

**Dates:** 25/02/2019

**Medical Practitioner's name:** Dr Klaus-Armin BARTSCH

**GMC reference number:** 6092891

**Primary medical qualification:** State Exam Med 2000 Ludwig-  
Maximilians Universität München

**Type of case**

Review - Conviction / Caution  
XXX

**Outcome on impairment**

Impaired  
XXX

**Summary of outcome**

Erasure

**Tribunal:**

Legally Qualified Chair	Mr Graham White
Lay Tribunal Member:	Mr Mick Turner
Medical Tribunal Member:	Dr Theva Nagarajah
Tribunal Clerk:	Mrs Sam Montgomery

**Attendance and Representation:**

Medical Practitioner:	Not present and not represented
Medical Practitioner's Representative:	NA
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 private.

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

### **Determination on Impairment - 25/02/2019**

#### **Hearing in Private**

1. At the commencement of this hearing the Tribunal agreed, in accordance with Rule 41(3)(b) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004 (the "Rules"), that the hearing should be in private XXX. However, as this case also involves convictions a redacted determination will be published at the conclusion of the hearing.

#### **Background**

2. The Tribunal has noted the background of Dr Bartsch's case which was first considered by a Fitness to Practise Tribunal in October 2016 (the 2016 Tribunal).

3. Dr Bartsch was a Consultant Cardio-thoracic Anaesthetist at Birmingham Queen Elizabeth Hospital. He self-referred to the GMC in February 2015 as on 21 January 2015 at Warwick Magistrates Court Dr Bartsch pleaded guilty to a charge of assault XXX. As a result of his convictions, Dr Bartsch was ordered to pay a fine of £960.00. On 7 December 2015 at Warwick Magistrates Court Dr Bartsch pleaded guilty to possession of a Class A drug and theft in relation to his taking of a syringe containing Fentanyl from the hospital where he was working. He was sentenced to 18 weeks in custody, suspended for 18 months with a supervision order which included an unpaid work requirement of 150 hours. He was also ordered to pay a victim surcharge and costs.

4. XXX.

5. The 2016 Tribunal determined that Dr Bartsch's fitness to practise was impaired by reason of XXX his convictions. It also determined to suspend Dr Bartsch's registration for a period of 12 months.

6. A review hearing was scheduled to take place in November 2017, however that Tribunal concluded that the notice of hearing had not been properly served upon Dr Bartsch in accordance with Rule 40(2) of the Rules. The hearing was therefore adjourned and the suspension of Dr Bartsch's registration was extended for three months to allow for another hearing to be listed and for notice to be served.

7. A review hearing took place in February 2018 (the 2018 Tribunal). That Tribunal noted that Dr Bartsch had not provided any information, despite the suggestions made by the 2016 Tribunal that evidence of reflection, remediation, Continuing Professional Development (CPD), XXX would be of assistance. In the circumstances the 2018 Tribunal could not be satisfied that there was no risk of repetition of previous behaviour XXX. The 2018 Tribunal therefore determined that Dr Bartsch's fitness to practise was impaired by reason of his convictions XXX. That Tribunal also determined to suspend his registration for a period of 12 months.

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8. Dr Bartsch was advised that the next review Tribunal might be assisted by receiving the following:

- Evidence of Dr Bartsch's further reflection on his convictions and the impact on public confidence in the profession,
- Evidence of how Dr Bartsch has reflected on the risks his behaviours posed to patients and the general public,
- Evidence that Dr Bartsch has kept his medical knowledge and skills up to date, such as studying relevant journals, online learning, attending lectures or seminars.
- XXX,
- Any other information that Dr Bartsch feels would assist the reviewing tribunal in assessing his fitness to practise.

### **Today's Review Hearing**

9. This Tribunal has today reviewed Dr Bartsch's case and has considered, in accordance with Rule 22(f) of the Rules, whether his fitness to practise is impaired. In so doing it has considered the submissions made by Ms Jones, Counsel, on behalf of the GMC.

### **Evidence**

10. The Tribunal has been provided with documentation which included, but was not limited to:

- Full determinations of Dr Bartsch's previous MPT hearings;
- Correspondence from the MPTS to Dr Bartsch;
- Correspondence from the GMC to Dr Bartsch, XXX.

### **Submissions**

11. The Tribunal has considered the submissions made by Ms Jones, Counsel, on behalf of the GMC.

12. Ms Jones submitted that there has been no further information from Dr Bartsch since the last hearing; he has not provided evidence of reflection, that he has kept his medical knowledge up to date XXX. Ms Jones submitted that it is clear that this Tribunal cannot be satisfied that there is no risk of repetition of the behaviour which led to the convictions and public confidence in the profession would be undermined if a finding of impairment was not made in the circumstances of the case.

13. Ms Jones submitted that Dr Bartsch has failed to provide any information either as suggested by the last Tribunal or at all, and therefore his fitness to practise remains impaired by reason of his convictions XXX.

