

## PUBLIC RECORD

Dates: 11/09/2023 - 15/09/2023

Medical Practitioner's name: Dr Gary HORN

GMC reference number: 4267803

Primary medical qualification: MD 1982 Universite de Paris

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Impaired

**Summary of outcome**  
Suspension, 3 months.

**Tribunal:**

Legally Qualified Chair	Miss Megan Larrinaga
Lay Tribunal Member:	Mr Chris Weigh
Medical Tribunal Member:	Dr Shez Khan
Tribunal Clerk:	Ms Ciara Fogarty

**Attendance and Representation:**

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Anthony Haycroft, Counsel, instructed by Ryan's Solicitors
GMC Representative:	Mr Charles Garside, KC

## 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 - 14/09/2023

### Background

1. Dr Horn qualified in 1982 from the Universite de Paris, eventually specialising in plastic and reconstructive surgery in public hospitals in Paris. He moved into the private sector in Paris in 1988. Dr Horn first registered with the General Medical Council in July 1997 when he was entered on the General Surgery Specialist Register. Since 2000, Dr Horn has worked exclusively in private practice in England. In January 2003 he was entered on the GMC's Specialist Register for Plastic Surgery. At the time of the events leading to this hearing, Dr Horn was practising as a Consultant Plastic Surgeon at consulting rooms in Harley Street and Norwich.
2. The allegation that has led to Dr Horn's hearing can be summarised as that on 8 September 2021, Dr Horn consulted with Patient A and Miss B regarding a potential hymen repair procedure ('the Procedure'). It was alleged that when asked what would happen if the Procedure became illegal in the future, Dr Horn stated that a lie could be told and it could be said that some other surgery, such as the removal of a cyst was being performed. It was also alleged that Dr Horn nodded when it was suggested that the surgery to be performed was a labial or other surgery. It was further alleged that Dr Horn gave the impression that he would act dishonestly if the Procedure became illegal.
3. In 2021, the Health and Care Bill ('the Bill') which was to eventually become the Health and Care Act 2022 ('the Act') was making its way through Parliament. A section of the Bill dealt with virginity testing as there were widespread concerns that some young women were being coerced into having their virginity tested and in some cases were forced to

undergo hymen repair surgery ('hymenoplasty'). The Act came into force on 1 July 2022 and amongst other things, made virginity testing and hymenoplasty criminal offences.

4. While the Bill was going through Parliament and before the Act came into force, two undercover journalists working for a television production company were producing a documentary in respect of virginity testing and hymenoplasty procedures. During production, one undercover journalist posed as a prospective patient ('Patient A') seeking a hymen repair procedure before a forthcoming marriage in Iran. The other undercover journalist posed as the prospective patient's aunt ('Miss B'). Patient A, in her witness statement to the Tribunal, stated that the purpose of the consultation was to play the role of someone who required the Procedure to be carried out in order to obtain a virginity report as she was about to get married and wished to know what was available through Dr Horn's clinic.

5. On 8 September 2021, Patient A and Miss B attended a consultation with Dr Horn and an intermediary ('Miss C') with whom Dr Horn had a financial relationship, at his Harley Street Consulting Rooms. Miss C introduced Patient A and Miss B to Dr Horn. The consultation was recorded on hidden cameras; one on Miss B's shirt and another in her bag and one on Patient A's shirt. Following the consultation, transcripts of the video recording of the consultation were made by the production company.

6. During the course of the consultation, Miss B explained to Dr Horn that Patient A was getting married in Iran and it was important to convince Patient A's prospective husband's family that she was a virgin. Miss B first enquired about the production of a report showing that she was a virgin. The video recording showed that there was a discussion between Dr Horn and Miss C about the possibility of an independent gynaecologist writing such a report. Dr Horn did not give an indication that he would write such a report. Miss C explained to Miss B and Patient A that no one in the UK would write a report and use the term 'virgin' as an individual could have never had sexual intercourse but still not have a hymen.

7. The recordings also showed Miss B asking Dr Horn whether, on completion of the surgery, Patient A would bleed [after her wedding night] as it was tradition for women to do so. Dr Horn can be heard on the recording explaining that bleeding could not be guaranteed. He explained most of the time [there was bleeding] but that everyone was different and sometimes there was a lot of blood and sometimes there was not.

