

Dates: 21/10/2019 - 30/10/2019

Medical Practitioner's name: Dr Sebastian JOHNS

GMC reference number: 6156791

Primary medical qualification: MB BCh 2007 University of Wales

Type of case **Outcome on impairment**
New - Misconduct Impaired

Summary of outcome

Suspension, 4 months.
Review hearing directed
Immediate order imposed

Tribunal:

Lay Tribunal Member (Chair)	Mrs Lucy Reid
Medical Tribunal Members:	Mrs Deborah McInerny, Dr Nisreen Hannah Booya
Legal Assessor:	Ms Julia Oakford (21 – 23 Oct 2019) Ms Megan Larrinaga (24 – 30 Oct 2019)
Tribunal Clerk:	Mr Sewa Singh

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Malcolm Fortune, Counsel, instructed by Medical Protection Service
GMC Representative:	Miss Eleanor Fry, Counsel

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Attendance of Press / Public

In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held partly in public and partly in private.

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 and Impairment - 29/10/2019

The Outcome of Applications Made during the Facts Stage

1. The Tribunal granted an application by Miss Eleanor Fry, Counsel for the GMC, made pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to withdraw paragraph 2 of the Allegation, XXX. The Tribunal determined that the amendment could be made without injustice to either party. The Tribunal's full decision on the application is included in Annex A.
2. Although not a formal application, the Tribunal made a further determination, following submissions made by both parties, on matters in evidence that were disputed. The Tribunal's full determination is included in Annex B.

The Allegation and the Doctor's Response

3. That being registered under the Medical Act 1983 (as amended):
 1. On the night shift starting 27 April 2018, you presented for work at the Prince Charles University Hospital in an unfit state in that you were:
 - a. intoxicated with alcohol;
Admitted and found proved
 - b. sleep deprived.
Admitted and found proved
 2. XXX
Withdrawn following a Rule 17(6) application

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And that by reason of the matters set out above your fitness to practise is impaired because of your:

a. misconduct in respect of paragraph 1;
to be determined

b. XXX

Withdrawn following a Rule 17(6) application

The Admitted Facts

4. In the light of the above, the Tribunal is required to determine whether Dr Johns' fitness to practise is impaired by reason of misconduct.

Background

5. Dr Johns qualified in 2007 from the University of Wales. He undertook several training posts as a House Officer and Senior House Officer between 2007 and 2016. In February 2016, he undertook locum posts as a middle grade doctor at the University Hospital of Wales (UHW) in the Cardiology and Accident and Emergency (A&E) departments. Between February 2016 and October 2017 Dr Johns worked as a middle grade locum doctor in the A&E department at the Royal Glamorgan Hospital. At the time of the April 2018 events, Dr Johns was working as a middle grade locum doctor in the A&E department at the Prince Charles Hospital ('the Hospital') in Wales.

6. On 27 April 2018, Dr Johns presented for work on a night shift. The Senior Staff Nurse, Ms D, noticed that when he arrived, he went straight to the board where the cards are held for each patient. He picked up the card on top of the pile and studied it for a little while, which, she said, was unusual because normally a doctor would collect the card and read it on their way to see the patient. She approached Dr Johns and as he turned to her, she noticed that he seemed a little 'off gait'. Dr Johns entered the room to speak to the patient, Ms D walked past to observe what was going on. At this stage, two other staff nurses approached Ms D and said that they were concerned that Dr Johns had been drinking. Ms D noted that whilst talking to the patient, Dr Johns was holding on to the rail to the side of the patient's bed. Ms D asked to speak with Dr Johns privately and he agreed. In her statement, dated 22 June 2019, Ms D states *'It was obvious as he approached me that he had been drinking alcohol. I could smell alcohol on his breath. He had an unsteady gait, his eyes were glassed over and he had slightly slurred speech...'*

