave to others. Having heard her oral evidence, the Tribunal found her account even less convincing. The Tribunal found her demeanour and attitude to be of concern. She was at times irrational, unhelpful and repeated phrases like a mantra (take me to a hotel, make love to me and give me an orgasm) when faced with uncomfortable questions. This appeared to the Tribunal to be well-rehearsed.

29. Further, in cross-examination, Patient A deflected questions posed by turning her answers around to reference Dr Boret's alleged behaviour. She was at times belligerent when asked the same question and on several points she did not directly answer the question put to her, for example when asked about heart-eyed emojis

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she had used to sign off an email she had written to Dr Boret. She also answered questions with questions and kept repeating her stock phrases.

30. The Tribunal did not find Patient A convincing. The Tribunal did not find Patient A to be a credible witness.

### **Dr Frank Boret**

31. The Tribunal found that Dr Boret gave a consistent account of events. However, it found he was at times guarded in his answers and asked for questions to be qualified. Also, some of his answers were not directly related to the question. However, on the whole the Tribunal believed his version of events. The Tribunal found Dr Boret to be a credible witness.

### **Dr C**

32. The Tribunal heard evidence from Dr C via telephone. The only version of events she had received was from Patient A and therefore her evidence was one sided. The Tribunal asked her a question regarding her use of the word 'grooming' and she had said it was a word raised by Dr B and not her. She denied being the source of the word 'grooming'. It found her documentary evidence to be of more assistance than her oral evidence.

### **Dr B**

33. The Tribunal heard evidence from Dr B via telephone. He was asked about the inconsistency in his written evidence to which he responded "*it was an oversight*". Further Dr B also denied being the source of the word 'grooming' and clarified that it was something that Patient A had raised with Dr C. He also told the Tribunal that Patient A's husband had told him not to report Dr Boret to the GMC. The Tribunal found his evidence to be of some assistance.

### **Ms D**

34. Ms D was Clinical Director for Watford General and not the Spire Hospital, where the alleged incidents occurred. The Tribunal found her to be cautious in her responses to questions. She had poor recall due to the passage of time. On her own evidence she said that her statement made to the Trust was more reliable. She provided corroborative evidence of the account given by Dr Boret who spoke to her as a colleague following the alleged incidents. The Tribunal found her oral evidence to be of limited assistance.

### **Ms E**

35. The Tribunal were impressed with the evidence of Ms E who gave straightforward answers and was frank and forthright. She expanded on her written statement and provided helpful evidence. She gave the Tribunal the benefit of her experience and provided an insight into Patient A's demeanour in her interactions with her over a protracted period of time.

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### **Mrs F**

36. Mrs F confirmed that XXX Dr Boret, had spoken to her on the same date of the alleged incident. The Tribunal found her to be a credible witness but she did not add anything further than that contained in her written statement.

### **The Tribunal's Analysis of the Evidence and Findings**

37. The Tribunal has considered each paragraph of the Allegation and has evaluated the evidence in order to make its findings on the facts.

### **Context**

38. The Tribunal has considered the context and the evidence of the doctor/patient relationship between Dr Boret and Patient A and of their friendship and assistance to each other. Patient A clearly became very friendly with Dr Boret over the years of her being his patient. This is demonstrated in the various emails between them in the bundle. They correspond with each other in a relaxed and informal manner. However, it is clear from the many testimonials provided in support of Dr Boret that he has never crossed any professional boundaries. The evidence shows that he regularly complimented his long standing patients and would greet them with a kiss on the cheek. The evidence also points to his very friendly and easy going manner. It is clear that Patient A thought highly of Dr Boret, demonstrated by the number of patients she referred to him and her involvement in the campaign in 2015 to stop the closure of the private unit at Watford General.

