

PUBLIC RECORD

Dates: 22/03/2024

Medical Practitioner's name: Dr John MCCLELLAND

GMC reference number: 4328610

Primary medical qualification: MB ChB 1996 University of Aberdeen

Type of case	Outcome on impairment
XXX	XXX
Review - Misconduct	Impaired
Review - Conviction	Impaired

Summary of outcome
Suspension, 6 months.

Tribunal:

Legally Qualified Chair	Miss Samantha Gray
Lay Tribunal Member:	Ms Liz Daughters
Medical Tribunal Member:	Dr Obadah Ghannam

Tribunal Clerk:	Ms Rachel Horkin
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Attendance and Representation:

Medical Practitioner:	Present, not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Mr Lewis Kennedy, Counsel

Attendance of Press / Public

In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held in 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 Impairment - 22/03/2024

1. At this review hearing the Tribunal now has to decide in accordance with Rule 22(1)(f) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules') whether Dr McClelland's fitness to practise is impaired by reason of misconduct; XXX and a conviction or caution for a criminal offence.

The Outcome of Applications Made during the Impairment Stage

2. On behalf of the GMC, Mr Lewis Kennedy, Counsel made an application for the entirety of the hearing to be held in private in accordance with Rule 41(3)(b) of the Rules. Dr McClelland did not oppose the application. The Tribunal concluded that all three elements of this case were inextricably linked and determined that the hearing would be held entirely in private.

3. This determination will be read in private. However, as this case concerns Dr McClelland's misconduct and a conviction a redacted version will be published at the close of the hearing.

4. Mr Kennedy, made an application for late documentation to be received in accordance with Rule 34(1) of the Rules. Mr Kennedy advised that a XXX Report XXX is available and asked that it be admitted into evidence. Mr Kennedy advised that Dr McClelland has not consented to this report being included in the evidence bundle. Mr Kennedy submitted that there is no prejudice to Dr McClelland to this being included in the bundle. Mr Kennedy advised that it is necessary for XXX to be up to date, and this often leads to them being finalised close to the review hearing.

5. Dr McClelland submitted that he has no objection to the report XXX being admitted into evidence.

6. Mr Kennedy submitted that the GMC has no objection to a statement provided from Dr McClelland at the outset of this hearing being admitted into evidence.

7. In reaching its decision, the Tribunal had regard to Rule 34(1) and had sight of the relevant document at this stage namely the XXX report XXX and the statement from Dr McClelland.

8. The Tribunal noted that in order to accept further evidence at this stage, it must consider the fairness of doing so and the relevance of the evidence, and only admit the evidence where it is considered to be both fair and relevant to the case before it.

9. The Tribunal has borne in mind that neither party objects to the documentation being admitted into evidence and acknowledges that Dr McClelland has already had sight of the XXX. The Tribunal considers that this further documentation will assist the Tribunal in reaching its determination on current impairment. The Tribunal finds that there will be no prejudice to either party in admitting these documents and, taking into account the overarching objective, finds that it is fair and reasonable to admit these documents into evidence.

Background

10. Dr McClelland qualified in 1996 from the University of Aberdeen and went on to become a General Practitioner ('GP').

XXX

11. XXX

12. XXX

13. XXX

14. XXX

15. XXX

16. XXX

17. XXX

The 2021 Tribunal

18. A new XXX MPT hearing commenced in June 2021 ('the 2021 Tribunal'). The 2021 Tribunal was first required to consider two new matters. A conviction in North Tyneside Magistrates Court in August 2019 and a misconduct matter relating to a conditional discharge which was imposed in Ballymena Magistrates' Court in October 2019.

Conviction

19. On 22 August 2019, at North Tyneside Magistrates' Court, Dr McClelland was convicted of committing fraud between June and December 2018. He was sentenced to a community order requiring him to be under a curfew with electronic monitoring for three months and undergo drug rehabilitation requirements. There had been an unusual frequency

of occasions between June and December of 2018 where Dr McClelland had created prescriptions and then deleted them on the patient record computer system in the practice in which he worked. These prescriptions were for controlled drugs such as XXX. An enquiry revealed that this had occurred on 22 occasions and the prescriptions were taken to pharmacies where they were dispensed. At the time of the creation of the prescriptions, Dr McClelland was employed as a GP at Crowhall Medical Practice in Gateshead.

Misconduct

20. On 10 October 2019, Dr McClelland was made subject to an order for conditional discharge for a period of two years in respect of dishonestly making a false representation to an employee of XXX Pharmacy, Ballymena on 17 August 2018, to which he pleaded guilty.

