

Dates: 25/06/2018 - 03/07/2018

Medical Practitioner's name: Dr Michael Albert Taliercio

GMC reference number: 7092011

Primary medical qualification: MD 2010 University of Malta

Type of case
New - Misconduct

Outcome on impairment
Impaired

Summary of outcome

Suspension, 2 months.

Tribunal:

Legally Qualified Chair	Ms Chitra Karve
Lay Tribunal Member:	Mr Nigel Humphreys
Medical Tribunal Member:	Dr Paul Divall
Tribunal Clerk:	Miss Elly McQuinn & Ms Angela Carney

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Stephen Brassington, Counsel, instructed by MDU Legal
GMC Representative:	Mr Ian Brook, Counsel

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.

Record of Determinations – Medical Practitioners Tribunal

Overarching Objective

Throughout the decision making process the tribunal has borne in mind the statutory overarching objective as set out in s 1, 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 - 29/07/2018

Background

1. Dr Taliercio qualified in Malta in 2010, following which he moved to the United Kingdom and worked in a number of posts during his initial training years. In 2012 Dr Taliercio commenced his speciality training in Paediatrics. At the time of the events which are the subject of the hearing Dr Taliercio was completing his specialist Paediatrics training at Newham University Hospital of the Barts Health NHS Trust ('the Trust'), and later completed his training as a General Practitioner under the Wales Deanery's GP Training Scheme.
2. It is alleged that Dr Taliercio took unauthorised leave to attend an Over The Wall Camp ('the camp') for sick children in 2015. It is also alleged that Dr Taliercio incorrectly answered an application to attend a subsequent Over The Wall Camp and in doing so, failed to disclose the fact he was subject to a fitness to practise investigation by the GMC at that time. It is also alleged that Dr Taliercio refused to work his notice period when resigning from the Trust and the Paediatrics training program. It is further alleged that Dr Taliercio was dishonest in statements made to his employers and an application form to attend the camp.
3. The initial concerns were raised with the GMC on 11 August 2015 by the Trust.

The Allegation and the Doctor's Response

The Admitted Facts

4. At the outset of these proceedings, through his counsel Mr Brassington, Dr Taliercio made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out below, 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.

Leave

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1. Between 6-10 July 2015, you took unauthorised leave from Barts Health NHS Trust ('the Trust') to attend the 2015 Over The Wall camp.

Admitted and Found Proved

2. In an email dated 2 July 2015, you informed the Trust:

a. in relation to the leave referred to at paragraph 1, 'If I cancel attending this camp, the entire camp would have to be cancelled as there will be no doctors on the medical staff';

Admitted and Found Proved

b. that 'Dr C [sic] would do my long day next Thursday the 9th, as well as my night shifts on the 17,18,19th of July. This has been agreed by Dr A in June.'

Admitted and Found Proved

3. In an email dated 14 July 2015, in relation to the leave referred to at paragraph 1, you informed the Trust 'This is a decision I feel was right to make in light of the information available at the time, as my lack of attendance would have canceled [sic] the camp'.

Admitted and Found Proved

4. On 17-19 July 2015, you failed to work night shifts without:

a. authorisation;

Admitted and Found Proved

b. ensuring that appropriate medical cover was in place.

Admitted and Found Proved

Resignation

5. On 14 July 2015, in a meeting with the Trust, you refused to:

a. work your full notice period of three months following your resignation from the Trust on or around 1 July 2015;

Admitted and Found Proved

b. continue working at the Trust until the end of August 2015 at the Trust's request.

Admitted and Found Proved

Over The Wall Application

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6. On 11 December 2015, you submitted an application to attend the 2016 Over The Wall camp in which you:
- answered 'No' to the question 'Are you currently subject to a fitness to practise investigation or proceedings by an employer or regulatory body or licensing body in the UK or any other country?';
Admitted and Found Proved
 - signed the application confirming 'I declare that the information I have given on this form is complete and accurate'.
Admitted and Found Proved
7. You knew that your statements at paragraphs 2a-b, 3, and 6a-b above were untrue. **To be determined**
8. Your actions at paragraphs 2a-b, 3, and 6a-b above were dishonest.
To be determined

The Facts to be Determined

5. In light of Dr Taliercio's response to the Allegation made against him, the Tribunal is required to determine whether or not Dr Taliercio knew that his statements at paragraphs 2a-b, 3, and 6a-b above were untrue and whether or not his actions at paragraphs 2a-b, 3, and 6a-b above were dishonest.