7. Dr F, consultant on call, was contacted at 00:29 hours by Ms D who expressed her concern about Dr Johns. Dr F advised that Dr Johns should not see any patients until she arrived to speak with him. Dr F and Ms H met with Dr Johns at 01:50 hours and were extremely concerned about his well-being. In her witness statement, Dr F described Dr Johns as very distressed, tearful, having bloodshot eyes and being very

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repetitive. Dr F asked about white marks around Dr Johns' lips and he explained that he had brushed his teeth. When asked if he had been drinking because the Nurses had expressed their concerns, Dr Johns replied that he was 'tee total' [sic] and XXX. He explained that his symptoms were due to exhaustion from lack of sleep.

8. Dr F and Ms H expressed concerns for Dr Johns' welfare where upon he repeatedly said 'don't worry about me I'm fine. XXX'. He also said that he felt that he was invincible because he had worked more night shifts than anybody else who works for Medacs in the UK and that he could cope with lack of sleep. Dr F was so concerned that she asked Dr Johns for his car keys, advised him to have a good rest and personally drove him to the overnight accommodation.

9. The matter came to the attention of the GMC following concerns raised by the Hospital and Medacs Healthcare.

Factual Evidence

10. The Tribunal received evidence in the form of witness statements and exhibits, on behalf of the GMC:

- Ms D, Senior Staff Nurse at Prince Charles Hospital, dated 22 June 2019;
- Ms E, Staff Nurse at Prince Charles Hospital, dated 20 May 2019
- Dr F, Consultant at Prince Charles Hospital, dated 13 May 2019;
- Ms H, Mental Health Nurse at Prince Charles Hospital, dated 24 May 2019;
- Ms I, Staff Nurse at Prince Charles Hospital, undated;
- Dr G, Locum Doctor at Prince Charles Hospital, dated 22 June 2019;
- Dr J (RO), Responsible Officer, Medics Healthcare PLC, dated 29 August 2019 and 19 September 2019;
- XXX.

11. The Tribunal received documentary evidence which included but was not limited to:

- XXX
- Correspondence between Medacs Healthcare, the Hospital and the GMC;
- Dr Johns' witness statement dated 21 October 2019

XXX

13. Dr Johns provided a further bundle at stage 2 of the proceedings which included:

- A testimonial from Ms L, Head of Clinical Services at Medacs Healthcare, dated 21 October 2019;
- Dr Johns' Colleague Assessment Report 10 July 2019.

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Oral Evidence

XXX

Dr Johns

16. The Tribunal found Dr Johns to be an unreliable witness. His evidence was inconsistent and, at times, evasive. He often did not answer the questions that were put to him and presented a disorganised thinking process. He was unable to recall the chronology of events and was unable to provide a satisfactory response to contradictions in his evidence. As a result, the Tribunal found his evidence unreliable.

Submissions on Misconduct and Impairment

17. The Tribunal was provided with written submissions from both parties.

On behalf of the GMC:

18. Miss Fry submitted that Dr Johns' actions on 27 April 2018 amounted to misconduct for reasons which included:

- Dr Johns attended work whilst he was sleep deprived and intoxicated;
- He saw at least one patient and prescribed some medication;
- He would have seen other patients but for the actions of his colleagues;
- He was described by his colleagues as 'extremely drunk', swaying, holding onto a patient's bed for support, slurring his words, and walking with an unusual gait.

19. Miss Fry submitted that Dr Johns' current fitness to practise is impaired. She said that Dr Johns is still unwilling to divulge the details of his alcohol consumption, despite having been given every opportunity to do so. She said that even Dr Johns' recent admissions do not go beyond 'possibilities' or 'assumptions'. Miss Fry said that Dr Johns' assertion that he cannot recall whether or how much alcohol he had to consume cannot be right when he is able to recollect that he did some housework on that day and that he had driven to work.

