

PUBLIC RECORD

Date: 27/11/2020

Medical Practitioner's name: Dr Kalomoira KEFALA
GMC reference number: 7516273
Primary medical qualification: Ptychio Iatrikes 1997 National Capodistrian University of Athens

Type of case	Outcome on impairment
Review - Misconduct	Impaired

Summary of outcome
Suspension, 6 months.
Review hearing directed

Tribunal:

Lay Tribunal Member (Chair)	Mr Nathan Moxon
Medical Tribunal Member:	Dr Josanne Holloway
Medical Tribunal Member:	Dr Maria Broughton

Tribunal Clerk:	Mr Sean Connor
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Attendance and Representation:

Medical Practitioner:	Not present and not represented
GMC Representative:	Ms Anya Horwood, 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.

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 - 27/11/2020

The Outcome of Applications Made during the Impairment Stage

1. The Tribunal granted the GMC's application, made pursuant to Rules 40 and 31 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that notice had been served on Dr Kefala and that it was content to proceed in her absence. The Tribunal's full decision on the application is included at Annex A.

Background

2. The Tribunal does not propose to rehearse the background in detail, beyond the following brief summary:
3. Dr Kefala qualified in Greece in 1997 from the National Capodistrian University of Athens. Dr Kefala is a Paediatrician specialising in Neonatal Pneumo-allergies. In 2013 Dr Kefala received a Master of Sciences from the University of Athens.
4. The allegation which led to Dr Kefala's hearing can be summarised as follows, on 16 March 2009 in the Thessaloniki Court of First Instance, Dr Kefala was convicted of bodily injury caused by negligence. She was sentenced to five months imprisonment, suspended for three years and ordered to pay costs of 85 euros. Dr Kefala failed to disclose this conviction to the University of Southampton when applying for a post-graduate course and again in a student self-disclosure of criminal record.
5. On 20 March 2018 Dr A Senior Clinical Teacher at the University raised concerns to the GMC.

The 2019 Tribunal

6. Dr Kefala's case was initially considered by a Medical Practitioners Tribunal ('MPT'), at a hearing which took place between 1 August 2019 to 9 August 2019 ('the 2019 Tribunal').
7. The 2019 Tribunal determined that Dr Kefala's actions represented a clear breach of GMP in relation to the need to act with honesty. The Tribunal noted that no patient safety concerns were raised and that there were no concerns in relation to Dr Kefala's clinical work. However, through her dishonest conduct Dr Kefala fell far short of the standards of conduct reasonably to be expected of a doctor so as to amount to serious misconduct.
8. The 2019 Tribunal concluded that Dr Kefala's actions did amount to misconduct in that her conduct fell far short of the standards of conduct reasonably to be expected of a doctor.
9. The 2019 Tribunal considered that Dr Kefala had not developed full insight in relation to her honesty and there was a small risk of repetition. Dr Kefala's actions demonstrated a lack of probity and a serious departure from the principles of GMP which members of the medical profession and the public would easily find deplorable. The Tribunal considered that Dr Kefala's actions were unacceptable and that she failed to uphold the proper standards of conduct and behaviour expected of a doctor.
10. The 2019 Tribunal determined Dr Kefala's dishonest conduct brought the profession into disrepute and public confidence in the profession would be undermined if a finding of impairment was not made. The Tribunal was satisfied that a finding of current impairment was necessary to protect the wider public interest.
11. The 2019 Tribunal determined to suspend Dr Kefala's registration for a period of 3 months. The Tribunal considered that this length of time was sufficient to mark the seriousness with which it viewed Dr Kefala's two incidents of dishonesty. The Tribunal was satisfied that such a sanction would be sufficient to promote and maintain both public confidence in the medical profession, and standards and conduct for members of that profession. The Tribunal also considered that a suspension of this length would ensure that Dr Kefala had adequate time in which to develop full insight into her misconduct and take the steps necessary to remediate and reflect on it.
12. The 2019 Tribunal directed Dr Kefala for the review hearing to demonstrate how she has remediated and developed full insight. The 2019 Tribunal said it may assist this Tribunal if Dr Kefala provide:

- A reflective statement;
- Evidence of Continuing Professional Development to demonstrate that she has maintained her medical skills and knowledge;
- Any other information Dr Kefala feels would assist the Tribunal.

