

Dates: 06/02/2019 - 06/02/2019

Medical Practitioner's name: Dr Robbert SMISSAERT

GMC reference number: 3208746

Primary medical qualification: Artsexamen 1983 Universiteit van Amsterdam

Type of case

Review - Misconduct

Outcome on impairment

Not Impaired

Summary of outcome

Conditions revoked

Tribunal:

Legally Qualified Chair	Ms Ijeoma Omambala
Lay Tribunal Member:	Mrs Michele Clare
Medical Tribunal Member:	Dr Pranveer Singh

Tribunal Clerk:	Mrs Jo Johnson
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Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Alan Jenkins, Counsel, instructed by RadcliffesLeBrasseur Solicitors
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.

Record of Determinations – Medical Practitioners Tribunal

Determination on Impairment - 06/02/2019

Background

1. This Tribunal does not intend to rehearse the full factual background to Dr Smissaert's case, as this is set out in previous determinations, which are a matter of record. Dr Smissaert's original Medical Practitioners Tribunal hearing concluded in July 2017 ("the 2017 Tribunal"). At the time of the events Dr Smissaert was working as a GP at Tettenhall Medical Practice, Wolverhampton and he first treated Patient A in June 2006. Patient A was an elderly male patient and had been diagnosed with Non-Hodgkin's Lymphoma. As Patient A's GP, Dr Smissaert treated Patient A in his surgery and attended his home between 15 August 2014 and 12 February 2015. The 2017 Tribunal found that Dr Smissaert failed to provide adequate care and treatment to Patient A in that he failed to diagnose his symptoms accurately; make contemporaneous records; recommend an appropriate treatment plan; and to communicate with Patient A and/or Mrs B properly. It considered that Dr Smissaert's conduct was a significant departure from the principles of *Good Medical Practice* and that Dr Smissaert failed to uphold the proper standards of behaviour expected of doctors by the public.

2. The 2017 Tribunal determined that Dr Smissaert's fitness to practise was impaired by reason of his misconduct. It was satisfied that Dr Smissaert had demonstrated some insight into his failings and it considered that a period of remediation would allow him to develop his insight further. The 2017 Tribunal noted that prior to the index events and since there had been no concerns about Dr Smissaert's fitness to practise. The Tribunal determined to impose conditions on Dr Smissaert's registration for a period of 18 months. In determining the length of the sanction, the 2017 Tribunal determined that this would allow Dr Smissaert sufficient time to undertake remediation, develop his insight and produce further appropriate evidence.

3. The 2017 Tribunal directed that before the end of the period of conditional registration, Dr Smissaert's case should be reviewed. It noted that at a review hearing the reviewing Tribunal may be assisted by receiving the following:

- Reports from Dr Smissaert's clinical supervisor and mentor
- Further reflection on Dr Smissaert's misconduct and his identified failings
- A reflective statement demonstrating what he had done to address the concerns raised and his learning from that; and
- Any other evidence Dr Smissaert considers demonstrates his fitness to resume unrestricted practice.

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Today's review

4. This Tribunal has met to review Dr Smissaert's case. It has considered, under Rule 22(1)(f) of the Rules, whether his fitness to practise is currently impaired by reason of his misconduct. In so doing, it has taken into account all of the evidence before it and the submissions made by Mr Taylor, Counsel, on behalf of the GMC and those made by Mr Jenkins, Counsel, on Dr Smissaert's behalf.

Written evidence

5. The Tribunal has received a hearing bundle which included the 2017 Tribunal determination and a number of other documents submitted on Dr Smissaert's behalf. These documents included, but were not limited to:

- Reports from Dr C, Dr Smissaert's workplace reporter and clinical supervisor
- Reports from Dr D, Dr Smissaert's mentor
- Reflective statement dated 11 January 2019
- CPD certificates
- Audit of referral letters and medical records audit
- Copy of Dr Smissaert's Personal Development Plan (PDP).

6. In an undated report, Dr C confirmed that he had been Dr Smissaert's workplace reporter and clinical supervisor since 23 August 2017. Dr C explained that he met with Dr Smissaert every two weeks and that during those meetings Dr C reviewed with Dr Smissaert a number of patients that Dr Smissaert had seen. Dr C noted that they focused on the content of the consultation and the quality of record keeping. Dr C explained that they had reviewed the contents of Dr Smissaert's PDP and that Dr C had performed an audit on the quality of Dr Smissaert's record keeping and had concluded that this was of good quality. Finally, Dr C noted that Dr Smissaert had always shown good clinical judgement and had a high degree of knowledge. He explained that Dr Smissaert had always kept up to date with new treatments and trends in general practice and also in secondary care. Dr C explained that he had no concerns about Dr Smissaert's fitness to practise.

7. In a report dated 14 January 2019 Dr D, confirmed that she had been acting as Dr Smissaert's mentor both before and after his GMC hearing. She explained that since his 2017 hearing she has met with Dr Smissaert every two months. During this time they have discussed how Dr Smissaert is complying with the conditions imposed on his registration. Dr C noted that for his NHS appraisal Dr Smissaert had completed 61 hours of continuing professional development (CPD) and this covered a wide range of subjects. Dr C was of the opinion that Dr Smissaert had complied with the conditions imposed by the 2017 Tribunal and that Dr Smissaert had reflected on his case and taken steps to address his shortcomings.

8. In his reflective statement dated 11 January 2019, Dr Smissaert explained that following his 2017 hearing he worked with NHS England to formulate his PDP.