20. She submitted that if true insight were present here, Dr Johns would have been able to 'recall', with deep regret, what, when and why he had been drinking, and what led him to compromise patient safety and, subsequently blame his colleagues for his actions. Miss Fry said that Dr Johns' apology to XXX, which appeared to have been prompted by his legal team, is somewhat undermined by the fact that on examination, it seemed that the only drinking which is actually conceded, is excessive alcohol consumption on social occasions and drinking some red wine to help with disjointed sleep patterns.

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On behalf of Dr Johns

21. Mr Fortune submitted that Dr Johns has admitted that he presented for work in an unfit state in that he was intoxicated with alcohol and sleep deprived. He said that Dr Johns also has explained, in his evidence, the background and surrounding circumstances to both his personal and professional life at that time.

22. Mr Fortune reminded the Tribunal that, when considering misconduct, it needs to consider the facts of each case. XXX

23. In relation to impairment, Mr Fortune reminded the Tribunal of the principles formulated by Dame Janet Smith in her Fifth Report from the Shipman Inquiry. He also invited the Tribunal to consider the following questions: (i) is Dr Johns conduct remediable; (ii) has he remediated; (iii) is the remediation firmly embedded; and (iv) is it likely that there will be any repetition of the conduct in the future.

XXX

25. Mr Fortune further submitted that the important question to be answered is whether Dr Johns has now accepted that he attended for work in an unfit state in that he was intoxicated, and whether this demonstrates some insight. He reminded the Tribunal that Dr Johns has put in place some coping mechanisms should he find himself in a similar position. XXX Mr Fortune said that Dr Johns has worked for some twelve months without any further incidents and no concerns have been raised about his clinical practice.

26. Mr Fortune said that, in the circumstances, the Tribunal can be satisfied that the overarching objective would not be undermined if a finding of impairment were not made.

The Tribunal's Approach

27. The Tribunal has considered the submissions made by both counsel. It has borne in mind that there is no burden or standard of proof at this stage. It is a matter for this Tribunal, exercising its own judgement, as to whether Dr Johns' fitness to practise is currently impaired.

28. The Tribunal noted that XXX was withdrawn at the outset of this hearing and therefore, its deliberations at this stage were confined to whether, on the facts found proved, Dr Johns' actions amounted to misconduct.

29. Throughout its deliberations, the Tribunal has been mindful of its responsibility to uphold the overarching objective:

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

Misconduct

30. The Tribunal first considered whether the facts admitted and found proved amounted to misconduct.

31. In reaching its decision, the Tribunal considered whether Dr Johns' conduct:

- (i) fell short of the standards considered proper in the circumstances;
- (ii) would be regarded as deplorable by fellow practitioners;
- (iii) would be regarded as 'an elementary and grievous failure';
- (iv) involved conduct of a morally culpable or otherwise disgraceful kind.

32. Dr Johns admitted at the beginning of this hearing that he was intoxicated with alcohol and sleep deprived when he presented for work on 27 April 2018. Dr Johns graduated in 2007 and at the time of the incident, would have been practising medicine for some ten years.

33. Dr Johns' colleagues were so concerned by his actions and the state he was in to the extent that he was advised not to see any other patients, arranged for the on-call trauma consultant to come and see him, placed him in a room away from patients, took him off duty, removed his car keys from him and escorted him to the overnight accommodation.

34. The Tribunal determined that Dr Johns placed patients at risk of harm and he failed to make the safety of his patients his first concern. Furthermore, he had placed members of the public at risk by driving into work whilst in this state. His behaviour in turning up for work intoxicated and sleep deprived was morally culpable and otherwise disgraceful. His actions had the potential to bring the medical profession into disrepute. He repeatedly failed to listen to the concerns of his colleagues. Dr Johns' actions fell short of what would be expected of practitioners in the circumstances. His conduct would be regarded as deplorable by fellow practitioners, as well as 'an elementary and grievous failure'.