High Court Appeal

13. On 17 September 2019, Dr Kefala appealed the decision made by the Tribunal under section 40 of the Medical Act 1983 in respect of the Tribunal's finding of dishonesty. Dr Kefala did not appeal against the finding of impairment itself nor the sanction. Dr Kefala sought an order that the Decision be quashed. Mr Justice Morris reviewed the appeal and concluded that the Tribunal decision from 2019 was not wrong on the facts and therefore dismissed the appeal.

Today's Review Hearing

14. This Tribunal has today reviewed Dr Kefala's case and has considered, in accordance with Rule 22(1)(f) of the Rules, whether her fitness to practise remains currently impaired.

The Evidence

15. This Tribunal has taken into account all of the documentary evidence submitted by the GMC and on Dr Kefala's behalf, since the last review hearing which included, but was not limited to:

- MPTS record of determination dated 1 to 9 August 2019;
- Bundle of documentation regarding Dr Kefala's appeal from her representative dated September 2019;
- Email from Mr B advising of high court decision – dated 18 September 2020 - Kefala Judgment Hand Down Final 18 September 2020;
- Email to Dr Kefala from the GMC dated 21 September 2020;
- Telephone call note to Dr Kefala dated 22 September 2020;
- Letter to Dr Kefala from the GMC dated 22 September 2020;
- Email to Monarch Solicitors from the GMC dated 25 September 2020.

Submissions

16. Ms Horwood submitted that Dr Kefala's fitness to practise remains impaired by reason of her misconduct.

17. Ms Horwood argued Dr Kefala had previously been dishonest in providing false information on two separate forms, which was a breach of a fundamental tenet of the medical profession. To remediate, Dr Kefala would have to demonstrate that she had insight into her actions. However, Ms Horwood submitted that Dr Kefala had not provided the Tribunal with any evidence of an acknowledgement of fault, insight, or remediation into her actions and behaviour which brought the profession into disrepute.
18. Ms Horwood submitted that Dr Kefala had not provided the Tribunal with any of the information outlined by the 2019 Tribunal which would assist the proceedings today. She submitted that to maintain public confidence in the profession and to maintain proper professional standards of the profession, Dr Kefala had a duty to comply with the 2019 Tribunal's suggestions.

The Tribunal's Determination on Impairment

19. 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.
20. The Tribunal had regard to all of the evidence before it and the submissions made by Ms Horwood. The Tribunal does not seek to go behind the findings of the 2019 Tribunal.
21. The Tribunal took account of the 2019 Tribunal's recommendations as to the information which might assist this review Tribunal on the issue of Dr Kefala's fitness to practise. The Tribunal considered these to be clear recommendations as to the evidence or information that may assist this Tribunal.
22. The Tribunal accepted the Legally Qualified Chair's advice that the burden is on Dr Kefala to show that her fitness to practise is no longer impaired.
23. Dr Kefala had not presented the Tribunal with any evidence of insight or remediation. Neither has she provided any evidence of her understanding of the importance of honesty and probity amongst medical professionals.

24. In all the circumstances, and in light of Dr Kefala’s disengagement from these regulatory proceedings, and her having not provided any evidence of insight and remediation, the Tribunal determined that her fitness to practice remained impaired by reason of her misconduct in order to:
- b. promote and maintain public confidence in the medical profession, and
 - c. promote and maintain proper professional standards and conduct for members of that profession.

Determination on Sanction - 27/11/2020

1. Having determined that Dr Kefala’s fitness to practise remains impaired by reason of her 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 to reaching a decision on sanction. No further evidence was adduced at this stage.

Submissions

3. On behalf of the GMC, Ms Horwood directed the Tribunal’s attention to the Sanctions Guidance. (November 2019 edition) (‘SG’) when making its determination. Ms Horwood made submissions on the appropriate and proportionate sanction in this case. Ms Horwood submitted that given Dr Kefala’s continued lack of engagement and her failure to acknowledge the 2019 Tribunal’s findings of misconduct a further period of suspension would be the appropriate sanction.
4. Ms Horwood submitted that the misconduct was sufficiently serious that the 2019 Tribunal imposed an order of suspension on Dr Kefala’s registration for 3 months.
5. Ms Horwood submitted that, in the light of the Tribunal’s findings, taking no action in this case would be inappropriate because this is not a case with exceptional circumstances. She submitted that conditions would not be appropriate because there is no evidence before the Tribunal that Dr Kefala has developed insight or remediation into her misconduct and any imposed conditions would not be workable.
6. Ms Horwood submitted that, importantly, Dr Kefala has shown that she is not interested in engaging with these proceedings or addressing her misconduct. The Tribunal has no evidence

to suggest that she is willing to remediate. Ms Horwood submitted that Dr Kefala has demonstrated a persistent lack of insight.