21. The 2021 Tribunal considered Dr McClelland's conviction and misconduct to be serious as both involved dishonesty. It bore in mind that Dr McClelland's dishonesty was perpetuated during XXX. The 2021 Tribunal determined that a finding of impairment by reason of Dr McClelland's conviction and misconduct was necessary.

22. XXX

23. The 2021 Tribunal determined to suspend Dr McClelland from the medical register for a period of 12 months. It considered that Dr McClelland's dishonesty, while difficult to remediate, was remediable in the circumstances of it being XXX. The 2021 Tribunal also directed a review.

The 2022 Tribunal

24. A review hearing was held on 21 June 2022. Dr McClelland admitted that he was not ready to return to clinical practice and that, in his view, a further period of 12 months was required for him to demonstrate insight and that he had remediated the concerns identified in his case.

Conviction and Misconduct

25. In relation to the misconduct matters, whilst the 2022 Tribunal acknowledged that Dr McClelland had taken some positive steps, it took into account that there were a number of very serious matters, such as using the GMC number of another doctor of the same name and deleting patient records. It also appeared there was an escalation of his deception in order to obtain prescription medication for his own personal use. The 2022 Tribunal was of the view that Dr McClelland's dishonest actions had the potential to put patients at serious risk of harm. It concluded that Dr McClelland's actions amounted to serious misconduct. The 2022 Tribunal determined that Dr McClelland's fitness to practise was impaired by reason of his conviction and misconduct.

XXX

26. XXX

27. The 2022 Tribunal considered it necessary and appropriate to suspend Dr McClelland's registration for a further period of 12 months. It considered this period would allow Dr McClelland time to address XXX and to develop further insight and remediation. The 2022 Tribunal was of the view that Dr McClelland's misconduct was not fundamentally incompatible with his continued registration.

The 2023 Tribunal

28. A review hearing was held on 16 June 2023.

XXX

29. XXX

30. XXX

Conviction and Misconduct

31. The 2023 Tribunal has borne in mind that Dr McClelland's misconduct and conviction arose as a direct result of XXX. It took into account the reflective statements submitted by Dr McClelland in which he acknowledged his misconduct and the impact his actions have had on others. The Tribunal acknowledged that Dr McClelland had developed some insight and had demonstrated his remorse. However, it took into account that there were a number of very serious matters such as using the GMC number of another doctor of the same name and deleting patient records. It also appeared there was an escalation of his deception in order to obtain prescription medication for his own personal use. His actions were dishonest and had the potential to put patients at serious risk of harm. The Tribunal concluded that Dr McClelland's actions amounted to serious misconduct.

32. The 2023 Tribunal considered that while Dr McClelland's remediation remains incomplete, it could not be satisfied that there was no risk of him repeating his misconduct. In the circumstances, the Tribunal determined that a finding of impairment by reason of his conviction and misconduct was necessary for the protection 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 the profession.

33. Accordingly, the Tribunal determined that Dr McClelland's fitness to practise remained impaired by reason of his conviction and misconduct.

34. The 2023 Tribunal determined to suspend Dr McClelland's registration for a further 9 months. The 2023 Tribunal directed a review and considered that a reviewing Tribunal would be assisted by the provision of the following information:

- XXX;

- XXX;
- A further reflective statement covering all aspects of his impairment including his misconduct and conviction and the effect of XXX on these;
- Supporting documentary evidence of how he has kept his medical knowledge up to date, including but not limited to CPD course attendance notes, certificates, etc;
- Any other evidence Dr McClelland considers may assist the Tribunal.

Today's Review Hearing

The Evidence

35. The Tribunal received documentation including:

- Emails sent from the GMC to Dr McClelland dated between 31 August 2023 and 20 October 2023 requesting XXX;
- XXX;
- XXX;
- Statement from Dr McClelland dated 22 March 2024;
- XXX;
- XXX.

Submissions

36. On behalf of the GMC, Mr Kennedy reminded the Tribunal of XXX. Mr Kennedy submitted that XXX. The misconduct and conviction impairments remain valid. In relation to his impairment regarding misconduct and conviction, Mr Kennedy reminded the Tribunal that the dishonesty is capable of remediation as it relates to XXX.

37. Mr Kennedy reminded the Tribunal that Dr McClelland has provided an updated statement but that the majority of evidence in this matter comes from XXX. Mr Kennedy stated that Dr McClelland had been candid regarding his own limitations in the statement that he has provided.

