

PUBLIC RECORD

Dates: 04/05/2021 - 24/05/2021

Medical Practitioner's name: Dr Nikolay TSAKOV
GMC reference number: 7035438
Primary medical qualification: Magister (Physician) 1999 Medical Academy Sofia

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Impaired

Summary of outcome

Conditions, 12 months.
Review hearing directed

Tribunal:

Legally Qualified Chair	Mr Andrew Lewis
Lay Tribunal Member:	Ms Jacqueline Telfer
Medical Tribunal Member:	Dr John Garner
Tribunal Clerk:	Miss Racheal Gill

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Matthew McDonagh, Counsel, instructed by Medical Protection Society
GMC Representative:	Mr Alan Taylor, 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 Facts - 17/05/2021

Background

1. Dr Tsakov qualified with a Magister (Physician)- from the Medical Academy of Sofia, in 1999. He has been on the GMC specialist register for Otolaryngology since 2009, since when he has worked in a number of hospitals in the UK, both as a locum speciality doctor and as a locum consultant, in ear, nose and throat (ENT) medicine.

2. The events which are the subject of Dr Tsakov's hearing, occurred during an almost 2 year period between November 2016 and September 2018, when he was working as a locum doctor at 4 trusts in the United Kingdom.

3. In November 2016, Dr Tsakov was working as a locum consultant in ENT at **NHS Fife**. Medical Student A was a medical student on a two week ENT placement at Victoria Hospital in Kircaldy. During a clinic, between seeing patients, it is alleged that Dr Tsakov showed Medical Student A the photograph of himself holding an air gun to patients and said, among other things, that, the increase in incidents of candida was due to *"men drinking too much from the furry cup"*, and that the name of a patient on the clinic list, *"sounded like they worked for Al Qaeda"*.

4. In October and November 2017, Dr Tsakov worked as a locum consultant in ENT for the **North West Anglia NHS Foundation Trust**, at Hinchingsbrooke Hospital. It is alleged that he said to a pregnant colleague *"Is that what happens when you sleep with no knickers on?"*. It is alleged that shortly afterwards the clinical lead spoke to him and warned him not to make remarks of that sort.

5. It is further alleged that, in November 2017, Dr Tsakov failed to take heed of that warning and, during a clinic, showed Deputy Sister D and Health Care Assistant E a picture on his computer of a number of naked women lying on top of each other with their legs open and their genitalia visible. He also showed Health Care Assistant E a music video on his mobile

phone which contained semi-naked men and women. It is also alleged that during the same clinic he suggested to a patient that she needed to lose weight by saying that she *“could do with having a bout of diarrhoea”*.

6. On 1 December 2017, Dr Tsakov began work as a locum consultant at Braid Valley Hospital in Ballymena, Northern Ireland, which is part of **Northern Health and Social Care Trust**. It is alleged that he told Nursing Sister F that he was staying at a refugee camp in Antrim. He is then alleged to have shown her a picture on his mobile phone of a toy rabbit with an erect penis.

7. A week later, Dr Tsakov was taking a clinic with Nursing Sister F. It is alleged that he was distracted during the clinic by making arrangements to collect his car from a garage, thereby causing delays to patients, asked Nursing Sister F to give him a lift to collect the car during the clinic and spoke to sister F in an intimidating manner.

8. Between July 2018 and September 2018, Dr Tsakov worked as a locum specialist registrar at the **Rotherham NHS Foundation Trust**. It is alleged that, at a clinic on his second day at the hospital, Dr Tsakov advised a patient with sinus problems to *“buy some vodka and snort it”* and asked an elderly patient if they *“snorted cocaine”* and laughed, stating *“you can tell me, we used to do this in clinic”*.

9. In September 2018, Dr Tsakov was working at the same hospital, in a clinic with Health Care Assistant G, who had recently suffered a bereavement. It is alleged that he told her she reminded him of *“a German Nazi with blonde hair and green eyes”* and repeated this remark to a colleague of hers.

10. It is further alleged that, at a clinic on 6 September 2018, he used a metal syringe from a display cabinet to remove a stone lodged in the ear of a 13 year old child, when this syringe was neither sterile nor authorised for use.

11. On 13 September 2018, Dr Tsakov treated a five-year-old boy who had attended clinic for a grommet check-up. A nurse, a medical student and the boy’s mother were present at the clinic. After failing to remove the grommets with forceps, it is alleged that Dr Tsakov treated the boy roughly by pulling him towards him so that he fell onto his body, and then shaking his head vigorously in an attempt to dislodge the grommets.

The Outcome of Applications Made during the Facts Stage

12. The Tribunal granted, in part, an application on behalf of Dr Tsakov, made pursuant to Rule 34(1) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to exclude a number of passages from witness statements. The Tribunal's full decision on the application is included at Annex A.

13. The Tribunal granted the GMC's application, made pursuant to Rule 17(6) of the Rules, in respect of amendments to the Allegation, to add the word 'semi' in paragraph 2b(ii) to read as 'semi-naked' and the removal of the word 'hire' in paragraph 3b(ii). The application was not opposed by Mr McDonagh. The Tribunal's full decision on the application is included at Annex B.

14. The Tribunal granted the GMC's application, made pursuant to Rule 17(6) of the Rules, to amend paragraphs 6 and 7 of the Allegation. The application was not opposed by Mr McDonagh. The Tribunal's full decision on the application is included at Annex C.

The Allegation and the Doctor's Response

15. The Allegation made against Dr Tsakov is as follows:

That being registered under the Medical Act 1983 (as amended):

NHS Fife

1. In November 2016, whilst working as a locum at NHS Fife, you told Medical Student A:
 - a. that you showed a photograph of yourself holding an air gun to patients, or words to that effect, and laughed about doing so;
Admitted and found proved
 - b. that the increase in incidents of candida was due to "*men drinking too much from the furry cup*", or words to that effect;
Admitted and found proved
 - c. whilst reading a clinic list, that the next patient "*sounded like they worked for Al Qaeda*", or words to that effect;
Admitted and found proved
 - d. that you had been in trouble for making inappropriate comments previously and had completed a course to be "*more PC*", or words to that effect.
Admitted and found proved

North West Anglia NHS Foundation Trust

2. Whilst working as a locum at North West Anglia NHS Foundation Trust:
- a. in October 2017, you:
 - i. stated to a pregnant colleague, Ms B, “...Is that what happens when you sleep with no knickers on?”, or words to that effect; **Admitted and found proved**
 - ii. met with Dr C, following the incident outlined at 2(a)(i) above, and were warned about making inappropriate comments to colleagues; **Admitted and found proved**
 - b. on 24 November 2017, you:
 - i. showed Deputy Sister D and Health Care Assistant E a picture on a computer screen of a number of naked women on top of each other with their legs open and their genitalia visible; **Admitted and found proved**
 - ii. showed Health Care Assistant E a music video on your mobile phone which contained semi-naked men and women; **Amended under rule 17(6)**
Admitted and found proved
 - iii. suggested to a patient that she needed to lose weight by saying to her that she “*could do with having a bout of diarrhoea*”, or words to that effect;
To be determined
 - c. you failed to take heed of Dr C’s warning referenced at paragraph 2(a)(ii) because of your actions at paragraph 2(b).
Admitted and found proved

Northern Health and Social Care Trust

3. Whilst working as a locum at Northern Health and Social Care Trust:
- a. on 1 December 2017, you:

- i. said to Sister F that you were staying in “*a refugee camp at Antrim Area Hospital*”, or words to that effect;
Admitted and found proved
 - ii. showed Sister F and another staff nurse a picture of a toy rabbit with an erect penis on your mobile phone;
Admitted and found proved
- b. on 8 December 2017, you:
- i. used clinic time to make personal travel arrangements, thereby causing delays to patients;
To be determined
 - ii. asked Sister F to give you a lift to collect a ~~hire~~ car in the middle of a clinic, whilst patients were waiting to be seen;
Amended under rule 17(6)
To be determined
 - iii. spoke to Sister F with a raised voice and in an intimidating manner.
To be determined

The Rotherham NHS Foundation Trust

4. Between July 2018 and 13 September 2018, whilst working as a locum at The Rotherham NHS Foundation Trust, you:
 - a. advised a patient with sinus problems to “*buy some vodka and snort it*”, or words to that effect;
To be determined
 - b. asked an elderly patient if they “*snorted cocaine*” and laughed, stating “*you can tell me, we used to do this in clinic*”, or words to that effect;
To be determined
 - c. told a Healthcare Assistant G that she reminded you of “*a German Nazi with blonde hair and green eyes*”, or words to that effect.
To be determined
5. On 6 September 2018, you:

- a. used a metal syringe taken from a display cabinet ('the syringe') to squirt water into a patient's ear canal;
Admitted and found proved
 - b. ignored requests from Sister H not to use the syringe, as it was not:
 - i. sterile;
Admitted and found proved
 - ii. a piece of equipment that was authorised for use at that time.
Admitted and found proved
6. On 13 September 2018, during a consultation with Patient I, you:
- a. pulled Patient I towards you, causing him to fall against your torso and knee;
To be determined
 - b. attempted to remove grommets from Patient I's ears by shaking Patient I's head vigorously from side to side;
To be determined
 - c. failed to obtain verbal consent from Patient I's mother for the procedure described at 6(b) above ~~in terms of:~~
Amended under Rule 17(6)
Admitted and found proved
 - i. ~~verbal consent from Patient I's mother;~~
Admitted and found proved
Amended under Rule 17(6)
 - ii. ~~the willing cooperation of Patient I.~~
Admitted and found proved
Amended under Rule 17(6)
7. Your actions at paragraphs 6(a) and 6(c) above caused Patient I distress:
Amended under Rule 17(6)
Partially admitted and found proved in relation to 6(b) and (c)
 - a. ~~unnecessary fear~~
Amended under Rule 17(6)

~~b. — distress.~~

The Admitted Facts

16. At the outset of these proceedings, through his counsel, Mr McDonagh, Dr Tsakov made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

The Facts to be Determined

17. In light of Dr Tsakov's response to the Allegation, the Tribunal is required to determine whether the remaining facts are found proved.

Witness Evidence

18. On behalf of the GMC, the Tribunal received written statements and heard oral evidence from the following witnesses:

- Deputy Sister D, by telephone link;
- Nurse K, ENT Nurse, by video link;
- Health Care Assistant G, by video link;
- Sister H, ENT/Maxillo-facial Sister, by video link;
- Ms L, Health Care Assistant, by video link;
- Nurse M, ENT Staff Nurse at the time of the events to which her evidence relates, by video link;
- Health Care Assistant E, by video link;
- Ms J, Patient I's mother, by video link;
- Dr N, a medical student at the time of the events to which her evidence relates, by video link;
- Dr O, Clinical Lead for the ENT department at the time of the events alleged at paragraphs 5 and 6 of the Allegation, by video link;
- Sister F, Outpatients Department Sister, by video link ;
- Ms P, GMC paralegal at the time of the events, in person.

19. The Tribunal also received evidence on behalf of the GMC, in the form of witness statements from the following witnesses, who were not called to give oral evidence:

- Medical Student A, dated 22 October 2020;
- Ms B, Senior Audiologist and Tinnitus Counsellor, dated 31 July 2019;
- Dr C, ENT surgeon and Clinical Lead for ENT, 31 July 2019.