35. In all the circumstances, the Tribunal determined that Dr Johns' conduct on 27 April 2018 amounted to misconduct.

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Impairment by reason of misconduct

36. The Tribunal, having found that the facts found proved amounted to misconduct, went on to consider whether Dr Johns' fitness to practise is currently impaired by reason of misconduct.

37. The Tribunal had regard to Dame Janet Smith's Fifth Report of the Shipman Inquiry, which provided a helpful approach to the determination of impairment:

'Do our findings of fact in respect of the doctor's misconduct...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...'

XXX

46. XXX, during his oral evidence, XXX Dr Johns said *'it was an assumption of mine that wine was in the house. I must have, that must be how I had alcohol in my system.'*

47. The Tribunal is concerned that Dr Johns has provided at least six different accounts of what took place around the 27 April 2018 incident. The Tribunal concluded that Dr Johns has consistently failed to recognise the extent of his alcohol consumption and sought to blame his colleagues for his problems. XXX Whilst the Tribunal notes that Dr Johns now admits he was intoxicated on 27 April 2018, the evidence he gave before the Tribunal remained inconsistent.

48. The Tribunal is not satisfied that Dr Johns has fully reflected on his conduct. Dr Johns has stated that he recognised the seriousness of his actions, and has provided some evidence that he understands how his actions had the potential to place patients at risk of harm, adversely affect the reputation of the profession, or to damage public confidence.

49. The Tribunal notes that there is no evidence that Dr Johns has repeated his misconduct. The Tribunal accepts that Dr Johns has some appreciation of the seriousness of his misconduct although his insight is far from complete. He has put in place strategies to help him to cope with his stress. However, the Tribunal is not persuaded, particularly in light of XXX, that he is not liable in the future to act so as to put patients at unwarranted risk of harm or bring the medical profession into disrepute, if faced with similar difficult circumstances.

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50. The Tribunal concluded that a finding of impaired fitness to practise is required in order to maintain public confidence in the profession and to promote and maintain proper professional standards and conduct for members of the profession. The Tribunal determined that the public interest would not be served if a finding of impairment were not made. The Tribunal determined that Dr Johns' fitness to practise is impaired by reason of his misconduct.

The Tribunal's Overall Determination on the Facts

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

1. On the night shift starting 27 April 2018, you presented for work at the Prince Charles University Hospital in an unfit state in that you were:

a. intoxicated with alcohol;
Admitted and Found Proved

b. sleep deprived.
Admitted and Found Proved

~~2. XXX~~

And that by reason of the matters set out above your fitness to practise is impaired because of your:

a. misconduct in respect of paragraph 1;
Found Proved

~~b. XXX~~

Determination on Sanction - 30/10/2019

1. Having determined that Dr Johns' 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

2. On behalf of the GMC, Miss Fry submitted that the appropriate sanction was one of conditions. She reminded the Tribunal that a sanction must be appropriate and proportionate and that the Tribunal should bear in mind that the reputation of the profession as a whole is more important than the interests of any individual doctor. Miss Fry said that the Tribunal must start with the least restrictive sanction.

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3. Miss Fry drew the Tribunal's attention to the mitigating and aggravating features in this case. She submitted that not an insignificant period of time has passed since the incident, without any further complaint having been raised and the conduct arose at a time of very difficult personal circumstances. She said that despite having admitted that he was intoxicated with alcohol and sleep deprived on 27 April 2018, Dr Johns was still unwilling to admit his misconduct of actually drinking alcohol in advance of his shift.

4. In terms of the length of any sanction, Miss Fry submitted this is a matter for the Tribunal. XXX

Submissions on behalf of Dr Johns

5. Mr Fortune referred the Tribunal to the Sanctions Guidance (SG) (February 2018). He highlighted the aggravating features which included that Dr Johns attended work on 27 April 2018 when he was intoxicated with alcohol and sleep deprived, and placed patients at risk of harm. Mr Fortune submitted that there are mitigating features which included that Dr Johns has no previous adverse history with the GMC, has worked for twelve months in accordance with his interim conditions without any concerns, has accepted responsibility for his behaviour and made an unreserved apology to his patients, XXX, his colleagues and the profession as a whole.