8. Dr Horn also explained the two types of surgical procedure for repairing the hymen. Miss B then asked about the healing time for the surgery and Dr Horn explained it would be approximately one month. Miss B apologised for the number of questions she was asking and explained that she was very worried. Miss B then explained that she had heard the procedure

was due to become illegal in the UK and she did not wish to get into trouble. Miss C explained that she was not sure whether the Procedure was illegal but that Dr Horn would check the position and respond on another day. Miss B was then heard on the video which was transcribed as

*“But if it’s illegal can... we cannot do anything?”*

In response to this question Dr Horn is heard on the recording to say

*“then we have to lie. We have to lie, we have to say we are doing something else”.*

9. Miss C then says *“you didn’t expect that, but yeah we can say that we are doing labial erm or some other surgery. I don’t know.”* When Miss C makes this statement, Dr Horn can be seen on the camera located in Miss B’s bag nodding to the suggestion. He then goes on to state that *“removal of a cyst”* could also be an alternative explanation for Patient A needing to have surgery. Following this discussion, Dr Horn offered to examine Patient A but she appeared to get distressed and leaves the consultation room.

10. The consultation with Dr Horn was eventually aired as part of documentary titled *“Britain’s Virginity Clinics Uncovered”* (‘the Documentary’) which aired on ITV on 1 November 2021. A newspaper article titled *“Exposed: UK Clinics still offering to ‘restore virginity’ before marriage”* was printed in a national newspaper on 31 October 2021, the day before the Documentary aired.

11. Following the publication of the article and airing of the Documentary a complaint was made to the General Medical Council about Dr Horn’s conduct.

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

### **Application to amend the Allegation**

12. On day one of the hearing, Mr Garside KC, Counsel for the GMC, made an application pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended (‘the Rules’), to amend the Allegation.

13. Mr Garside submitted that due to an administrative error, the Tribunal had been provided with an earlier version of the Allegation against Dr Horn which had since been

revised. He stated that the version which he wished to put before the Tribunal had been seen by Dr Horn and he understood that there were to be full admissions to the revised allegation.

14. On behalf of Dr Horn, Mr Haycroft, Counsel, did not oppose the application.

15. In determining the application, the Tribunal was satisfied that there would be no injustice or unfairness caused to either party should the Allegation be amended. The Tribunal was satisfied that the revised Allegation related to factual content of the video and did not change the case being faced by Dr Horn. Accordingly, the Tribunal granted the GMC's application.

### **Decision on whether a Tribunal Member should recuse**

16. Also on day one of the proceedings, the Tribunal notified the parties that one of the Tribunal members had watched the proportion of the Documentary showing Dr Horn's consultation with Patient A and Miss B prior to the hearing. It asked the parties to make submissions on whether it was necessary for member of the Tribunal to recuse themselves from the hearing.

17. Mr Garside, did not consider it necessary for the Tribunal member to recuse themselves as the footage was publicly available and had been since November 2021. Mr Haycroft requested further information on when and in what circumstances the Documentary was viewed. It was explained to Mr Haycroft that the Tribunal member, having seen the hearing bundle and noted that the extract of Dr Horn's consultation with Patient A was to be played to the Tribunal at the hearing watched extracts of the Documentary when Dr Horn appeared the screen.

18. Mr Haycroft on being provided with details as to the circumstances of the Tribunal member watching the Documentary confirmed that he was satisfied that in the circumstances it was not necessary for the Tribunal member to recuse himself and made no application to this effect. Mr Haycroft stated that he was satisfied that the Tribunal member was sufficiently experienced and capable of placing anything seen in the extract from the Documentary but not played during the hearing out of their mind. However, Mr Haycroft requested that at the conclusion of the Tribunal watching the recordings of Dr Horn's consultation, the Tribunal member confirm that they had not seen anything in the extracts watched which was not played during the hearing.

19. Despite there being no application for a recusal, the Tribunal nonetheless considered whether the Tribunal member who had watched the extract from the Documentary should recuse themselves. The Tribunal had regard to the case of *Porter v Magill [2002] 2 AC 357* which sets out the test for bias and which is ‘*whether a fair minded and informed observer, having considered the facts, would conclude the tribunal was biased.*’

20. The Tribunal noted that only extracts of the Documentary involving Dr Horn were watched and in circumstances where the Tribunal had already been provided with the bundle. The Tribunal also had regard to the fact that the material watched was that which was to be in evidence before the Tribunal. It further noted that the Tribunal member had not read or any seen any other material which was not in evidence. In the circumstances, the Tribunal determined that a fair-minded observer who had considered the facts would be unlikely to conclude that the Tribunal was biased. Further, the Tribunal had regard to the fact there was no objection to it continuing as constituted and there was no application for a recusal. Accordingly, the Tribunal determined that it was not necessary for the Tribunal member who had seen extracts of the Documentary to recuse themselves.

### The Allegation and the Doctor’s Response

21. The Allegation made against Dr Horn is as follows:

1. On 8 September 2021, you consulted with Patient A and Ms B regarding a potential hymen repair procedure (‘the procedure’) and when asked what would happen if the procedure became illegal in the future, you inappropriately:
  - a. stated, ‘well then we have to lie, we have to lie, we have to say we’re doing something else’; **admitted and found proved**
  - b. nodded when Ms C said ‘we can say that we are doing labial erm maybe or some other surgery, I don’t know’; **admitted and found proved**
  - c. stated ‘removal of a cyst’. **admitted and found proved**
2. Your actions at paragraph 1a-c above gave the impression that you would act dishonestly should the procedure become illegal. **admitted and found proved**

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

## The Admitted Facts

22. At the outset of these proceedings, through his counsel, Mr Haycroft, Dr Horn made admissions to the Allegation in its entirety as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced the Allegation as admitted and found proved.