### **Events immediately after the appointment on 22 June 2017**

39. As the Tribunal only has the conflicting evidence of Patient A and Dr Boret regarding the consultation on 22 June 2017, the Tribunal considered the actions of both immediately after this appointment, which is at the heart of this case. It noted that Dr Boret told his wife about the incident when he returned home from work on 22 June. Dr Boret said in oral evidence that he had thought that Patient A had just momentarily lost her head and he told his wife about the incident when he returned home from work that evening and spoke to Ms D the following day and later to Ms E.

40. The Tribunal noted that Patient A, in contrast, does not immediately report the alleged incident to anyone. However, the following day, on 23 June 2017, she sent an email to Dr Boret asking a question about a prescription and makes no mention of what allegedly happened the day before. In her oral evidence she said this was a cryptic email (which she later deleted but Dr Boret produced to the Trust). Her evidence was that there was a discussion on the 22 June that if they needed to communicate with each other then they could send cryptic messages such as this as a code that they wanted to meet each other and she also said in evidence that there was no prescription issued to her on 22 June 2017. The Tribunal did not find Patient A's evidence on this point credible as there is evidence of a prescription in the clinic letter that appears at page 327 of the bundle. This is also corroborated

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by Ms E's witness statement who confirmed that Patient A had been given a prescription (therefore the email was not cryptic).

41. On the same date (23 June 2017) Patient A telephoned Ms E and in her statement said that she had told her she thought she might be pregnant hence the reason for wanting an urgent appointment to see Dr Boret. However, Ms E, in her statement gave a different account. She stated that Patient A was saying that she was not happy and was still bleeding and that Dr Boret had given her a prescription and she was unsure about directions for use.

42. From the examination of the phone records there appears to be repeated attempts on this date by Patient A to call Dr Boret's private clinic – the longest call being four minutes in duration. It is therefore clear to the Tribunal that Patient A was initiating the contact to make an appointment to see Dr Boret again and secured an appointment for Monday 26 June 2017. Patient A persisted in making contact; attempting to make 10 calls in a period of over an hour and a half.

43. Dr Boret gave consistent evidence of this point, namely that he had a message from his PA that Patient A wanted to see him and he called her later that day to discuss the prescription. He stated that it was clear that the prescription was not the reason she had requested a call back and that she was persisting in pursuing a relationship with him. Patient A makes no reference to this phone call in her evidence.

44. Patient A was given an appointment for Monday 26 June 2017 and there is conflicting evidence as to what occurred at that appointment.

45. Dr Boret says (at page 270 of his statement to the Trust and paragraph 44 and 45 of his witness statement) that he only found out that Patient A was on his list on that day and Ms E confirmed this in her statement where she states: *'When he came in I told him that I had booked Patient A in to see him again. When I told him this his demeanour completely changed and he told me that he had a problem. He told me that during her previous appointment Patient A had made an advance on him. He said that he was embarrassed and he did not know what to do. He did not want to upset her as he valued the patient doctor relationship and this incident had made him uncomfortable. Dr Boret told me that he did not want to be in the room on his own with Patient A but that he did not want to upset her by having a nurse in the room. He asked me if I would come down to clinic after 5 to 10 minutes ...'*

46. Patient A in her oral evidence, stated that at this consultation: *"Dr Boret did say he wanted to make love to me and take me to a hotel and to make me orgasm but then said he had a room full of patients waiting to see him and told me to leave ...this was very very confusing for me... At the consultation on 26 June Dr Boret set me up – he could have just had a chaperone present ... I wanted to speak to him to*

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*normalise what had happened on 22 June and for things to go back to how they were.”*

47. Dr Boret explained in his oral evidence that: *"in my mind I had thought of ways to protect myself ...by asking Ms E and the nurse to come in as secondary protection ... I agree that I handled this badly, with hindsight I should have acted differently ... what came across to me was she wasn't coping with the rejection ... I wanted to explain to her what she was feeling was not mutual."*

48. Dr Boret stated that this consultation lasted around 10-20 minutes. He said that by asking Ms E and the nurse to pop in intermittently that may have deterred Patient A from making advances towards him.

