

PUBLIC RECORD

Dates: 05/07/2021 - 09/07/2021

Medical Practitioner's name: Dr Georgi Tsakov

GMC reference number: 7006496

Primary medical qualification: Magister (Physician) 1998 Sofia Medical University

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

Summary of outcome

Conditions, 12 months
Review hearing directed
Immediate order imposed

Tribunal:

Legally Qualified Chair	Mr Simon Bond
Lay Tribunal Member:	Mr Geoffrey Brighton
Medical Tribunal Member:	Dr Susan O'Connor

Tribunal Clerk:	Mr Sewa Singh
-----------------	---------------

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Stephen Brassington, Counsel, instructed by the MDDUS
GMC Representative:	Ms Katie Nowell, Counsel

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.

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 - 06/07/2021

Background

1. Dr Tsakov qualified in 1998 from the Sofia Medical University in Bulgaria. At the time of the events in question, Dr Tsakov was working as a locum consultant dermatologist at the Ashford and St Peter's Hospitals NHS Foundation Trust ('the Trust').
2. The allegation that has led to Dr Tsakov's hearing is, in summary, that he failed to provide adequate care and treatment to two female patients as follows:

Patient A

3. Patient A attended for a consultation with Dr Tsakov on 29 January 2019, having been referred by her GP, suffering from a flare up of her eczema. This was Patient A's second appointment at the Trust – the first being with a female doctor. In a complaint made by Patient A to the Trust she alleged that, during her consultation, Dr Tsakov asked Patient A to take her trousers off in front of him without offering her a chaperone or the opportunity to undress behind a screen. Patient A claimed that Dr Tsakov then examined her groin area and asked her to spread her buttocks apart so that he could examine her in that area. Patient A alleged that Dr Tsakov asked her, while she was still standing in front of him, to take off her top so that he could examine her back. Patient A claimed that Dr Tsakov asked her if she had eczema around her nipples, but she replied that she did not and she kept her bra on. Following this examination, Patient A stated that Dr Tsakov asked her if she used vegetable glycerine and gave her some information so that she could use it twice a week, along with Dermol. Patient A alleged that Dr Tsakov then asked her again to take her trousers off, after which he shone an ultraviolet (UV) torch on the areas of eczema on her groin and legs. In response to Patient A's question as to whether she would always have eczema Dr Tsakov is also alleged to have told Patient A, that she would still get it 'until they come up with a miracle cure'. Patient A claimed that Dr Tsakov booked her in for a review in three months

but changed that to one month when she challenged the review period. As Patient A was leaving the consultation room, Dr Tsakov is alleged to have asked Patient A whether she considered wearing white cotton underwear as it contained fewer chemicals than the black underwear she was wearing at the time. He did not touch her at any time during the consultation.

4. After her consultation with Dr Tsakov, Patient A alleged that she felt uncomfortable about the consultation and spoke to her mother who advised her to make a complaint. She did not do so at that time. During a later review meeting with a Dr D, Patient A explained that she still had eczema on her groin and peri-anal area. Patient A claimed that Dr D said that he would not look at those areas because there was no female colleague in the clinic to assist him. Patient A stated that she then explained to Dr D about her consultation with Dr Tsakov. Dr D raised this as a concern and on 2 March 2019, Patient A was contacted via email by the Head of Dermatology at the Trust about the events on 29 January 2019. On 3 April 2019, Patient A sent an email to the Trust setting out her version of her consultation with Dr Tsakov.

Patient B

5. Patient B attended for a consultation with Dr Tsakov on 19 January 2019, having been referred by her GP, suffering from cystic acne on her face, back and shoulders. It is alleged that, during that consultation, Dr Tsakov advised Patient B that she could have scarring and active acne. It is claimed that Dr Tsakov arranged for Patient B to have blood tests and said that, provided the results were satisfactory, he would prescribe her with Roaccutane. Patient B had no complaint about this consultation.

6. On 24 February 2019, Patient B attended for her follow up appointment with Dr Tsakov, having undergone the blood tests. During this consultation, Patient B stated that Dr Tsakov told her that the results of the blood tests were normal and that she could commence Roaccutane treatment provided she had a negative pregnancy test result on that day. Patient B alleged that, without offering her a chaperone, Dr Tsakov told Patient B to stand up and to pull down her trousers. When Patient B asked why, Dr Tsakov apparently said 'to check for dry skin'. Patient B stated that she told Dr Tsakov about a small patch of sunburn on the front upper thigh of her left leg. Patient B alleged that she pulled her trousers down to her knees, keeping her underwear on, and that Dr Tsakov looked at both her legs whilst remaining in his seat. He then asked Patient B to pull her trousers back up.

7. Patient B claimed that Dr Tsakov asked her to provide a urine sample to check whether or not she was pregnant. Patient B alleged that she felt flustered and considered it unusual that she had been requested to lower her trousers in front of Dr Tsakov, rather than going behind a curtain. In her account, Patient B described how, after having provided a urine sample, she sat in the waiting room. Patient B stated that a female Health Care Assistant (HCA) handed Patient B's car keys to her, because she had left them in the consultation room. Shortly after this, Patient B claimed that Dr Tsakov came to see her holding a prescription form and advised her to return to the consultation room, without any

explanation as to why. Upon returning to the consultation room, Dr Tsakov is alleged to have told Patient B to go behind the curtain and take her trousers off. When Patient B asked why, Dr Tsakov is alleged to have replied, 'to check for dry skin'. Patient B claims that she removed her trousers completely and lay on a plinth, with a curtain pulled around it. Dr Tsakov is alleged to have examined Patient B by shining a UV light on different parts of Patient B's legs, stating that he was checking for signs of UV exposure. Patient B claimed that Dr Tsakov then asked her to pull her underwear down, pointing to her knickers. She stated that, despite feeling uncomfortable, she did as Dr Tsakov had asked and pulled her knickers down to the top of her pubic bone. Patient B claimed that she asked why she needed to pull her knickers down, to which Dr Tsakov replied that he wanted to check her groin for lumps. Patient B stated that Dr Tsakov shone the torch very quickly around her groin area and then told her she could get dressed. He did not touch her at any time during the consultation

8. Patient B claimed that, once she was dressed, she sat in a chair in front of Dr Tsakov's desk and that he prescribed Roaccutane for her and gave her a blood test form. Patient B stated that she did not feel comfortable raising any concerns at the time of her appointment but, in order to avoid having to see Dr Tsakov again, she made a written complaint to the Trust on 25 February 2019. Patient B stated that she had received previous prescriptions for Roaccutane but had not experienced the type of examination that Dr Tsakov had undertaken. Patient B was contacted by a staff member from the Patient Advisory and Liaison Service (PALS) at the Trust who advised her that, due to its nature, the complaint would be passed to her supervisor.

9. The concerns from Patients A and B were raised with the GMC following investigation by the Trust.

The Allegation and the Doctor's Response

10. The Allegation made against Dr Tsakov is as follows:

1. On 29 January 2019 you conducted a consultation with Patient A and you failed to:

a. conduct an adequate medical examination, in that you:

Admitted and found proved in its entirety

i. did not:

1. explain why the examination was necessary;

2. ask Patient A to go behind a curtain to undress;

3. invite Patient A to have a chaperone present during your examination;

4. offer Patient A a gown to wear;
 5. offer Patient A a blanket to cover themselves;
 6. conduct the examination with Patient A lying on a couch;
- ii. undertook an ultraviolet light examination:
1. despite this not being clinically indicated;
 2. in a normally lit room;

b. explain your rationale for treatment;

Admitted and found proved

c. discuss other treatment options;

Admitted and found proved

d. make an adequate record of the consultation in that you did not record:

i. the past history of Patient A's skin disorder;

To be determined

ii. aggravating factors in relation to Patient A's skin disorder;

To be determined

iii. previous forms of treatment the patient had received;

To be determined

iv. any clinical findings following your examination;

To be determined

~~v. in the alternative to paragraph 1.ai3 above, your discussion with Patient A as to the possible attendance of a chaperone during your examination.~~

Withdrawn under Rule 17(6)

2. On 24 February 2019 you conducted a consultation with Patient B and you failed to:

a. conduct an adequate medical examination in that you:

- i. did not examine the affected areas of Patient B’s skin;
Admitted and found proved
 - ii. examined Patient B’s legs and groin area:
 - 1. despite this not being clinically indicated;
Admitted and found proved
 - 2. without first explaining to Patient B why you wished to do so;
Admitted and found proved
 - iii. undertook an ultraviolet light examination:
 - 1. despite this not being clinically indicated;
Admitted and found proved
 - 2. in a normally lit room;
Admitted and found proved
 - iv. did not invite Patient B to have a chaperone present during your examination;
Admitted and found proved
- b. maintain adequate communication with Patient B in that you did not discuss: **Admitted and found proved in its entirety**
- i. how the acne was affecting Patient B;
 - ii. previous forms of treatment Patient B had received;
 - iii. the outcome of any previous treatment Patient B had received;
 - iv. any possible factors that might have accounted for the flare up of Patient B’s acne;
- c. explain your rationale for treatment;
Admitted and found proved
- d. discuss other treatment options;
Admitted and found proved
- e. make an adequate record of the consultation in that you did not record:

i. the findings of your examination;

Admitted and found proved

ii. Patient B's past medical history;

Admitted and found proved

~~iii. in the alternative to paragraph 2aiv above, your discussion with Patient B as to the possible attendance of a chaperone during your examination;~~

Withdrawn under Rule 17(6)

~~iv. in the alternative to paragraphs 2bii-iii above:~~

~~1. previous forms of treatment Patient B had received;~~

Withdrawn under Rule 17(6)

~~2. the outcome of any previous treatment Patient B had received.~~

Withdrawn under Rule 17(6)

The Admitted Facts

11. Dr Tsakov, through his Counsel, Mr Stephen Brassington, made admissions to the majority of the of the Allegation, 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 these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

12. Although not a formal application, during the course of her submissions on the facts, Ms Katie Nowell, Counsel for the GMC, submitted that in light of the admissions made by Dr Tsakov, the GMC did not seek to prove paragraphs 1d(v) or 2e(iii) and (iv) (1) and (2). Accordingly the Tribunal announced that those paragraphs of the Allegation were withdrawn under Rule 17(6).

The Facts to be Determined

13. In light of Dr Tsakov's response to the Allegation made against him, the Tribunal is required to make a finding in respect of paragraph 1d (i – iv) of the Allegation, relating to an alleged failure to make adequate records, as set out above.

Evidence

14. The Tribunal also received evidence on behalf of the GMC in the form of witness statements from the following witnesses who were not called to give oral evidence:

- Patient A, witness statement dated 13 September 2019;
- Patient B, witness statement dated 10 September 2019.

15. Dr Tsakov did not give oral evidence nor did he provide a witness statement for these proceedings.

Expert Witness Evidence

16. The Tribunal heard evidence from the GMC expert witness, Dr C, Consultant Dermatologist, and received his report dated 27 November 2019, together with his emails dated 11 December 2019 and 9 June 2021 clarifying matters raised by the GMC.

Documentary Evidence

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

- Documents provided to the GMC by the Trust;
- Email correspondence from the Trust to Patient A, dated 21 March 2019;
- Email from Patient A to the Trust setting out her initial account of the events, dated 3 April 2019;
- Initial complaint from Patient B to the Trust, undated;
- Email correspondence from the Trust to Patient B's complaint, dated 5 March 2019;
- Adult Dermatology Clinic Referral Forms for Patient A and Patient B;
- Letter from Dr Tsakov to Patient A's GP dated 7 February 2019 and illegible prescription form for Patient A (exhibit C3).

The Tribunal's Approach

18. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Tsakov 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 that the events occurred.

The Tribunal's Analysis of the Evidence and Findings

19. The Tribunal has considered the outstanding paragraph of the Allegation, namely paragraph 1d(i – iv) and has evaluated the evidence in order to make its findings on the facts.

Paragraph 1

1. On 29 January 2019 you conducted a consultation with Patient A and you failed to:

d. make an adequate record of the consultation in that you did not record:

i. the past history of Patient A's skin disorder;

Found not proved

ii. aggravating factors in relation to Patient A's skin disorder;

Found not proved

iii. previous forms of treatment the patient had received;

Found not proved

iv. any clinical findings following your examination;

Found not proved

~~v. in the alternative to paragraph 1.ii3 above, your discussion with Patient A as to the possible attendance of a chaperone during your examination.~~

Withdrawn under Rule 17(6)

20. The Tribunal considered paragraph 1d as a whole.

21. The GMC's case is that on 29 January 2019, Dr Tsakov failed to make an adequate record of the consultation in that he did not record Patient A's past history; the aggravating factors in relation to her skin disorder; previous forms of treatment she had received; nor any clinical findings following his examination of Patient A.

22. During her oral submissions on the facts, Ms Nowell submitted that the absence of any clinical records indicated that Dr Tsakov had not made any record. In support of her assertion, she referred the Tribunal to Dr C's report in relation to this particular element of the Allegation.

23. In his evidence, Dr C accepted that it is not possible to record everything in a patient's clinical records. However, he said that Dr Tsakov had not provided any explanation as to why he undertook '*a rather unorthodox*' form of examination on both patients and that he would have expected Dr Tsakov to have recorded something which was '*out of the ordinary*'. Further he stated that Dr Tsakov had not recorded any explanation as to why Patient A's eczema may have got worse or what investigations had been carried out, such as whether Patient A had stopped using her medication, or whether she had had an allergic reaction, or whether she was under any stress. Dr C said that without this information it was difficult to put in place an appropriate treatment plan for Patient A.

24. The Tribunal noted that it had been provided with very limited evidence relating to the clinical records of Patient A. The only extract of the patient's records supplied to the

Tribunal comprised an Adult Dermatology Referral Form, Dr Tsakov's letter to Patient A's GP setting out her treatment plan and a copy of a prescription form. The Tribunal noted that Dr C had also been provided with very limited extracts of Patient A's clinical records. The Tribunal considered that Dr C had assumed that Dr Tsakov had failed to make a record of his consultation with Patient A because he had not been provided with any notes of that consultation.

25. The Tribunal reminded itself that the burden of proof was on the GMC to prove paragraph 1d of the Allegation. Whilst the Tribunal acknowledged that it was not possible to disclose Dr Tsakov's notes of his consultation with Patient A if none existed, the Tribunal considered that the GMC could have taken further steps to obtain evidence to support paragraph 1d of the Allegation. For example, the Tribunal had not been provided with any evidence to suggest that a search for such notes had been conducted or any other evidence to demonstrate that Patient A's clinical records had been properly scrutinised. In the absence of such evidence, the Tribunal was not satisfied that the GMC had discharged its burden of proof to the required standard. It therefore found paragraph 1d (i – iv) of the Allegation not proved.

The Tribunal's Overall Determination on the Facts

26. The Tribunal has determined the facts as follows:

1. On 29 January 2019 you conducted a consultation with Patient A and you failed to:
 - a. conduct an adequate medical examination, in that you:
Admitted and found proved in its entirety
 - i. did not:
 1. explain why the examination was necessary;
 2. ask Patient A to go behind a curtain to undress;
 3. invite Patient A to have a chaperone present during your examination;
 4. offer Patient A a gown to wear;
 5. offer Patient A a blanket to cover themselves;
 6. conduct the examination with Patient A lying on a couch;
 - ii. undertook an ultraviolet light examination:

1. despite this not being clinically indicated;
2. in a normally lit room;
- b. explain your rationale for treatment;
Admitted and found proved
- c. discuss other treatment options;
Admitted and found proved
- d. make an adequate record of the consultation in that you did not record:
 - i. the past history of Patient A's skin disorder;
Found not proved
 - ii. aggravating factors in relation to Patient A's skin disorder;
Found not proved
 - iii. previous forms of treatment the patient had received;
Found not proved
 - iv. any clinical findings following your examination;
Found not proved
 - v. ~~in the alternative to paragraph 1.ai3 above, your discussion with Patient A as to the possible attendance of a chaperone during your examination.~~
Withdrawn under Rule 17(6)
2. On 24 February 2019 you conducted a consultation with Patient B and you failed to:
 - a. conduct an adequate medical examination in that you:
 - i. did not examine the affected areas of Patient B's skin;
Admitted and found proved
 - ii. examined Patient B's legs and groin area:
 1. despite this not being clinically indicated;
Admitted and found proved
 2. without first explaining to Patient B why you wished to do so;
Admitted and found proved
 - iii. undertook an ultraviolet light examination:

1. despite this not being clinically indicated;
Admitted and found proved
 2. in a normally lit room;
Admitted and found proved
 - iv. did not invite Patient B to have a chaperone present during your examination;
Admitted and found proved
- b. maintain adequate communication with Patient B in that you did not discuss:
Admitted and found proved in its entirety
- i. how the acne was affecting Patient B;
 - ii. previous forms of treatment Patient B had received;
 - iii. the outcome of any previous treatment Patient B had received;
 - iv. any possible factors that might have accounted for the flare up of Patient B's acne;
- c. explain your rationale for treatment;
Admitted and found proved
- d. discuss other treatment options;
Admitted and found proved
- e. make an adequate record of the consultation in that you did not record:
- i. the findings of your examination;
Admitted and found proved
 - ii. Patient B's past medical history;
Admitted and found proved
 - ~~iii. in the alternative to paragraph 2aiv above, your discussion with Patient B as to the possible attendance of a chaperone during your examination;~~
Withdrawn under Rule 17(6)
 - ~~iv. in the alternative to paragraphs 2bii-iii above:~~
 - ~~1. previous forms of treatment Patient B had received;~~

Withdrawn under Rule 17(6)

~~2. the outcome of any previous treatment Patient B had received.~~

Withdrawn under Rule 17(6)

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

To be determined

Determination on Impairment - 08/07/2021

1. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved as set out before, Dr Tsakov's fitness to practise is impaired by reason of misconduct.

The Evidence

2. The Tribunal has taken into account all the evidence received during the facts stage of the hearing. This included oral evidence from Dr Tsakov and a bundle of documents provided by him.

3. In his oral evidence he told the Tribunal that, over the past couple of years, he had reflected upon these events and that he now understood what went wrong and why. He said that when a complaint is made, he needs to accept and analyse what has gone wrong and understand why the complaint has been made, rather than deny its validity. Dr Tsakov said that, in relation to the Allegation, he analysed what the patients must have been going through and why they might have felt the way they did. He said it was important for him to understand what had gone wrong and the mistakes he had made. Dr Tsakov said that he had lacked concentration, as result of having taken on too much work, and that he had not adopted a personal approach to patient care which is what patients want to see. He went on to say that he recognised that his record keeping needed to be improved and that he had now amended his practice in order to record the key points in patients' clinical records. Dr Tsakov said that he needed to be more focused on patient care and he recognised that he had not provided to Patients A and B the level of privacy and dignity that they had expected.

4. Dr Tsakov told the Tribunal that he had identified and completed relevant courses. These courses had reminded him of why it was important to provide an appropriate level of care to patients and how to treat patients. In this regard, he referred the Tribunal to the certificates of attendance in his defence bundle. He said that he had the cases of Patients A and B on his mind and had adopted an open-minded approach, tried to be positive, and to understand what had gone wrong. Dr Tsakov explained in detail the workload pressures he was under and the working environment within the hospital at the time of the index events, stating that these factors had impacted on his ability to carry out his role effectively. In

relation to prevention, Dr Tsakov said that he would undergo further training and, if there were any concerns raised, he would scrutinise the situation carefully. He provided the Tribunal with an example of where he had refused to accept a locum position within a hospital because he had been expected to see in excess of 20 patients a session.

5. Dr Tsakov said that communication was very important and he said he recognised the shortcomings in this area of his practice. He told the Tribunal that he had undertaken courses and had now changed his practice and was satisfied with the work he had done to address the situation. He added that he now takes his time with patients and goes through everything with them, starting with the GP referral letter. He stated that he explains to his patients what his thinking is and what examination or treatment they needed. He added that, in the case of female patients, he now always insists that a chaperone be present but accepted the patient has the right to refuse a chaperone.

6. Dr Tsakov apologised for the impact that his actions had on Patient A and Patient B stating that he had apologised generally to both patients in his correspondence with the Trust at that time. He said he was 'deeply sorry' for the way he had made them feel. He said that doctors should be a 'pillar of hope for everyone' rather than just focus on the medical aspect of their work. He said that, if he found himself in a similar situation where his workload was impacting on his ability to undertake his role effectively, he would seek appropriate support from senior colleagues.

7. During cross examination, Dr Tsakov said that he had undertaken the consultations in a hurry given that each consultation was only allocated a 15-minute slot. He said that it was not his usual practice to ask a patient to lower or remove their trousers in front of him and certainly not without the presence of a chaperone. He added that it was important to read and understand what the patient might be feeling. Dr Tsakov explained the chronology of when he became aware of the complaints and his response to them. In relation to the Trust's chaperone policy, Dr Tsakov stated that he had, 'over-estimated' the impact of the published policy or notice which was in the Trust's waiting room. That notice made clear to patients that they were entitled to a chaperone should it become necessary and Dr Tsakov said that he assumed that patients had read the relevant notice prior to him conducting physical examinations. He said he now ensured that patients were aware of their right to a chaperone and were offered one.

8. Dr Tsakov told the Tribunal that he had discussed these matters with his Responsible Officer at the locum agency, where he was registered, with a view to learning from his actions. He added that, in future, he would ensure that he followed appropriate guidelines in respect of chaperones, and would explain everything clearly to patients before conducting any form of physical examination.

Submissions

For the GMC

9. Ms Nowell, Counsel, submitted that Dr Tsakov's fitness to practise is impaired. She reminded the Tribunal of the two stage test for impairment, which required a consideration of whether Dr Tsakov's actions amounted to serious misconduct and then whether his fitness to practise is impaired. She added that it was necessary for the Tribunal to look to the past as well as the present when considering impairment. Ms Nowell explained that both patients in this case described very similar experiences, in that they both said that Dr Tsakov failed to explain why their examination was necessary and that both felt uncomfortable. Neither patient was offered a chaperone or a gown to cover themselves, and both were asked to remove their trousers standing in front of the doctor. Ms Nowell reminded the Tribunal that Dr Tsakov himself admitted that these might not be isolated cases, given his state of mind and his workload pressures.

10. Ms Nowell referred the Tribunal to Dr C's evidence, in relation to the consultations of Patients A and B, and particularly their physical examinations (including the use of the UV light) which were not clinically indicated. She reminded the Tribunal that when asked, Dr Tsakov told the Tribunal that he was aware of the GMC's 'Guidance on Intimate Examinations' and submitted that by not offering either patient a chaperone, Dr Tsakov had persistently failed to follow the Guidance. She went to say that Dr Tsakov failed to record that he had undertaken a physical examination of either patient in their clinical records and therefore failed to follow Good Medical Practice (GMP).

11. Ms Nowell acknowledged that Dr Tsakov admitted the majority of the Allegation at the outset. He then made further admissions, but only after hearing Dr C's evidence. Ms Nowell submitted that Dr Tsakov's actions amounted to misconduct which was serious.

12. Ms Nowell submitted that, given Dr Tsakov's blatant disregard for patient safety and dignity, a finding of no impairment would have a detrimental impact on public confidence in the medical profession and both Patients A and B.

13. In relation to insight, Ms Nowell submitted that not all allegations were admitted by Dr Tsakov at the outset. She reminded the Tribunal that Dr Tsakov told the Tribunal that he had considered the complaints and had apologised straight away. However, she referred the Tribunal to Dr Tsakov's email of 19 March 2019 in which Dr Tsakov appeared to be justifying the examination that he had carried out. She submitted that Dr Tsakov's apologies are 'hollow'. She added that he made no concerted effort to apologise to either patient through the Trust or through the GMC.

14. Ms Nowell submitted that Dr Tsakov had not demonstrated to the Tribunal that he had insight into his actions or how his actions impacted on Patients A and B. She said that Dr Tsakov had very limited insight and that it had been formed, 'late in the day'. She said that, whilst Dr Tsakov said he would not use a UV light as a diagnostic tool, he did not say that he would not examine the groin area or the legs, for example where a patient presented with acne on their face.

15. Ms Nowell submitted that, given his very late and limited insight, there could be no confidence that, without restrictions on Dr Tsakov's practice, patients would not be put at risk. She submitted that the public interest demands a finding of current impairment.

For the Doctor

16. Mr Brassington, Counsel, reminded the Tribunal of the principles to be applied when considering impairment, and he too reminded the Tribunal of the two-stage test to be applied. He said that, in addition, the Tribunal must ask itself whether the misconduct is remediable, whether it has been remedied, and whether there was a likelihood of repetition. Further, it was necessary to consider whether the public interest requires a finding of impairment. He submitted that there had been no challenge to Dr C's opinion that the standard of care provided by Dr Tsakov to Patient A and Patient B fell far below the expected standards. Mr Brassington accepted that Dr Tsakov's actions amount to misconduct.