## Impairment

23. In light of Dr Horn's admission to the Allegation, the Tribunal had to determine in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts found proved, his fitness to practise is impaired by reason of misconduct.

## Witness Statements and Documentary Evidence

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

- Witness Statement of Patient A dated 22 March 2023
- Supplemental witness statement of Patient A dated 3 April 2023
- Witness statement of Miss B dated 4 April 2023
- Article from The Observer: *Exposed: UK clinics still offering to 'restore virginity' before marriage* dated 31 October 2021
- Extract of transcript of Documentary dated 21 November 2021
- Undercover video footage of the consultation with Dr Horn dated 8 September 2021
- Transcripts of the undercover video footage dated 8 September 2021
- Witness Statement from Dr Horn dated 28 June 2023;
- Reflective Statement from Dr Horn dated 7 August 2023 and an addition to the reflective statement dated 12 August 2023
- Dr Horn's CV
- CPD certificates for Dr Horn between April 2020 and 9 July 2023 including courses on probity and ethics, remediation and insight
- Testimonial from Dr Horn's Appraiser, Dr D dated 22 August 2023.

25. In addition to his witness statement, Dr Horn also gave oral evidence to the Tribunal. Dr Horn reiterated his admission to the Allegation in his oral evidence. In both his written and oral evidence Dr Horn offered his apologies to all involved including to Patient A, his colleagues, the medical profession, the public, the GMC and to the Tribunal for the

impression he gave in the recording. He also stated that he could not apologise enough for his actions. He accepted that his words were inappropriate and misleading and expressed shame and remorse for his actions. He stated that his actions would never be repeated.

26. In his evidence he explained that he had known Miss C for about 10 years and she called him at short notice to see a new patient. His evidence was that Miss C had raised concerns about Patient A's family dynamics and her safety. Dr Horn's evidence was that during the consultation, Miss B (who he referred to as the aunt) took the lead in asking many questions and that he was annoyed by this approach as it prevented him having a conversation or starting his consultation with Patient A. Dr Horn stated that twice during the conversation, Miss B mentioned something about hymen repair becoming illegal. His evidence was that he had never heard of any procedure becoming illegal but had once heard a discussion on a television programme a discussion about hymen repair but did not reference it becoming illegal.

27. Dr Horn accepted in his oral evidence that in the recording he gave the impression that he would carry out the procedure if it became illegal. His evidence was that as Miss B had mentioned illegality twice and he was concerned that she might have been worried about something else that she was not saying. He stated that he thought Patient A was afraid of the family (her prospective husband's family) and that he knew honour killings still existed in some cultures. His evidence was that he then jumped to a conclusion that he was being asked what the future husband's family could be told and that is why he said they could lie. Dr Horn accepted that he should have never used the word "*lie*" as this breaks the trust of a patient. He stated that he got carried away with his intention of protecting Patient A, that he had not thought it through what he was saying and this was a big mistake on his part. Dr Horn accepted that anyone watching the footage would be under the impression that he would carry out a procedure which was illegal and then lie about it. While he accepted that this was the impression the recording gave, he stated that this was a wrong impression, he had never done and would never do anything illegal and that goes against everything he believes in.

28. Dr Horn also stated that he had not thought through the implications of his proposed lie and that it would have been impossible for him to carry it out. He stated that he would never have been prepared to lie to the hospital about the nature of the operation as the instruments needed for the procedure would have been different. He also stated that the consent form Patient A would have needed to sign would need to state the nature of the operation that she consented to it. He also stated the consent form would be checked by others in hospital including anaesthetists and nurses. Dr Horn reiterated that he jumped to a conclusion that Patient A was frightened and that if the operation was not carried out she



would not be able to get married or worse. He further reiterated that he would have never carried out a procedure he knew was illegal . His evidence was that he had never ever carried out a virginity test on any patient and would never have supplied a report of the type referred to in the consultation.

29. At the conclusion of Dr Horn’s evidence, the Tribunal member who had watched extracts of the Documentary confirmed that they had not seen anything which was not played before the Tribunal. Further they confirmed that some of the recordings in evidence before the Tribunal had not been seen. Both parties accepted this.

## Submissions

### Submissions on behalf of the GMC

30. On behalf of the GMC, Mr Garside reminded the Tribunal that the matter in question took place on 8 September 2021 at a time when the Act had not yet become law and the procedures in question i.e. virginity testing and hymenoplasty were not yet criminal offences but were the subject of debate and controversy.