20. Dr Tsakov provided his own witness statement, dated 30 March 2021, and also gave oral evidence at the hearing.

Expert Witness Evidence

21. The Tribunal also received expert evidence on behalf of the GMC from Mr Q, a consultant ENT surgeon. Mr Q provided a report dated 28 August 2019, and a supplementary report dated 8 March 2021. Mr Q also gave oral evidence at the hearing via video link. Mr Q assisted the Tribunal in understanding whether or not Dr Tsakov's care of Patient I at paragraph 6 of the Allegation, fell below, or seriously below, the standard expected of a doctor in Dr Tsakov's position.

Documentary Evidence

22. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included but was not limited to:

- Extract from Medblogs, dated December 2016;
- Handwritten notes of Sister H, dated 6 September 2018;
- Photographs taken by Sister H, dated October 2020;
- Minutes of a meeting with Dr Tsakov, dated 13 September 2018;
- Notes and emails, typed by a number of witnesses at or near the time of the events they witnessed and referred to below under each paragraph;
- Email correspondence, various dates;
- Notes of from Ms P, relating to the taking of Ms L's witness statements;
- Extracts from Dr Tsakov's Rule 7 response;
- Dr Tsakov's Curriculum Vitae (CV).

The Tribunal's Approach

23. In reaching its decision on facts, the Tribunal bore in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Tsakov does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e. whether it is more likely than not that the alleged events occurred.

The Tribunal's Analysis of the Evidence and Findings

24. The Tribunal considered each outstanding paragraph of the Allegation separately and evaluated the evidence relating to each paragraph in order to make its findings on the facts. However, the Tribunal records the following observation, which relates to all the matters it decided. The witnesses in this case gave evidence to the Tribunal of events that occurred between 2 ½ and 3 ½ years ago. The Tribunal was confident that each of the witnesses to the events giving rise to the Allegation, was trying their best to help the Tribunal. Nevertheless, the Tribunal was aware that memories fade over time and placed particular weight on notes recorded by witnesses near the time of the alleged events.

Paragraph 2(b)(iii)

25. The Tribunal heard the evidence of Deputy Sister D and Health Care Assistant E, who gave evidence of a clinic at which they had worked with Dr Tsakov on 27 November 2017. Both recorded their concerns in writing on the same day, in a document that was before the Tribunal. The Tribunal also heard evidence from Dr Tsakov.

26. The Tribunal noted that Deputy Sister D recorded that Dr Tsakov *“also suggested to a female patient that she needed to lose some weight, by telling her she could do with having a bout of Diarrhoea.”* Health Care Assistant E recorded that *“Mr Tsakov also told a female patient that ‘her frame could handle some diarrhoea’, implying the lady needed to lose some weight.”* Neither witness recorded the context in which the remark was made. In cross examination, Deputy Sister D very properly accepted that Dr Tsakov could have said *“tolerate a bout of diarrhoea”* although that was not quite how she remembered it. Health Care Assistant E told the Tribunal that, understandably, she could not remember if Dr Tsakov had said *“tolerate a bout of diarrhoea”*.

27. Dr Tsakov's evidence was that he accepted that he made a comment about diarrhoea, but his comment was a response to the patient's queries about antibiotics and how they may cause diarrhoea. He told the Tribunal that he had said that the patient *“could tolerate diarrhoea”* and was only trying to answer the patient's concerns. In his written response to the Allegation (Rule 7 Statement) Dr Tsakov accepted that his comment was inappropriate.

28. The Tribunal took into account the evidence that the patient's consultation was due to a sinusitis referral, for which antibiotics were appropriate and one of the side effects of antibiotics could be diarrhoea. Neither witness had noted any context of the remark in their contemporaneous notes, perhaps because neither was there throughout the whole of the conversation or consultation. The Tribunal found that there must have been some context to Dr Tsakov's remark and accepted that the context which he recalled was the most likely.

29. The Tribunal concluded, that while Dr Tsakov’s remark was inappropriate because it referred to the patient’s weight, there was not sufficient evidence to support a finding that it was made in order to suggest that she needed to lose weight. Therefore, it found allegation 2(b)(iii) not proved.

Paragraph 3(b)(i)

30. The Tribunal heard the evidence of Sister F, who was the Outpatient’s Department Sister at a clinic where Dr Tsakov was the locum consultant on 8 December 2017. She recorded her concerns in a written document within a few days of the clinic she attended with Dr Tsakov. That document was before the Tribunal.

31. Sister F recorded that Dr Tsakov had told her at the beginning of the clinic that he had to collect his car and required to finish his clinic “*sharp*”. She observed that in the morning clinic, there were delays because Dr Tsakov ran over the patient allocated appointment times, which she acknowledged had nothing to do with his car issues. However, during the afternoon, she observed that Dr Tsakov, “*appeared very distracted regarding the car hire and taxi arrangements and was attempting to contact the taxi company and car hire company during his clinic, which prolonged the patient delays at clinic.*”

32. Dr Tsakov accepted that he was concerned because his car was at a garage, and he needed to recover it to attend work the following Monday. He agreed that he had checked his phone and tried to make telephone contact with a garage, during the afternoon. Nevertheless, he did not accept that he had caused any delays to the clinic. He told the Tribunal that the delays that occurred were due to patients having complicated and time consuming problems. He told the Tribunal that no patients had been disadvantaged during that clinic.

33. The Tribunal accepted that there were many factors at play during the clinic day that could have contributed to delays in the clinic. It has not been provided with a breakdown of timings to show the precise effect of Dr Tsakov being distracted by his concerns for his car. Accordingly, the Tribunal does not find evidence of significant delay or any prejudice to patients. Nor did it find that Dr Tsakov deliberately misled it when he said that he did not add to delays.

34. Nevertheless, the Tribunal found that Dr Tsakov was unaware of the effect of his actions and Sister F is correct in her observation that Dr Tsakov “*prolonged the patient delays at the clinic*”. The Tribunal found that it would be surprising if Dr Tsakov’s watching his

telephone and making calls, had not added to the delays. Having considered submissions, the Tribunal was satisfied that the paragraph of the Allegation does not allege that Dr Tsakov's concerns were the only cause of delay. Accordingly, the Tribunal found allegation 3(b)(i) proved.

Paragraph 3(b)(ii)

35. The Tribunal accepted the evidence of Sister F that, at 5pm, Dr Tsakov asked her to take him in her car to the car hire company or garage to collect his car, when there were still patients waiting to be seen in the clinic. Dr Tsakov did not dispute this evidence but told the Tribunal that this was an honest mistake because he believed that the clinic was finished. There is no dispute that Dr Tsakov, completed his clinic when Sister F pointed out to him that there were still patients to be seen.

36. The Tribunal accepts the evidence of Sister F that she had already told Dr Tsakov there were patients to be seen but found that he did not absorb that information because of his increasingly agitated state. The Tribunal considered Mr McDonagh's submission that by 5 pm it was no longer "in the middle of a clinic" but almost at the end. The Tribunal found that this was an unduly technical approach to the paragraph in the Allegation and that, properly construed, the expression "in the middle of the clinic" was appropriate to describe any period during the clinic after the beginning but before the end.

37. In light of these findings, the Tribunal found, that although Dr Tsakov, did not intend to ask for a lift before the clinic was completed, he did in fact do so. Accordingly, the Tribunal found paragraph 3(b)(ii) proved.

Paragraph 3(b)(iii)

38. There is no dispute that, when Dr Tsakov feared that he would be unable to collect his car in time to be able to use it for his work the following Monday, he became very agitated. Sister F noted at the time that she "*felt intimidated at this time by his mannerism and with a raised voice*". In her evidence to the Tribunal, she explained that she felt intimidated because she had no way of exiting the room. She accepted that Dr Tsakov was not restricting her movements, but the experience was intimidating.

39. In his Rule 7 statement, Dr Tsakov observed: "*Dr Tsakov apologises for his behaviour, and in particular that Sister F felt intimidated, as he had no intention to intimidate her. On reflection, he understands that as a large man who was stressed and anxious about not having his car for the weekend, he may well have appeared intimidating, and he is very sorry*

for that.” In his evidence Dr Tsakov told the Tribunal that he had apologised for his “hysteria” and admitted that he “may have appeared intimidating”.

40. The Tribunal considered Mr McDonagh’s submission that Dr Tsakov’s behaviour was not objectively intimidating despite the impression of Sister F. He submitted that a large man with a raised voice, who is anxious and genuinely upset, does not amount to an intimidating manner, without more. He reminded the Tribunal that there was no threat, no force, no obstruction and that normal conversation was then resumed.

41. Nevertheless, having heard Sister F and Dr Tsakov’s evidence and their description of the event, specifically the volume of Dr Tsakov’s voice and that he was inadvertently blocking the door and waving his arms around, the Tribunal found that Dr Tsakov’s manner was intimidating, albeit unintentionally. It found that Sister F’s reaction was entirely reasonable. Therefore, it found Paragraph 3(b)(iii) proved.

Paragraph 4(a)

42. In respect of this paragraph of the Allegation, the GMC’s case is that Dr Tsakov made the alleged comments to a patient in an outpatient clinic, between July and September 2018. The GMC relied upon the evidence of Nurse K. She made no note of her observations at the time of the events giving rise to the allegation and first gave a statement to the GMC in October 2020.

43. Dr Tsakov, denied making the alleged comment and told the Tribunal he could think of no reason why he would have. He said that it was not in his repertoire of jokes, and it would harm the patient to snort vodka.

44. The Tribunal had no doubt that Nurse K was doing her best to assist it. However, at this distance of time she, understandably, had no recollection of the context of the remark or indeed any other detail that might assist the Tribunal.

45. In those circumstances, the Tribunal found that the evidence adduced by the GMC fell short of what was necessary to discharge the burden of proving that paragraph of the Allegation. Accordingly, the Tribunal found paragraph 4(a) not proved.

Paragraph 4(b)

46. In respect of this paragraph of the Allegation, the GMC alleged another remark to a patient in an outpatient clinic and again relied only upon the evidence of Nurse K, who did

not make a note of events nearer the time and who was not asked for a statement by the GMC until October 2020.

47. In his written statement, Dr Tsakov denied asking the patient about taking cocaine. However, when it became apparent, during oral evidence, that the patient had a damaged nasal septum, he explained that it was appropriate to ask whether the patient had taken cocaine because that was a common cause of damage to the septum and agreed that he may well have done so on this occasion. The Tribunal accepted that evidence.

48. With regard to speaking about the use of cocaine in clinic, Dr Tsakov explained the position as follows: *“in an attempt at humour, and to try and relax the patients I often explained how in the past we used to use a cocaine spray to numb the nasal mucosa, and when we did that we had people queuing up to have the procedure!”*

49. Having regard to this evidence, the Tribunal found that Dr Tsakov probably asked the patient if he had used cocaine and said words to the effect that cocaine was used at the clinic. However, the clear meaning of that paragraph of the Allegation is that Dr Tsakov told the patient that they used cocaine in the colloquial sense of abusing it. In the absence of more detail and/or a contemporaneous note of what was said, the Tribunal found that there was not sufficient evidence that Dr Tsakov had used the words alleged in the way intended by this paragraph of the Allegation. Accordingly, it found allegation 4(b) not proved.

