

**Record of Determinations –
Medical Practitioners Tribunal**

PUBLIC RECORD



Date: 6 September 2019

Medical Practitioner's name: Dr Justine McINTYRE

GMC reference number: 7037071

Primary medical qualification: MB BS 2009 University of East Anglia

Type of case

Review - Misconduct

Outcome on impairment

Impaired

Summary of outcome

Suspension, 3 months
Review hearing directed

Tribunal:

Legally Qualified Chair:	Ms Fiona Barnett
Lay Tribunal Member:	Ms Elizabeth Daughters
Medical Tribunal Member:	Dr John Garner
Tribunal Clerk:	Ms Esther Morton

Attendance and Representation:

Medical Practitioner:	Not present and not represented
GMC Representative:	Ms Caoimhe Daly, Counsel, instructed by GMC Legal

Attendance of Press / Public

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

Record of Determinations – Medical Practitioners Tribunal

DETERMINATION ON IMPAIRMENT - 06/09/2019

1. This determination contains references to XXX and will be handed down in private. A redacted version will be made available following the conclusion of the hearing.

Background

2. Dr McIntyre qualified as a doctor in the UK in 2009. Following graduation Dr McIntyre moved to New Zealand, where she continued her medical training.

3. In 2017 Dr McIntyre applied to the GMC for UK registration as she wished to practice in the UK during an extended visit to spend time with her family. At the time of application Dr McIntyre was practising in New Zealand as a Surgical Education and Training 2 Orthopaedic Registrar.

4. As part of her application for UK registration Dr McIntyre provided the GMC with a copy of her CV. On this CV, under the heading 'Qualifications and Certificates', Dr McIntyre listed a Postgraduate Diploma in Surgical Anatomy from the University of Otago ('the Diploma'), purportedly obtained in 2011. As part of standard pre-registration checks, Dr McIntyre was asked to provide the GMC with a copy of the Diploma certificate ('the certificate'). A document purporting to be a copy of the certificate was received by the GMC in September 2017.

5. As Dr McIntyre had provided an electronic copy of the certificate, the GMC emailed the University of Otago on 15 January 2018 requesting verification. On 21 January 2018 the GMC received a response from the University of Otago advising that Dr McIntyre had passed three out of four papers required for the Diploma. They added that, as Dr McIntyre had not met all of the requirements for qualification, the Diploma had not been awarded. It was subsequently confirmed by the University of Otago that the certificate submitted by Dr McIntyre to the GMC in support of her application was not the same certificate that had been issued to her by the university.

6. On 15 February 2018 the GMC emailed Dr McIntyre to ask for her comments on this discrepancy. Dr McIntyre responded to the GMC on 16 February 2018 confirming that she had amended the original certificate to imply that she had completed the Diploma. The matter was subsequently referred to the GMC's Fitness to Practise Directorate for further investigation.

February 2019 hearing

7. Dr McIntyre's case was first considered by a Medical Practitioners Tribunal in February 2019 ('the February Tribunal'). At the outset of that hearing Dr McIntyre admitted the facts in full, as follows:

Record of Determinations – Medical Practitioners Tribunal

- That, on 21 August 2017, she made a written application to the GMC for full registration enclosing her CV in which she falsely stated that she had a 'Postgraduate Diploma in Surgical Anatomy (PGDipSA), University of Otago 2011'.
- That, on 7 September 2017, she provided the GMC with a Postgraduate Diploma Certificate in Surgical Anatomy purportedly from the University of Otago in which it stated that she had completed all four papers required for the Diploma.
- That, on or before 7 September 2017, she amended the original Certificate dated 29 April 2014 in which it was stated that she had completed three of the four papers required for the Diploma.
- That she knew that she had not achieved the Diploma at the time of submitting the documents set out above, and at the time of amending the original certificate.
- That her actions, as described above, were dishonest.

8. The February Tribunal found that Dr McIntyre's conduct was a clear breach of the principles set out in *Good Medical Practice* in relation to probity. It considered that her initial dishonesty (including the Diploma on her CV) was compounded by her subsequent decision to amend the original certificate. The February Tribunal found that her actions amounted to serious misconduct.

9. Turning to impairment, the February Tribunal noted that Dr McIntyre had demonstrated some insight into her misconduct, however it was not provided with evidence that she had undertaken remediation or reflected on the matter fully. Given this, it could not be satisfied that she would not repeat her misconduct in future. Accordingly, the February Tribunal found that Dr McIntyre's fitness to practise was impaired by reason of her misconduct.