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### **The Relevant Legal Principles**

14. The Tribunal’s decision as to whether Dr Bartsch’s fitness to practise is impaired is a matter for the Tribunal’s judgement alone. In a review case the persuasive burden falls upon the doctor to demonstrate that all the concerns identified have been adequately addressed, and that remediation has taken place.

15. The Tribunal must determine whether Dr Bartsch’s fitness to practise is impaired today. In so doing, it has taken into account his conduct at the time of the allegations, together with any relevant factors since then, such as whether the matters are remediable, have been remedied and are highly unlikely to be repeated.

16. Throughout its deliberations, the Tribunal has borne in mind the statutory overarching objective, which includes the need to:

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

### **The Tribunal’s Decision on Impairment**

17. The Tribunal notes that the 2018 Tribunal imposed a further period of suspension to give Dr Bartsch the opportunity to re-engage with the GMC and the regulatory process and to provide XXX, as well as evidence to demonstrate any insight that he has gained. However, this Tribunal finds that Dr Bartsch has failed to provide any evidence of insight and remediation. XXX.

18. The Tribunal noted that Dr Bartsch’s last communication was with the GMC in 2016. It therefore has no evidence to assist it regarding XXX any progress made in addressing the concerns previously raised in relation to his convictions. Given Dr Bartsch’s persistent failure to engage with his professional regulator and in the absence of up-to-date evidence regarding Dr Bartsch’s current XXX insight or remediation into his convictions, the Tribunal is bound to conclude that Dr Bartsch’s fitness to practise remains impaired by reason of his convictions XXX.

19. The Tribunal considers that all three limbs of the overarching objective are engaged in this case and that a finding of impairment is necessary to protect patients, the wider public interest and to maintain proper professional standards in the profession.

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### **Determination on Sanction - 25/02/2019**

1. Having determined that Dr Bartsch's fitness to practise is impaired by reason of his convictions XXX, the Tribunal has considered the submissions made by Ms Jones, Counsel, on behalf of the General Medical Council (GMC), regarding the appropriate sanction, if any, that should be imposed on his registration.
2. In summary, Ms Jones submitted that the appropriate sanction, given the finding that Dr Bartsch's remains impaired, is one of at least suspension. She submitted that there is no evidence of any remediation at all from Dr Bartsch and no evidence in respect of insight. She referred to the previous findings made of a risk of a repetition of behaviour given there is no evidence that any of the identified concerns have been addressed.
3. XXX. Ms Jones also referred to Dr Bartsch's correspondence of 2016 in which he stated that he did not wish to practise in the UK.
4. The Tribunal is aware that the decision as to the appropriate sanction, if any, to impose on Dr Bartsch's registration is a matter for this Tribunal exercising its independent judgment. In reaching its decision, the Tribunal has taken account of the current Sanctions Guidance (the guidance).
5. Throughout its deliberations, the Tribunal considered its 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, and to promote and maintain proper professional standards and conduct for the medical profession. The Tribunal has also borne in mind that the purpose of a sanction is not to be punitive, but to protect patients and the public interest, although it may have a punitive effect.

### **Taking no action**

6. The Tribunal considered whether to conclude Dr Bartsch's case and take no action. It determined that given its finding on impairment it would be neither sufficient, proportionate or in the public interest to take no action on Dr Bartsch's registration.

### **Conditions**

7. The Tribunal next considered whether it would be appropriate to impose a period of conditions on Dr Bartsch's registration. It has borne in mind that any conditions must be appropriate, proportionate, workable and measurable.
8. Given Dr Bartsch's failure to engage with his professional regulator, the Tribunal has no up-to-date evidence as to Dr Bartsch's XXX insight into his conviction. In the circumstances the Tribunal considers that it would not be possible to formulate appropriate and practical conditions. The Tribunal has therefore

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determined that conditions would not be a sufficient, appropriate or a proportionate response.

### **Suspension**

9. The Tribunal considers Dr Bartsch's convictions, relating to violence and dishonesty, are serious. In particular it was concerned regarding the theft of a syringe from the hospital where he held the position of Consultant Cardio-thoracic Anaesthetist, and the associated possession of a Class A drug. XXX.

10. Dr Bartsch was expressly advised of the evidence he should provide to assist the Tribunal reviewing his case and to assure it that he has addressed his shortcomings. However, Dr Bartsch has not engaged with the GMC since 2016 when he stated that he had no intention of practising in the UK. Therefore there is no evidence of reflection, insight, remediation or of how he has kept his clinical knowledge up-to-date. The Tribunal determined that in the circumstances the risk of a repetition of behaviour remained.

11. The Tribunal considered whether it should afford Dr Bartsch a further opportunity to engage with the GMC and to provide evidence of insight and remediation. In light of his failure to do this during the period of suspension, despite the clear advice he had received, the Tribunal is not persuaded that there is any realistic prospect that such further opportunity would have a positive outcome. In all the circumstances, the Tribunal has determined that it would be neither appropriate nor sufficient to further suspend Dr Bartsch's registration. By reference to paragraph 97(g) of the Guidance, the Tribunal cannot be satisfied that Dr Bartsch '...has insight and does not pose a significant risk of repeating behaviour.'