Paragraph 4(c)

50. The Tribunal heard the evidence of Health Care Assistant G, Ms L and Dr Tsakov. None of the witnesses made a note at or near the time, that Dr Tsakov told Health Care Assistant G that she looked like a Nazi. Health Care Assistant G was the only witness to the alleged remark. Nevertheless, the GMC submitted that her account was largely corroborated by Ms L’s evidence of what Dr Tsakov said to her immediately afterwards.

51. Health Care Assistant G gave evidence that she and Dr Tsakov were alone in a room when he said to her *“you remind me of a Nazi”*. She said that when she challenged him he said, *“you know like a German Nazi with blonde hair and green eyes”* She was asked in cross-examination whether she had not mistaken *“German lady serving at Oktoberfest”* for *“Nazi”*. Nevertheless, she was clear that the expressions were very different, and she had not been mistaken.

52. Ms L gave evidence that she came into the room and Dr Tsakov *“turned to me and said something like “doesn’t she look like a German Nazi?””* They both gave evidence that

Health Care assistant G also spoke to Ms L about this incident when Ms L gave Health Care Assistant G a lift home, later that evening. They both gave evidence that Health Care Assistant G was very upset at being called a Nazi.

53. Dr Tsakov's evidence was that he was aware that Health Care Assistant G had suffered a recent bereavement and appeared depressed. He said that he was *"trying to lighten the mood"*. His evidence was that he said she reminded him of a *"German lady serving beers at Oktoberfest"*. He explained that this remark was partly due to her hair styled in two plaits at the time like a *"Bavarian lady"*. The Tribunal noted that Health Care Assistant G was adamant that she would not style her hair in this way at work and accepted that evidence.

54. The Tribunal considered those matters raised on behalf of Dr Tsakov which had the potential to cast doubt on whether Ms L had been in a position to corroborate Health Care Assistant G's account in the way she described. The Tribunal noted that in her statement relating to paragraph 5 of the allegation, Ms L had said that she had had no other issues with Dr Tsakov. It also saw a copy of the telephone attendance note of her conversation with, Ms P, who was the GMC paralegal who drafted her statement about this allegation. That note does contain all the matters in her statement. However, it begins with these words: *"All I can recall is on day happened I gave her a lift home and when she got in the car she cried and told me what he said something like you remind me of a German Nazi."*

55. The Tribunal asked itself whether it really was more likely than not that she was present when Dr Tsakov repeated to her the words he had used to Health Care Assistant G. However, when Dr Tsakov gave evidence, he confirmed that Ms L came into the room and he repeated to her what he had said to Health Care Assistant G. He said that it was *"doesn't she look like a German lady"*.

56. For those reasons, the Tribunal was confident that Ms L had come into the room and Dr Tsakov had repeated to her what he had said to Health Care Assistant G. Therefore, the only question for the Tribunal was whether it was more likely than not that both witnesses had correctly heard what Dr Tsakov had said or whether it was more likely that both had misheard what he said and mistaken *"German lady who serves beer at the Oktoberfest"* for *"German Nazi"*. The Tribunal was satisfied that the two expressions are very different and did not accept that both witnesses had made the same mistake.

57. Accordingly, the Tribunal rejected Dr Tsakov's account and found paragraph 4(c) of the Allegation proved.

58. Before leaving this paragraph of Allegation the Tribunal records that it did not find that Dr Tsakov had intended to cause the hurt that he did. This view is based on the evidence that Dr Tsakov had taken the trouble to offer his condolences to Health Care Assistant G before this incident. It also accords with Health Care Assistant G's evidence that Dr Tsakov *"didn't even realise that he had done or said anything wrong."* Having watched Dr Tsakov give evidence, the Tribunal formed the view that he had said those words because the thought came into his head and he had spoken without further thought.

Paragraph 7

59. This paragraph of the Allegation was amended near the end of the facts stage and Dr Tsakov admitted that his actions in shaking Patient I's head in an attempt to dislodge the grommets in his ears and not obtaining the consent of the Patient's mother had caused distress to Patient I, not least because Patient I was largely taken by surprise when Dr Tsakov took hold of his head and shook it. Therefore, the only issue that remained for the Tribunal to decide was whether, when Dr Tsakov pulled Patient I towards him causing him to fall against his knee and torso, he contributed to Patient I's distress.

60. The Tribunal had regard to the notes made near the time by Patient I's mother, Dr N (who was present as a medical student at the time) and Nurse M. The Tribunal accepts that after Dr Tsakov had failed to remove the grommets with forceps, there came a time when Patient I was sitting opposite him. The Tribunal also accepts that Dr Tsakov asked Patient I to stand. However, as Patient I was starting to stand, he took hold of his hands or arms in such a clumsy manner as to cause Patient I to fall upon his knee and torso. Dr Tsakov then shook Patient I's head from side to side for about 5 seconds in an effort to dislodge the grommets.

61. Mr McDonagh submitted that the Tribunal should find that it was the shaking of the head without first obtaining the consent of Patient I's mother, that caused the distress.

62. Having heard the accounts of three eyewitnesses and Dr Tsakov, the Tribunal found that the whole incident lasted a matter of seconds and that it would be wholly artificial to separate one aspect from another. The Tribunal found that, realistically, the distress to Patient I was caused by a combination of causing him to fall on Dr Tsakov and shaking his head without the explanation and warning that there would've been if Dr Tsakov had obtained the consent of Patient I's mother.

63. The Tribunal is reassured that this is the correct approach because it is the approach adopted by Mr Q in his report. When giving his opinion of the treatment of Patient I, he summarises the evidence as follows: *"attempting to remove the grommets from the ear canal"*

by grabbing (Patient I), pulling him over, vigorously shaking his head, with or without tapping”.

64. For these reasons the Tribunal found Paragraph 7 proved in relation to paragraph 6 (a), as well as (b) and (c) which have been admitted.

The Tribunal’s Overall Determination on the Facts

65. The Tribunal has determined the facts as follows:

NHS Fife

1. In November 2016, whilst working as a locum at NHS Fife, you told Medical Student A:

- a. that you showed a photograph of yourself holding an air gun to patients, or words to that effect, and laughed about doing so;

Admitted and found proved

- b. that the increase in incidents of candida was due to *“men drinking too much from the furry cup”*, or words to that effect;

Admitted and found proved

- c. whilst reading a clinic list, that the next patient *“sounded like they worked for Al Qaeda”*, or words to that effect;

Admitted and found proved

- d. that you had been in trouble for making inappropriate comments previously and had completed a course to be *“more PC”*, or words to that effect.

Admitted and found proved

North West Anglia NHS Foundation Trust

2. Whilst working as a locum at North West Anglia NHS Foundation Trust:

- a. in October 2017, you:

- i. stated to a pregnant colleague, Ms B, *“...Is that what happens when you sleep with no knickers on?”*, or words to that effect; **Admitted and found proved**

- ii. met with Dr C, following the incident outlined at 2(a)(i) above, and were warned about making inappropriate comments to colleagues;

Admitted and found proved

- b. on 24 November 2017, you:
- i. showed Deputy Sister D and Health Care Assistant E a picture on a computer screen of a number of naked women on top of each other with their legs open and their genitalia visible; **Admitted and found proved**
 - ii. showed Health Care Assistant E a music video on your mobile phone which contained semi-naked men and women;
Amended under rule 17(6)
Admitted and found proved
 - iii. suggested to a patient that she needed to lose weight by saying to her that she “*could do with having a bout of diarrhoea*”, or words to that effect;
Not proved
- c. you failed to take heed of Dr C’s warning referenced at paragraph 2(a)(ii) because of your actions at paragraph 2(b).
Admitted and found proved

Northern Health and Social Care Trust

3. Whilst working as a locum at Northern Health and Social Care Trust:
- a. on 1 December 2017, you:
 - i. said to Sister F that you were staying in “*a refugee camp at Antrim Area Hospital*”, or words to that effect;
Admitted and found proved
 - ii. showed Sister F and another staff nurse a picture of a toy rabbit with an erect penis on your mobile phone;
Admitted and found proved
 - b. on 8 December 2017, you:
 - i. used clinic time to make personal travel arrangements, thereby causing delays to patients;
Determined and found proved

- ii. asked Sister F to give you a lift to collect a ~~hire~~ car in the middle of a clinic, whilst patients were waiting to be seen;

Amended under rule 17(6)

Determined and found proved

- iii. spoke to Sister F with a raised voice and in an intimidating manner.

Determined and found proved

The Rotherham NHS Foundation Trust

- 4. Between July 2018 and 13 September 2018, whilst working as a locum at The Rotherham NHS Foundation Trust, you:

- a. advised a patient with sinus problems to *“buy some vodka and snort it”*, or words to that effect;

Not proved

- b. asked an elderly patient if they *“snorted cocaine”* and laughed, stating *“you can tell me, we used to do this in clinic”*, or words to that effect;

Not proved

- c. told a Healthcare Assistant G that she reminded you of *“a German Nazi with blonde hair and green eyes”*, or words to that effect.

Determined and found proved

- 5. On 6 September 2018, you:

- a. used a metal syringe taken from a display cabinet (‘the syringe’) to squirt water into a patient’s ear canal;

Admitted and found proved

- b. ignored requests from Sister H not to use the syringe, as it was not:

- i. sterile;

Admitted and found proved

- ii. a piece of equipment that was authorised for use at that time.

Admitted and found proved

- 6. On 13 September 2018, during a consultation with Patient I, you:

a. pulled Patient I towards you, causing him to fall against your torso and knee;
Admitted and found proved

b. attempted to remove grommets from Patient I's ears by shaking Patient I's head vigorously from side to side;
Admitted and found proved

c. failed to obtain verbal consent from Patient I's mother for the procedure described at 6(b) above ~~in terms of:~~
Amended under Rule 17(6)
Admitted and found proved

~~iii. verbal consent from Patient I's mother;~~
Amended under Rule 17(6)

~~iv. the willing cooperation of Patient I.~~
Amended under Rule 17(6)

7. Your actions at paragraphs 6(a) and 6(c) above caused Patient I distress:
Amended under Rule 17(6)
Partially admitted and found proved in relation to 6(b) and (c)
Determined and found proved in relation to 6(a)

~~a. unnecessary fear~~
Amended under Rule 17(6)

~~b. distress.~~
Amended under Rule 17(6)

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct. **To be determined**

Determination on Impairment - 20/05/2021

66. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved as set out above, Dr Tsakov's fitness to practise is impaired by reason of misconduct.

The Evidence

67. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary. In addition, the Tribunal received further evidence as follows.

68. Dr Tsakov provided his own witness statement, and also gave oral evidence at the impairment stage. In addition, the Tribunal received evidence from the following witnesses on Dr Tsakov's behalf:

- Dr R, ENT Lead Consultant and Dr Tsakov's workplace supervisor, by video link.

69. The Tribunal also received in support of Dr Tsakov a number of testimonials from colleagues and patients, who were not called to give oral evidence. They are referred to during this determination.

70. The Tribunal also received the following additional documentary evidence, including but not limited to:

- Reflective piece written by Dr Tsakov;
- Certificates reflecting Dr Tsakov's Continuous Professional Development ('CPD'), various dates between November 2017 to March 2021;
- 360 Patient Feedback Questionnaires and reports, various dates in 2014;
- 360 Self & Colleague Feedback Report, dated 6 January 2015;
- GMC Patient Questionnaires, dated 2015 to 2021;
- Documents demonstrating Dr Tsakov's remediation including certificates of courses completed.