31. Mr Garside accepted that there was no suggestion that Dr Horn had behaved illegally, however, he submitted that his actions created the impression that he was prepared to do so. Mr Garside submitted that the words used were not said in isolation but was the continuation of a debate to discuss a plan to deceive Patient A’s potential husband. Mr Garside further submitted that Dr Horn was seeking to make sure that Patient A had complete confidence in him by creating an impression that he was on her side no matter what so that they would use and pay for his services.

32. Mr Garside reminded the Tribunal of paragraph 74 of the judgment in *CHRE v NMC and Grant [2011] EWHC 927 (Admin)* where the court adopted the test set out in Dame Janet Smith’s Fifth Shipman Report which states:

*74 ‘In determining whether a practitioner’s fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.’*

33. Mr Garside submitted that Dr Horn actions represented a departure from the principles set out in paragraphs 1 and 65 of Good Medical Practice (2013), as amended) ('GMP') which state:

*1 'Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues,1 are honest and trustworthy, and act with integrity and within the law.'*

*65 'You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.'*

34. Mr Garside stated that Dr Horn's actions represented serious professional misconduct and was something more than trivial. He submitted that the public interest and the need to uphold the confidence and standards of the medical profession required the Tribunal to make a finding of impaired fitness to practise.

Submissions on behalf of Dr Horn

35. Mr Haycroft reminded the Tribunal that impairment is a matter of judgment and not proof and that it involved a two-stage approach. He reminded the Tribunal of the case of *Remedy UK v GMC 2010 EWHC 1245* in which misconduct was conduct regarded as, 'deplorable' by fellow practitioners and amounting to 'serious' misconduct or misconduct falling far below standard. Mr Haycroft also reminded the Tribunal that it must determine whether Dr Horn' fitness to practise was impaired at the date of the hearing and that it must have regard to the statutory overarching objective.

36. Mr Haycroft reminded the Tribunal that Dr Horn was only obliged to meet the allegations levelled against him and no others. He reminded the Tribunal that there were no allegations in relation to Dr Horn's state of mind and that there were no allegations that he had been involved in any deception, did not report on a 'virginity test' or speak to Patient A's husband's family. He referred the Tribunal to the cases of *Roomi v GMC [2009] EWHC 2188 (Admin)* and *El-Baroudy v GMC [2013] EWHC 2894* which made it clear that the only allegation a practitioner faces is that which is contained in the notice and no other allegation.

37. Mr Haycroft reminded the Tribunal of Dr Horn's evidence in which he stated, '*I never did anything illegal and I would never do anything illegal in the future and it is not what I believe in*'. Mr Haycroft submitted that the future illegality of the procedure was not known by Dr Horn at that time and there was no evidence to contradict that. Mr Haycroft submitted

that there was also no evidence that Dr Horn had any knowledge of the Act which was not then in law and did not make the procedure under discussion a criminal offence until 1 July 2022. He stated that Dr Horn accepted that he was in breach of paragraphs 1 and 65 of GMP but did not do so consciously. Mr Haycroft reminded the Tribunal that Dr Horn clearly indicated that he would not get involved in writing any report about Patient A being a ‘*virgin*’. Mr Haycroft submitted that no actual patient harm was done and Dr Horn had never acted illegally.

38. Mr Haycroft accepted that the Allegation amounted to misconduct, as giving a patient the impression that a doctor would act dishonestly is a serious departure from GMP and would be considered deplorable by fellow practitioners.

39. He submitted that there were no public protection issues and that Dr Horn could return to work safely and had learnt his lesson. Mr Haycroft further submitted that Dr Horn’s insight was fully developed, he had done all he could to remediate his misconduct and had taken steps to ensure his actions would never be repeated.

40. Mr Haycroft submitted that it was accepted that this misconduct amounts to impairment but on public interest grounds only. He further accepted that the misconduct needs to be marked with a finding of impairment.

### **The Relevant Legal Principles**

41. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision of impairment is a matter for the Tribunal’s judgement alone. It had regard to all of the evidence adduced during the hearing and also bore in mind all three limbs of the statutory overarching objective.

42. In approaching its decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved amounted to misconduct and, if so, whether Dr Horn’s fitness to practise was impaired at the date of the hearing by reason of that misconduct.

43. The Tribunal was also mindful that in making its decision, to take into account Dr Horn’s conduct at the time of the events and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.

44. The Legally Qualified Chair (LQC) reminded the Tribunal that there was no allegation that Dr Horn had ever acted dishonestly or had behaved deliberately or knowingly. The Tribunal had regard to the principles set out in *El-Baroudy v GMC [2013] EWHC 2984 (Admin)*, *Roomi v GMC [2009] EWHC 2188 (Admin)* and *Thakar v SRA [2011] EWHC 660 (Admin)* and *Chauhan v GMC [2010] EWHC (Admin) 2003*, all of which state that any findings of the Tribunal must be confined to the allegation faced by the registrant.