49. Dr Boret told the Tribunal that after what had happened on 22 June he thought Patient A would apologise and that is why he wanted to give her a few minutes without anyone else present. Dr Boret stated: *"my actions in getting the PA and nurse to come in are not the actions of someone who wants to act as in a sex motivated way towards a patient."* He stated: *"I made it clear to Patient A that I was happily married and that I did not have those sort of feelings towards her and that is why I told her to sit down when she came towards me."* He added that *"the way I was seated I would have to go around her to get past her so I decided to stay seated and tell her there were cameras and to go sit down."*

50. The Tribunal found Dr Boret's evidence as to the steps he took to protect himself during this consultation to be believable, namely arranging for Ms E and the clinic nurse to interrupt him intermittently. The Tribunal considers that this may have offered him some protection but he could have made more effective arrangements such as having a chaperone present throughout. The Tribunal noted Dr Boret's explanation as to why he put the arrangement in place and his acknowledgement that in hindsight perhaps he should have acted differently.

51. There is corroborative evidence from Ms E of the numerous interruptions during this consultation, which supports Dr Boret's evidence. She stated: *"When I saw them it was apparent that something had happened as there was a frosty air ...Patient A would have normally greeted me but she didn't – I handed some paperwork to Dr Boret and he said stay have a chat – but Patient A said "I haven't finished my consultation" and asked me to leave so I didn't think it appropriate to stay."* She added *"in hindsight I should have asked the Dr if he wanted me to stay ...it was a very awkward situation."* The Tribunal found Ms E's evidence to be clear and compelling on this point.

52. That same evening at 6.20pm Patient A sent an email to Dr Boret recommending more patients to him. In the Tribunal's view this is not supportive of the allegation she made as to what happened during the earlier consultation. Patient A then sends two text messages and a picture message. Therefore there are several

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attempts to contact Dr Boret, following the consultation, which again does not support her allegation.

53. The next day, on 27 June 2017, she sends five text messages to Dr Boret and she calls his practice twice. This again is not supportive of the allegation she is making.

54. The next significant event is on 28 June 2017 when Patient A told her husband of the alleged incident on 22 June. The Tribunal notes that there is no mention of her telling her husband in her original account given to the Trust. The Tribunal considered this to be a significant omission. It took account of Patient A's husband's statement where he stated that he noticed his wife acting odd from the end of June and that he confronted her on Wednesday 28 June. He stated: *'On questioning, she told me that at an appointment with Dr Boret on 22 June, an inappropriate event occurred....She told me that as she went to leave the appointment he kissed her and put his hands up her top and bra.'* The Tribunal notes this inconsistency with the evidence of Patient A.

55. On 6 July 2017, Patient A emailed Dr Boret and called Spire Hospital leaving a message for Dr Boret to call her urgently. It is the following day on 7 July when he called her that is the subject of the next allegation at paragraph 3 which related to what was said in the phone call between Patient A and Dr Boret. In her statement at paragraph 42, she states: *'I phoned Dr Boret back the following day and left a message with reception at around 09:00. He called me back after around thirty minutes and we also spoke again later that day. ... during these he told me again that he did want to sleep with me but wanting to do something and doing it were different things and our friendship was more important to him.'*

56. Dr Boret in his statement gives the following account of the phone call: *'I called and spoke to Patient A on that day. Again, Patient A was upset and could not understand why she had to transfer her care after all she had done for me. I was very clear with her that because of what had happened it was untenable for me to look after her and this position was not going to change. She asked if I was upset with her, and if we were still friends. I said yes, but I could not see her anymore.'*

57. The Tribunal has insufficient detail to judge which account is accurate and in the absence of supportive evidence, it cannot determine as a fact what was said during this telephone conversation.