Submissions

On behalf of the GMC

71. Mr Taylor submitted that the facts found proved established that Dr Tsakov's fitness to practice is currently impaired by reason of his misconduct. Mr Taylor drew the attention of the Tribunal to a number of paragraphs of Good Medical Practice (2013) ('GMP') listed below in the Tribunal's decision which he submitted had been breached by Dr Tsakov. Mr Taylor also drew the Tribunal's attention to the case of *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), where serious misconduct was defined as *'conduct which would be regarded as deplorable by fellow practitioners'*.

72. Mr Taylor submitted that although remedial action may be highly relevant in relation to impairment arising from clinical errors and errors of judgment, there are some examples

of misconduct which are so serious that the Tribunal's duty to uphold proper professional standards and public confidence in the profession requires a finding of impairment regardless of the remedial steps that had been taken.

73. Furthermore, in terms of insight and remediation, Mr Taylor submitted it should be noted that Dr Tsakov has repeatedly failed to learn from advice and warnings about his conduct. In November 2016 he told Medical Student 'A' about being in trouble for making inappropriate comments previously and attending a course to be "*more PC.*" The misconduct found at paragraph 2(b) occurred after a warning from Dr C and the misconduct found at paragraph 4(c), 5 and 6 occurred while Dr Tsakov was subject to interim conditions. Mr Taylor also submitted it is significant that the doctor contested several of the charges found proved against him.

74. Mr Taylor submitted that given the history, and in light of the fact that Dr Tsakov has only resumed work, under close supervision and with chaperoning, since January 2021 – having not worked for any significant period since February 2019 –that the Tribunal is not able to conclude that Dr Tsakov's insight is complete, or that his misconduct is "*highly unlikely to be repeated*".

75. In summary, Mr Taylor submitted that given the significant departures from GMP and the limited insight and remediation, the Tribunal's duty to uphold proper professional standards and public confidence in the profession would, indeed, be undermined if no finding of impairment were made in the circumstances of this case.

On behalf of Dr Tsakov

76. Mr McDonagh submitted that it must be taken into account that the charges against Dr Tsakov were attempts at jokes, to empathise and ingratiate himself with his colleagues. He submitted that Dr Tsakov's misjudgements of his jokes are unfortunate, but they were not motivated by pleasure from the "*shock factor*". Dr Tsakov accepted that his behaviour on occasions was below the standard to be expected of a doctor.

77. Mr McDonagh submitted that the Tribunal should ensure that it confines its findings on misconduct to the facts alleged in the allegation. He reminded the Tribunal of the authorities which supported this proposition.

78. Mr McDonagh submitted that NHS Fife may be considered as an isolated incident in an otherwise successful period of locum employment. He submitted that Dr Tsakov was

otherwise highly regarded as an undergraduate tutor and his interaction with Medical Student A was clumsy and he made matters worse when he tried to make matters better.

79. Mr McDonagh submitted that North West Anglia NHS reflected Dr Tsakov's '*darkest hour*.' It should be noted that there has been no repetition of such egregious behaviour at this or any other Trust. He submitted that Dr Tsakov's photograph of the rabbit was a funny picture rather than a further example of pornography. Dr Tsakov immediately recognised his mistake and apologised.

80. Mr McDonagh submitted that the incidents at the Northern Health and Social Care Trust reflected a thoughtless comment to describe his personal living arrangements in a self-derogatory and ironical way. Otherwise, the clinic difficulties highlighted can fairly be seen as a doctor stressed by his attempt to organise his personal arrangements which would impact his ability to do his work, if not resolved. Mr McDonagh submitted that whilst there were unintended consequences from Dr Tsakov's actions, there is no suggestion that patient care was compromised or, in reality, likely to be compromised. He submitted that Dr Tsakov responded positively to supervision and there has been no such repetition of this misconduct.

81. With regard to paragraph 4(c), Mr McDonagh submitted that Dr Tsakov intended to 'cheer up' Health Care Assistant G but accepted that he failed 'spectacularly.' He noted that the Tribunal have already concluded that there was no intention to cause the hurt that he did.

82. Mr McDonagh submitted that paragraphs 6 and 7 of the Allegation can only be criticised as another example of poor communication and teamworking. He submitted it would not be fair to conclude that there is any clinical failure. Further he submitted that whatever view is taken of the grommet incident, impairment for a single clinical failing is not established.

83. Mr McDonagh concluded that this is a case where the facts alleged (rather than failings or other criticisms identified) necessitate careful consideration in the application of the process of determining misconduct and impairment. He submitted that Dr Tsakov had commenced a long journey of insight and remediation and the Tribunal must decide whether Dr Tsakov's fitness to practice is currently impaired.

The Relevant Legal Principles

84. The Tribunal had regard to the advice given by the Legally Qualified Chair which is reflected in the decisions set out below.

85. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision of impairment is a matter for the Tribunal's judgement alone.

86. In approaching the decision, the Tribunal was mindful of the two stage process to be adopted: first whether the facts as found proved amounted to misconduct, and then whether the finding of that misconduct which was serious, could lead to a finding of impairment. In *Cheatle v GMC* (2009) EWHC 645 (Admin), Cranston J stated (at paragraph 19) that: *Whatever the meaning of impairment of fitness to practise, it is clear from the design of section 35C that a Panel must engage in a two-step process. First, it must decide whether there has been misconduct, deficient professional performance or whether the other circumstances set out in the section are present. Then it must go on to determine whether, as a result, fitness to practise is impaired.*

87. In reaching its decision, the Tribunal had regard to the conduct of Dr Tsakov at the time of the events, the nature, circumstances, and gravity of the misconduct found proved. As well as the evidence of insight and remediation since the misconduct and the critically important public interest, including the need to maintain confidence in the profession as well as declaring and upholding proper standards of conduct and behaviour for the profession.

88. The Tribunal has judged these matters in the light of the overarching objective as set out in the Medical Act 1983 (as amended). That objective is the protection of the public and involves the pursuit of the following:

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

89. The Tribunal bore in mind that a finding of impairment is separate from the finding of misconduct and that a finding of misconduct does not automatically mean that the practitioner's fitness to practise is impaired.

90. The Tribunal also bore in mind that in deciding whether Dr Tsakov's fitness to practise is still impaired it should follow the approach of Dame Janet Smith endorsed by the High Court in *CHRE v NMC and P Grant* [2011] EWHC 927 (Admin): *"Do our findings of fact in respect of*

the (registrant's) misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d. has in the past acted dishonestly and/or is liable to act dishonestly in the future."*

91. The Tribunal accepted Mr McDonagh's submission that it should not make findings of fact that had not been alleged. It accepted that a Tribunal cannot make findings such as dishonesty, sexual motivation, or racial prejudice if they are not alleged because each of those findings are findings of fact.

92. Nevertheless it is satisfied that a Tribunal is entitled to have regard to the natural meaning of words used and find they are capable of causing offence, transgressing professional boundaries (unprofessional) and giving the impression of being disrespectful of the protected characteristics of colleagues or patients, regardless of the intention of the speaker. The Tribunal is satisfied that if it came to the conclusion that words used or images displayed were of the sort described above it is entitled to find that their use breached Good Medical Practice and amounted to misconduct. The Tribunal decided that this position is not altered if the speaker intended his words as a "joke".

The Tribunal's Determination on Misconduct and Impairment

Misconduct

93. In determining whether Dr Tsakov's fitness to practise is currently impaired by reason of misconduct, the Tribunal first considered whether the facts found proved amounted to misconduct.

94. Throughout its deliberations, the Tribunal had regard to GMP and set out in its decision the paragraphs that were breached by Dr Tsakov in this case.

Paragraph 1(a)

95. The Tribunal found that Dr Tsakov’s behaviour on this occasion amounted to a transgression of professional boundaries, because he was speaking to a young medical student. The Tribunal concluded that paragraph 1(a) was misconduct but was not serious.

Paragraph 1(b)

96. The Tribunal accepted that Dr Tsakov may have been attempting to offer Medical Student A an explanation of how diseases can be transmitted through the mouth. The Tribunal accepted his evidence that he was embarrassed to use the term oral sex and attempted to “*crack a joke*”, referencing a joke from the comedian Ali G. Nonetheless, the Tribunal considered Dr Tsakov’s remark to be sexualised and vulgar.

97. The Tribunal also noted that there was a significant power imbalance between Dr Tsakov and Medical student A. It was concerned that such remarks, especially when made addressing a young student, are capable of creating the impression that Dr Tsakov disrespects and overly sexualises women. The Tribunal therefore determined that Dr Tsakov’s actions with regard to this comment amounted to misconduct that was serious.

Paragraph 1(c)

98. The Tribunal took into account that this comment referred to a specific patient apparently because of her perceived religious or racial background. It found that Dr Tsakov’s comment would give patients and the public an impression that people from particular backgrounds are not respected in a clinical context. The Tribunal made no finding that Dr Tsakov holds any racial prejudices, or he was motivated by any malicious intention when he made the comment. Nonetheless the Tribunal decided the remark fell far below the conduct expected of a doctor and that it amounted to misconduct that was serious.

Paragraph 1(d)

99. The Tribunal found that the remark found proved at paragraph 1(d) was foolish but did not amount to misconduct.

100. In reaching its conclusions with regard to paragraph 1 above, the Tribunal had regard to paragraphs 36 and 37 of GMP and found that Dr Tsakov’s conduct was in breach of both these provisions.

“36 You must treat colleagues fairly and with respect.

37 You must be aware of how your behaviour may influence others within and outside the team.”

Paragraph 2(a)(i) and 2(a)(ii)

101. The Tribunal considered the context in which Dr Tsakov’s remark was made: Dr Tsakov was a consultant doctor who made a comment to a female colleague in a less senior position; Ms B was a complete stranger; and in a work environment. Ms B stated that she *“knew that it was a joke and awkwardly laughed it off. After the encounter (I) thought it was a strange thing to say, especially as we did not know each other”*. The Tribunal acknowledged that Dr Tsakov did not intend to cause upset or offence and had apologised to Ms B a week later after the incident but were of the view that this comment was demeaning to Ms B and unprofessional, so that it amounted to serious misconduct.

102. The Tribunal found paragraph 2(a)(ii) of the allegation to be purely narrative.

Paragraph 2(b)(i)

103. Dr Tsakov admitted that he had shown two female colleagues in a less senior position an image of *‘a number of naked women on top of each other with their legs open and their genitalia visible’*. Dr Tsakov had made admissions during evidence that the picture was *“outrageously offensive”* but he had thought it was funny at the time. The Tribunal found that Dr Tsakov’s behaviour was demeaning to the colleagues to whom he showed the images. The Tribunal concluded that Dr Tsakov’s conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct that is serious.

Paragraph 2(b)(ii)

104. The Tribunal had viewed the music video described and were aware that the it was on a mainstream website. Nevertheless, it noted the content included images of semi-naked men and women, and Dr Tsakov showed it at work to colleagues to whom he had already shown an explicitly pornographic picture. In those circumstances, the Tribunal found that this amounted to misconduct that was serious.

Paragraph 2(c)

105. The Tribunal found that paragraph 2(c) amounted to an aggravating feature of paragraphs 2(a) and 2(b) but was not itself a separate head of misconduct.

Paragraph 3(a)(i)

106. The Tribunal noted the context in which this comment was made. Dr Tsakov had been living in hospital accommodation with doctors and nurses from all around the world. The Tribunal accepted Dr Tsakov's evidence that he did not intend to cause upset or offence but rather was making a self-deprecating joke. Overall, it did not find this comment amounted to misconduct.

