

**Dates:** 11/02/2019

**Medical Practitioner's name:** Dr Jason KLEIN

**GMC reference number:** 4204420

**Primary medical qualification:** MB ChB 1995 University of Leeds

**Type of case** **Outcome on impairment**

Review - Misconduct

Not Impaired

**Summary of outcome**

Suspension revoked

**Tribunal:**

Legally Qualified Chair	Miss Nicola Murphy
Lay Tribunal Member:	Mr Michael Turner
Medical Tribunal Member:	Dr Peter Kyle
Tribunal Clerk:	Mr Rowan Barrett

**Attendance and Representation:**

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr George Hugh-Jones, QC, instructed by RadcliffesLeBrasseur
GMC Representative:	Ms Katie Jones, Counsel

**Attendance of Press / Public**

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

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

### **Overarching Objective**

Throughout the decision making process the tribunal has borne in mind the statutory overarching objective as set out in s1 Medical Act 1983 (the 1983 Act) to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

### **Determination on Impairment - 11/02/2019**

#### **Background**

1. Dr Klein's fitness to practise was first considered by a Medical Practitioners Tribunal ('the 2018 Tribunal') in September 2018.
2. In May 2014, Dr Klein inappropriately accepted a patient's offer of her contact details and contacted her by telephone. Following this incident, he verbally informed a senior colleague that he had not done this, and on June 2014, he created a written record of his account of the patient consultation in which he repeated this dishonesty.
3. The 2018 Tribunal did not consider Dr Klein's actions in contacting the patient by telephone to amount to serious misconduct. It noted however that it demonstrated repeated poor judgement on his part and this conduct fell short of the standards reasonably to be expected of a doctor, but did not amount to.
4. However, the 2018 Tribunal did consider Dr Klein's subsequent dishonesty about these events amounted to serious misconduct. Dr Klein's fitness to practise was found to be impaired as a result of this dishonest conduct, as the 2018 Tribunal considered that this was necessary in order to maintain and promote public confidence in the medical profession and to uphold the standards of conduct expected of doctors.
5. The 2018 Tribunal imposed a period of suspension for four months, which it considered would be sufficient time for Dr Klein to further reflect on his misconduct and its consequences and to fully develop his insight. The 2018 Tribunal suggested that a future reviewing Tribunal would be assisted by seeing evidence that Dr Klein had further developed his insight and that he has kept his medical knowledge and skills up to date.

#### Today's Review Hearing

6. This Tribunal has considered, under Rule 22(1)(f) of the Rules, whether Dr Klein's fitness to practise is currently impaired by reason of his deficient professional

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performance. In so doing, it has taken into account all of the evidence before it and the submissions made by both parties.

### **The Evidence**

7. This Tribunal has been provided with documentation from both parties which included:

- Full determination of Dr Klein's previous MPT hearing
- A Personal Development Plan dated 8 November 2018
- Undated reflective document prepared by Dr Klein
- Certificates of completion of several Continuing Professional Development ('CPD') courses completed by Dr Klein, including two courses relating to professional boundaries and ethics

8. Dr Klein also gave oral evidence to the Tribunal, in which he expanded on the CPD and reflection he had undertaken during the period of suspension.

### **Submissions**

9. On behalf of the GMC, Ms Jones told the Tribunal that the GMC was neutral as to the issue of impairment.

10. On behalf of Dr Klein, Mr Hugh-Jones submitted that Dr Klein's fitness to practise was no longer impaired. He drew the Tribunal's attention to the reflective document and personal development plan, and reminded the Tribunal that the 2018 Tribunal had found this document in particular to be 'impressive'.

11. In relation to Dr Klein's medical knowledge and skills being kept up to date during the time when he was suspended, Mr Hugh-Jones submitted that there was no evidence of deskilling in Dr Klein's case whatsoever. He told the Tribunal that the length of suspension imposed by the 2018 Tribunal had been relatively short and that Dr Klein had regularly read relevant medical journals and other online resources during his suspension.

12. Mr Hugh-Jones submitted that Dr Klein has developed a real understanding of his misconduct and referred the Tribunal to the 2018 Tribunal's assessment that there was no evidence to suggest a likely risk of repetition, inviting the Tribunal to find that there was no longer any real risk of Dr Klein's misconduct being repeated.

### **The Relevant Legal Principles**

13. The Tribunal was reminded by the Legally Qualified Chair 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.

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

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

15. In reaching its decision the Tribunal bore in mind that its primary responsibility is to uphold the statutory overarching objective, which is:

- To protect, promote, and maintain the health, safety, and well-being of the public;
- To promote and maintain public confidence in the medical profession;
- To promote and maintain proper professional standards and conduct for members of that profession.

16. The Tribunal noted that Dr Klein had provided limited documentary evidence that he has kept his knowledge and skills up to date during the period of suspension, however, it was reassured by his oral evidence that he has kept up to date with reading medical journals and online learning. The Tribunal notes in any event that, given the length of the suspension, there is little risk of Dr Klein's knowledge and skills diminishing in that time.

17. The Tribunal noted the evidence of CPD Dr Klein has undertaken in the period of suspension, and was satisfied that these courses have helped him to expand his insight and to recognise and accept his dishonesty.

18. The Tribunal had regard to the detailed reflection document provided by Dr Klein, which it considered to be thorough and sincere. Like the 2018 Tribunal, the Tribunal was impressed by Dr Klein's updated Personal Development Plan, which expanded on the specific circumstances in which his misconduct arose and measures to ensure he would not find himself in a similar situation in future.

19. Having considered the documentary evidence and heard Dr Klein's oral evidence, the Tribunal is satisfied that he has fully reflected on his dishonest conduct and has developed full insight into his wrongdoing and its impact on the reputation of the profession. The Tribunal therefore concluded that, while it is difficult to remediate dishonesty, Dr Klein had taken appropriate and effective steps to do so.

20. Given that Dr Klein has demonstrated meaningful reflection and has developed full insight into his misconduct, the Tribunal is satisfied that the risk of repetition in this case is low.

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21. Bearing all of the above in mind, the Tribunal determined that Dr Klein's fitness to practice is no longer impaired by reason of his misconduct.
22. Having reached this decision, the Tribunal determined to revoke the order of suspension in place on Dr Klein's registration with immediate effect.

**Confirmed**  
**Date** 11 February 2019

Miss Nicola Murphy, Chair