38. Mr Kennedy submitted that Dr McClelland's fitness to practise remains impaired by reason of his misconduct.

39. Dr McClelland informed the Tribunal that he has no submissions to make at this time however, he was happy to answer questions. The Tribunal had no questions for Dr McClelland.

The Relevant Legal Principles

40. The Tribunal reminded itself that the decision of impairment is a matter for the Tribunal's judgement alone. As noted above, the previous Tribunal set out the matters that a future Tribunal may be assisted by and these had also been set out by Mr Kennedy in his

submissions. This Tribunal is aware that it is for the doctor to satisfy it that he would be safe to return to unrestricted practise.

41. This Tribunal must determine whether Dr McClelland’s fitness to practise is impaired today, taking into account Dr McClelland’s conduct XXX 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.

The Tribunal’s Determination on Impairment

XXX

42. XXX

43. XXX

44. XXX

45. XXX

46. XXX

47. XXX

48. XXX

49. XXX

50. XXX

51. XXX

Misconduct and Conviction

52. The Tribunal is satisfied that Dr McClelland’s misconduct and conviction arose as a direct result of XXX. The Tribunal is further satisfied that Dr McClelland continues to demonstrate some insight and remorse regarding his misconduct and conviction. However, given XXX and in the absence of Dr McClelland’s reflections of the impact of his offending on the public and the profession as a whole, the Tribunal cannot conclude that his insight is complete.

53. The Tribunal considered that, while Dr McClelland’s insight and remediation remains incomplete, it cannot be satisfied that there was no risk of him repeating his misconduct. In the circumstances, the Tribunal determined that a finding of impairment by reason of his conviction and misconduct, was necessary for the protection 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 the profession.

54. Accordingly, the Tribunal determined that Dr McClelland’s fitness to practise is currently impaired by reason of his conviction and misconduct.

55. This Tribunal has therefore determined that Dr McClelland’s fitness to practise is impaired by reason of misconduct, conviction XXX.

Determination on Sanction - 22/03/2024

56. Having determined that Dr McClelland’s fitness to practise is impaired by reason of misconduct, conviction XXX, the Tribunal now has to decide in accordance with Rule 22(1)(h) of the Rules what action, if any, it should take with regard to Dr McClelland’s registration.

The Evidence

57. The Tribunal took into account the background to the case and the evidence received during the earlier stage of the hearing where relevant to reaching a decision on what action, if any, it should take with regard to Dr McClelland’s registration. It received no further evidence at this stage of the proceedings.

Submissions

58. Mr Kennedy reminded the Tribunal that it should impose the least restrictive sanction possible and drew the Tribunal’s attention to the relevant paragraphs of the Sanctions Guidance. Mr Kennedy submitted that an order of conditions for a period of 18 months would be the most appropriate sanction in this case.

59. He further submitted that the GMC would not object to a further period of suspension as requested by Dr McClelland in his reflective statement. Mr Kennedy submitted that the GMC does not make any submissions regarding an appropriate length of suspension. However, he did state that a 6 month suspension period would be consistent with the reductions made progressively throughout the review process. Mr Kennedy submitted that, given Dr McClelland’s remorse, insight and time since the incident, erasure would be inappropriate in this case.

60. Dr McClelland informed the Tribunal that he has no further comments to make in addition to his written statement. In that statement he suggested that:

“I’m not 100% sure that I would like to terminate my medical career, but I think it more likely than not

...

If I'm in a position to propose anything, I'd like to suggest 3 or 6 months' suspension. This would give me further time to continue very useful discussions with Dr D."

The Tribunal's Determination

61. The decision as to the appropriate sanction to impose, if any, in this case is a matter for this Tribunal exercising its own judgement.

62. The Tribunal has borne in mind the aggravating and mitigating factors. The Tribunal has borne in mind the relevant paragraphs of the SG. The Tribunal has taken into account the aggravating and mitigating factors considered at the previous hearing.

Aggravating

63. Dr McClelland's dishonesty was an aggravating factor. It was repeated, pre-meditated, complex and sustained over a period of time. His actions were an abuse of his professional position and led to a serious criminal conviction.

64. The Tribunal found that Dr McClelland's insight remains incomplete and he has not provided evidence of his remediation. The Tribunal reminded itself that, at the previous review hearing Dr McClelland requested further time to remediate. However, no evidence has been provided today of the steps that he has taken to remediate.