10. Turning to sanction, the February Tribunal noted that Dr McIntyre's conduct appeared to be an isolated episode of dishonesty for which she had apologised and expressed remorse, and it had regard to the mitigating factors in her case, which included difficulties in her family life. Bearing these factors in mind, the February Tribunal determined to suspend Dr McIntyre's registration for a period of six months. It considered that a period of suspension would serve to mark the seriousness of Dr McIntyre's misconduct, and that a period of six months would allow her sufficient time to reflect and remediate.

11. The February Tribunal set out that any future Tribunal reviewing Dr McIntyre's case may be assisted by the following:

Record of Determinations – Medical Practitioners Tribunal

- Evidence of her insight and remediation;
- A written reflective piece demonstrating that she understands how her misconduct came about, its impact on others, and how she will ensure that there is no repetition;
- Evidence that she has kept her medical skills and knowledge up to date during the period of suspension;
- Testimonial evidence from persons of good standing regarding her conduct.

Today's Hearing

12. The Tribunal had regard to the documentary evidence provided at this hearing, which includes (but is not limited to):

- Correspondence between the GMC and Dr McIntyre
- A letter dated 3 July 2019 from Dr McIntyre's representative, Mr Matthew McClelland QC, confirming that a charge of professional misconduct had been brought against Dr McIntyre by the New Zealand Professional Conduct Committee ('PCC'). Mr McClelland wrote that a hearing had been scheduled before the New Zealand Health Practitioners Disciplinary Tribunal in December 2019.
- An undated reflective statement prepared for the PCC investigation by Dr McIntyre.
- A letter dated 19 August 2019 from Mr McClelland confirming that Dr McIntyre is preparing to sit GP training exams in New Zealand, to take place between September and December of this year. Mr McClelland added that Dr McIntyre is due to commence full-time practice as a GP at a new medical centre in December, and that her new employers are 'fully aware' of both the February Tribunal's findings and the disciplinary charges Dr McIntyre is facing in New Zealand.

Submissions

13. The Tribunal heard oral submissions from Ms Caoimhe Daly, Counsel, on behalf of the GMC.

14. Ms Daly accepted that Dr McIntyre's reflective statement showed evidence of further remediation and insight, but submitted that there was a 'deficit' of additional material as requested by the February Tribunal. Ms Daly submitted that Dr McIntyre had not provided evidence relating to how she had kept her medical skills and knowledge up

Record of Determinations – Medical Practitioners Tribunal

to date, nor had she provided any testimonials from persons of good standing relating to her conduct. Ms Daly opined that this evidence could have been easily provided but that, in its absence, the GMC was unaware of where Dr McIntyre had been working during her period of suspension, the nature of this work, or the nature of any courses undertaken. Further, the lack of testimonial evidence meant that the GMC did not have any updated objective information regarding her contemporaneous conduct.

15. Ms Daly invited the Tribunal to consider the case of *Abrahaem v GMC [2008] EWHC 183 (Admin)* which sets out that, at a review hearing, there is a persuasive burden on the practitioner to demonstrate that they have fully acknowledged, and sufficiently addressed, past impairment. Ms Daly submitted that Dr McIntyre has not discharged this burden and, accordingly, invited the Tribunal to find that her fitness to practise remains impaired by reason of misconduct.

The Tribunal's Determination on Impairment

16. In reaching its decision on impairment the Tribunal bore in mind that its primary responsibility is to the statutory overarching objective, which is as follows:

- 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.

17. The Tribunal first had regard to Dr McIntyre's undated reflective statement prepared for the New Zealand regulator. Its view was that this statement demonstrates that Dr McIntyre's insight has improved since her initial hearing, and provides some background as to how Dr McIntyre came to have committed her misconduct. In this statement Dr McIntyre sets out the steps she has taken (and will continue to take) to reduce the risk of repetition in future; these include recognising the signs of 'burn out', XXX, ensuring she maintains a healthier work environment by balancing her personal and professional responsibilities, changing her career to maintain a better work/life balance, and working part-time to help achieve this balance and minimise the risk of burn out. Dr McIntyre also described the impact that her misconduct has had on her life, her family, and those around her, and she expresses regret and remorse at her actions. On the basis of this reflective statement the Tribunal was satisfied that Dr McIntyre has developed insight, and that the risk of repetition has reduced to some extent.

18. Whilst the Tribunal was encouraged by Dr McIntyre's reflective statement, it noted that there was no objective evidence to corroborate any aspect of it. Given that this case relates to Dr McIntyre's admitted dishonesty the Tribunal would have benefitted from, at least, independent testimonial evidence, particularly from colleagues, attesting

Record of Determinations – Medical Practitioners Tribunal

to her insight and current professional conduct. It noted that the February Tribunal suggested that Dr McIntyre provide this evidence at this review hearing in its determination on sanction. The reflective statement was silent in relation to Continuing Professional Development ('CPD'), and no independent evidence was produced in relation to CPD.