6. Mr Fortune said that a period of conditional registration would be an appropriate and proportionate sanction, if only to address the risk of relapse or recurrence. In relation to the length of any sanction, Mr Fortune said that the Tribunal should be mindful that Dr Johns' registration has already been subject to an interim order of conditions for more than fifteen months. Finally, he submitted that any conditions should be workable, appropriate and proportionate. He requested that conditions be as least restrictive as possible so as not to have an adverse impact on Dr Johns ability to work.

The Tribunal's Approach

7. The decision as to the appropriate sanction, if any, to impose is a matter for the Tribunal, exercising its own judgement. In so doing, it has given consideration to its findings of fact, misconduct and impaired fitness to practise and the submissions made by Miss Fry and Mr Fortune.

8. Throughout its deliberations the Tribunal bore in mind that the purpose of sanctions is not to be punitive, but to protect the public interest. The public interest includes protecting the health, safety and wellbeing of the public, maintaining public confidence in the profession, and declaring and upholding proper standards of conduct and behaviour. In making its decision, the Tribunal also had regard to the principle of proportionality, and it considered Dr Johns' interests as well as those of

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the public. It also considered and balanced the mitigating and aggravating factors in this case.

9. The Tribunal considered the following mitigating and aggravating factors were relevant:

Mitigating

- There is no evidence of any further complaints since April 2018, although the Tribunal noted that Dr Johns has been on interim conditions and that he has worked for the past twelve months in a different setting;
- Dr Johns' conduct arose at a time of very difficult personal circumstances;
- He has demonstrated some insight into the concerns, but only in relation to sleep deprivation.
- He has described his attempts to remediate which include putting in place strategies to manage his work pattern, not working nights, sleep hygiene, and social activities;
- He has apologised before the Tribunal for his conduct to his patients, his professional colleagues and XXX;
- A letter from Ms L of Medacs Healthcare, dated 21 October 2019, confirmed they have no clinical concerns about Dr Johns and a positive colleague assessment report;
- He stated that he had developed a better understanding of the causes of his sleep deprivation issues;
- XXX.

Aggravating

- Dr Johns' admission to being intoxicated on 27 April 2018 was made only at the outset of this hearing, XXX and his oral evidence in this regard was inconsistent. XXX
- Dr Johns has not demonstrated sufficient insight into the concerns regarding his alcohol consumption;
- In response to his misconduct, he made allegations against colleagues at the Hospital and sought to blame them.
- He placed patients at serious risk of harm as a result of attending work intoxicated and sleep deprived;
- He placed members of the public at risk by driving to work in this state.

The Tribunal's Decision

No action

10. In coming to its decision as to the appropriate sanction, if any, to impose in Dr Johns' case, the Tribunal first considered whether to take no action. The Tribunal

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considered, amongst others, paragraphs 68-70 of the SG which highlights that taking no action following a finding of impaired fitness to practise may be appropriate in exceptional circumstances.

11. The Tribunal determined there were no exceptional circumstances in this case. Therefore, taking no action would not be appropriate, proportionate nor in the public interest given the seriousness of the misconduct.

Conditions

12. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Johns' registration. The Tribunal took account of the SG, in particular, paragraphs 82a, b and c, 84a and b. These state:

'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*

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'*

13. It also had regard to paragraph 85 of the SG, which states:

'85 Conditions should be appropriate, proportionate, workable and measurable.'

14. The Tribunal considers that Dr Johns' insight in relation to attending work whilst intoxicated is limited and fragile. XXX Whilst he has described his efforts to address his sleep deprivation XXX, he has provided no independent evidence of this and the Tribunal has no evidence of remediation in relation to his alcohol consumption. However, the Tribunal is mindful that the matter before it does not

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relate to performance or XXX, such that conditions could adequately address its concerns.