58. Three days later, on 10 July 2017, Patient A sent an email to Dr Boret saying: *'you must be so relieved. I only ever wanted some excitement and a bit of passion. Would not have grown attached or fallen for you. It would have been a bit of fun for both of us. Your career and family life is safe and always will be.'*

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59. There are then a series of emails which showed that Patient A was clearly upset that the sexual relationship had not happened between them. She also suggested meeting again and made the point that her husband was away. This, in the Tribunal's judgement, does not support her allegation that he instigated a sexual relationship and pursued her; on the contrary the evidence points clearly to her being the pursuer. The Tribunal has noted from the emails sent from Patient A that there appeared to be an infatuation with Dr Boret, for example in the email at page 85 she writes: *'Perhaps I was not concentrating again and far too busy looking into your eyes!'* When asked why she sent constant emails and requests to see Dr Boret, Patient A said *"I was confused and didn't understand ...I just wanted to talk to him."*

60. As to possible motive for Patient A's actions, the Tribunal noted the email sent on 17 July 2017 where she stated: *'I don't want to hurt you or start making a complaint to the GMC, I am not a silly little girl that just because nothing can happen with us that I would seek to gain some revenge all it would do is destroy you and me and our families. ...'*

61. When Dr Boret was asked why would Patient A be so vindictive to make up the allegations, he responded that he could not speculate why, but gave other examples where she had made similar flippant comments before, for example on page 377 there is a screenshot from a Facebook page which refers to Dr Boret as being *'my husband in another life'*.

62. A key document in this sequence of events is the retraction email sent from Patient A on 25 July 2017 which states: *'I want to apologise to you, ...I am terribly embarrassed for coming onto you ...I made it all up I realise it was a very serious allegation to make and I am so so sorry...I hope that in time you will forgive me.'*

63. When questioned about this retraction email, Patient A said: *"I sent that email to help him ...I didn't want to get him in trouble ... this email is a lie sent in panic and that is the truth."* In the Tribunal's judgement, this retraction email independently supports Dr Boret's case that Patient A had made the allegation up.

64. The next day on 26 July 2017, Patient A sends an email retracting from the retraction sent on 25 July. In this email she states: *'You have just manipulated and used me over the years for your own personal gain ...You have caused me so much harm. I genuinely believed that you were a decent human being. There is nothing decent about you! Your [sic] a dishonourable and despicable human being!'*

65. The Tribunal considers 26 July 2017 to be a key date as it is on this date that her husband rang the GP to ask him not to report Dr Boret to the GMC. The GP sought advice and reported it to Dr Boret's Responsible Officer. Patient A then sent the retraction to the retraction email sent a day earlier.

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66. Dr Boret told the Tribunal *"to be accused of inappropriately touching a patient was a huge huge shock and I would not wish that on anybody so I when I saw the email – all I wanted to do was to report it and deal with it – in the same vein when I saw the retraction email ... I didn't go on checking my emails."*

67. The following day (27 July 2017), Patient A reported her allegation to the Sexual Assault Referral Centre. An explanation for her taking this step has not been provided to the Tribunal.

68. The final key document is the email sent from Patient A on 9 August 2017 from a newly created email address and written in the third person. In this email she stated: *'You are aware that you behaved in an unethical way. They understand that you do not want to risk your career and that is why you have lied but there is one person that you have hurt and she has always fought for you! This person still wants to help you and can only see the good in you when others do not and doubt you. ... This person did want to make love to you as you suggested and is gutted that it did not happen. Unfortunately the situation just got out of control.'*

69. When questioned about this email, Patient A said: *"I was all over the place ... I just wanted to get back our friendship ... I did say I wanted a sexual relationship with him because he wanted one with me and I just wanted him to know that he was safe and that I wouldn't report him ... I was upset and distraught by what had happened between us – as he said he wanted to make love to me and then put his doctor's hat on ... I was confused not in a good way and that is why I sent that email."*

70. The Tribunal considered this to be a bizarre email and noted that she lied in an email to Dr B that her last contact with Dr Boret was on 30 July 2017 but this email clearly shows she contacted Dr Boret after that date.