Factual Witness Evidence

6. The Tribunal received evidence on behalf of the GMC from the following witnesses:
- Dr A, Consultant Paediatrician, Newham General Hospital
 - Ms D, Nursing Director, Over the Wall Charity
7. 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:
- Ms E, GMC Investigation Officer;
 - Dr B, Educational Supervisor and Consultant Paediatrician at the Trust;
 - Dr C, Senior House Officer at the Trust.
8. Dr Taliercio provided his own witness statement and gave oral evidence at the hearing.

Documentary Evidence

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

- email correspondence between Ms D, Dr Taliercio and other Over The Wall camp volunteers
- email correspondence between Dr Taliercio and various colleague of the Trust
- application for Over The Wall camp completed in December 2015
- letter from the MDU (Dr Taliercio’s legal representative), to the GMC dated 19 April 2016
- testimonials on behalf of Dr Taliercio.

The Tribunal’s Approach

10. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Taliercio 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 events occurred.

11. The Tribunal also reminded itself of its statutory overarching objectives and the need to consider the full circumstances of the case.

12. The Tribunal acknowledged its ability to consider good character evidence where it is relevant at law, particularly in relation to the character of Dr Taliercio. Furthermore, it recognised that it was able to take account of hearsay evidence provided by witnesses, however the Tribunal should consider what weight to give to such evidence.

13. The Tribunal considered the applicable test for determining dishonesty was the two stage approach as set out by the case of *Ivey v Genting Casinos (UK) Limited (t/as Crockfords Club) [2017] UKSC 67 (‘Ivey’)*. The Tribunal referred itself to the test as set out at paragraph 74 thereof, which states:

‘When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.’

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The Tribunal's Analysis of the Evidence and Findings

14. The Tribunal has considered paragraphs 7 and 8 of the Allegation in relation to paragraphs 2a, b, 3 and 6 a, b.

Paragraphs 7 and 8 in relation to paragraph 2a

15. In considering whether Dr Taliercio, in his email of 2 July 2015, knew his statements to be untrue the Tribunal considered the oral and written accounts of Ms C. In particular, it highlighted Ms C's oral evidence which indicated that Over The Wall camps could manage with a degree of flexibility where clinical staff had to withdraw; that she had a tendency to 'over recruit' for camps in the event staff needed to withdraw; and that she had never made any representation that the camp would be cancelled by the inability of Dr Taliercio to attend to the camp. In addition, the Tribunal considered the email exchange from Ms C to the camp volunteers in 2015. The Tribunal had particular regard to the communications that despite one Doctor and one nurse withdrawing two additional nurses had been secured. It also considered the email from Ms C to the volunteers of 8 June 2015 which in summary stated that the camp was going ahead and there were three doctors and seven nurses attending. It determined that such communications show the clear position that the camp would be proceeding.

16. The Tribunal went on to consider the detailed nature of the 2 July 2015 email. In particular, it considered the following paragraph of the email:

'...If I cancel attending this camp, the entire camp would have to be cancelled as there will be no doctors on the medical staff, and it would mean disappointing countless children who look forward to the camp all year long...'

It determined that it was a carefully structured explanation for the action he was going to take when attending the camp and being absent from the Trust. It considered that this was a bold communication and determined that this was of itself evidence that Dr Taliercio had thought deeply about the situation and attempted to justify what he was planning to do by exaggerating and making statements which were untrue.

17. The Tribunal also bore in mind the written and oral evidence of Dr Taliercio. It was Dr Taliercio's evidence that he was having difficulties in his personal life at the time of the events. He claimed his actions were illogical and irrational. However, the Tribunal determined that the well thought out and carefully constructed email of 2 July 2015, not limited to the paragraph quoted above, is not representative of a person who was thinking illogically.

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18. The Tribunal took into account that previously, Dr Taliercio may have seen requests for additional clinical staff on Over The Wall Camps where volunteer Doctors had withdrawn their attendance. It also bore in mind that Dr Taliercio may have felt committed to attend the camp after having been allocated to supervise a group of attendees in a 'team' in the email of 8 June 2015 from Ms D. It considered the potential pressure Dr Taliercio felt to attend due to another volunteer Doctor having withdrawn their attendance. However, the Tribunal found that there was no evidence that Dr Taliercio had been given information that the camp would be cancelled if he did not attend. Neither was there evidence that previous camps had been cancelled due to non-attendance of clinical staff. It determined that based on the above evidence and considerations, Dr Taliercio did not and could not have assumed or believed the camp would be cancelled. The Tribunal therefore determined Dr Taliercio knew his statements in regard to the camp being cancelled in his email of 2 July 2015 were untrue. Accordingly, the Tribunal found paragraph 7 in relation to paragraph 2a proved.