The Relevant Legal Principles

7. 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 the determination of the 2019 Tribunal, together with its own finding on impaired fitness to practise. In making its decision, it had regard to the SG.
8. Throughout its deliberations the Tribunal bore in mind that the purpose of sanctions is not to be punitive, even though they may have a punitive effect. The Tribunal had regard to the statutory overarching objective, which is to:
 - a. protect, promote and maintain the health, safety and well-being of the public,
 - b. promote and maintain public confidence in the medical profession, and
 - c. promote and maintain proper professional standards and conduct for members of that profession
9. The Tribunal was mindful that sanctions are not imposed to punish or discipline doctors, but they may have a punitive effect. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Kefala's interests with the public interest.
10. The Tribunal accepted the advice of the Legally Qualified Chair ('LQC'). It reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision on sanction is a matter for the Tribunal exercising its own independent judgment.

The Tribunal's Determination on Sanction

11. In reaching its decision, the Tribunal has given careful consideration to relevant sections of both the SG and Good Medical Practice ('GMP'). It has borne in mind that the main reason for imposing sanctions is to protect the public, pursuant to the overarching objective set out in section 1 of the Medical Act 1983 (as amended). The Tribunal was mindful that sanctions are not imposed to punish or discipline doctors, but they may have a punitive effect.
12. Throughout its deliberations, the Tribunal considered the overarching objective. The Tribunal has borne in mind that in deciding what sanction, if any, to impose, it should consider all the sanctions available, starting with the least restrictive. The Tribunal has had regard to the principle of proportionality, weighing the interests of the public against those of Dr Kefala.

13. The Tribunal considered that was an absence of any effort by Dr Kefala to engage with the regulator and no evidence of any efforts to remediate her misconduct, express remorse, gain insight or acknowledge fault.

No Action

14. In coming to its decision as to the appropriate sanction, if any, to impose in Dr Kefala's case, the Tribunal first considered whether to take no action. The Tribunal considered no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances.
15. The Tribunal has already identified that Dr Kefala has not demonstrated evidence of insight or evidence of remediation. It therefore has determined that taking no action would be neither appropriate, proportionate, nor in the public interest.

Conditions

16. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Kefala's registration. It has borne in mind that any conditions must be appropriate, proportionate, workable and measurable.
17. The Tribunal had regard to the evidence of Dr Kefala's persistent lack of engagement with the GMC and lack of evidence of insight into her misconduct. This Tribunal noted that there was no evidence before it to suggest that Dr Kefala would comply with any conditions it imposed.
18. The Tribunal determined that conditions would not be appropriate, workable or sufficient to address the public interest in this case.

Suspension

19. The Tribunal then considered whether imposing a further period of suspension on Dr Kefala's registration would be appropriate and proportionate.
20. The Tribunal had regard to the history of this case. It noted the aggravating and mitigating factors from the 2019 Tribunal and Dr Kefala's persistent lack of meaningful engagement with the GMC and her failure to address or remediate the misconduct. It took into account that she has not worked in the UK. Further the Tribunal noted that despite being suspended for three months in August 2019, this has not prompted Dr Kefala to re-engage with her professional regulator.

21. The Tribunal took into account the matters which brought Dr Kefala before the 2019 Tribunal and it had regard to the principle of proportionality. It noted that the 2019 Tribunal considered that the misconduct had the potential to be remediable. The Tribunal considered whether it could meet its duty under the overarching objective by imposing a further period of suspension, which might afford Dr Kefala more time to engage with her regulator.
22. The Tribunal gave careful consideration to the question of whether a shorter or longer period of suspension was required to uphold the overarching objective. The Tribunal concluded that a period of 6 months was the appropriate period of time that would meet this objective.

Review Hearing Directed

23. The Tribunal has directed that, shortly before the end of the period of Dr Kefala's suspension, her case will be reviewed by a Medical Practitioners Tribunal. This Tribunal considered that a future reviewing Tribunal would be assisted by:
- A reflective statement (The Tribunal advised that any reflections need not be an admission of guilt, but should demonstrate an understanding of the importance of medical professionals acting with honesty and probity);
 - Evidence of Continuing Professional Development to demonstrate that she has maintained her medical skills and knowledge;
 - Any other information Dr Kefala feels would assist the Tribunal.

Appeal

24. The effect of this direction is that, unless Dr Kefala exercises her right of appeal, this decision will take effect on the date upon which the previous order would otherwise expire. The suspension currently imposed on her registration will remain in place until the outcome of any appeal is known. Additionally, if Dr Kefala chooses to appeal against this decision the current suspension will remain in force until the appeal is determined
25. That concludes this case.