45. The Tribunal were reminded that the Allegation against Dr Horn is that he gave the impression that he would act dishonestly, but that was not the same as acting dishonestly. Therefore, Tribunal was of the view that it must confine itself to the matters before it i.e. what impact did Dr Horn's acceptance that he gave the impression that he would act dishonestly have on the objectives which the GMC seeks to maintain i.e. protecting patient safety, promoting public confidence in the profession and maintaining professional standards for members of the profession.

## The Tribunal's Determination on Impairment

### Misconduct

46. The Tribunal first considered whether the facts admitted and found proved of the Allegation amounted to misconduct that was serious.

47. The Tribunal had regard to the Allegation and Dr Horn's admissions to it. In particular the Tribunal noted that Dr Horn admitted saying he would be prepared to lie and say that Patient A was having a different procedure than the one she was discussing with him, made a suggestion on the type of surgery she could say she was having and nodded when a different surgery was suggested by Miss A. The Tribunal also had regard to Dr Horn's admission and his acceptance that he gave the impression that he would be willing to carry out a procedure which had become illegal.

48. The Tribunal had regard to paragraphs 1 and 65 of GMP and was satisfied that Dr Horn's actions breached paragraph 1 in giving the impression that he would be prepared to act outside the law. It accepted that at the time Dr Horn was having these discussions, the Procedure and report being discussed were not yet criminal offences. The Tribunal also accepted Dr Horn's evidence that he would have never acted illegally and that it would have been impossible for him to have acted in the way he indicated he would to Patient A. However, the Tribunal was satisfied that the giving of any impression that he would be prepared to act outside the law and to provide a patient with the ability to lie about a procedure being undertaken also breached paragraph 65 of GMP. The Tribunal was satisfied

Dr Horn's admitted conduct did not justify patient trust in him or the public's trust in the medical profession.

49. In all the circumstances the Tribunal concluded that members of the public would be shocked to learn of Dr Horn's admitted conduct. The Tribunal also concluded that fellow practitioners would consider Dr Horn's actions deplorable and that his admitted conduct fell far below the standards expected of registered doctors.

50. The Tribunal therefore determined that Dr Horn's conduct fell so far short of the standards of conduct expected of a doctor so as to amount to misconduct.

### Impairment

51. The Tribunal having found that the facts found proved amounted to misconduct, went on to consider whether, as a result of that misconduct, Dr Horn's fitness to practise is currently impaired.

52. The Tribunal had regard to the judgment in the case of Grant in which Mrs Justice Cox provided a helpful approach to the determination on impairment:

*'a) Whether the registrant 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;*

*b) Whether the registrant has in the past brought and/or is liable in the future to bring the profession into disrepute;*

*c) Whether the registrant has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the profession.*

*d) Whether the registrant has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

53. The Tribunal noted that there were no patient safety concerns in Dr Horn's case and neither was there any allegation that he had ever acted dishonestly. However, the Tribunal was satisfied that Dr Horn's admitted conduct brought the medical profession into disrepute and his giving the impression that he would be prepared to act dishonestly breached a fundamental tenet of the profession.

54. In considering whether Dr Horn was impaired at the date of the hearing, the Tribunal considered whether the misconduct could be remediated as well as the evidence in respect of Dr Horn's insight and any risk of repetition. It balanced these matters against the three limbs of the statutory overarching objective namely to protect, promote and maintain the health, safety and well-being of the public, promote and maintain public confidence in the medical profession, and promote and maintain proper professional standards and conduct for members of that profession.

55. The Tribunal noted that Dr Horn's apologies were not confined to his oral evidence but was also set out in his witness statement and again in his reflective statement. In particular, the Tribunal noted Dr Horn's reflective statement provided that he now *"...recognize[d] now the seriousness of my misconduct, resulting in the loss of trust and the impact of probity and ethics, not just on my patient but also on my colleagues, the general public and the medical profession."*

56. The Tribunal accepted that Dr Horn's apologies were full, genuine and sincere. It also accepted Dr Horn's evidence that he was ashamed and embarrassed and it was satisfied that he was genuinely remorseful for his actions and the impact they had.

57. The Tribunal was satisfied that Dr Horn had made attempts to remediate his conduct by attending relevant courses over the period of time since the matters giving rise to the Allegation arose. The courses included a course on probity and ethics between June and July 2023 and modules on insight, reflection and remediation. The Tribunal was also satisfied that Dr Horn's remediation went beyond his attendance on courses which was supported by his reflective statements. The Tribunal noted that his reflections were ongoing and involved his colleagues, appraiser and mentor. The Tribunal further noted that Dr Horn provided evidence of applying his reflections to his practise and provided relevant examples to the Tribunal.