71. In conclusion in assessing which account to believe, the Tribunal having analysed the chronology of events and the documentary and oral evidence, has rejected Patient A's account. The Tribunal does not believe Patient A due to the actions she took in making the appointment for 26 June. It is clear she was very keen to make this appointment to see Dr Boret; her many inconsistencies in her version of accounts and aspects of her evidence diminish her credibility. The actions she took subsequently also diminished her credibility such as sending the retraction email, then sending the retraction of the retraction and with the sending of an email in the third person.

72. On the balance of probabilities the Tribunal believed the evidence of Dr Boret and rejected Patient A's account.

### Paragraph 1a

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73. In her oral evidence Patient A maintained that Dr Boret did tell her that she was beautiful on two occasions and once during a telephone conversation.

74. In his witness statement, Dr Boret denied this allegation and stated: *'I may have made a passing comment such as 'you're looking nice today', as I brought her into the consulting room, but would never have said 'you're looking beautiful'.'*

75. In his oral evidence, Dr Boret stated that he would never use the word beautiful to a patient as he considered it to be too intimate and would say it to his wife and daughter.

76. The Tribunal has determined that on the balance of probabilities, Dr Boret did not tell Patient A that she was looking beautiful, or words to that effect. Accordingly, the Tribunal has found paragraph 1a of the Allegation not proved.

### **Paragraph 1b**

77. In his witness statement, Dr Boret denied this allegation.

78. The Tribunal has not been presented with any cogent evidence on this point. Accordingly, the Tribunal has found paragraph 1b of the Allegation not proved.

### **Paragraph 1c**

79. In his witness statement, Dr Boret denied this allegation and stated: *'I have never been unfaithful to my wife, and would in any event never discuss such personal matters with a patient.'*

80. The Tribunal has not been presented with any persuasive evidence on this point. Accordingly, the Tribunal has found paragraph 1c of the Allegation not proved.

### **Paragraph 1d**

81. In his witness statement, Dr Boret denied this allegation and stated: *'I do recall Patient A telling me that some patients of mine who she knew fancied me, but I brushed the comment aside.'*

82. The Tribunal has not been presented with any cogent evidence on this point. Accordingly, the Tribunal has found paragraph 1d of the Allegation not proved.

### **Paragraph 1e**

83. In his witness statement, Dr Boret denied this allegation and stated: *'Patient A would frequently suggest that we went for coffee, but I would always decline. I recall bumping into her twice at a cafe on the Broadway near where we both live, and she asked me to sit and have coffee with her, but I stopped going there as I did not want to socialise with a patient but equally did not want to offend her by continually refusing.'*

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84. The Tribunal has not been presented with any persuasive evidence on this point. Accordingly, the Tribunal has found paragraph 1e of the Allegation not proved.

### **Paragraph 1f**

85. In his witness statement, Dr Boret denied this allegation and stated: *'I never suggested that we could exchange any kind of cryptic' information, or indeed any information which was not directly related to her treatment.'*

86. The Tribunal has referred to this point in its analysis of the chronology. It has already determined that it did not believe Patient A's account and rejected it. Accordingly, the Tribunal has found paragraph 1f of the Allegation not proved.

### **Paragraph 1g**

87. In his witness statement, Dr Boret denied this allegation.

88. The Tribunal has not been presented with any cogent evidence on this. Accordingly, the Tribunal has found paragraph 1g of the Allegation not proved.

### **Paragraphs 1h and 1i**

89. In her oral evidence Patient A maintained the account that she gave in her written statement and added that she is only 5 foot tall and Dr Boret is over 6 foot and therefore it was not possible for her to have grabbed Dr Boret in the manner described by him.