Paragraph 3(a)(ii)

107. The Tribunal bore in mind the nature of the image and the context in which Dr Tsakov showed it to a colleague he had recently met. The Tribunal found this image to be less serious than the images he had shown to other colleagues. Nonetheless it found that the picture was uninvited, vulgar and sexualised. The Tribunal found that the conduct proved at this paragraph amounted to misconduct that was serious.

Paragraph 3(b)(i)

108. The Tribunal had already found that there was no evidence that significant patient delays were caused. It referred itself to its previous determination of facts at paragraph 33:

“The Tribunal accepted that there were many factors at play during the clinic day that could have contributed to delays in the clinic. It has not been provided with a breakdown of timings to show the precise effect of Dr Tsakov being distracted by his concerns for his car. Accordingly, the Tribunal does not find evidence of significant delay or any prejudice to patients. Nor did it find that Dr Tsakov deliberately misled it when he said that he did not add to delays.”

109. Having regard to the amount of delay, the Tribunal found that Dr Tsakov's conduct fell below what was expected of a doctor of his position but did not amount to misconduct which was serious.

Paragraph 3(b)(ii)

110. The Tribunal accepted Dr Tsakov's evidence that he made an honest mistake when he asked for a lift from Sister F to the car hire company before the end of the clinic. The Tribunal accepted that he was under the impression that the clinic had finished for the day. The Tribunal acknowledged that once Dr Tsakov had been made aware that more patients were

to be seen, he returned to work immediately. The Tribunal found that this mistake by Dr Tsakov did not amount to misconduct.

Paragraph 3(b)(iii)

111. The Tribunal had already found that it accepted Dr Tsakov's evidence that he was not intentionally intimidating, and importantly, he recognised the problem and made an apology to Sister F in person. The Tribunal found that this was a short-lived incident and had regard to the circumstances in which it occurred. It found that Dr Tsakov's conduct fell below that expected of a doctor because a colleague should not have to endure intimidating behaviour at work. The Tribunal found that he had breached paragraphs 36 and 37 of GMP. Nevertheless, having regard to all the circumstances, the fact that Dr Tsakov had not intended to intimidate Sister F and his personal apology, the Tribunal found that his conduct amounted to misconduct, but it did not find it amounted to misconduct which was serious.

Paragraph 4(c)

112. The Tribunal accepted that Dr Tsakov did not intend to insult or harm Health Care Assistant G. The Tribunal accepted that he was aware that Health Care Assistant G had suffered from a recent bereavement, and he had already offered his condolences to her. The Tribunal therefore accepts Dr Tsakov's evidence that his remarks were a misguided attempt to "*lighten the mood*". Nonetheless, the Tribunal found that the term 'Nazi' has such strong negative connotations, that Dr Tsakov should have exercised far greater care with what he said. Instead he repeated the word three times to two different colleagues.

113. The Tribunal also noted that Dr Tsakov made his remark to a junior colleague who he did not know. In all those circumstances, the Tribunal found that his behaviour fell so far below that expected of a doctor that it amounted to misconduct that was serious.

Paragraph 5(a), 5(b)(i) and 5(b)(ii)

114. The Tribunal accepted Dr Tsakov's evidence that he did not realise that the syringe was for display purposes only. The Tribunal noted that this was also the view of his clinical lead, Dr O, at the time. The Tribunal found that this view was supported by the photographic evidence of the cabinet where the syringe was kept, it formed the view it looked more like a storage cupboard than a display cabinet. Dr Tsakov recognised at the time that he had made a mistake and had apologised.

115. Dr Tsakov accepted he should have respected Sister H's request to not use the syringe and he should have had a discussion to explain what he was going to use it for and why. The Tribunal found that Dr Tsakov had breached the following paragraphs of GMP in this incident:

"11 You must be familiar with guidelines and developments that affect your work.

12 You must keep up to date with, and follow, the law, our guidance and other regulations relevant to your work.

35 You must work collaboratively with colleagues, respecting their skills and contributions."

116. Taking all the circumstances into account, including that no harm was caused to the patient nor was there any evidence that harm was likely, the Tribunal found that the entirety of paragraph 5 was misconduct which was not serious.

Paragraph 6(a)(b)(c) and Paragraph 7

117. The Tribunal had found that it should consider paragraph 6 and 7 as a whole when considering misconduct. It reminded itself, of its own findings at paragraph 62 of its determination on facts, as follows:

"62. Having heard the accounts of three eyewitnesses and Dr Tsakov, the Tribunal found that the whole incident lasted a matter of seconds and that it would be wholly artificial to separate one aspect from another. The Tribunal found that, realistically, the distress to Patient I was caused by a combination of causing him to fall on Dr Tsakov and shaking his head without the explanation and warning that there would've been if Dr Tsakov had obtained the consent of Patient I's mother."

118. The Tribunal accepted the expert evidence of Mr Q, who in his medical report dated 19 August 2019 stated that Dr Tsakov's conduct was seriously below what is expected of a doctor. He said,

"If the version of the facts as presented by the Complainant are accepted as true, then Dr Tsakov's actions and omissions fell seriously below the standard to be expected of a locum registrar in otolaryngology in the following ways:

- a. *In attempting to remove the grommets from the ear canal by grabbing Patient [I], pulling him over, vigorously shaking his head, with or without tapping the ears, because:
 - i. *such a manoeuvre is not a recognised method of removing grommets from the ears and would not be supported by a body of ENT specialist opinion.*
 - ii. *such rough handling of a young child is likely to cause unnecessary fear and distress, and adversely affect that child's future trust in the medical profession.**
- b. *In failing to obtain either consent from the mother, or the willing cooperation of Patient [I], for his unorthodox method of attempting to remove the grommets by grabbing Patient [I], pulling him over, vigorously shaking his head, with or without tapping the ears.*
- c. [xxx]
- d. *Alternatively, if Dr Tsakov was genuinely unaware of how his behaviour had been perceived by Patient [I], Patient [I]'s mother, and his nursing and medical student colleagues, then his conduct still fell seriously below the standard to be expected under section 37 of "Good Medical Practice" (2013) "You must be aware of how your behaviour may influence others within and outside the team"."*

119. It is the Tribunal's view that the incident reflected in paragraph 6 should be viewed as a whole and against the background that Patient I had already been distressed. The Tribunal accepted that Dr Tsakov had not intended to cause harm and wished to save Patient I having to return at a later date.

120. Further, the Tribunal noted that a medical student was present and expecting to see good medical practice.

121. The Tribunal accepted that the distress caused to Patient I was reasonably foreseeable, and likely to undermine trust in doctors. It considered that Dr Tsakov had breached the following paragraphs of GMP:

***15** You must provide a good standard of practice and care. If you assess, diagnose or treat patients, you must:*

***a** adequately assess the patient's conditions, taking account of their history (including the symptoms and psychological, spiritual, social and cultural factors), their views and values; where necessary, examine the patient*

***b** promptly provide or arrange suitable advice, investigations or treatment where necessary*

16 *In providing clinical care you must:*

a prescribe drugs or treatment, including repeat prescriptions, only when you have adequate knowledge of the patient's health and are satisfied that the drugs or treatment serve the patient's needs"

122. The Tribunal concluded that his conduct on this occasion fell so far below what was expected of a doctor of his position that it amounted to serious misconduct.

Impairment

123. The Tribunal, having found that those facts found proved and indicated above amounted to serious misconduct went on to consider whether, as a result of that misconduct, Dr Tsakov's fitness to practise is currently impaired.

124. In determining whether a finding of current impairment of fitness to practise is necessary, the Tribunal looked for evidence of insight and remediation, and the likelihood of repetition, having regard to the three elements of the overarching statutory objective.

125. The Tribunal was of the view that Dr Tsakov's misconduct was capable of remediation but that he has a difficult task to take his comedic persona out of his medical professional life. The Tribunal was concerned that Dr Tsakov had engaged in similar inappropriate behaviour towards other colleagues despite warnings and being placed on conditions. Namely the misconduct at paragraph 2(b)(i) and 2(b)(ii) occurred after being warned by Dr C and the misconduct at paragraph 4(c) occurred while he was on GMC conditions. Furthermore, the Tribunal noted that even when Dr Tsakov had given his evidence during the current proceedings in a formal setting, he had occasionally slipped into his jocular mode.

126. The Tribunal accepted that Dr Tsakov had developed insight into his misconduct. During his oral evidence Dr Tsakov told the Tribunal that he apologises for his behaviour which he has described as '*disgraceful*' and '*outrageous*' and expressed remorse and regret. Dr Tsakov showed he understands the gravity of his '*outrageous*' language and stated that he has learnt a lot from the incidents. Namely, he now understands why his working behaviour was wrong and how it undermined the working team. Dr Tsakov has also shown that he understands his own personal difficulties namely that he was isolated, lonely, burnt out, and how this gave rise to his misconduct. He now recognises that he needs to take more holidays to ensure he maintains high standards at work.

127. The Tribunal acknowledged it is to his credit that Dr Tsakov has taken steps to remediate his misconduct and completed courses in maintaining boundaries. He told the Tribunal what he had learnt from these courses and started to put into practice in his current work.

128. The Tribunal heard that in January 2021, Dr Tsakov had started work as a locum registrar in Princess Alexandra Hospital Harlow and has continued to work there under interim conditions, which includes supervision and chaperoning when he treats children.

129. The Tribunal took into account the testimonials submitted in support of Dr Tsakov. These demonstrated that he made significant improvements and is well regarded by his colleagues and patients. The Tribunal gave considerable weight to the testimonials provided by nurses and medical students, as it was to colleagues of this sort that he had behaved inappropriately in the past.

130. The Tribunal noted in particular the testimonial of Nurse S who worked closely with Dr Tsakov as a nurse chaperone during patient contact on a regular basis. She described him as *“polite and professional in his dealings with me and other colleagues within the department”*. The Tribunal also noted the testimonial of Dr T who said they had *“always found Dr Tsakov to be professional, appropriate and courteous at all times”*. It also noted a testimonial by Dr U who described him as *“very knowledgeable”*. He said that he had worked closely with junior colleagues whose feedback matched his own, *“a very approachable colleague”*.

131. The Tribunal was also assisted by the evidence of Dr R, who has been Dr Tsakov’s workplace supervisor since he started work at the Princess Alexandra Hospital since January 2021. She told the Tribunal that he was extremely hardworking and helpful and has made an excellent impression on clinicians, nurses and managers alike. She told the Tribunal that she occupied the office next to his and could hear him speaking to patients and colleagues and was satisfied that he was doing so appropriately. She said that she had actively sought feedback from her colleagues, and all the feedback had been positive. She was satisfied that there had been no examples of misconduct since Dr Tsakov had started work and assured the Tribunal that, if there had been, she would have dealt with them appropriately. She also told the Tribunal of an emergency in response to which Dr Tsakov stayed after his contractual hours to assist in surgery and received very favourable feedback.