58. The Tribunal was satisfied that Dr Horn had done all he could do in an attempt to remediate his conduct. The combination of Dr Horn's full, genuine and sincere apologies, his remorse for his actions, his continued attempt to remediate his conduct and his reflections led the Tribunal to conclude that Dr Horn's insight into his conduct had fully developed. The Tribunal was also satisfied that there was a low risk of Dr Horn repeating the misconduct giving rise to this hearing.

59. Despite Dr Horn's full insight, attempts at remediation and the assessed low risk of repetition, the Tribunal was satisfied that a member of the public with full knowledge of the facts would be concerned to learn of a doctor, particularly one of Dr Horn's seniority and experience, acting in the way he did. The Tribunal was satisfied that given its views as to the

seriousness of Dr Horn’s misconduct, a finding of impaired fitness to practise was necessary to promote and maintain proper standards of conduct for members of the medical profession. The Tribunal also determined that public confidence in the profession and the regulatory process would be significantly undermined if a finding or impaired fitness to practise was not made.

60. The Tribunal has therefore determined that Dr Horn’s fitness to practise is currently impaired by reason of his misconduct.

#### **Determination on Sanction - 15/09/2023**

61. Having determined that Dr Horn’s fitness to practise is impaired by reason of misconduct, the Tribunal now has to decide in accordance with Rule 17(2)(n) of the Rules on the appropriate sanction, if any, to impose.

#### **The Evidence**

62. The Tribunal has taken into account evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction. No further evidence was adduced at this stage of proceedings.

#### **Submissions**

##### On behalf of the GMC

63. On behalf of the GMC, Mr Garside reminded the Tribunal of the purpose of imposing a sanction and further reminded the Tribunal that it must have regard to the statutory overarching objective. He referred the Tribunal to a number of paragraphs in the Sanctions Guidance (November 2020) (‘the SG’) and the need to take a staged approach to sanction beginning with the least restrictive.

64. Mr Garside accepted there were a number of mitigating factors in Dr Horn’s case including that his insight was fully developed and that he had taken steps to remediate his conduct.

65. Mr Garside in making submissions on the appropriate sanction submitted that while it was open to the Tribunal to take no action, this should only be done in exceptional cases. He stated there were no exceptional circumstances in Dr Horn's case which would justify taking of no action. He further submitted that taking no action would not be proportionate or in the public interest.

66. Mr Garside also submitted that undertakings were not appropriate and, in any event, none had been offered or asked for.

67. Mr Garside stated that conditions were not appropriate. He accepted there were no clinical concerns in respect of Dr Horn's practice and, in any event, conditions could not be formulated which would address the misconduct found. Further, Mr Garside submitted that given that Dr Horn worked exclusively in private practice in England, formulating workable conditions for his practice to be supervised would be difficult.

68. Mr Garside submitted that the appropriate sanction in this case was one of suspension as this would maintain public confidence in the medical profession. He referred the Tribunal to paragraphs 91, 92, 93 and 97a of the SG (set out below) and submitted this supported his submission that a period of suspension was the appropriate sanction.

*91 Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention.*

*92 Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (i.e., for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession).*

*93 Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions.*

*97 Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.*



*a A serious breach of Good medical practice, but where the doctor's misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.*

69. Mr Garside submitted that erasing Dr Horn's name from the register would be disproportionate in light of the misconduct found. He submitted that Dr Horn is a useful member of the medical community, and it would be wrong to remove him altogether from the list of those entitled to practise. Mr Garside stated that although the misconduct found was serious, this was not a case where Dr Horn's conduct was fundamentally incompatibly with continued registration.

#### On behalf of Dr Horn

70. Mr Haycroft submitted that it was open to the Tribunal to take no action in this case. He stated that Dr Horn's conduct was an isolated incident involving a few seconds of ill-advised inappropriate words, there was no harm caused to patients, the incident occurred over two years ago, that this was not a dishonesty case and there was a low risk of repetition. He reminded the Tribunal that Dr Horn had made full admissions to the Allegation, that there was no evidence of a predisposition towards misconduct, had engaged with the whole process including the investigation and the hearing and had made repeated and appropriate apologies.

71. Mr Haycroft reminded the Tribunal that while the public interest was engaged in this case, there was also a public interest in retaining an otherwise good clinician. He invited the Tribunal to conclude that in light of all the factors, the public interest had been satisfied by the finding of impairment.

72. Mr Haycroft stated that if the Tribunal did not accept that a finding of impairment would be sufficient to satisfy the public interest then a brief period of suspension would be the appropriate sanction. He reminded the Tribunal of the mitigating factors and its findings at the impairment stage, particularly in respect of Dr Horn's insight, remediation and the risk of repetition. He submitted that if the Tribunal were minded to impose a period of suspension then at the conclusion of that period, a review would not be necessary in light of the depth of remediation and the insight shown by Dr Horn.