Confirmed

Date 27 November 2020

Mr Nathan Moxon, Chair

ANNEX A – 27/11/2020

Service and Proceeding in Absence – 27/11/2020.

Service

1. Dr Kefala was neither present nor legally represented at this hearing.
2. Ms Horwood made submission in relation to service and referred the Tribunal to the Service bundle from the General Medical Council ('GMC'). She drew attention to the following correspondence from the GMC to Dr Kefala:
 - Email, dated 21 September 2020 asking Dr Kefala if she would like to continue receiving emails from the GMC to the email address;
 - Telephone notes, dated 22 September 2020 logging attempts made to contact Dr Kefala;
 - Letter, dated 22 September 2020 requesting information for this review hearing;
 - Email, dated 25 September 2020 to Monarch Solicitors asking if the firm were still representing Dr Kefala;
 - GMC information letter and proof of attempted delivery, dated 2 November 2020;
 - Notice of hearing and proof of delivery, dated 3 November 2020;
 - Letter, dated 21 October 2020.
3. Ms Horwood drew attention to the screenshot showing Dr Kefala's registered postal address. Email address and telephone number. To this date, Dr Kefala has not communicated with the GMC.
4. Ms Horwood provided a brief history of the case and submitted that the GMC had taken all reasonable steps to serve notice in accordance with the relevant guidance as per the aforementioned correspondence.

5. Ms Horwood submitted that the Tribunal should be satisfied that service had been effected in accordance with the Rules.
6. Having considered the evidence before it, the Tribunal determined that all reasonable efforts had been taken to serve notice of this hearing on Dr Kefala in accordance with Rule 40 the Rules, and paragraph 8 of Schedule 4 to the Medical Act 1983, as amended.
7. The Tribunal agreed that all reasonable efforts had been made to contact Dr Kefala. This included contacting Monarch Solicitors who had represented Dr Kefala at the previous hearing.

Proceeding in absence

8. The Tribunal then went on to consider whether it would be appropriate to proceed with this hearing in Dr Kefala's absence pursuant, to Rule 31 of the Rules. The Tribunal bore in mind that the discretion to proceed in the absence of a doctor should be exercised with the utmost care and caution, balancing the interests of the doctor with the wider public interest.
9. Ms Horwood submitted that there was a clear lack of cooperation from Dr Kefala. However, she did acknowledge that Dr Kefala may have been unaware of the date of this review hearing and that is something for the Tribunal to consider. Ms Horwood invited the Tribunal to consider whether an adjournment would resolve the matter but questioned the suitability of any timescale considering the lack of contact with Dr Kefala.
10. Ms Horwood invited the Tribunal to proceed with the hearing in Dr Kefala's absence. She submitted that there is a public interest in making sure hearings take place in a reasonable time.
11. In deciding whether to proceed with this hearing in Dr Kefala's absence, the Tribunal carefully considered all the evidence before it, and Ms Horwood's submissions.
12. The Tribunal had regard to the cases of *R v Jones [2003] 1 AC HL* and *GMC v Adeogba [2016] EWCA Civ 162*, which outlined the factors which should be taken into consideration before deciding to proceed in a doctor's absence.
13. The Tribunal was aware that it had a duty to proceed in a timely manner with a fair hearing, taking the utmost care and caution. It considered the nature and circumstances of Dr Kefala's non-attendance; that Dr Kefala has not asked for an adjournment; whether

it can test the evidence provided in the absence of the doctor; the information that the Tribunal has been presented with about Dr Kefala; and the overarching objective.

14. The Tribunal found that it was the responsibility of Dr Kefala to ensure her correspondence details, as held by her regulator, are correct and up to date.
15. In all the circumstances, the Tribunal was of the view that Dr Kefala has either failed to update the GMC with her contact details or maintained the same contact details but has failed to respond to correspondence. Either way, she has demonstrated a lack of cooperation with the GMC and engagement with these review proceedings. She will have known that a hearing was to be listed prior to the expiry of her suspension. It noted that there was nothing before the Tribunal to suggest that an adjournment would secure Dr Kefala's attendance in the future and that she had not requested an adjournment.
16. The Tribunal was mindful that it should not draw an adverse view of Dr Kefala based on her non-attendance.
17. In the circumstances, the Tribunal determined that it was appropriate to proceed in Dr Kefala's absence. It concluded that it was fair and in the public interest to do so.