17. However, in respect of current impairment, Mr Brassington submitted that, in relation to the public interest, there was no allegation that Dr Tsakov had breached fundamental tenets of GMP. He said that this was a case of two poorly conducted examinations by a doctor who otherwise had an unblemished reputation. There was no evidence to suggest that Dr Tsakov has repeated his misconduct. Mr Brassington submitted that the public interest does not demand a finding of impairment in this case.

18. Mr Brassington submitted that Dr Tsakov has shown insight through his admissions and has acknowledged what he did wrong, why it happened and how he would prevent it from happening in the future. Mr Brassington submitted that Dr Tsakov is on a 'journey of remediation' but accepted that he has not fully remediated his misconduct. He went on to say that, in the consultations with Patients A and B, Dr Tsakov failed in his communications and had not explained to either patient what he was doing and why. He said that Dr Tsakov has apologised for this from the outset. Mr Brassington stated that Dr Tsakov's poor communication was exacerbated by poor time management and workload stresses, though he did not use these as excuses.

19. Mr Brassington submitted that Dr Tsakov is a man who has significant insight, demonstrated by his oral evidence to the Tribunal. Dr Tsakov recognised and acknowledged his failures. Mr Brassington added that it is wholly unfair of the GMC to criticise Dr Tsakov for not having apologised directly to either patient when no evidence was adduced by the GMC in relation to that issue. He said the GMC does not know what correspondence may have passed between Dr Tsakov and the Trust, and it would have been improper for Dr Tsakov to have contacted the patients directly.

20. Mr Brassington submitted that the Tribunal should not speculate as to whether there had been any other complaints about Dr Tsakov's clinical practice. He submitted that Dr Tsakov did not present a risk of repeating his misconduct.

21. In all of the circumstances, Mr Brassington acknowledged that Dr Tsakov's remediation was not complete or fully evidenced. He accepted that the issue of remediation might provide the Tribunal with a route to finding that Dr Tsakov's fitness to practise is impaired.

The Relevant Legal Principles

22. 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.

23. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved amounted to misconduct and that the misconduct was serious, and then, whether the finding of serious misconduct, led to a finding of impairment.

24. The Tribunal must determine whether Dr Tsakov's fitness to practise is impaired today, taking into account his 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.

25. Throughout its deliberations, the Tribunal has been mindful of its responsibility to uphold the overarching objective as set out in the Medical Act 1983 (as amended). That objective is the protection of the public and involves the pursuit of the following:

- a. to protect, promote and maintain the health, safety and wellbeing of the public
- b. to maintain public confidence in the profession
- c. to promote and maintain proper professional standards and conduct for members of the profession

The Tribunal's Decision

Misconduct

26. The Tribunal first considered whether the facts found proved are a sufficiently serious departure from the standards of conduct reasonably expected of Dr Tsakov, to amount to misconduct. In its deliberations, the Tribunal had regard to the current version of GMP (March 2013). It also noted that Misconduct is not defined by statute but it has been said to be serious professional misconduct or conduct which a fellow professional would regard as deplorable.

27. The Tribunal had regard to the summary at the beginning of GMP and paragraphs 1, 15, 32, 46, 47 and 65 of GMP. These state:

‘Good medical practice describes what it means to be a good doctor.

It says that as a good doctor you will:

- make the care of your patient your first concern*
- be competent and keep your professional knowledge and skills up to date.....*
- establish and maintain good partnerships with your patients*

‘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

15 You must provide a good standard of practice and care. If you assess, diagnose or treat patients, you must:

a. adequately assess the patient’s conditions, taking account of their history (including the symptoms and psychological, spiritual, social and cultural factors), their views and values; where necessary, examine the patient

b. promptly provide or arrange suitable advice, investigations or treatment where necessary

c.

32 You must give patients the information they want or need to know in a way they can understand. You should make sure that arrangements are made, wherever possible, to meet patients’ language and communication needs.

46 You must be polite and considerate.

47 You must treat patients as individuals and respect their dignity and privacy.

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

28. The Tribunal was mindful that Dr Tsakov, at the outset, admitted the majority of the Allegation.

Patient A

In relation to paragraph 1a(i)

29. The Tribunal had regard to the GMC Guidance on Intimate Examinations (‘the Guidance’).

30. In his report of 27 November 2019, Dr C states:

‘Dermatology patients, by their very nature, are often embarrassed and upset by the appearance of their skin. But a full physical examination of the skin is essential in a patient with widespread eczema, as in this case. It is an important skill for a dermatologist to be able to put a patient at their ease, and clearly in this regard Dr Tsakov’s approach appears quite inappropriate. I have never heard of a patient being asked to undress standing up, and would not regard this as normal or appropriate practice.

I do not think that the manner of the examination maintained the patient’s dignity.

What I would regard as standard, would be to briefly explain why examination is necessary and to ask the patient to go behind a curtain, a chaperone should always be offered, and indeed should be provided as routine. The patient should be asked to undress in privacy and should be examined lying on a couch. It may be appropriate to offer the patient a gown or blanket to cover themselves.

I do not think it inappropriate for the breast or genital area to be examined as these are areas that are commonly affected in eczema, but examination should be done with appropriate explanation and consent, and with a chaperone.’

31. Dr C concluded that the manner in which Dr Tsakov conducted the examination fell seriously below the standard expected of a locum consultant dermatologist.

32. The Tribunal took into account that, Patient A stated that she felt ‘really uncomfortable’ following her consultation with Dr Tsakov on 29 January 2019 and described it as, ‘*the weirdest doctors’ appointment ever*’. Further, Patient A described Dr Tsakov’s approach as abrupt. In her witness statement at paragraph 4, Patient A stated ‘*I just recall him having a very officious tone and being very straight to the point.*’

33. The Tribunal determined that Dr Tsakov had failed to conduct an adequate medical examination, in that he did not:

- explain why the examination was necessary;
- ask Patient A to go behind a curtain to undress;
- invite Patient A to have a chaperone present during her examination;
- offer Patient A a gown to wear;
- offer Patient A a blanket to cover herself;
- conduct the examination with Patient A lying on a couch.

34. The Tribunal determined that this was a serious breach of the doctor’s obligations and that Dr Tsakov failed to follow appropriate guidelines as set out in GMP and the Guidance. His

actions made Patient A feel uncomfortable and failed to respect her dignity. The Tribunal considered that this would be considered deplorable by fellow colleagues.

35. It determined that Dr Tsakov's actions fell seriously below the standard expected of a locum consultant dermatologist and amounted to serious misconduct.

In relation to paragraph 1a(ii)

36. In his evidence, Dr C stated that the ultraviolet light examination of Patient A conducted by Dr Tsakov was not clinically indicated. He stated that there was no reason to use a UV light to inspect the Patient A's groin and legs as Dr Tsakov had done. Further, a UV light would normally be used in a dimly lit room. However, Dr C accepted that he was not aware of the type of UV light device that Dr Tsakov used. Dr C conceded that, in any event, an examination conducted with a UV light was relatively innocuous.

37. Dr Tsakov had admitted that the use of a UV light had not been clinically indicated nor performed in a darkened room. In addition, the Tribunal noted that he had failed to explain to Patient A why he conducted an examination using a UV light device. As a result, the Tribunal determined that Dr Tsakov's actions amounted to misconduct.

38. However, the Tribunal considered that, although not clinically indicated, Dr Tsakov had used the UV light with good (albeit misguided) intentions, namely to help him to diagnose the cause of Patient A's eczema. In addition, it noted Dr C's comment as to the relatively innocuous nature of a UV light examination. Consequently, the Tribunal concluded that Dr Tsakov's actions did not amount to serious misconduct.

In relation to paragraphs 1b and 1c

39. The Tribunal had regard to Dr C's report of 27 November 2019 in which he states:

'I regard the following aspects of the care provided by Dr Tsakov as being seriously below the standard expected of a reasonably competent locum Consultant Dermatologist in the following:

- *Failure to explain the rationale for treatment or to discuss other treatment options in a patient with a serious skin disorder.'*

and

'In each of the points above, I regard the deficiencies of care as amounting to "seriously below" the expected standard, in that they denied the patient with a serious skin disorder the care that she could reasonably have expected in a specialist hospital department, and denied the patient the degree of dignity that they could reasonably expect.'