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

73. The Tribunal reminded itself that the decision as to the appropriate sanction, if any, to impose was a matter for it exercising its own judgement. In reaching its decision on sanction,

the Tribunal had regard to the SG. It bore in mind that the purpose of imposing a sanction was not to be punitive, but to protect patients and the wider public interest, although any sanction imposed may have a punitive effect.

74. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Horn's interests with the public interest. It considered and had regard to the statutory overarching objective, which includes the protection of the public, the maintenance of public confidence in the profession, and the promoting and maintaining of proper professional standards and conduct for members of the profession.

75. The Tribunal also had regard to its findings of misconduct and impairment as well as the submissions on behalf of the GMC and Dr Horn.

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

76. The Tribunal first identified what it considered to be the aggravating and mitigating factors in this case.

#### Mitigating Factors

77. The Tribunal considered there to be a number of mitigating factors in this case including that Dr Horn had made attempts to remediate his misconduct. He had made full apologies both in writing and in the course of his oral evidence and the Tribunal accepted that those apologies were genuine and sincere. The Tribunal also had regard to the expressions of regret, remorse and shame and was also satisfied that these were genuine and heartfelt. The Tribunal concluded that Dr Horn had full insight into his misconduct. It noted that he was an experienced doctor with no evidence of any adverse fitness to practise history and more than two years had elapsed since the matters giving rise these proceedings had arisen. The Tribunal also accepted that Dr Horn's conduct was not premeditated, there were no issues of patient safety, there was no actual dishonesty and he had not committed any criminal offences.

78. The Tribunal considered that Dr Horn giving the impression that not only would he perform a procedure that was illegal but that he would lie about committing a criminal offence was an aggravating matter in this case.

79. The Tribunal balanced these factors throughout its deliberations and went on to consider each sanction in ascending order of severity, starting with the least restrictive.

### **No action**

80. The Tribunal first considered whether to conclude the case by taking no action. It noted that taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances.

81. The Tribunal accepted that this was an isolated incident in an otherwise unblemished career and that Dr Horn had lost his previous good standing following the finding of impairment. The Tribunal also accepted that Dr Horn had done all he could to remediate his misconduct, that his insight was full and there was a low risk of repetition. However, the Tribunal did not consider that these factors were so exceptional so as to justify taking no action.

82. Further the Tribunal did not accept that Dr Horn's words were merely ill advised and inappropriate. The Tribunal was of the view in circumstances where a doctor was prepared to give the impression that he would be willing to commit a criminal offence and lie about it was extremely serious. It was satisfied that action must be taken to maintain public confidence in the medical profession and system of regulation. In addition, the Tribunal determined that taking no action would be disproportionate, would not mark the seriousness of the misconduct found or meet the statutory overarching objective.

### **Conditions**

83. The Tribunal next considered whether to impose conditions on Dr Horn's registration. The Tribunal had regard to the SG which requires that conditions should be appropriate, workable and measurable.

84. The Tribunal concluded that no measurable or workable conditions could be formulated in this case. Further, the Tribunal determined that a period of conditional registration would be insufficient to mark the seriousness of the misconduct, would not satisfy the statutory overarching objective, public interest or uphold or maintain public confidence in the profession.

### **Suspension**

85. In giving weight to the aggravating and mitigating factors previously identified, the Tribunal considered whether it should impose a period of suspension on Dr Horn's registration. It accepted Mr Garside's submission that paragraphs 91, 92, 93 and 97 (a) as set out above were engaged in this case. However, it also considered that paragraphs 97 e, f and g were also engaged.

*97 Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.*

*a ...*

*e ... No evidence that demonstrates remediation is unlikely to be successful, e.g. because of previous unsuccessful attempts or a doctor's unwillingness to engage.*

*f No evidence of repetition of similar behaviour since incident*

*g The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.*

86. The Tribunal had regard to its findings that Dr Horn's conduct breached paragraphs 1 and 65 of GMP as well as its findings that his conduct breached a fundamental tenet of the profession and brought the medical profession into disrepute. However, while the Tribunal considered that Dr Horn's conduct was serious, it accepted that it was an isolated incident and his comments about lying and suggesting alternative procedures were made impulsively without thought as to how this would work in practice. Further the Tribunal accepted Dr Horn's evidence that he would have never carried out an illegal act and that his actions were damaging to the medical profession.

87. The Tribunal had regard to Dr Horn's attempts to remediate his misconduct. It noted that he had attended relevant courses and had undertaken reflections following his attendance. The Tribunal was satisfied that he had done all he could to remediate his misconduct. The Tribunal also had regard to Dr Horn's reflective statements as well as his evidence before this Tribunal and its findings that his insight had fully developed.

