

Date: 03/02/2020

Medical Practitioner's name: Dr Ngozi GBENOBA

GMC reference number: 4545435

Primary medical qualification: Lekarz 1988 Poznan

Type of case **Outcome on impairment**

Review - Misconduct

Not Impaired

Summary of outcome

Suspension to expire

Tribunal:

Legally Qualified Chair	Mrs Laura Paul
Lay Tribunal Member:	Ms Wanda Rossiter
Medical Tribunal Member:	Dr Shazad Amin

Tribunal Clerk:	Mr David Salad
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Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Simon Blakebrough, Counsel, instructed by Cartwright King Solicitors
GMC Representative:	Mr Peter Byrne, 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

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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 - 03/02/2020

1. The Tribunal 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 Gbenoba's fitness to practise is impaired by reason of misconduct.

Background

2. Dr Gbenoba gained his primary medical qualification ('Lekarz') in Poznan, Poland in 1988 and has practised in the NHS since 1993. At the time of the events leading to the Allegation, Dr Gbenoba was practising as a locum Consultant Gastroenterologist at Bedford Hospital ('the Hospital').

3. At a Medical Practitioners Tribunal hearing which took place in September 2019 ('the First Tribunal'), Dr Gbenoba admitted to the full Allegation at the outset of the hearing. The First Tribunal therefore found facts proved as follows:

4. Whilst working at the Hospital, Dr Gbenoba completed an Endoscopy Request Form dated 20 April 2018 ('the Form') for Patient A. He wrote on the Form that Dr B was Patient A's named Consultant. Dr Gbenoba did not inform Dr B that he had requested the endoscopy for Patient A or that he had provided Dr B's details as the named Consultant on the Form. He knew that he did not have Dr B's permission to request the endoscopy for Patient A and therefore his actions with regard to the Form were dishonest.

5. Dr Gbenoba initiated Patient A's admissions to the Hospital's Day Treatment Unit for iron transfusions on a number of dates ('the Admissions'). He named Dr B as the treating Consultant for the Admissions and did not inform Dr B that he had named him as the treating Consultant for the Admissions. When requesting the endoscopy and iron transfusions Dr Gbenoba involved himself in the treatment of Patient A, with whom he had a close personal relationship.

6. Dr Gbenoba was dishonest in that he deliberately failed to follow the Hospital's Overseas Patient Policy, seeking the endoscopy and iron transfusions

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when he knew that Patient A was an overseas patient who was not eligible for free NHS care.

7. The First Tribunal considered that honesty and integrity is a fundamental tenet of the profession and that Dr Gbenoba's conduct constituted a significant departure from Good Medical Practice. It concluded that his dishonest conduct fell so far short of the standards reasonably to be expected of a doctor as to amount to misconduct which is serious.

8. With regard to impairment, the First Tribunal considered that Dr Gbenoba's statements about these matters to the Bedford Hospital NHS Trust made it quite clear that Patient A's health was his chief concern and he would repeat the behaviour should the situation arise again. The Tribunal was concerned that these statements demonstrated only partial insight. It had received no further evidence of insight and therefore concluded that there remained a real risk of repetition. It considered that public confidence in the medical profession would be undermined if it did not make a finding of impairment and that a finding of impairment was also necessary to promote and maintain proper professional standards of conduct of members of the medical profession.

9. At the sanction stage, Dr Gbenoba gave oral evidence and apologised unreservedly for what had happened, stating that he would not act in the same way again and explained the steps that he would take if presented with the same situation in the future.

10. The First Tribunal was satisfied that a period of suspension was the appropriate sanction to mark the serious nature of Dr Gbenoba's misconduct. It considered that, while the misconduct was serious, Dr Gbenoba's dishonesty was at the lower end of the spectrum. The Tribunal accepted that the two acts of dishonesty were linked and that Dr Gbenoba's dishonesty was not persistent.

11. The First Tribunal determined to suspend Dr Gbenoba's registration for a period of four months. It considered that this amount of time would allow Dr Gbenoba to fully reflect on his misconduct, undertake relevant remediation and develop his insight. It considered that this period would also serve the public interest by maintaining public confidence in the medical profession and promoting and maintaining proper professional standards and conduct for the members of the profession. However, the First Tribunal also had regard to the public interest in not seeking to deprive the public of an otherwise competent doctor.

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12. In directing a review of Dr Gbenoba's case, the First Tribunal was of the view that it may assist the reviewing Tribunal if he provided:

- *A written reflective statement on his misconduct and the steps he has taken in respect of remediation. This could include:*
 - *reflection on any courses on probity, whether attended in person or online*
 - *reflection on any articles or journals read which have informed his level of insight*
- *Evidence that Dr Gbenoba has maintained his clinical skills and that his CPD is up to date.*
- *Any further evidence which may assist the Tribunal.*

The Evidence

13. The Tribunal has taken into account all the evidence received, both oral and documentary.

14. Dr Gbenoba provided a personal statement of reflection and also gave oral evidence at the hearing.

15. In addition, the Tribunal received documentary evidence which included, but was not limited to:

- the determinations of the First Tribunal;
- correspondence between the GMC, MPTS and Dr Gbenoba and his legal representatives (26 September 2019 – 17 January 2020);
- testimonial letters provided by former colleagues of Dr Gbenoba;
- certificates of attendance at courses on gastroenterology, acute and general medicine and endoscopy (November – December 2019).