40. The Tribunal noted that Dr Tsakov admitted these particular paragraphs of the Allegation.

41. The Tribunal considered that it was incumbent upon Dr Tsakov to explain his rationale for his treatment of Patient A and to have discussed other treatment options with her, but that he failed to do so.

42. Having regard to GMP and to Dr C's report, the Tribunal determined Dr Tsakov's failings amounted to misconduct which fell seriously below the standards expected of a reasonably competent locum Consultant Dermatologist. It therefore concluded that Dr Tsakov's actions amounted to misconduct that was serious.

Patient B

In relation to paragraph 2a (i – ii)

43. The Tribunal took into account that Dr Tsakov has admitted these particular paragraphs of the Allegation.

44. The Tribunal also had regard to Dr C's report in which he stated:

'There does not seem any record that Dr Tsakov examined the affected areas of the skin, namely the face, neck, shoulders, chest and back.

It is not clear why he wished to examine the legs and the groin, and there did not appear to be any clinical indication. If he wished to examine those areas he should have clearly explained to [Patient B] why he wished to do so. There is no evidence that he did.'

45. The Tribunal noted Dr C's conclusion that Dr Tsakov's failure to, 'conduct a proper medical examination' fell seriously below the standard expected of a reasonably competent locum Consultant Dermatologist.

46. The Tribunal considered that Dr Tsakov had failed to conduct an adequate medical examination of Patient B in that he:

- did not examine the affected areas of Patient B's skin;
- examined Patient B's legs and groin area, despite this not being clinically indicated and without first explaining to Patient B why he wished to do so.

47. The Tribunal determined that Dr Tsakov's examination of Patient B fell seriously below the standards expected of a locum consultant dermatologist. As a result, the Tribunal concluded that his failings amounted to misconduct. Having regard to GMP, and the conclusions of Dr C, the Tribunal determined that Dr Tsakov's actions amounted to serious misconduct.

In relation to paragraph 2a(iii)

48. The Tribunal also took account of Dr C's report, in relation to Patient B, that:

'Examination with ultraviolet light can be helpful in diagnosing certain skin disorders, but is only useful in a darkened room, and clearly this requires explanation, and a chaperone. As performed by Dr Tsakov it would appear to have been without clinical indication, and not conducted properly, in that it would not show any abnormalities of the skin unless in a normally lit room'.

49. The Tribunal noted that Dr Tsakov had admitted that the use of a UV light had not been clinically indicated nor performed in a darkened room. In addition, the Tribunal noted that he had failed to explain to Patient B why he conducted an examination using a UV light device. As a result, the Tribunal determined that Dr Tsakov's actions amounted to misconduct.

50. However, the Tribunal considered that, although not clinically indicated, Dr Tsakov had used the UV light with good (albeit misguided) intentions, namely to help him to diagnose the cause of Patient B's acne. In addition, it noted Dr C's comment as to the relatively innocuous nature of a UV light examination. Consequently, the Tribunal concluded that Dr Tsakov's actions did not amount to serious misconduct

In relation to paragraph 2a(iv)

51. The Tribunal took into account that Dr Tsakov has admitted this particular paragraph of the Allegation.

52. During his oral evidence, Dr Tsakov said that he was aware of GMP and the Guidance, as well as the Trust's policy on chaperones. While the Tribunal noted his evidence that he was working under pressure in a stressful work environment, it considered that this did not excuse his duty to follow the obligations on him when carrying out intimate examinations.

53. The Tribunal had regard to Dr C's report in which he stated that:

'If Dr Tsakov had thought it clinically indicated for the patient to have to undress for examination, and especially if he wished to examine the groin, he should have arranged for a chaperone to be present, not least in order to help maintain the patient's dignity'.

54. Dr C concluded that the following aspects of Dr Tsakov's care to Patient B fell seriously below the standards expected of a reasonably competent locum consultant dermatologist:

‘Failure to conduct a proper medical examination, and conducting such an examination as it was in an undignified manner such as to deny the patient respect and dignity, including failure to use a chaperone’

55. The Tribunal also took into account of Patient B’s witness statement in which she confirmed that there had been a female Health Care Assistant present at the clinic during the time of her consultation with Dr Tsakov. It could not therefore be said that there was no female colleague of Dr Tsakov present who could have acted as a chaperone for Patient B.

56. The Tribunal determined that Dr Tsakov’s actions fell seriously below the standards expected of a locum consultant dermatologist. The Tribunal determined that this was a serious failing and amounted to misconduct which was serious.

In relation to paragraph 2b(i– iv)

57. The Tribunal took into account that Dr Tsakov has admitted this particular paragraph of the Allegation.

58. In his report Dr C states that:

‘In the consultation there seemed to have been no discussion as to how the acne was affecting the patient, what treatments had helped, or not helped, in the past, or any factors which might have accounted for the recent flare of the condition’

‘No attempt seemed to have been made to put the patient at their ease’

‘Dr Tsakov’s manner left the patient feeling inhibited from asking questions’

59. Dr C concluded that the manner in which Dr Tsakov conducted the examination fell seriously below the standard expected of a locum consultant dermatologist.

60. The Tribunal took into account that in her complaint, Patient B stated that she felt ‘uncomfortable’ and ‘intimidated’. Further, Patient B described Dr Tsakov’s approach as abrupt. In her witness statement at paragraph 7, Patient B states ‘Dr Tsakov was quite authoritative and he would shut me down when asking questions, so I felt a bit intimidated’.

61. The Tribunal determined that Dr Tsakov had failed to conduct an adequate medical examination, in that he did not:

- discuss how the acne was affecting Patient B;
- previous forms of treatment Patient B had received;
- the outcome of any previous treatment Patient B had received;
- any possible factors that might have accounted for the flare up of Patient B’s acne;

62. The Tribunal determined that this was a serious breach of the doctor's obligations and that Dr Tsakov failed to follow appropriate guidelines as set out in GMP and the Guidance. His actions made Patient B feel uncomfortable, intimidated and inhibited from asking questions. The Tribunal considered that this would be considered deplorable by fellow colleagues.

63. It determined that Dr Tsakov's actions fell seriously below the standard expected of a locum consultant dermatologist and amounted to serious misconduct.

In relation to paragraphs 2c and 2d

64. The Tribunal took into account that Dr Tsakov has admitted these particular paragraphs of the Allegation.

65. The Tribunal had regard to Dr C's report of 27 November 2019 in which he states:

'I regard the following aspects of the care provided by Dr Tsakov as being seriously below the standard expected of a reasonably competent locum Consultant Dermatologist in the following:

- *Failure to explain the rationale for treatment or to discuss other treatment options in a patient with a serious skin disorder.'*

66. The Tribunal considered that it was incumbent upon Dr Tsakov to explain his rationale for the treatment prescribed for Patient B and to have discussed other treatment options with her, but he failed to do this.

67. The Tribunal accepted Dr C's evidence that Dr Tsakov's failings in that regard fell seriously below the standard expected of a reasonably competent locum Consultant Dermatologist. The Tribunal determined that Dr Tsakov's failures amounted to misconduct that was serious.

In relation to paragraph 2e(i and ii)

68. The Tribunal took into account that Dr Tsakov has admitted these particular paragraphs of the Allegation.

69. The Tribunal had regard to paragraph 21 of GMP which states:

'21 Clinical records should include:

- a. relevant clinical findings*
- b. the decisions made and actions agreed, and who is making the decisions and agreeing the actions*
- c. the information given to patients*
- d. any drugs prescribed or other investigation or treatment*

e. *who is making the record and when.*'

70. The Tribunal took account of the note made by Dr Tsakov in Patient B's clinical record, dated 24 February 2019. The Tribunal noted that that the clinical record was largely illegible and consisted only of a few lines.

71. The Tribunal considered that the record did not adequately present to any clinician, who might treat Patient B in the future, the findings of Dr Tsakov's examination on 24 February 2019 nor Patient B's past medical history.

72. The Tribunal had regard to the report of Dr C which states that:

'The written records were very inadequate. There was no record of the findings on examination, no record of the past medical history, of previous or current treatments for the patient's condition.'