88. The Tribunal further considered Dr Horn's long and unblemished career with no evidence of previous adverse fitness to practise history and that more than two years had elapsed since the matters giving rise to this hearing with no evidence of repetition. In light of

the steps taken to remediate his misconduct and his full insight, the Tribunal was satisfied that there was little risk of repetition of the misconduct in this case.

89. In addition to these factors, the Tribunal took into account that Dr Horn did not act illegally or dishonestly and that no actual harm had been caused to patients.

90. These factors coupled with his full insight, his assessed low risk of repetition and attempts at remediation led the Tribunal to conclude that that Dr Horn's conduct was not fundamentally incompatible with continued registration.

91. The Tribunal determined that imposing a period of suspension on Dr Horn's registration was the appropriate and proportionate sanction in this case. It considered that a period of suspension would mark the seriousness of the misconduct and satisfy the overarching objective by maintaining public confidence in the profession and maintaining proper professional standards for doctors. It was also satisfied that a period of suspension would send a clear message to the public and the medical profession that this type of behaviour was not acceptable.

### **Erasure**

92. While the Tribunal determined a period of suspension would satisfy the overarching objective, it also considered the sanction of erasure. Having balanced the aggravating and mitigating factors, all the circumstances of this case and its findings that Dr Horn's conduct was not fundamentally incompatible with continued registration the Tribunal determined that a sanction of erasure would be disproportionate in this case. The Tribunal accepted that erasing Dr Horn from the register would deprive the public of an otherwise good doctor and was not the only sanction available to it to mark the seriousness of the misconduct found or satisfy the public interest.

### **Duration of Suspension**

93. Having decided that the appropriate sanction was one of suspension, the Tribunal went on to consider the length of suspension. It considered paragraphs 100 and 101 of the SG:

- 100 The following factors will be relevant when determining the length of suspension:*
- a. the risk to patient safety/public protection.*

- b. *the seriousness of the findings and any mitigating or aggravating factors (as set out in paragraphs 24–60).*
- c. *ensuring the doctor has adequate time to remediate.*

**101** *The tribunal’s primary consideration should be public protection and the seriousness of the findings. Following any remediation, the time all parties may need to prepare for a review hearing if one is needed will also be a factor.*

94. The Tribunal had regard to the need to mark the seriousness of Dr Horn’s misconduct and also to declare and uphold proper standards of behaviour. It also had regard to the fact there was no risk of harm to patients as well as the aggravating and mitigating factors in this case. Having taken all these matters into account the Tribunal determined to impose a three month period of suspension on Dr Horn’s registration. It determined that a period of suspension of any greater length would be disproportionate in light of Dr Horn’s insight, remediation and the low risk of repetition. The Tribunal determined that suspension for a period of three months would be sufficient to send a signal to Dr Horn, the wider profession and the public about conduct which is regarded as unbecoming a registered doctor.

95. The Tribunal therefore determined to suspend Dr Horn’s registration for a period of three months.

### Review hearing

96. The Tribunal is not directing a review in Dr Horn’s case. It is satisfied that he had continuously and fully reflected on his misconduct. In addition, given that there were no clinical concerns with Dr Horn, the Tribunal did not consider that a review was necessary in this case.

### Determination on Immediate Order - 15/09/2023

97. Having determined that Dr Horn’s registration is to be suspended for a period of three months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Horn’s registration should be subject to an immediate order.

### Submissions

98. On behalf of the GMC, Mr Garside, submitted that an immediate order would not be necessary in this case and submitted that Dr Horn does not pose a risk to patients.

99. On behalf of Dr Horn, Mr Haycroft, Counsel, concurred that an immediate order would not be necessary in this case.

### The Tribunal's Determination

100. The Tribunal had regard to paragraphs 172 and 173 of the SG (stated below). It took account of the guidance, the submissions of both parties and the basis upon which the Tribunal reached its determination on sanction.

*172 The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. The interests of the doctor include avoiding putting them in a position where they may come under pressure from patients, and/or may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.*

*173 An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety. For example, where they have provided poor clinical care or abused a doctor's special position of trust, or where immediate action must be taken to protect public confidence in the medical profession.*

101. The Tribunal determined that an immediate order was not necessary to protect members of the public. It considered that the public interest was appropriately served by the imposition of the three-month suspension. It reminded itself that there were no patient safety concerns in this case.

102. The Tribunal therefore determined not to impose an immediate order of suspension on Dr Horn's registration.

103. This means that Dr Horn's registration will be suspended from the Medical Register 28 days from when notice of this decision is deemed to have been served upon him, unless he lodges an appeal. If Dr Horn does lodge an appeal he will remain free to practise unrestricted until the outcome of any appeal is known.

104. There is no interim order to be revoked.

105. That concludes this case.