### **Erasure**

12. The Tribunal therefore determined that it is proportionate and appropriate to erase Dr Bartsch's name from the Medical Register in order to protect patients from harm and to maintain public confidence in the profession. In reaching its decision the Tribunal had regard to:

- the serious nature of the convictions;
- XXX;
- the persistent lack of engagement;
- the risk to patients given the lack of evidence regarding Dr Bartsch's current clinical competence,

13. The Tribunal also had regard to paragraph 109 of the guidance which sets out factors which may indicate when erasure is the appropriate sanction. Those relevant in this case are:

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“a. A particularly serious departure from the principles set out in *Good Medical practice* where the behaviour is fundamentally incompatible with being a doctor,

...

d. Abuse of position/trust,

g. Offences involving violence....,

h. Dishonesty, especially where persistent and/or covered up

...

j. Persistent lack of insight into the seriousness of their actions or the consequences.”

14. The MPTS will write to Dr Bartsch notifying him of this decision, his right of appeal, and confirming the date on which his name will be erased from the Medical Register if he does not exercise his right of appeal. The previous sanction will remain in place until the further sanction takes effect or until any appeal has been determined.

15. That concludes this case.

**Confirmed**

**Date** 25 February 2019

Mr Graham White, Chair

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**ANNEX A – 25/02/2019**

### **Application on Service and Proceeding in the Absence of Dr Bartsch**

#### Service

1. Dr Bartsch is neither present nor legally represented at this hearing. The Tribunal has considered whether notification of this hearing has been properly served upon Dr Bartsch.
2. Ms Jones, Counsel, on behalf of the GMC, submitted that notice of today's hearing has been properly served. She provided the Tribunal with a Service bundle which included, but was not limited to:
  - a screen shot of Dr Bartsch's registered address;
  - a path finder email, dated 7 January 2019;
  - the GMC Information Letter, dated 11 January 2019, which was sent to Dr Bartsch's registered address;
  - a proof of delivery note for the GMC letter, dated 17 January 2019, which states 'Left Letter Box';
  - the MPTS Notice of Hearing, dated 16 January 2019, which was sent to Dr Bartsch's registered address;
  - a proof of delivery note for the MPTS letter, dated 18 January 2019; which states 'Left Letter Box'.
3. Ms Jones submitted that the GMC has done all that is required to serve the notice of hearing on Dr Bartsch. She reminded the Tribunal that the onus is upon Dr Bartsch to maintain an up-to-date registered address and contact details.
4. Having considered the evidence before it, the Tribunal was satisfied that all reasonable efforts have been made to serve Dr Bartsch with notice of this hearing in accordance with Rules 20 and 40 of the GMC's (Fitness to Practise Rules) Order of Council 2004, as amended ('the Rules'), and paragraph 8 of Schedule 4 to the Medical Act 1983, as amended.

#### Proceeding in Dr Bartsch's absence

5. The Tribunal then went on to consider whether it would be appropriate to exercise its discretion to proceed with this hearing in Dr Bartsch's absence, pursuant to Rule 31 of the Rules. The Tribunal was conscious 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.
6. Ms Jones invited the Tribunal to proceed with the hearing in Dr Bartsch's absence. She submitted that the GMC has done all that is required to serve notice on Dr Bartsch and it is clearly appropriate to proceed in his absence. She informed

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the Tribunal that the GMC has had no communication from Dr Bartsch and she noted that he did not attend the original hearing.

7. The Tribunal considered the efforts made by the GMC to inform Dr Bartsch of today's hearing, including service by post and an attempt to contact Dr Bartsch by email. It considers that Dr Bartsch has a professional obligation to ensure that the GMC is aware of his up-to-date contact details.

8. The Tribunal has borne in mind that Dr Bartsch did not attend the original hearing or the review hearing and he has not engaged with the GMC to provide the evidence as requested by the previous Tribunal. It considers that there has been a persistent failure to engage with the GMC. Furthermore, it noted that Dr Bartsch has not made an application to adjourn and, given his failure to engage with his professional regulator, the Tribunal concluded that an adjournment of these proceedings would be unlikely to serve any useful purpose.

9. The Tribunal has fully considered Dr Bartsch's interests and the implications of proceeding in his absence. It decided that reasonable attempts had been made to contact Dr Bartsch to remind him of this review hearing and to request the provision of evidence as stipulated by the 2018 Tribunal. In the absence of any response from Dr Bartsch, the Tribunal has determined that it is in the public interest and in Dr Bartsch's interests to proceed with the hearing in his absence.

10. The Tribunal wishes to emphasise that it draws no adverse inference from Dr Bartsch's absence from these proceedings.