73. Dr C's report also states:

'I regard the following aspects of the care provided by Dr Tsakov as being seriously below the standard expected of a reasonably competent locum consultant dermatologist in the following:

- *Inadequate record-keeping of both history and examination*
- *Failure to record a medical history in relation to the patient's severe skin disorder with reference to past medical history and previous and current treatments'*

74. However the Tribunal also noted Dr C's oral evidence in which he conceded that Dr Tsakov's failure to keep an adequate note of his consultation with Patient B fell below the standards expected but did not fall seriously below. In these circumstances, the Tribunal determined that, whilst Dr Tsakov's record keeping failures amounted to misconduct, they did not amount to serious misconduct.

Impairment

75. The Tribunal, having found that some of the facts found proved amounted to serious misconduct, went on to consider whether Dr Tsakov's fitness to practise is currently impaired by reason of his misconduct.

76. The Tribunal had regard to paragraph 76 of the judgment in the case of *CHRE v NMC & Paula Grant [2011] EWHC 927 (Admin)*, in which Mrs Justice Cox provided a helpful approach to the determination of impairment:

'Do our findings of fact in respect of the doctor's misconduct...show that his/her fitness to practise is impaired in the sense that s/he:

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

77. The Tribunal considered whether Dr Tsakov's misconduct was capable of being remediated, has been remediated, and whether it was likely to be repeated. In so doing, it considered whether there was evidence of Dr Tsakov's insight into his misconduct and any steps taken by him to remediate it.

78. The Tribunal took into account that doctors occupy a position of privilege and trust. They are expected to act in a manner which maintains public confidence in them and in the medical profession and to uphold proper standards of conduct.

79. Dr Tsakov told the Tribunal that he had been in clinical practice between January and April 2021. There is no evidence before the Tribunal that there are any concerns about his clinical practice. The Tribunal has not been provided with any evidence that he has repeated his conduct since the matters before this Tribunal.

80. The Tribunal took into account the two testimonials from Dr Tsakov's colleagues who speak highly of him. However, the Tribunal noted that, neither of these colleagues were in a position to provide objective evidence of his performance and therefore the Tribunal applied limited weight to their evidence. Dr Tsakov also provided feedback forms from patients and colleagues from the period January to April 2021. These were positive but the Tribunal noted they were for a limited period.

81. In relation to his insight, the Tribunal took into account Dr Tsakov's admissions at the outset of these proceedings. During his oral evidence at this stage of the proceedings, Dr Tsakov explained the steps he has taken to address the concerns identified in this case. These include attendance at or completion of various online courses, including courses on Privacy and Dignity, Communication Skills and Chaperone for Health and Social Care.

82. The Tribunal had regard to Dr Tsakov's email of 19 March 2019 in which he responded to Patient B's complaint. The Tribunal noted that, whilst Dr Tsakov in his email, apologised to the patient and to, 'any one involved on case' (sic) the apologies were brief and perfunctory. The Tribunal considered that the remainder of Dr Tsakov's email consisted of justifications for his actions including statements as to why making diagnoses is not an easy task. The Tribunal considered that the email provided very little evidence that Dr Tsakov understood what had gone wrong in his consultation with Patient B, appreciated that he should have acted differently or understood how to act in the future.

83. The Tribunal also had regard to an email from Dr Tsakov dated 5 May 2021, to his legal representatives. The Tribunal noted that, in his email, Dr Tsakov speaks of how he would manage his workload and time management to help to prevent him repeating the misconduct found. However, the Tribunal considered that the email was somewhat perfunctory; for example, Dr Tsakov’s description of the impact of his actions on Patients A and B consisted of no more than 8 words. The Tribunal also considered that Dr Tsakov sought, in his email, to justify his actions by reference to time and workload pressures and that he had not properly addressed the gravity of his misconduct and its impact on Patients A and B, the Trust or the wider medical profession.

84. As a result, the Tribunal concluded that whilst Dr Tsakov had some insight, it was limited. During his oral evidence the Tribunal noted that Dr Tsakov stated that he had analysed what Patient A and Patient B had gone through and that he had reflected on his misconduct and had made changes to his clinical practice. However, the Tribunal considered that whilst Dr Tsakov understood in theory the impact of his misconduct (and what gave rise to it), it was not satisfied that Dr Tsakov had meaningful insight or had reflected adequately on all the issues. In reaching this conclusion, the Tribunal noted Dr Tsakov’s emails dated 19 March 2019 and 5 May 2021 which were perfunctory and further noted that whilst Dr Tsakov had attended some relevant online courses, he had provided inadequate written reflections on his learning or how he might apply that to his clinical practice. The Tribunal noted that Dr Tsakov has addressed issues in relation to his time management but provided little evidence to demonstrate that he fully appreciates the impact of his behaviour on patients.

85. The Tribunal accepts that Dr Tsakov has begun a journey of remediation and that his insight is developing. In the absence of sufficient evidence of insight or the steps he had taken to address the concerns in this case, the Tribunal was not satisfied that he has fully remediated his misconduct. The Tribunal considered that until Dr Tsakov develops greater insight and takes further steps to remediate his misconduct, a risk of repetition remains.

86. In the circumstances, the Tribunal concluded that Dr Tsakov’s fitness to practise is impaired.

87. The Tribunal reminded itself of its over-arching objective, which is to protect the public. The objective includes to:

- a protect and promote the health, safety and wellbeing of the public;
- b promote and maintain public confidence in the medical profession; and
- c promote and maintain proper professional standards and conduct for the members of the profession.

88. The Tribunal considered that, in this case, all three limbs of the overarching objective were engaged, particularly in light of its finding that a risk of repetition remains.

89. In all the circumstances, the Tribunal concluded that a finding of impaired fitness to practise was required in order to protect and promote the health, safety and wellbeing of the

public, maintain public confidence in the profession and to promote and maintain proper professional standards and conduct for members of the profession.

90. The Tribunal has therefore determined that Dr Tsakov's fitness to practise is impaired by reason of his misconduct.

Determination on Sanction - 09/07/2021

1. Having determined that Dr Tsakov'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

2. The Tribunal has taken into account evidence received during the earlier stages of the hearing, where relevant, in reaching a decision on sanction.

Submissions

For the GMC

3. Ms Nowell submitted that suspension was the only proportionate sanction, in this case, to satisfy all three limbs of the over-arching objective. However, she reminded the Tribunal that it should start by looking at the least restrictive sanction first.

4. Ms Nowell acknowledged that Dr Tsakov had undertaken some remediation but she reminded the Tribunal that lack of knowledge was not the issue in this case. She stated that Dr Tsakov, by his own admission, was aware of the relevant Guidance but had failed to comply with it. Ms Nowell said that carrying out intimate examinations was an integral part of Dr Tsakov's role and he would be required to conduct such examinations on a regular basis. She added that Dr Tsakov had failed to offer a chaperone to Patients A and B, thereby compromising their dignity. Given the evidence, she submitted that there remains a potential for Dr Tsakov to repeat his misconduct.

5. Ms Nowell referred to the issue of public confidence and reminded the Tribunal that, in its determination on impairment, it had found that the standard of care provided by Dr Tsakov to both patients fell seriously below the standard expected. Ms Nowell submitted Dr Tsakov's misconduct was bound to have an adverse impact on public confidence in the medical profession.

6. Ms Nowell submitted that this was not a case that could be concluded by taking no action, or by imposing a period of conditions upon Dr Tsakov's registration. She referred the Tribunal to relevant sections of the Sanctions Guidance ('SG') which, she said, supported that submission. She added that Dr Tsakov had demonstrated a blatant disregard for the

requirements for conducting intimate examinations and, given his limited insight and reflections, and the lack of an apology, the Tribunal could not be satisfied that he would comply with any conditions. She submitted that paragraph 81 of the SG did not apply to the facts of this case because it involved misconduct not issues related to performance.

7. Ms Nowell went on to say that Dr Tsakov's actions were a serious breach of GMP and amounted to serious misconduct. She submitted that, as a result, suspension was the appropriate and proportionate sanction, in order to send a signal to the doctor and the profession that this type of behaviour will not be tolerated. She conceded however that Dr Tsakov's misconduct fell short of being fundamentally incompatible with his continued registration on the medical register.

8. Ms Nowell concluded by saying that, although Dr Tsakov had acknowledged fault in this case, this was an insufficient reason not to impose a sanction of suspension.

For Dr Tsakov

9. Mr Brassington submitted that the Tribunal could not ignore the evidence in this case. He said that is simply not true, as asserted by the GMC, that Dr Tsakov has not apologised. He added that it was also incorrect for the GMC to assert that the factors set out in paragraph 81 of the SG did not apply in this case.