Submissions

16. On behalf of the GMC, Mr Byrne, Counsel submitted that impairment of Dr Gbenoba's fitness to practise was a matter for the Tribunal. He told the Tribunal that the GMC was neutral on the matter.

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17. On behalf of Dr Gbenoba, Mr Blakebrough, Counsel, submitted that Dr Gbenoba's fitness to practise is no longer impaired and that he should be allowed to continue in his practice. He reminded the Tribunal that Dr Gbenoba had admitted to the Allegation in full at the First Tribunal, including to acting dishonestly. He drew the Tribunal's attention to the view of the First Tribunal that Dr Gbenoba's dishonesty was '...at the lower end of the spectrum.' He told the Tribunal that Dr Gbenoba's actions were not carried out for his own personal gain and were triggered by him being 'blindsided' by Patient A's illness at the time.

18. Mr Blakebrough submitted that Dr Gbenoba had remediated his misconduct to some extent through paying back approximately half of the money for Patient A's treatment. He said that Dr Gbenoba intended to pay back the remainder of this money as soon as he was able. He told the Tribunal that Dr Gbenoba had practised in the UK for a lengthy period and had never previously found himself before a Medical Practitioners Tribunal. He stated that the case had been a salutary experience for Dr Gbenoba and had impacted on him heavily both emotionally and financially. He stated that any queries the Tribunal may have had from the wording of Dr Gbenoba's personal statement of reflection had been clarified today and that he can and should be permitted to resume practice.

The Relevant Legal Principles

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

20. This Tribunal must determine whether Dr Gbenoba's fitness to practise is impaired today, taking into account his conduct 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

21. In reaching its decision on impairment, the Tribunal first considered Dr Gbenoba's reflection on his misconduct and his level of insight into it. Having read Dr Gbenoba's personal statement of reflection, which referred to '...a momentary lack of judgement', the Tribunal asked questions during his oral evidence in order to clarify this statement with respect to his level of insight. It was satisfied that Dr Gbenoba eventually accepted

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that this was not a 'momentary lack of judgement' within the accepted meaning of the phrase and that his errors had persisted over a matter of several weeks.

The Tribunal considered that Dr Gbenoba was clearly affected by the emotive situation that faced him when he learned that Patient A required medical treatment for a condition that was within his own specialty and therefore facilitated that treatment. The Tribunal considered that Dr Gbenoba's actions should be judged in that context, noting that his dishonest acts were not carried out for personal financial gain.

22. The Tribunal noted that Dr Gbenoba expressed his embarrassment at his actions and made a clear statement that he would never repeat them. The Tribunal accepted his evidence. It noted that Dr Gbenoba had not completed a course on probity, stating that he had been unable to find a suitable one. However, having heard Dr Gbenoba's evidence on his re-reading of Good Medical Practice, the Tribunal was satisfied that he now understood clearly that, unless there is an urgent clinical need, he should not be involved in the treatment of those with whom he has a close personal relationship. Further Dr Gbenoba accepted that he acted dishonestly in his actions. In addition, the Tribunal gave weight to the testimonials provided on Dr Gbenoba's behalf by former colleagues which attest to his character. These testimonials, along with a previous lack of findings of impaired fitness to practise, suggest that his actions in this case were out of character.

23. The Tribunal was satisfied that Dr Gbenoba's reflection on and insight into his actions were now adequate and it was therefore satisfied that the risk of Dr Gbenoba repeating his actions was negligible. The Tribunal took into account that no clinical concerns were raised in this case, and that Dr Gbenoba has completed a number of clinical courses in order to keep his knowledge and skills up to date.

24. Having regard to its statutory overarching objective, the Tribunal was satisfied that Dr Gbenoba's insight into his actions, and their impact on the reputation of the profession in the eyes of the public, is sufficient. It was also satisfied that Dr Gbenoba now has a significantly clearer understanding of the standards and conduct expected of members of the profession in the relevant areas. On the basis of the evidence placed before it, the Tribunal concluded that Dr Gbenoba has sufficiently addressed the concerns raised in the previous findings of impairment. In all the circumstances, the Tribunal determined that Dr Gbenoba's fitness to practise is no longer impaired.

25. The Tribunal has determined not to revoke the suspension on Dr Gbenoba's registration with immediate effect under Section 35D(5)(d) of the Medical Act. It will

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instead allow the suspension in place on his registration to run its course and expire on 28 February 2020. In making this decision, the Tribunal has taken into account that the First Tribunal imposed a suspension of four months to demonstrate to Dr Gbenoba, the profession and the public that his misconduct was unacceptable. It considered that it would therefore be inappropriate to revoke the suspension before that four month period is complete.

26. That concludes this case.

Confirmed

Date 03 February 2020

Mrs Laura Paul, Chair