19. The Tribunal also noted a discrepancy between Dr McIntyre's stated intention to work part-time and between Mr McClelland's letter of 19 August 2019 in which he wrote that Dr McIntyre had obtained a full-time GP post. The Tribunal considered this point to be of relevance given the impact that a stressful work environment has had on Dr McIntyre in the past, as well as her stated intention to improve her work/life balance by working part-time. Again, it considered that testimonial evidence or a clarifying statement from Dr McIntyre would have assisted, but no such evidence was forthcoming.

20. The Tribunal further noted that, whilst Dr McIntyre's insight appears to have improved, she has not yet demonstrated insight into the seriousness of providing fraudulent documents to her regulator and the wider impact this could have had on patients, as well as the overall impact on public confidence in the profession and the profession as a whole.

21. The Tribunal acknowledged that Dr McIntyre is not under an obligation to provide the information suggested by the February Tribunal. However, it reminded itself that there is a persuasive burden on Dr McIntyre to satisfy this Tribunal that she is now fit to practise, and the absence of some of this information placed the Tribunal at a disadvantage when considering whether Dr McIntyre has fully remediated her misconduct. Dr McIntyre has been given every opportunity to engage and to provide this Tribunal with objective evidence to support her reflective statement, but she has not done so. Given this lack of corroborating evidence, the Tribunal could not be fully satisfied that Dr McIntyre has sufficiently remediated her past misconduct, and accordingly, it determined that her fitness to practise remains impaired by reason of that misconduct.

DETERMINATION ON SANCTION - 06/09/2019

1. Having determined that Dr McIntyre's fitness to practise remains impaired by reason of her misconduct the Tribunal now has to decide on the appropriate sanction, if any, to impose.

Submissions

2. Ms Daly, for the GMC, submitted that very little has changed since Dr McIntyre's initial hearing. She submitted that, given this is a case involving dishonesty, conditions continue to be both inappropriate and unworkable. Ms Daly reminded this Tribunal that

Record of Determinations – Medical Practitioners Tribunal

the February Tribunal imposed an order of suspension in order to allow Dr McIntyre time to gather evidence to show that her fitness to practise is no longer impaired; she submitted that Dr McIntyre has not done so, and that the concerns identified by the February Tribunal therefore remain. In these circumstances, Ms Daly invited the Tribunal to impose a further period of suspension on Dr McIntyre's registration.

The Tribunal's Determination on Sanction

3. The decision as to the appropriate sanction to impose, if any, is a matter for this Tribunal exercising its own judgment. In reaching its decision the Tribunal has taken account of the Sanctions Guidance ('SG'), and has borne in mind that the purpose of a sanction is not to be punitive, although a sanction may have a punitive effect. The Tribunal has applied the principle of proportionality, weighing Dr McIntyre's interests with the wider public interest.

No Action

4. The Tribunal first considered whether to conclude Dr McIntyre's case by taking no further action. It considered that there were no exceptional or extraordinary circumstances that would warrant it taking no further action, and that doing so would be inappropriate given its findings in relation to impairment.

Conditions

5. The Tribunal next considered whether an order of conditions would be appropriate. In so doing, it bore in mind that any conditions imposed must be appropriate, workable, measurable, and proportionate.

6. The Tribunal bore in mind the nature of Dr McIntyre's misconduct, and it accepted Ms Daly's submission that it is difficult to formulate conditions to address dishonesty. It determined that there were no workable conditions that would sufficiently address Dr McIntyre's dishonesty, particularly in the absence of any contemporaneous information from Dr McIntyre regarding her current circumstances and practice. Even if conditions were workable, the Tribunal determined that, given the nature and seriousness of Dr McIntyre's misconduct, they would not serve to uphold public confidence in the medical profession in line with its statutory overarching objective. Further, there was no information from Dr McIntyre to satisfy the Tribunal that she would be willing to engage with any conditions imposed on her registration.

7. Bearing the above in mind, the Tribunal determined that conditions would not be workable, appropriate, measurable, or proportionate in Dr McIntyre's case.

Suspension

Record of Determinations – Medical Practitioners Tribunal

8. The Tribunal next considered whether to impose a further period of suspension on Dr McIntyre's registration. In so doing it had regard to paragraphs 91 and 92 of the SG, which set out that:

- Suspension has a deterrent effect and can be used to send a signal to the doctor, the profession, and the public about what is regarded as behaviour unbecoming a registered doctor;
- A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration.