10. Mr Brassington reminded the Tribunal that this was a purely clinical case involving two patients who were left feeling uncomfortable. He submitted that it could not be right that suspension was the only available sanction simply because Dr Tsakov was aware of the Guidance on intimate examinations ('the Guidance'). He acknowledged that the concerns in this case are serious but submitted that Dr Tsakov's failings were not irredeemable. Mr Brassington submitted that the Tribunal should consider the facts of the case in their proper context and with a sense of perspective.

11. Mr Brassington said that the SG was there to protect patients and the public, and to maintain professional standards of behaviour in the medical profession. He said the SG was not concerned with punishing a doctor, although a sanction can have a punitive effect. He said that the Tribunal must apply the principle of proportionality in order to achieve its statutory purpose.

12. Mr Brassington submitted that the appropriate and proportionate sanction is one of conditions and that suspension would be disproportionate and unnecessary. He took the Tribunal through the relevant paragraphs of the SG which deal with aggravating and mitigating factors. He submitted that Dr Tsakov understands the concerns which gave rise to the Allegation and has attempted to remediate them. He conceded that Dr Tsakov is on a remediation journey which is not yet complete.

13. Mr Brassington referred the Tribunal to its determination on impairment, stating that Dr Tsakov has adhered to good practice as evidenced by his appraisals. He said that Dr Tsakov

is a doctor of impeccable character, and that he has not repeated his misconduct and he has apologised.

14. Referring to mitigating factors, Mr Brassington reminded the Tribunal that English is not Dr Tsakov's first language and that it should bear this in mind when considering the appropriate sanction. He added that in his oral evidence, Dr Tsakov was much more eloquent in his apology and in describing what happened, what went wrong and why, than in his written communication. Further, he reminded the Tribunal that these events took place some two and a half years ago at a time when Dr Tsakov's was 'over-reaching' himself and needed to manage his workload better. He added that Dr Tsakov engaged with the Trust's investigation and has, and continues to, engage with the GMC. Furthermore, Dr Tsakov has not sought to put Patient A and Patient B through the ordeal of attending these proceedings to give oral evidence and this should go in his favour.

15. In relation to insight, Mr Brassington submitted that Dr Tsakov has taken timely steps to address and remediate the concerns by apologising to Patient A and Patient B through the Trust, and by his attendance on training courses. Mr Brassington said that this demonstrates that Dr Tsakov has insight into the concerns. Mr Brassington stated that there are no aggravating factors in this case.

16. Mr Brassington submitted that in considering conditions, the length of which was a matter for the Tribunal, paragraphs 81 (b) and (c), 82 (a), (b) and (c) and 84 of the SG were engaged. He said that Dr Tsakov accepts there are shortcomings in his clinical practice in relation to communications, time management, chaperoning, and record keeping. However, Mr Brassington submitted that the factors set out in paragraph 82 support his submission that conditions would be appropriate, proportionate, workable and measurable and the Tribunal could be satisfied that Dr Tsakov will comply with conditions. Mr Brassington suggested that any conditions could include a requirement for supervision, a PDP, audits of Dr Tsakov's note keeping and chaperoning.

17. Mr Brassington submitted that suspension would be wholly disproportionate and unnecessary and would amount to punishment in a case such as this. He added that a period of suspension would not assist Dr Tsakov in continuing with his remediation. He submitted that the very fact of these proceedings, and its impact on Dr Tsakov's reputation, was sufficient to send a clear message to the public and to the profession.

18. In all the circumstances, Mr Brassington invited the Tribunal to impose conditions upon Dr Tsakov's registration.

The Tribunal's Approach

19. The decision as to the appropriate sanction, if any, to impose is a matter for the Tribunal alone, exercising its own judgement. In so doing, it has given consideration to its findings at the earlier stages of these proceedings, and the submissions made by both Counsel.

20. Throughout its deliberations, the Tribunal bore in mind that the purpose of a sanction is not to be punitive, but to protect the public interest. That includes protecting the health, safety and wellbeing of the public, maintaining public confidence in the profession, and declaring and upholding proper standards of conduct and behaviour. In making its decision, the Tribunal also had regard to the principle of proportionality, and it considered Dr Tsakov's interests as well as those of the public. It noted that those interests may include maintaining experienced clinicians in practice in appropriate cases but the Tribunal has also to balance this with pursuit of the statutory overarching objective.

The Tribunal's Determination on Sanction

21. The Tribunal considered the aggravating and mitigating features in this case and identified the following:

Aggravating:

22. The Tribunal bore in mind that this case involved an element of repetition in that the Allegations involved two female patients, making broadly similar complaints about Dr Tsakov, albeit within a relatively short period of time.

Mitigating

23. The Tribunal identified the following mitigating factors, namely that:

- Dr Tsakov has a degree of insight, albeit limited;
- Dr Tsakov has taken steps to remediate his misconduct, albeit that his remediation is not yet complete;
- Dr Tsakov has apologised, albeit in a limited way;
- the lapse of time since the events giving rise to the Allegation;
- there is no evidence of repetition;
- Dr Tsakov is of previous good character; and
- Dr Tsakov had cooperated with the investigations by the Trust and GMC; and
- made early admissions to the Allegations and agreed the evidence of Patients A and B such that they were not required to give evidence to the Tribunal.

24. In balancing the aggravating and mitigating factors the Tribunal considered that, whilst Dr Tsakov's misconduct was serious and affected the dignity of Patients A and B, there were a number of mitigating factors for which Dr Tsakov was entitled to be given credit. The Tribunal considered that Dr Tsakov's misconduct, whilst serious, was towards the lower end of the scale of seriousness. It further considered that Dr Tsakov's misconduct was not fundamentally incompatible with continued registration. The Tribunal noted that paragraphs 133 to 162 of the SG, which sets out factors indicating that more serious action is likely to be required, did not apply in this case.

No Action

25. In coming to its decision as to the appropriate sanction, if any, to impose in Dr Tsakov's case, the Tribunal first considered whether to take no action. The Tribunal considered paragraphs 68-70 of the SG which highlight that taking no action, following a finding of impaired fitness to practise, would only be appropriate in exceptional circumstances.

26. The Tribunal has determined that, given the gravity of the facts found proved, and the absence of any exceptional circumstances in this case, taking no action was neither appropriate, proportionate nor in the public interest.

Conditions

27. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Tsakov's registration. The Tribunal took account of the SG and in particular paragraphs 81, 82, 84 and 85, which state:

'81 Conditions might be most appropriate in cases....

b involving issues around the doctor's performance.

c where there is evidence of shortcomings in a specific area or areas of the doctor's practice.

82 Conditions are likely to be workable where:

a the doctor has insight

b a period of retraining and/or supervision is likely to be the most appropriate way of addressing any findings

c the tribunal is satisfied the doctor will comply with them

d the doctor has the potential to respond positively to remediation, or retraining, or to their work being supervised.

84 Depending on the type of case (eg health, language, performance or misconduct), some or all of the following factors being present (this list is not exhaustive) would indicate that conditions may be appropriate:

a no evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor's unwillingness to engage

b identifiable areas of their practice are in need of assessment or retraining.

85 *Conditions should be appropriate, proportionate, workable and measurable.'*

28. The Tribunal did not accept Ms Nowell's submission that paragraph 81 of the SG was not relevant in this case. Although the Tribunal found that Dr Tsakov's fitness to practise was impaired by reason of serious misconduct, it considered that the misconduct arose because of shortcomings in Dr Tsakov's performance and practice, specifically in relation to the conduct of intimate examinations, chaperoning, communication and record keeping.

29. In relation to paragraph 82 of the SG, the Tribunal reminded itself of its determination on impairment and, in particular, that Dr Tsakov did have some insight into his misconduct, albeit that it was limited. The Tribunal noted that Dr Tsakov has sought to remediate his misconduct, albeit that further efforts by him towards remediation were required. The Tribunal was satisfied that Dr Tsakov would respond positively to further retraining and remediation and noted his PDP which, although currently limited, was evidence that Dr Tsakov was willing to be trained and had the capacity to learn from it.

30. The Tribunal considered that a period of supervision, further learning and reflection was the most appropriate way for Dr Tsakov to address and remediate his misconduct. The Tribunal was provided with no evidence to suggest that remediation was unlikely to be unsuccessful and the Tribunal noted that Dr Tsakov had attended relevant learning courses and had sought to reflect upon them. The Tribunal acknowledged that English was not Dr Tsakov's first language and observed that a mentor may be able to assist him with his written reflections on the Tribunal's findings and on his future learning.