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Dr Smissaert explained that in relation to care, treatment and record keeping he had met with Dr C and discussed these topics. Dr reflected that note keeping was a significant part of these meetings. He accepted that the notes in Mr A's case had been sparse and he explained that he had improved on this. Dr Smissaert explained that he had reviewed his notes and discussed them with Dr C and Dr D.

9. Dr Smissaert explained that he had developed a smart phone application that allowed him to see all the relevant patient details anytime and anywhere. Dr Smissaert noted that Dr C had audited 30 of his consultations and these were found to be of good quality. In terms of communication, Dr Smissaert explained that Dr C had reviewed a number of his referral letters. Dr Smissaert had reflected on how he prepared referral letters, and he no longer wrote them directly after seeing a patient or during the actual consultation but tended to do them after surgery or in the evenings from home. Dr Smissaert explained that the advantage of doing this was that he could take "... a bit more time." Dr Smissaert noted that Dr C had found that his letters were of good quality. In relation to communication in general, Dr C had found that Dr Smissaert's communication with patients was of good quality. It was noted that Dr Smissaert tended to enter the consultation notes after the consultation and therefore patients felt they were getting more attention during the consultation itself.

10. In the summary section of his reflective statement Dr Smissaert explained:

"I fully admit failings in this case and I think I have addressed these. In my opinion the main failing was poor note keeping and notes are now a lot better and of good quality. They are not perfect and they will never be and this is to do with serious time constraints we have in our very busy practice. The 4 full-time partners in our practice (which includes myself) all have now personal lists of over 2500 patients. This GMC case has been a serious lesson and my practice has improved from it."

11. In an email dated 30 January 2019, Mr E, Senior Project Officer, Professional Regulations, at NHS England (West Midlands) confirmed that Dr Smissaert had attended a PDP review meeting with Dr F, nominated Deputy Medical Director, on that same day. It was noted that Dr Smissaert had confirmed that he had fully achieved all of his PDP objectives and discussed most of them at various appraisals with his clinical supervisor and mentor.

GMC submissions

12. Mr Taylor referred the Tribunal to the Sanctions guidance (February 2018) and in particular paragraphs 163 and 164 which refer to review hearings. Paragraph 163 states:

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“It is important that no doctor is allowed to resume unrestricted practice following a period of conditional registration or suspension unless the tribunal considers that they are safe to do so.”

It was Mr Taylor’s submission that the GMC is neutral as to whether Dr Smissaert’s fitness to practise is currently impaired by reason of his misconduct and it is a matter for the Tribunal to determine.

Submissions made on behalf of Dr Smissaert

13. Mr Jenkins submitted that Dr Smissaert has complied with everything that was asked of him and that he has shown insight into his failings. Mr Jenkins reminded the Tribunal that apart from this incident there had been no clinical concerns about Dr Smissaert’s practice. Mr Jenkins submitted that Dr Smissaert had worked hard with his clinical supervisor and with his mentor. It was Mr Jenkins’ submission that Dr Smissaert’s fitness to practise is currently not impaired by reason of his misconduct.

Tribunal decision

14. The Tribunal must determine whether Dr Smissaert’s fitness to practise is impaired today, taking into account Dr Smissaert’s misconduct and any relevant factors since then, such as whether the matters are remediable, have been remediated and whether they are likely to be repeated.

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

16. Throughout its deliberations, the Tribunal has borne in mind the statutory over-arching objective, which includes to:

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

17. The Tribunal has determined that Dr Smissaert has complied with the conditions currently imposed on his registration and is satisfied that he has provided all of the information requested by the 2017 Tribunal. The Tribunal noted that there appeared to be some confusion around who was assisting Dr Smissaert with his PDP and approving it. Dr Smissaert attempted to clarify the situation. Whilst there was some delay whilst clarification was sought and provided, the Tribunal is satisfied that

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Dr Smissaert had designed his PDP and was seeking the approval required by his conditions. The Tribunal noted that on 21 December 2018 the GMC wrote to Dr Smissaert to confirm that they had decided not to take any action against him for not providing a copy of his PDP within three months of his GMC conditions becoming effective as they accepted that there had been confusion over when it should have been provided and who should have approved it. The Assistant Registrar noted that it did not seem that the breach was intentional and Dr Smissaert did provide an approved PDP. The Tribunal was concerned that it took the GMC until December 2018 to advise Dr Smissaert of this.

18. The Tribunal is impressed by the written evidence provided by Dr Smissaert. This demonstrated the significant amount of work that he has undertaken, during the period that he had conditions imposed on his registration, to address the concerns raised by the 2017 Tribunal. As well as working full time Dr Smissaert has been meeting regularly with his clinical supervisor and with his mentor. The Tribunal is satisfied that Dr Smissaert now has full insight into the events which led him to appearing before the 2017 Tribunal and has addressed his deficiencies. There have been no further instances of misconduct. Dr Smissaert has maintained and updated his skills and knowledge. The Tribunal is satisfied that patients will not be placed at risk by Dr Smissaert's resumption of unrestricted practice. The Tribunal has therefore determined that Dr Smissaert's fitness to practise is no longer impaired by reason of his misconduct.

19. The Tribunal determined that the conditions currently imposed on Dr Smissaert's registration and due to expire on 27 February 2019 should be revoked with effect from today. It was the Tribunal's view that in the circumstances of Dr Smissaert's case leaving the conditions in place to run their course would be unnecessary.

20. That concludes Dr Smissaert's case.

Confirmed

Date 06 February 2019

Ms Ijeoma Omambala, Chair