9. The February Tribunal determined that a period of six months suspension was necessary to send a signal to the doctor, the profession, and the public to mark the seriousness of Dr McIntyre's misconduct and demonstrate that it would not be tolerated. The February Tribunal also determined that this suspension would allow Dr McIntyre time to provide evidence that she had remediated her misconduct. Dr McIntyre has not provided full evidence of remediation, but the Tribunal determined that a further period of suspension would allow Dr McIntyre another opportunity to gather this evidence. The Tribunal was mindful that she has engaged with this process to some extent and made some progress with her insight. It was therefore satisfied that her misconduct was not fundamentally incompatible with continued registration at this stage.

10. The Tribunal decided that a further period of suspension was required in order to maintain public confidence in the profession and uphold proper standards, whilst providing Dr McIntyre time to provide full evidence of remediation.

Duration

11. The Tribunal determined to impose a further period of suspension of three months. It noted that Dr McIntyre has stated, through her Counsel, that she will soon be sitting her GP exams and that her New Zealand professional conduct hearing is due to be held in December 2019. It determined that a period of three months would ensure that the statutory overarching objective is met, whilst allowing Dr McIntyre time to focus on her exams and her New Zealand conduct hearing, as well as giving her further time to gather the evidence required for her future review hearing.

Review

12. A Tribunal will convene to review Dr McIntyre's case shortly before the end of the period of suspension. Any future Tribunal reviewing Dr McIntyre's case would be assisted by the following:

Record of Determinations – Medical Practitioners Tribunal

- Information about her current employment and training, including CPD evidence;
- Testimonials from persons of good standing commenting, in particular, on her conduct and probity;
- Independent corroboration of the steps she has set out in her reflective statement to reduce the risk of repetition (including XXX, and support from colleagues);
- Evidence that she has insight into the seriousness of providing fraudulent documents to her regulator and the wider impact this could have on patients and wider public confidence in the profession.

13. This suspension will take effect 28 days from when written notice of this decision is deemed to have been served upon Dr McIntyre. The current order of suspension remains in place during this 28 day appeal period. If an appeal is made, the current order of suspension on her registration will remain in force until the appeal has concluded.

14. That concludes Dr McIntyre's case.

Confirmed

Date 06 September 2019

Ms Fiona Barnett, Legally Qualified Chair

Record of Determinations – Medical Practitioners Tribunal

ANNEX A

DETERMINATION ON SERVICE & PROCEEDING IN ABSENCE - 06/09/2019

1. Dr McIntyre is neither present nor represented at this hearing. The Tribunal had regard to the service bundle provided by the GMC, which indicates that the MPTS sent Notice of Hearing to Dr McIntyre on 24 July 2019. This notice letter was sent to Dr McIntyre's registered postal and email addresses, as well as to her legal representative, Mr Matthew McClelland QC, and his legal secretary. This notice letter sets out that:

'If you do not attend, and are not represented, the Tribunal can hear and make a decision about your case in your absence, under Rule 31 of the GMC (Fitness to Practise) Rules. If your fitness to practise is found to be impaired a sanction could be imposed on your registration in your absence...'

2. The Tribunal noted the email relay receipt which indicates that the electronic copy of the notice letter was received by Mr McClelland's email server at 20.48 on 24 July 2019. The Tribunal also had regard to the DHL tracking documentation which indicates that the notice letter was signed for by 'JUSTIN M' on 29 July 2019, as well as to the pre-hearing GMC information letter dated 26 July 2019 sent to Mr McClelland via post and via email, and the corresponding email delivery receipt.

3. Bearing the above in mind, the Tribunal was satisfied that the MPTS and the GMC have made all reasonable efforts to serve notice of today's hearing on Dr McIntyre. Accordingly, it determined that service had been effected in accordance with the Rules.

4. Turning to whether it is appropriate to proceed in Dr McIntyre's absence, the Tribunal noted that - whilst there has been no direct response to the MPTS Notice of Hearing - Mr McClelland has been in touch with the GMC as recently as 19 August 2019. In addition, Mr McClelland has provided the GMC with Dr McIntyre's reflective statement. From this, the Tribunal inferred that Dr McIntyre was aware of the hearing and has waived her right to attend, with the expectation that the hearing will proceed in her absence. In reaching this decision, the Tribunal noted that Dr McIntyre is legally represented.

5. The Tribunal further bore in mind that Dr McIntyre did not attend her initial hearing, and that it has not received any request for an adjournment. Dr McIntyre has also made no request to attend the hearing via video-link or telephone. Accordingly, the Tribunal determined that adjourning today's hearing would be of no benefit to Dr McIntyre, nor would it be in the wider public interest. Bearing all of the above in mind, the Tribunal determined to proceed with this hearing in Dr McIntyre's absence.