90. In his witness statement, Dr Boret denied the allegation at 1h and 1i. He set out the sequence of events as the consultation came to an end: *'I went round the table and walked with Patient A towards the door. At the door, I gave her a brief hug which is something I have always done with Patient A and, as previously mentioned, with many of my long standing patients. As I did so, she suddenly turned, held my face in both her hands and French kissed me. I was taken completely by surprise. I did not return the kiss, I pushed her away and quickly stepped back in shock, asking her what she was doing and telling her to stop it. I did not, as Patient A has alleged, put my hand up her top or touch her breast. I then moved back towards the desk but she started walking towards me, initially apologising saying "I'm sorry Mr B" but then carrying on about how she couldn't help herself and trying to convince me to kiss her back.'*

91. In his oral evidence, Dr Boret stated that it was *"absurd to say he French kissed her ... she has fantasised the rest or it is a deliberate lie but those things did not happen – why she said those things I do not know."*

92. The Tribunal has determined that on the balance of probabilities, that there was a kiss. However the allegation infers that it was Dr Boret who instigated the

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kiss, the Tribunal has determined that it was Patient A who leant in and kissed Dr Boret who was taken by surprise and pushed her away.

93. Accordingly, the Tribunal has found paragraphs 1h and 1i of the Allegation not proved.

### **Paragraph 2a**

94. Dr Boret admitted this paragraph at the outset of the allegation.

95. In his witness statement Dr Boret explained that he *'told her that there were cameras in the room, in an attempt to deter her from making any further advances. There are no cameras in the consulting room.'*

96. Accordingly, the Tribunal has recorded paragraph 2a as having been Admitted and Found Proved.

### **Paragraph 2b**

97. In his witness statement, Dr Boret denied this allegation.

98. The Tribunal has not been presented with any supportive evidence that Dr Boret stated the words alleged by Patient A. It has rejected Patient A's account and her claim that Dr Boret said these words. Accordingly, the Tribunal has found paragraph 2b of the Allegation not proved.

### **Paragraph 2c**

99. In his witness statement, Dr Boret denied this allegation.

100. The Tribunal has noted that the words alleged to have been said by Dr Boret, namely *'that he wanted to take her to a hotel, make love to her and give her an orgasm'* were repeated by Patient A in response to many of the questions put to her. The Tribunal has already referred to this mantra like response being bizarre and rehearsed and rejected her evidence that Dr Boret used these words.

101. Accordingly, the Tribunal has found paragraph 2c of the Allegation not proved.

### **Paragraph 3a**

102. In his witness statement, Dr Boret denied this allegation. The accounts given by both Dr Boret and Patient A during this telephone conversation are set out at paragraph 55 of this determination.

103. The Tribunal has determined that it has no evidence to prove what was said during this telephone conversation. Having rejected Patient A's version of events, on the balance of probabilities, it is more likely than not that Dr Boret did not state the words alleged at paragraph 3a.

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104. Accordingly, the Tribunal has found paragraph 3a of the Allegation not proved.

### Paragraph 3b

105. In his witness statement, Dr Boret denied this allegation and stated: *'I believe this may be a reference to when Patient A was asking me about the circumstances under which it might be acceptable for a doctor to have an intimate relationship with a patient, but it is obviously not an accurate reflection of that exchange.'*

106. The Tribunal has rejected Patient A's evidence on this point and in the absence of any supporting evidence has determined that on the balance of probabilities, it is more likely than not that Dr Boret did not say the words alleged at paragraph 3b.

107. Accordingly, the Tribunal has found paragraph 3b of the Allegation not proved.

### Paragraph 4

108. In his witness statement, Dr Boret denied this allegation and stated: *'I deny any sexual motivation in my dealings with Patient A. I have never behaved in a way that was sexually motivated either to Patient A or any patient throughout my career.'*

109. Having found the entirety of the allegation not proved, paragraph 4 of the allegation falls. Accordingly, the Tribunal has found paragraph 4 not proved.