15. The Tribunal went on to consider whether conditions would be appropriate to address its identified concerns.

16. The Tribunal had regard to paragraphs 160 and 162a and b of the SG. These state:

'160 Doctors are expected to act with honesty and integrity and uphold the law – this includes their use of drugs and alcohol. Any serious or persistent failure in this regard that puts patients at risk or undermines public confidence in doctors will put their registration at risk.

162 While misuse of drugs or alcohol is serious, and not solely where linked to criminal conduct, there are certain factors that aggravate these issues. The aggravating factors that are likely to lead the tribunal to consider taking more serious action (this list is not exhaustive) are:

a intoxication in the workplace or while on duty

b misuse of alcohol or drugs that has impacted on the doctor's clinical performance and caused serious harm to patients or put public safety at serious risk'

17. Dr Johns drove to work (on his own evidence for about an hour) while intoxicated, which the Tribunal considered he placed members of the public at serious risk of harm. He attended his workplace and embarked on undertaking his clinical duty whilst intoxicated and sleep deprived. The evidence of his colleagues was that his clinical judgement may have been affected as a result. His actions put patients at risk of serious harm and undermined public confidence in doctors and the medical profession.

18. The Tribunal determined that conditions would not address the seriousness of Dr Johns' misconduct. Further, given the Tribunal's concern about Dr Johns lack of insight, it was not persuaded that conditions would be workable, appropriate, proportionate or properly satisfy the overarching objective.

Suspension

19. The Tribunal then went on to consider whether a period of suspension would be an appropriate and proportionate sanction to impose on Dr Johns. The Tribunal took into account paragraphs 91, 92, 93, and 97(a), (e), (f) and (g) of the SG, which state:

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'91 *Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbecoming a registered doctor. ...*

92 *Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration...*

97. *Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.*

a. *A serious breach of Good medical practice, but where the doctor's misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors."*

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

f *No evidence of repetition of similar behaviour since incident.*

g *The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.'*

20. The Tribunal considered that Dr Johns' misconduct represented a serious breach of the following paragraphs of Good Medical Practice (GMP).

'1 *Patients need good doctors. Good doctors make the care of their patients their first concern: ...*

25 *You must take prompt action if you think that patient safety, dignity or comfort is or may be seriously compromised.*

28 *... if your judgement or performance could be affected by a condition or its treatment, you must consult a suitably qualified colleague. You must follow their advice about any changes to your practice they consider necessary. You must not rely on your own assessment of the risk to patients.'*

21. The Tribunal noted that Dr Johns has described his attempts at remediation in relation to his sleep deprivation but needs to be able to demonstrate that he has

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successfully remediated the concerns with regard to his alcohol consumption. The Tribunal considered that Dr Johns' insight needs to be developed further such that he is able to provide satisfactory evidence that:

- He accepts that he has used alcohol in the past to address his sleep difficulties;
- He recognises and has addressed the underlying issues that gave rise to his alcohol intoxication;
- He has fully reflected on his behaviour in relation to the alcohol consumption, sleep deprivation, his conduct towards his colleagues and how he has jeopardised patient safety and undermined confidence in the profession.

22. The Tribunal XXX considered that whilst Dr Johns does not pose a significant risk of repeating his behaviour, this risk is still present whilst his insight is still at such an early stage of development.

23. The Tribunal has already found that Dr Johns' misconduct was serious and that his fitness to practise is currently impaired. Further, it found his oral evidence inconsistent on the matter of whether he was intoxicated on 27 April 2018. The Tribunal noted that the only evidence of remediation undertaken by Dr Johns relates to the matter of sleep deprivation. The Tribunal has already determined that Dr Johns' insight is only recent, is limited and is at the early stages of development.

24. The Tribunal determined that, in view of its findings on impairment, and given the seriousness with which it views Dr Johns' misconduct, the appropriate and proportionate sanction is a period of suspension of four months. The Tribunal was mindful that the reputation of the profession is more important than the interests of any individual practitioner.