132. The Tribunal is aware that a finding of impairment is an overall finding. Nevertheless, because the matters proved at paragraphs 6 and 7 are wholly different from the other examples of misconduct proved against Dr Tsakov, the Tribunal needs to make clear the part played by those findings in its overall finding of impairment. The Tribunal has already found

that Dr Tsakov's treatment of Patient I amounted to serious misconduct. In respect of this misconduct, it found that it was a genuinely isolated incident. It found that there were no findings that he had provided seriously sub-standard treatment to patients before or since. It noted in particular the testimonials and opinion of Dr R and concluded that there was no significant risk that this form of misconduct would be repeated. Accordingly, it found that Dr Tsakov was not liable to put patients at risk in the future.

133. The Tribunal then considered whether a finding of impairment would be necessary in respect of this misconduct in order to maintain public confidence in the profession and uphold standards. The Tribunal found that it was not necessary because a well-informed member of the public would understand that this was a short-lived error of judgement by Dr Tsakov, from which he has clearly learned.

134. Overall, having regard to the remaining matters of misconduct, the Tribunal accepted that Dr Tsakov had developed significant but not yet complete insight and had begun the necessary steps to remediate his misconduct. Nevertheless, his period of good practice was still relatively short compared to the period of his misconduct committed against the background of a number of warnings. Therefore, the Tribunal could not yet be confident that Dr Tsakov would not repeat similar misconduct. The Tribunal found that Dr Tsakov's process of remediation was at a relatively early stage.

135. As outlined earlier in this determination, Dr Tsakov's misconduct occurred in the context of a hospital environment. The Tribunal found that his pattern of misconduct constituted a serious breach of the standards expected of a doctor and his conduct had brought the medical profession into disrepute. It determined that Dr Tsakov had breached the following paragraphs of GMP:

"1 Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity..."

46 You must be polite and considerate.

47 You must treat patients as individuals and respect their dignity and privacy"

136. Overall, the Tribunal determined that Dr Tsakov's behaviour was persistent and aggravated because it continued despite warnings. It found that there is still a risk of repetition.

137. The Tribunal found that a reasonable and well-informed member of the public would expect a finding of impairment to be made in this case, both to mark the seriousness of the misconduct, and to uphold proper standards across the medical profession. Public trust in the profession would be undermined if a finding of impairment was not made.

138. Overall, the Tribunal determined that a finding of impairment was necessary under all the limbs of the overarching objective. The Tribunal has therefore determined that Dr Tsakov's fitness to practise is currently impaired by reason of misconduct.

Determination on Sanction - 24/05/2021

139. Having determined that Dr Tsakov's fitness to practise is impaired by reason of 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.

Submissions

On behalf of the GMC

140. Mr Taylor submitted that the appropriate and proportionate sanction is a period of suspension. Mr Taylor referred to a number of relevant paragraphs of the Sanctions Guidance (2019 edition) ('the SG') (non-exhaustive list below) and the Tribunal's previous determinations. Mr Taylor reminded the Tribunal of its duty to protect the public, as set out in the over-arching objective.

141. Turning to Dr Tsakov's existing interim order of conditions, Mr Taylor submitted it should be mindful not to give undue weight to the order. He submitted that the current MPT Tribunal has a different role to an Interim Order Tribunal (IOT) and referred to paragraph 22 of the SG:

"22 The doctor may have had an interim order to restrict or remove their registration while the GMC investigated the concerns. However, the tribunal should not give undue weight to whether a doctor has had an interim order and how long the order was in place. This is because an interim orders tribunal [IOT] makes no findings of fact, and its test for considering whether to impose an interim order is entirely different from the criteria that medical practitioners tribunals use when considering an appropriate sanction on a doctor's practice."

142. Mr Taylor reminded the Tribunal to consider the aggravating and mitigating features of the case. He submitted the following aggravating factors were present in Dr Tsakov's case: the repeated nature of his misconduct; his failure to heed advice and warnings; his misconduct was committed in the presence of women who were junior to him; and the young age of Patient I. Mr Taylor acknowledged Dr Tsakov's admissions and recognition of fault but submitted that there remained a risk that his misconduct would be repeated.

143. Therefore, having regard to the facts of this case, its nature and the seriousness of the Tribunal's findings, Mr Taylor submitted that suspension would be the appropriate sanction. He submitted that suspension would have a deterrent effect and send a signal to Dr Tsakov, the profession, and the public about what is regarded as behaviour unbecoming a registered doctor.

On behalf of Dr Tsakov

144. Mr McDonagh submitted that, based on the Tribunal's previous findings, the appropriate and proportionate sanction in this case was an order of conditions. Mr McDonagh submitted that an order of conditions with a review would satisfy the public interest and uphold the over-arching objective. Mr McDonagh submitted that a period of conditional registration would allow Dr Tsakov to further develop his insight and demonstrate his remediation in practice, while being supervised in his role and overseen by the GMC.

145. Mr McDonagh submitted that a period of suspension would not address the concerns of this Tribunal regarding Dr Tsakov's remediation and would not be proportionate or appropriate. As such, he submitted that a fully informed member of the public would find conditions to be the sufficient sanction in this case as to adequately protect the public and wider public interest.

146. Mr McDonagh submitted that Dr Tsakov is an articulate man for whom English is his third language. He submitted that Dr Tsakov's behaviour was never ill-intended or malevolent, but he is a man, who, in misguided clumsy efforts to lighten the mood, made mistakes. Furthermore, as demonstrated by himself and confirmed by Dr R, his workplace supervisor, Dr Tsakov has shown he can improve and he is a good team player, lauded by his patients and many colleagues.

147. Mr McDonagh submitted that there are a range of conditions the Tribunal could impose which would provide Dr Tsakov with a supportive framework that would allow him to continue to develop as a clinician while continuing to remediate his misconduct.

The Tribunal's approach

148. Throughout its deliberations, the Tribunal considered the statutory overarching objective, and the relevant paragraphs of both the SG and Good Medical Practice ('GMP'). The decision as to the appropriate sanction to impose, if any, is a matter for this Tribunal exercising its own judgement. The sanction must be proportionate and tailored to the specific circumstances of the case.

149. In deciding what sanction, if any, to impose, the Tribunal reminded itself that it must consider each of the sanctions available, starting with the least restrictive, to establish which is appropriate and proportionate in this case. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Tsakov's interests with the public interest. It kept in mind that the purpose of a sanction was not to be punitive, but to protect patients and the wider public interest, although the sanction may have a punitive effect.

150. The reasons for imposing a sanction also needed to reflect the current reasons for impairment. The Tribunal has already given a detailed determination on impairment and had taken those matters into account during its deliberations on sanction.

The Tribunal's Determination on Sanction

Mitigating and Aggravating Factors

151. Before considering what action, if any, to take in respect of Dr Tsakov's registration, the Tribunal first considered the aggravating and mitigating factors present and referred itself to its findings on impairment.

152. The Tribunal found the following to be aggravating factors in this case:

- Dr Tsakov's misconduct was repeated over a considerable period of time and in 4 different working environments, despite warnings.

153. It found the following to be mitigating factors:

- Dr Tsakov made significant admissions at the outset of the hearing, and accepted the majority of his misconduct;
- Dr Tsakov has fully engaged with the GMC investigation and the hearing;
- Dr Tsakov has demonstrated genuine remorse and has made a number of apologies for his actions to his colleagues and the Tribunal;

- As indicated in its determination on impairment, the Tribunal found that Dr Tsakov has developed significant insight into his misconduct, including why it is wrong and how to avoid it in the future. He has taken full responsibility for his actions, and he has acknowledged the seriousness of his misconduct;
- Dr Tsakov has taken significant steps to remediate and demonstrated that he can put what he has learned into practice;
- Dr Tsakov has demonstrated a commitment to ongoing personal and professional development. He has sought out opportunities to remediate his actions, by undertaking relevant courses including one focused on maintaining professional boundaries;
- The Tribunal received testimonial evidence that was positive to Dr Tsakov's credit regarding his current conduct, his dedication to patients and his clinical skills (these references were not verified by the GMC but were entirely consistent with the evidence of Dr R, who confirmed that she had received positive feedback from colleagues);
- Dr Tsakov's workplace supervisor Dr R described Dr Tsakov as a productive and contributory member of the team;
- Dr Tsakov had a previously unblemished professional record with no prior fitness to practise findings against him.

No action

154. In arriving at its decision as to the appropriate sanction, if any, to impose on Dr Tsakov, the Tribunal first considered whether to take no action. The Tribunal reminded itself that there should be exceptional circumstances to justify taking no action where a finding of impairment had been made.

155. The Tribunal found that there were no exceptional circumstances to justify taking no action in this case. It determined that given the nature of the Tribunal's findings on impairment, it would be neither sufficient, proportionate nor in the public interest, to conclude this case by taking no action.

Conditions

156. The Tribunal then considered whether it would be sufficient to impose conditions on Dr Tsakov's registration. It has borne in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable. The Tribunal had regard to paragraphs 81, 82 and 84 of the SG which relate to conditions, these state:

'81 Conditions might be most appropriate in cases:

a ...

b ...

c where there is evidence of shortcomings in a specific area or areas of the doctor's practice

d ...

82 Conditions are likely to be workable where:

a the doctor has insight

b a period of retraining and/or supervision is likely to be the most appropriate way of addressing any findings

c the tribunal is satisfied the doctor will comply with them

d the doctor has the potential to respond positively to remediation, or retraining, or to their work being supervised.

84 Depending on the type of case (eg health, language, performance or misconduct), some or all of the following factors being present (this list is not exhaustive) would indicate that conditions may be appropriate:

a no evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor's unwillingness to engage

b identifiable areas of their practice are in need of assessment or retraining

c willing to respond positively to retraining, with evidence that they are committed to keeping their knowledge and skills up to date throughout their working life, improving the quality of their work and promoting patient safety

d ...

e ...'

157. The Tribunal noted that its concerns regarding Dr Tsakov's current fitness to practise related to a number of specific areas: his interpersonal skills, relationships with colleagues and overall professionalism. In light of its previous findings, it determined that Dr Tsakov was no longer at risk of repeating his clinical error.

158. The Tribunal has already found that Dr Tsakov's insight into his misconduct has significantly improved. The Tribunal was of the view that Dr Tsakov has demonstrated that he is capable of reflecting on his conduct and the impact that it had had on colleagues, patients, and the medical profession as a whole.

159. Further, the Tribunal found that if Dr Tsakov ceased clinical practice, its concerns were unlikely to be successfully addressed, in the way that they were currently being

addressed. It was aware that Dr Tsakov has already been working under strict conditions successfully, since the beginning of the year, and achieved a significant improvement in his practice. The Tribunal was satisfied that Dr Tsakov would comply with conditions as it had received no evidence to suggest that Dr Tsakov will not respond positively to further remediation or being supervised.

160. The Tribunal noted that Dr Tsakov has already taken steps to remediate his misconduct, there was good evidence that Dr Tsakov was capable of engaging with the learning process and that any further remediation is likely to be successful. The Tribunal was satisfied that there were identifiable areas of Dr Tsakov’s practice that require improvement and could be addressed with an order of conditions. It took into account that Dr Tsakov had taken professional training and boundary courses. Dr Tsakov had spoken to the Tribunal intelligently and persuasively regarding the need for professional boundaries and how he is putting them into practice. It was satisfied that, during a period of conditional registration, Dr Tsakov could demonstrate his improved working relationships with colleagues and supervisors, and demonstrate how he has maintained his professionalism.

161. For the reasons set out above, the Tribunal found that a conditions of practice order was a sufficiently restrictive sanction to protect the public, in particular colleagues, from any repetition of Dr Tsakov’s misconduct.