## The Tribunal's Overall Determination on the Facts

110. The Tribunal has determined the facts as follows:

### Paragraph 1

On 22 June 2017 during a consultation with Patient A you:

- a. said she was looking beautiful, or words to that effect; **Found Not Proved**
- b. asked Patient A how she knew a mutual acquaintance and if she had dated him in the past, or words to that effect; **Found Not Proved**
- c. told Patient A that you had cheated on your wife, or words to that effect; **Found Not Proved**
- d. told Patient A other patients fancied you, or words to that effect; **Found Not Proved**
- e. said that you and Patient A could go for coffee so she could tell you about someone she liked, or words to that effect; **Found Not Proved**

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f. said that you and Patient A could exchange cryptic emails, or words to that effect; **Found Not Proved**

g. asked Patient A how she would feel about having an affair, or words to that effect; **Found Not Proved**

h. kissed Patient A on the lips on at least one occasion; **Found Not Proved**

i. put your hands up Patient A's top and touched her breasts on top of her bra. **Found Not Proved**

### Paragraph 2

On 26 June 2017 during a consultation with Patient A you:

a. warned Patient A to be very careful with what she said as there may be video cameras watching her, or words to that effect; **Admitted and Found Proved**

b. said you were glad that Patient A had not been wearing a skirt on 22 June 2017 because you did not want to just stick it in and it be over in three seconds, or words to that effect; **Found Not Proved**

c. said you wanted to take Patient A to a hotel, make love to her and give her an orgasm, or words to that effect. **Found Not Proved**

### Paragraph 3

On 7 July 2017 you made one or more phone calls to Patient A and you:

a. told Patient A that she was beautiful and that you did want to take her to a hotel and sleep with her but that wanting and actually doing something are two very different things, or words to that effect; **Found Not Proved**

b. said to Patient A that if she was not your patient for a year then something could possibly happen between you, or words to that effect. **Found Not Proved**

### Paragraph 4

Your comments as described at paragraphs 1, 2b, 2c and 3 above were sexually motivated. **Found Not Proved**

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct. **Not Impaired**

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111. Although Dr Boret has admitted the facts of paragraph 2(a), the Tribunal did not find this fact to be culpable on a standalone basis as it could not amount to misconduct. In these circumstances the Tribunal will therefore conclude Dr Boret's case, unless Mr Garside wishes to make submissions on the matter of impairment.

**No submissions were made – the Chair announced that Dr Boret's fitness to practise is not impaired and concluded the case**

**Confirmed**

**Date** 12 September 2018

Mrs Laura Paul, Chair

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### **ANNEX A – 06/09/2018**

#### **Determination: Application under Rule 35(6)**

112. Mr Wastell referred the Tribunal to Rule 35(6) of the General Medical Council (Fitness to Practise) Order of Council 2004, which states:

*'A witness of fact shall not, without leave of the Committee or Tribunal, be entitled to give evidence at a hearing unless he has been excluded from the proceedings until such time as he is called.'*

113. Mr Wastell informed the Tribunal that Mrs F has been present in the building but remained outside the hearing room as she will be called as a witness in due course. He applied for Mrs F to be permitted to be an observer prior to her giving evidence in order to provide support to Dr Boret. Mr Wastell explained that Mrs F had not been a witness to the alleged incidents that form the allegation for 22 June and 26 June 2017.

114. Mr Garside, on behalf of the GMC submitted that this is a matter for the Tribunal's discretion but that in practical terms he would be astounded if Dr Boret and Mrs F had not already had conversations about this case. He did not object to Mr Wastell's application.

115. The Tribunal considered Rule 35(6) and the submissions of parties and determined to refuse Mr Wastell's application as Mrs F will give evidence, in due course, surrounding the circumstances of the alleged incidents. In the interests of a fair hearing, she should not be entitled to observe the proceedings until she has completed her evidence. The Tribunal did not have details, or the order, of the defence witnesses and did not want the situation to arise whereby Mrs F becomes influenced by anything she hears prior to giving her own evidence.