25. In considering the appropriate period of suspension, the Tribunal was mindful that it should be sufficient to mark the seriousness of Dr Johns' misconduct and send a message to the profession and protect the public interest. This period will allow Dr Johns to develop further insight into the concerns which this Tribunal has identified. A period of suspension will also serve to reassure the public and uphold the reputation of the profession.

Review

26. The Tribunal has directed that before the end of the period of suspension, Dr Johns' case be reviewed by a Medical Practitioners Tribunal. A letter will be sent to him about the arrangements for the review hearing. The Tribunal considered that those reviewing Dr Johns' case would be assisted by receiving the following:

- Reports from Dr Johns as to the success of his strategies in managing his sleep deprivation;

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- Evidence he has reflected on his use of alcohol;
- A reflective statement or other document which shows that Dr Johns has reflected on his misconduct;
- Evidence that he has kept his clinical knowledge and skills up to date;
- Any other information that he considers would assist the Tribunal.

Determination on Immediate Order - 30/10/2019

1. Having determined that Dr Johns' registration should be suspended, the Tribunal has now considered, in accordance with Section 38 of the Medical Act 1983 as amended, whether to impose an immediate order to suspend his registration.
2. The Tribunal has borne in mind the test to be applied with regard to imposing an immediate order; it 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.

Submissions on behalf of the GMC

3. Miss Fry submitted that an immediate order is not necessary given that Dr Johns has practised continuously without any further concerns. However, she submitted that the interim order currently in place should remain in place pending the substantive order taking effect.

Submissions on behalf of Dr Johns

4. Mr Fortune submitted that it is a matter for the Tribunal to determine whether to impose an immediate order. In relation to the GMC submissions regarding the interim order, he said that it is highly unusual for a Tribunal to allow the interim order to remain in place having made a substantive order of suspension.

Tribunal's decision

5. The Tribunal has taken account of the relevant paragraphs of the *SG* in relation to when it is appropriate to impose an immediate order. Paragraph 172 of the *SG* states:

"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..."

6. The Tribunal has determined that, given the seriousness with which it viewed Dr Johns' misconduct, and given its findings on impairment and sanction, it is

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necessary, for the protection of members of the public, in Dr Johns' interests and in the public interest, to make an order suspending Dr Johns' registration immediately.

7. The substantive decision of suspension, as already announced, will take effect 28 days from when notice is deemed to have been served upon Dr Johns, unless he lodges an appeal in the interim. If Dr Johns lodges an appeal, the immediate order for suspension will remain in force until such time as the outcome of any appeal is determined.

8. The interim order of conditions is revoked.

9. That concludes the case.

Confirmed

Date 30 October 2019

Mrs Lucy Reid, Chair

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ANNEX A – 21/10/2019

DETERMINATION: Rule 17(6) Application (21 October 2019)

Application to Amend Allegation

1. On 21 October 2019 (Day 1), the Counsel for the GMC, Miss Eleanor Fry, made an application to withdraw paragraph 2 of the Allegation which stated:

'XXX'

XXX

3. Miss Fry submitted that, in light of this evidence, paragraph 2 of the Allegation should be withdrawn, and as consequence, the related paragraph 'b'.

4. Mr Malcolm Fortune, Counsel for Dr Johns, supported the application.

Tribunal's decision

5. The Tribunal had regard to Rule 17(6) 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."

6. The Tribunal accepted the submissions made by Miss Fry and Mr Fortune.

7. The Tribunal was satisfied that the amendment could be made without injustice. It therefore decided to accede to the amendment and grant the application to withdraw paragraph 2 of the Allegation, set out at paragraph 1 above.

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ANNEX B – 28/10/2019

Determination on Application to consider evidence at Stage 1 relating to a set of disputed facts in evidence before the Tribunal – 28 October 2019

XXX