162. The Tribunal then considered whether a conditions of practice order was a sufficiently restrictive sanction to also promote and maintain public confidence in the medical profession and promote and maintain proper professional standards of conduct for members of the profession.

163. The Tribunal had regard to Mr Taylor’s submission that the nature and gravity of the misconduct in this case were such that an order for conditions would be inadequate to serve those limbs of the overarching objective.

164. Nevertheless, the Tribunal was satisfied that conditions can be appropriate in cases of misconduct, in particular because paragraph 84 of SG provides *“Depending on the type of case (eg health, language, performance or misconduct), some or all of the following factors being present (this list is not exhaustive) would indicate that conditions may be appropriate:”*

165. The Tribunal had regard to paragraphs 136 -138 in the SG which provide that *“failure to work collaboratively with colleagues”* falls within the category of *“cases that indicate more*

serious action is likely to be required". It had particular regard to paragraph 138 which provides that:

"138 More serious outcomes are likely to be appropriate if there are serious findings that involve:

a bullying

b sexual harassment

c physical violence towards colleagues

d unlawful discrimination"

166. The Tribunal also had regard to paragraphs 91, 92 and 93 of the SG, which set out the circumstances in which suspension may be the appropriate sanction.

167. The Tribunal had regard to the nature of the misconduct in this case, which, although serious, was significantly less serious than the misconduct referred to above. It had regard to its finding that the misconduct was not malicious but was the result of clumsiness and insensitivity.

168. It also had regard to the passage of over 2 and a half years since the last misconduct, during several months of which Dr Tsakov was unable to work, because of the chaperoning conditions imposed. That does not affect the sanction necessary to protect the public from any risk of repetition. However, it is a factor the Tribunal took into account when deciding whether the wider public interest requires that there be a period when Dr Tsakov cannot work at all.

169. The Tribunal also had regard to the very positive report from Dr Tsakov's work place supervisor, based upon and supported by wide ranging feedback, which the Tribunal has also read, and which it is satisfied demonstrates that Dr Tsakov has used the time to reflect and begin a process of remediation that has resulted in that favourable report from his work place supervisor.

170. It also reminded itself that conditions are a restrictive sanction for a relatively senior doctor.

171. The Tribunal also reminded itself that it should not allow any one limb of the overarching objective to over-ride the others but must look at the question of sanction in the light of all limbs of the overarching objective.

172. Balancing all those considerations, the Tribunal concluded that the public would expect a less restrictive sanction in the case of a doctor who had already had a period out of practice and demonstrated by his conduct that, to a significant extent he had put his misconduct behind him and resolved to serve the public. It would also expect that a doctor who had begun a process of remediation and shown he could serve the public should be allowed to continue with that process in the public interest.

173. The Tribunal concluded that, in those circumstances, a conditions of practice order would sufficiently protect the public, including the wider the public interest, having regard to the misconduct itself and the use Dr Tsakov has made of the time since his misconduct.

174. Therefore, in all the circumstances, the Tribunal determined that it was appropriate and proportionate to impose conditions on Dr Tsakov's registration to satisfy the overarching objective. This included the need in this case to mark the seriousness of his actions to Dr Tsakov, other doctors and the public, maintain public confidence in the profession and uphold proper standards of professional conduct and behaviour for the profession.

Length of the Order

175. In considering the length of the conditions imposed on Dr Tsakov's registration, the Tribunal had regard to its earlier findings and the guidance set out in the SG. Furthermore, the Tribunal took into account the importance of balancing the public interest with the interests of Dr Tsakov.

176. The Tribunal concluded that it was appropriate, necessary and proportionate to impose conditions on Dr Tsakov's registration for a period of 12 months. The Tribunal considered that this was the minimum period to allow Dr Tsakov to satisfactorily address its concerns in relation to professionalism and working collaboratively with colleagues and patients.

177. The Tribunal has concluded that the following conditions set out below are to be imposed on Dr Tsakov's registration. The following conditions are public and will be published:

1 He must personally ensure the GMC is notified of the following information within seven calendar days of the date these conditions become effective:

- a the details of his current post, including:

- i his job title
 - ii his job location
 - iii his responsible officer (or their nominated deputy)
 - b the contact details of his employer and any contracting body, including his direct line manager
 - c any organisation where he has practising privileges and/or admitting rights
 - d any training programmes he is in
- 2** He must personally ensure the GMC is notified:
- a of any post he accepts, before starting it
 - b that all relevant people have been notified of his conditions, in accordance with condition 8
 - c if any formal disciplinary proceedings against him are started by his employer and/or contracting body, within seven calendar days of being formally notified of such proceedings
 - d if any of his posts, practising privileges, or admitting rights have been suspended or terminated by his employer before the agreed date within seven calendar days of being notified of the termination
 - e if he applies for a post outside the UK.
- 3** He must allow the GMC to exchange information with any person involved in monitoring his compliance with his conditions.
- 4**
- a He must have a workplace reporter appointed by his responsible officer (or their nominated deputy).
 - b He must not work until:
 - i his responsible officer (or their nominated deputy) has appointed his workplace reporter
 - ii he has personally ensured that the GMC has been notified of the name and contact details of his workplace reporter.

- 5 a He must design a Personal Development Plan (PDP), with specific aims to address the deficiencies in the following areas of his practice:
- Collaboration with colleagues, i.e. showing respect, maintaining professional boundaries;
 - Team working;
 - Interpersonal skills;
 - Further development on maintaining professional boundaries;
 - Maintaining and improving clinical skills.
- b His PDP must be approved by his responsible officer (or their nominated deputy).
- c He must give the GMC a copy of his approved PDP within three months of these substantive conditions becoming effective.
- d He must give the GMC a copy of his approved PDP on request.
- e He must meet with his responsible officer (or their nominated deputy), as required, to discuss his achievements against the aims of his PDP.
- 6 He must get the approval of the GMC before working in a non-NHS post or setting.
- 7 a He must be supervised in all of his posts by a clinical supervisor, as defined in the *Glossary for undertakings and conditions*. His clinical supervisor must be appointed by his responsible officer (or their nominated deputy).
- b He must not work until:
- i his responsible officer (or their nominated deputy) has appointed his clinical supervisor and approved his supervision arrangements
 - ii he has personally ensured that the GMC has been notified of the name and contact details of his clinical supervisor and his supervision arrangements.
- 8 He must personally ensure the following persons are notified of the conditions listed at 1 to 7:
- a his responsible officer (or their nominated deputy)
 - b the responsible officer of the following organisations:

- i his place(s) of work, and any prospective place of work (at the time of application)
 - ii all of his contracting bodies and any prospective contracting body (prior to entering a contract)
 - iii any organisation where he has, or has applied for, practising privileges and/or admitting rights (at the time of application)
 - iv any locum agency or out of hours service he is registered with
 - v if any of the organisations listed at (i to iv) does not have a responsible officer, he must notify the person with responsibility for overall clinical governance within that organisation. If he is unable to identify that person, he must contact the GMC for advice before working for that organisation.
- c his immediate line manager and senior clinician (where there is one) at his place of work, at least 24 hours before starting work (for current and new posts, including locum posts).

Review Hearing Directed

178. The Tribunal determined to direct a review of Dr Tsakov's case. A review hearing will convene before the end of the period of conditions. The Tribunal reminds Dr Tsakov that at the review hearing, the onus will be on him to demonstrate the extent to which he has remediated, addressed his insight and is safe to return to unrestricted practice. The Tribunal considered that it may assist the reviewing Tribunal if Dr Tsakov provided:

- A Reflective statement addressing the issues raised by the Tribunal at this review hearing;
- A copy of Dr Tsakov's PDP and updated information about his progress against the objectives set out within the PDP;
- A satisfactory report from his clinical supervisor;
- A copy of his latest annual appraisal;
- Attendance at the next Tribunal.

This is not intended to be an exhaustive list and Dr Tsakov may provide any other information he considers will assist him and another Tribunal at a review hearing.

Determination on Immediate Order - 24/05/2021

179. Having determined to impose conditions on Dr Tsakov’s registration for a period of 12 months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Tsakov’s registration should be subject to an immediate order.

Submissions

On behalf of the GMC

180. Mr Taylor submitted that the Tribunal should revoke Dr Tsakov’s current interim order of conditions and make an immediate order of conditions. He reminded the Tribunal of its findings with regard to the seriousness of Dr Tsakov’s misconduct. He submitted that an immediate order was necessary to protect the public, and to maintain public confidence in the profession. He drew the Tribunal’s attention to paragraphs 172, 173, 178 of the Sanctions Guidance (November 2020) ('SG'), which gives guidance on immediate orders.

On behalf of Dr Tsakov

181. Mr McDonagh submitted an immediate order was not necessary because the public interest could be properly protected by the IOT order currently in place. He also submitted that an immediate order risked preventing Dr Tsakov working for several days which the Tribunal have already indicated is not in the public interest.

The Tribunal’s Determination

182. The Tribunal was mindful that an immediate order should only be made if necessary, to protect the public, or otherwise in the public interest.

183. In deliberating on the matter, the Tribunal took into account the paragraphs of the Sanctions Guidance (November 2020) which deal with the matter of immediate orders, in particular paragraph 172 and 173 which states:

“172 The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. The interests of the doctor include avoiding putting them in a position where they may come under pressure from patients, and/or may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor,

which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.

173 An immediate order might be particularly appropriate in cases where... immediate action must be taken to protect public confidence in the medical profession.”

184. The Tribunal considered submissions by both counsel and took into account the circumstances in this case.

185. The Tribunal took into account that the current IOT conditions in place are stricter than the substantive conditions, at least in the short term. It bore in mind that if an immediate order was made, Dr Tsakov would have to cease working in order to put the substantive conditions in place. The Tribunal found that this was not in the public interest.

186. Accordingly, the Tribunal does not make an immediate order but leaves the interim order in place and reminds the GMC that the interim order will need to be revoked when the substantive order comes into effect.

187. This means that Dr Tsakov’s registration will be made subject to conditions 28 days from when notice of this decision is deemed to have been served upon him, unless he lodges an appeal. The interim order currently imposed on Dr Tsakov’s registration will remain in place until revoked.

188. That concludes this case.

Confirmed

Date 25 May 2021

Mr Andrew Lewis, Chair

ANNEX A – 04/05/2021

Rule 34(1) Application - Application on the admissibility of evidence

189. At the outset of proceedings, Mr Taylor, counsel on behalf of the GMC, drew the Tribunal's attention to 8 passages in the evidence which had been excluded from the documents provided to the Tribunal before the hearing. He explained that these passages had been redacted at the request of those representing Dr Tsakov, pending their application that they be permanently redacted.