Mitigating

65. The Tribunal acknowledged that a significant mitigating factor was XXX. The Tribunal is satisfied that XXX is intrinsically linked to his conduct and thus outweighs the aggravating factor relating to insight and remediation in this matter.

66. The Tribunal noted that Dr McClelland continues to express regret and remorse in relation to his misconduct.

67. Dr McClelland has XXX and this Tribunal which has demonstrated his developing insight and remediation.

68. Dr McClelland appears to have a stable and supportive network around him.

69. In reaching its decision, the Tribunal took account of the SG. It had borne in mind that the purpose of sanctions was not to be punitive, but to protect patients and the wider public interest, although they may have a punitive effect. It had also taken account of the submissions made by the GMC and by Dr McClelland.

70. Throughout its deliberations the Tribunal applied the principle of proportionality, balancing Dr McClelland's interests with the public interest. It reminded itself that it should only impose the minimum sanction necessary to achieve the over-arching objective. In

deciding what sanction, if any, to impose the Tribunal considered each of the sanctions available, starting with the least restrictive.

No action

71. The Tribunal first considered whether to conclude Dr McClelland's case by taking no action with regard to his registration. The Tribunal has already determined that Dr McClelland's fitness to practise remains impaired by reason of his conviction, misconduct XXX. It determined that, in the absence of any circumstances which could be regarded as exceptional, it would be inappropriate to take no action.

Conditions

72. The Tribunal next considered whether it would be sufficient to impose conditions on Dr McClelland's registration. It has borne in mind that conditions should be appropriate, proportionate, workable and measurable.

73. The Tribunal has borne in mind all relevant paragraphs of the SG and in particular paragraph XXX,

XXX

74. XXX

75. The Tribunal acknowledged that Dr McClelland has requested a further period of suspension and has provided no objective evidence that he has maintained his clinical skills and knowledge.

76. The Tribunal has already determined that Dr McClelland's insight and remediation remains incomplete and that there remains a risk of repetition of the behaviour that led to the initial hearing. The Tribunal also acknowledged that Dr McClelland breached conditions when previously imposed and that he has been out of clinical practice for a period of 5 years.

77. The Tribunal is not satisfied that it has sufficient evidence before it to suggest that an order of conditions would be workable or proportionate to maintain confidence in the profession or maintain proper professional standards. The Tribunal also considers that to impose an order of conditions would not be in Dr McClelland's own interests as, at this time, XXX.

Suspension

78. The Tribunal then considered if an order to suspension is proportionate in these circumstances.

79. The Tribunal has borne in mind paragraphs 91-97 of the SG. In particular paragraph 97,

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

a A serious departure from Good medical practice, but where the misconduct is not so difficult to remediate that complete removal from the register is in the public interest. However, the departure is serious enough that a sanction lower than a suspension would not be sufficient to protect the public.

XXX

80. The Tribunal concluded that, whilst Dr McClelland has developed some insight into his misconduct and XXX, he remains unable to discuss his offending and, as such, has not yet fully remediated his misconduct. The Tribunal also bore in mind Dr McClelland's request for a further period of suspension.

81. The Tribunal has determined to suspend Dr McClelland's registration for a period of 6 months. The Tribunal considers that this period of suspension would allow Dr McClelland time to consider whether he wishes to remain in the medical profession and to demonstrate that he has continued to develop his insight and remediation.

Erasure

82. The Tribunal determined that erasure is not a proportionate sanction in this case. The Tribunal found that Dr McClelland continues to make progress XXX and has expressed remorse for his misconduct. In these circumstances, the Tribunal considers that erasure would be wholly disproportionate.

Review

83. The Tribunal determined to direct a review of Dr McClelland's case. A review hearing will convene shortly before the end of the period of suspension. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr McClelland to demonstrate how he has remediated and developed insight. It therefore may assist the reviewing Tribunal if Dr McClelland provided;

- XXX;
- XXX;
- Documents that would be helpful to show to the reviewing tribunal how the findings of this tribunal have been considered and applied to ensure he is fit to practise;
- Any documentation that Dr McClelland may consider the Tribunal would find helpful in relation to any plan he has to return to work;
- Supporting documentary evidence of how he has kept his medical knowledge up to date, including but not limited to CPD course attendance notes, certificates, etc;

84. Dr McClelland will also be able to provide any other information that he considers will assist.

85. The Tribunal has directed to suspend Dr McClelland's registration for 6 months. The MPTS will send Dr McClelland a letter informing him of his right of appeal and when the direction and the new sanction will come into effect. The current suspension will remain in place during the appeal period.

86. This concludes the case.