31. The Tribunal was satisfied, having noted the steps he has taken so far to remediate, that Dr Tsakov is likely to continue his development of insight. It considered that conditions would protect the public from risk of harm while allowing Dr Tsakov the opportunity to fully remediate his misconduct. The Tribunal is satisfied that given the steps he has already take to remediate, Dr Tsakov is likely to comply with conditions imposed upon his registration.

32. As a result, the Tribunal has determined that a period of conditional registration, for a period of twelve months, is the appropriate and proportionate sanction in this case.

33. The following conditions will be published:

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

a the details of his current post, including:

- i his job title;
- ii his job location;

- iii his responsible officer (or their nominated deputy);
 - b the contact details of his employer and any contracting body, including his direct line manager;
 - c any organisation where he has practising privileges and/or admitting rights;
 - d any training programmes he is in;
 - e of the contact details of any locum agency or out of hours service he is registered with.
- 2 He must personally ensure the GMC is notified:
- a of any post he accepts, before starting it;
 - b that all relevant people have been notified of his conditions, in accordance with condition 12;
 - c if any formal disciplinary proceedings against him are started by his employer and/or contracting body, within seven calendar days of being formally notified of such proceedings;
 - d if any of his posts, practising privileges, or admitting rights have been suspended or terminated by his employer before the agreed date within seven calendar days of being notified of the termination;
 - e if he applies for a post outside the UK.
- 3 He must allow the GMC to exchange information with any person involved in monitoring his compliance with his conditions.
- 4
- a He must have a workplace reporter appointed by his responsible officer (or their nominated deputy).
 - b He must not work until:
 - i his responsible officer (or their nominated deputy) has appointed his workplace reporter;
 - ii he has personally ensured that the GMC has been notified of the name and contact details of his workplace reporter.

- 5 a He must design a Personal Development Plan (PDP), with specific aims to address the deficiencies in the following areas of his practice:
- communication skills;
 - time management;
 - note taking;
 - chaperoning;
 - consenting;
 - explaining rationale for treatment and options for alternative treatment;
 - examinations – particularly intimate examinations and the impact of intimate examinations on patients;
 - ensuring patients privacy and dignity
- b His PDP must be approved by his responsible officer (or their nominated deputy).
- c He must give the GMC a copy of his approved PDP within three months of these substantive conditions becoming effective.
- d He must give the GMC a copy of his approved PDP on request.
- e He must meet with his responsible officer (or their nominated deputy), or his mentor, at least once per month to discuss his achievements against the aims of his PDP.
- 6 a He must get the approval of his GMC Adviser before accepting any post.
- b He must keep his professional commitments under review and limit his work if his GMC Adviser tells him to.
- c He must stop work immediately if his GMC Adviser tells him to and must get the approval of his GMC Adviser before returning to work.
- 7 He must contact the GMC within seven calendar days of returning to the UK.
- 8 He must get the approval of the GMC before working in a non-NHS post or setting.
- 9 a He must be supervised in all of his posts by a clinical supervisor, as defined in the Glossary for undertakings and conditions. His clinical supervisor must be appointed by his responsible officer (or their nominated deputy).

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

- 10 a Except in life-threatening emergencies, he must not carry out an intimate examination of female patients without a chaperone present.
 - b He must keep a log detailing every case where he has carried out an intimate examination of female patients, which must be signed by the chaperone.
 - c He must maintain a log detailing every case where he has carried out an intimate examination of female patients, in a life-threatening emergency, without a chaperone present.
 - d He must give the GMC a copy of these logs on request.

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

- 12 He must personally ensure the following persons are notified of the conditions listed at 1 to 11:
 - a his responsible officer (or their nominated deputy);
 - b the responsible officer of the following organisations:
 - i his place(s) of work, and any prospective place of work (at the time of application);
 - ii all of his contracting bodies and any prospective contracting body (prior to entering a contract);
 - iii any organisation where he has, or has applied for, practising privileges and/or admitting rights (at the time of application);
 - iv any locum agency or out of hours service he is registered with;
 - v if any of the organisations listed at (i to iv) does not have a responsible officer, he must notify the person with responsibility for overall clinical governance within that organisation. If he is unable to identify that person, he must contact the GMC for advice before working for that organisation.

c his immediate line manager and senior clinician (where there is one) at his place of work, at least 24 hours before starting work (for current and new posts, including locum posts).

Length of Order

34. In considering the appropriate period of conditional registration, the Tribunal was mindful that it should be sufficient to mark the seriousness of the misconduct found in Dr Tsakov's case, send a message to the profession and protect the public interest. It considered that a period of twelve-months is sufficient and will allow Dr Tsakov to further remediate his misconduct and develop further insight into the concerns which this Tribunal has identified. A period of conditional registration will also serve to reassure the public and uphold the reputation of the profession.

Suspension

35. Prior to reaching a decision on conditional registration, the Tribunal considered whether a period of suspension was the appropriate sanction. It had regard to paragraphs 91 and 93. It also had regard to paragraph 97 (a), (e), (f) and (g). The Tribunal considered that a sanction of suspension was disproportionate and would serve only to punish Dr Tsakov, rather than address the shortcomings in his clinical practice. Since the Tribunal was satisfied that the level of impairment could be dealt with by imposing conditions, it was unnecessary to impose a greater restriction. The Tribunal therefore determined that suspension would not be the appropriate or proportionate sanction in this case.

Review

36. The Tribunal has directed that before the end of the period of conditional registration, Dr Tsakov's case be reviewed by a Medical Practitioners Tribunal. A letter will be sent to him about the arrangements for the review hearing. The Tribunal considered that those reviewing Dr Tsakov's case would be assisted by receiving the following:

- Dr Tsakov's up to date PDP – to include extensive notes of all his learning over the past twelve months, and in particular, the concerns identified by this Tribunal and the impact on patients;
- A detailed reflections document on the Tribunal's findings, his behaviour around the allegations, and subsequent changes he has made to his behaviour and clinical practice;
- A report or statement from his mentor and his clinical supervisor;
- Analysis and reflections on feedback from his colleagues and patients;
- A log of all intimate examinations he has undertaken;
- Any relevant audits of his clinical work.

- Testimonials from colleagues who are in a position to comment directly on his clinical practice;
- Any relevant Continuing Professional Development he has undertaken;
- Any other information that he considers would assist the Tribunal such as a statement from a senior colleague including discussion and consideration of their perspective on his remediation and insight.

Determination on Immediate Order - 09/07/2021

1. Having determined to impose conditions upon Dr Tsakov's registration, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether his registration should be subject to an immediate order.

Submissions

2. On behalf of the GMC, Ms Nowell submitted that an immediate order was necessary. She reminded the Tribunal of paragraphs 172 – 178 of SG which relate to imposing an immediate order. Ms Nowell submitted that one issue for the Tribunal to consider was the necessity to protect the public, and further to balance this against the doctor's interests. Ms Nowell also reminded the Tribunal that one of the limbs engaged when imposing a sanction was the issue of patient safety in relation to intimate examinations. She said that it was not appropriate for Dr Tsakov to have unrestricted practice for the next twenty eight days given the potential for him to repeat his misconduct. Further, she added that Dr Tsakov was currently residing abroad, and the imposition of an immediate order would not disrupt his working life or patient care.

3. On behalf of Dr Tsakov, Mr Brassington did not oppose the imposition of an immediate order.

The Tribunal's Determination

4. The Tribunal has taken account of Section 38 of the Medical Act 1983 and the relevant paragraphs of the SG in relation to when it is appropriate to impose an immediate order. Paragraph 172 of the SG states:

"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..."

5. The Tribunal has determined that, in light of all of the evidence adduced in this case and taking into account its findings on Impairment and Sanction, it is necessary in the public interest and to protect patients, to direct an immediate order of conditions.

**Record of Determinations –
Medical Practitioners Tribunal**

6. The substantive decision of conditions, as already announced, will take effect 28 days from when notice is deemed to have been served upon Dr Tsakov, unless he lodges an appeal in the interim.
7. The interim order currently in place upon Dr Tsakov's registration is revoked.
8. That concludes the case.

Confirmed

Date 09 July 2021

Mr Simon Bond, Chair