190. The passages to which Mr Taylor drew the Tribunal's attention were as follows:

Witness statement of Medical Student A, dated 22 October 2020

- Paragraph 7: *'as it was very sexist and vulgar'*
- Paragraph 8: *'it felt like he knew this behaviour was inappropriate yet was still making these types of comments in a boastful nature'*
- Paragraph 10: *'I wouldn't like anything like that to be said about my friends that are Muslim, or any other race or religion. It was a nasty comment and completely unnecessary. I was concerned that Dr Tsakov had used a judgemental and stigmatised term, relating this patient to a terrorist organisation just because of her name. I was worried that this islamophobia and prejudiced views could lead to Dr Tsakov being dismissive of the patient and her complaints whilst he was in charge of her care'*

Extract from Medblogs, dated December 2016

- Page 66: *'the patient was a lovely Muslim lady who had no idea that the clinician had made this racist comment prior to their appointment.'*

Witness statement Nurse M, dated 4 February 2021

- Paragraph 17: *'the mum said something like 'other children have got to go and see him!' this was said in front of the other parents who were waiting with their children, which does not create a good impression.'*

Witness statement of Ms J (Patient I's mother), dated 4 February 2021

- Paragraph 14: *'[Patient I] still talks about the appointment with Mr Tsakov, 2 years on and the appointment has very much affected him. When we go to his hospital appointments, he says things like "am I seeing the nice lady? I don't want to see that man".'*
- Paragraph 15: *'following contact from the GMC in September 2020, I asked [Patient I] about the incident. He said words to the effect of "when he put it in my ear, he was pushing very hard...knocked my head from side to side... hurt me...not happy to see him again".'*

Supplemental report prepared by Mr Q, dated 8 March 2021

- Section 3: *One has been reinforced (see section 3 below). I note from sections 14-16 in the statement of Patient I's mother, that patient (I) continues to suffer long term adverse effects over 2 years after the event: this reinforces my previously expressed opinion (which remains dependent on the version of the facts as presented by the mother, the clinic nurse, and the medical student being accepted by the Tribunal as true) that "such rough handling of a young child is likely to cause unnecessary fear and distress and adversely affect that child's future trust in the medical profession".*

Submissions

On behalf of Dr Tsakov

191. As this was an application on behalf of Dr Tsakov to exclude evidence upon which the GMC wished to rely, Mr McDonagh made his submissions first.

192. He made the following general submissions.

- Evidence is only admissible if it is fair and relevant to the charge to which it relates.
- Speculation and guess work should be redacted.
- The opinion evidence of witnesses who are not experts should not be admitted.
- Hearsay evidence is admissible, but the Tribunal should have careful regard to its fairness, which goes to admissibility and not just to weight.

193. Mr McDonagh submitted that, in relation to the witness statement of Medical Student A, her opinion that Dr Tsakov's remarks were sexist and vulgar was not relevant because that is not an allegation which Dr Tsakov faces. He submitted that her views regarding the appropriateness of Dr Tsakov's behaviour and his 'boastful nature' was similarly

not relevant. He submitted that Medical Student A's reaction to what she heard, and her concerns about its impact on her friends who are Muslim, were also not relevant, in the absence of any suggestion that she was wrong to report what she heard.

194. With regard to the extract from Medblogs, Mr McDonagh submitted that, the witness's view that the remarks were racist was not relevant to the charge. He submitted it is not the GMC's case that the remarks impacted any patient.

195. Mr McDonagh submitted that the two passages in the witness statement of Nurse M, were hearsay accounts of what Patient I's mother said to patients waiting to see Dr Tsakov and were not relevant to any matter the tribunal had to decide.

196. Turning to the 2 passages from Mrs J's statement, Mr McDonagh submitted that they were hearsay accounts of what Patient I had told his mother, which it would not be fair to admit. No note had been made at the time of what was said, and nothing was known of the circumstances of the remarks by Patient I, who was on the face of it, in the second passage at least, describing an incident that had occurred 2 years previously.

197. With regard to the passage from Mr Q's report, Mr McDonagh submitted that should be excluded because his opinion was based upon material which could not be properly evaluated and was, in any event, irrelevant to paragraph 7 of the Allegation, which he submitted was limited in time to the events of the day in 2018.

On behalf of the GMC

198. Mr Taylor submitted that it was important that the Tribunal be provided with the full account of the evidence relevant to the charges. He submitted that the passages in question were admissible, and witnesses would be called and be available for cross-examination.

199. Mr Taylor referred to the witness statement of Medical Student A and submitted that she was explaining why she was so offended and why she reported these comments, which she was perfectly entitled to do. He submitted it should be uncontroversial for her to state that she was made to feel uncomfortable as a woman. Furthermore, she was entitled to give a view of her impression of how Dr Tsakov, communicated the comments to her. He submitted that it explained why she reported the remarks.

200. In regard to Nurse M's account of Ms J's comments to people in the waiting area, Mr Taylor submitted that they were relevant to the charges and both witnesses can be cross-examined if necessary.

201. Mr Taylor submitted that Ms J, as Patient I's mother, is perfectly entitled to state what effect the consultation with Dr Tsakov had on her son. This he submitted was relevant to the charge that Patient I suffered distress as alleged in paragraph 7.

202. Mr Taylor submitted that the passage in Mr Q's report was admissible to support his view that Dr Tsakov's treatment of Patient I was likely to cause suffering and distress.

The Tribunal's Approach

203. The Tribunal took account of the requirements of Rule 34(1) which states:

"The Committee or a Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law."

204. The Tribunal referred to the guidance given in the following relevant authorities, which were referred to by the Legally Qualified Chair in the presence of the parties:

- *El-Karout vs NMC [2019] EWHC28*
- *R (Bonhoeffer) v GMC [2011] EWHC 1585 (Admin)*
- *Nursing & Midwifery Council v Ogbonna [2010] EWCA civ 1216.*

205. It bore in mind that the question of whether it was fair to admit evidence went to the question of its admissibility and not just its weight.

206. In reaching its decision, the Tribunal bore in mind the fundamental principle of the right to a fair hearing. The Tribunal acknowledged that the concept of fairness encompasses fairness to both Dr Tsakov and the GMC, and whether the proposed restorations were relevant to the matters before it.

The Tribunal's Decision

207. The Tribunal considered the passages in Medical Student A's witness statement. The Tribunal was of the view that she was expressing her opinion of what Dr Tsakov said and his attitude. The Tribunal decided that this was not relevant at this stage, in the absence of any suggestion that Medical Student A was wrong to report what she heard. Therefore, it decided not to admit this evidence.

208. The Tribunal considered the witness statement of Nurse M, in which she recorded the comments of Ms J. The Tribunal decided that her remarks to other patients did not establish any fact which the GMC needed to prove and accordingly, were irrelevant and inadmissible.

209. The Tribunal decided that Ms J's evidence at paragraph 14 of her statement fell into a different category. At Paragraph 14 she stated: '*[Patient I] still talks about the appointment with Mr Tsakov, 2 years on and the appointment has very much affected him. When we go to his hospital appointments, he says things like "am I seeing the nice lady? I don't want to see that man".*' The Tribunal decided that this evidence was relevant to the issue of whether Patient I (her son) had suffered fear and/or distress as a result of the consultation with Dr Tsakov, as alleged at paragraph 7 of the Allegation.

210. The Tribunal recognised that this was hearsay evidence but decided that it was fair, in all the circumstances to receive evidence of the fear and distress caused to Patient I, based upon Ms J's observation over a significant period of time. It was also fair to receive this evidence from Patient I's mother because Patient I was too young to give evidence in a case like this. Accordingly, the Tribunal decided to admit this evidence.

211. However, at paragraph 15, the Tribunal decide to exclude the quotation of what Patient I had told his mother some 2 years after the consultation with Dr Tsakov. The Tribunal accepted that the evidence was potentially relevant to the same issue as the evidence in paragraph 14. However, the Tribunal found that there was a high risk of unfairness in admitting the sort of informal statement that the High Court had deprecated in *El-Karout vs NMC (above)* and excluded that passage.

212. The Tribunal considered the supplemental report of Mr Q and was of the view that the admission of the contested paragraph was fair. The passage did no more than set out the basis for Mr Q's view and the Tribunal was satisfied that Mr Q could be cross examined about whether he was right to take that evidence into account.

ANNEX B – 11/05/2021

Rule 17(6) Application - Application to Amend the Allegation

213. On behalf of the GMC, Mr Taylor made an application under Rule 17(6) of the Rules, to amend paragraph 2b(ii) and paragraph 3b(ii) of the Allegation as follows:

2. *Whilst working as a locum at North West Anglia NHS Foundation Trust:*

- b. on 24 November 2017, you:
 - ii. showed Health Care Assistant E a music video on your mobile phone which contained naked men and women;

To

2. Whilst working as a locum at North West Anglia NHS Foundation Trust:

- b. on 24 November 2017, you:
 - ii. showed Health Care Assistant E a music video on your mobile phone which contained semi-naked men and women;

and,

3. Whilst working as a locum at Northern Health and Social Care Trust:

- b. on 8 December 2017, you:
 - ii. asked Sister F to give you a lift to collect a hire car in the middle of a clinic, whilst patients were waiting to be seen;

To

3. Whilst working as a locum at Northern Health and Social Care Trust:

- b. on 8 December 2017, you:
 - ii. asked Sister F to give you a lift to collect a ~~hire~~ car in the middle of a clinic, whilst patients were waiting to be seen;

214. On behalf of Dr Tsakov, Mr McDonagh submitted that he had no objections to the amendments.

Tribunal's Decision

215. The Tribunal was mindful of paragraph 17(6) of the General Medical Council's (Fitness to Practise) Rules 2004, as amended, (the Rules) which states:

"17(6) Where, at any time, it appears to the Medical Practitioners Tribunal that—

(a) the allegation or the facts upon which it is based and of which the practitioner has been notified under rule 15, should be amended; and

(b) the amendment can be made without injustice,

it may, after hearing the parties, amend the allegation in appropriate terms.”

216. The Tribunal noted the application by Mr Taylor was unopposed by Mr McDonagh. It was satisfied that the two amendments could be made without injustice. It was also satisfied that the amended application better reflected the evidence upon which the Allegation is based. It therefore decided to grant the application and amend paragraph 2b(ii) and paragraph 3b(ii) of the allegation, in accordance with the proposed amendments set out above.

ANNEX C – 12/05/2021

Rule 17(6) Application - Application to Amend the Allegation

1. On behalf of the GMC, Mr Taylor made an application under Rule 17(6) of the Rules, to amend paragraph 6 and paragraph 7 of the Allegation as follows:

6. *On 13 September 2018, during a consultation with Patient I, you:*

- a. *pulled Patient I towards you, causing him to fall against your torso and knee;*
- b. *attempted to remove grommets from Patient I's ears by shaking Patient I's head vigorously from side to side;*
- c. *failed to obtain verbal consent from Patient I's mother for the procedure described at 6(b) above in terms of:*

~~i. verbal consent from Patient I's mother;~~

~~ii. the willing cooperation of Patient I.~~

7. *Your actions at paragraphs 6(a) and 6(c) above caused Patient I distress:*

~~a. unnecessary fear~~

~~b. distress.~~

2. On behalf of Dr Tsakov, Mr McDonagh submitted that he had no objections to the amendments.

Tribunal's Decision

217. The Tribunal was mindful of paragraph 17(6) of the General Medical Council's (Fitness to Practise) Rules 2004, as amended, (the Rules) which states:

"17(6) Where, at any time, it appears to the Medical Practitioners Tribunal that—

(a) the allegation or the facts upon which it is based and of which the practitioner has been notified under rule 15, should be amended; and

(b) the amendment can be made without injustice,

it may, after hearing the parties, amend the allegation in appropriate terms."

218. The Tribunal noted that the application by Mr Taylor, was unopposed by Mr McDonagh. It was satisfied that the proposed amendments could be made without injustice. It was also satisfied that the proposed amendments better reflected the evidence upon which the Allegation was based. It therefore decided to grant the application and amended paragraph 6(c) and paragraph 7 allegation, as set out above.