19. Having found that Dr Taliercio knew the statements to be untrue, the Tribunal went on to consider whether his conduct was dishonest. With regard to whether or not Dr Taliercio held a subjective belief or thought he had knowledge that the camp would be cancelled if he did not attend, the Tribunal determined based on the above reasons that Dr Taliercio did not genuinely believe that if he withdrew from the camp it would be cancelled, having known such a statement was incorrect when he made it. The Tribunal further determined that any ordinary person would consider the making of knowingly incorrect statements to an employer as dishonest. Accordingly, the Tribunal found paragraph 8 in relation to paragraph 2a proved.

Paragraphs 7 and 8 in relation to paragraph 2b

20. The Tribunal noted the email from Dr Taliercio to Dr A dated 31 May 2015 and timed 17:00 hrs, which states:

*'Hi Dr A,
Am glad we have been able to sort out the swap over from Neonates to Paeds. I have a look at the rota and so I just needed to sort out swaps for the 3rd, 6th, 8th and 10th July (for the charity camp) I would be happy to swap with anyone who is on an off day then or study day and I can always swap it with my off days or study days that I have coming up after that on the rota, so if you have any suggestions or ideas that would be so great.
...'*

21. The Tribunal also noted the email from Dr Taliercio to Dr A dated 22 June 2015 and timed 19:06 hrs, which states:

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'Just to email as previously discussed on Friday. So I will carry on in neonates on the condition that Dr C is happy to do those night shifts we discussed as well as a single long day in July.

9th of July – the evening from 4.30-9

17-19th July, Night shifts

Many thanks again, and let me know if there are issues.

...'

22. The Tribunal has taken account of the email from Dr Taliercio to Dr F, (the consultant in charge of managing junior doctor's rota in the neonates department) dated 2 July 2015 timed 09.10 hrs, which states:

'... I have arranged, as a condition of my staying in neonates that Dr C would do my long day next Thursday the 9th, as well as my night shifts on 17, 18, 19th of July. This has been agreed by Dr A in June.

...'

23. The Tribunal has also taken account of Dr F's email response, copied to Dr A, dated 2 July 2015 and timed 17:35 hrs, which states:

'Dear Michael,

I have no information about your arrangement of leave with Dr A and hence cannot comment on this.

I am therefore copying this mil [sic] to Dr A and would discuss with him in person as well...'

24. The Tribunal has additionally taken account of Dr A's email to Dr Taliercio, copied to Dr F, dated 2 July 2015 and timed 18:11 hrs, which states:

Dear Michael,

Dr C has informed me that he is on nights downstairs from Monday 13th July for 4 nights in Paediatrics; hence he cannot do 7 nights in a row. He may agree to do your weekend nights if you can do his 3 nights in exchange. If you are expecting him to do your long day on 9th then this should be a mutual swap.

I agree that I had promised that you and Dr C will swap after 3 months. As both of you were going for exams in the middle of June this did not happen. If you want to be off for days when you are working it can only be done by arranging appropriate swaps...'

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25. The Tribunal has noted the email from Dr Taliercio to Dr C dated 1 July 2015 and timed 21:42 hrs, also copied to Dr A, which states:

*'Hi Dr C,
Just emailing as a reminder what was previously agreed with Dr A as my conditions for staying up in neonate. For your reference you are covering me for the following dates.
16:30-20:30 9/7/15
17, 18, 19 July. Night Shift
I suppose Dr A has already spoken to you about it...'*

26. The Tribunal has further noted Dr C's response dated 2 July 2015 and timed 09:55, which states:

*Hi Michael
Could look [sic] my Rota
I am happy to do your nights but I will be doing nights before, your night, so it will be difficult and putting patients at risk doing 7 nights in a row.
Will it be possible for you to do 3 of my nights so I can do your nights...'*

27. Dr Taliercio told the Tribunal that he had initially requested leave to attend the camp in January 2015. In his oral evidence Dr A told the Tribunal that he had discussed the leave for the camp with Dr Taliercio, although he could not recall the specific dates. When questioned by the Tribunal Dr A agreed that the leave had been agreed in principle. Dr A told the Tribunal that it was usual and expected practice for doctors to arrange swaps with colleagues and then inform the rota co-ordinator of the swap so that the electronic rota could be amended. Dr A stated that on some occasions swaps had occurred and the rota was amended retrospectively.

28. The Tribunal considered, taking into account the emails from Dr Taliercio detailed above, that there is evidence that it was in Dr Taliercio's mind that the leave had been agreed. The Tribunal was concerned that Dr Taliercio failed to do the appropriate checks to ensure that this was definitely the case. Nonetheless, the Tribunal accepted that the statement made by Dr Taliercio was not untrue. Accordingly, the Tribunal found paragraph 7 in relation to paragraph 2b not proved. Having found that the statement made by Dr Taliercio in the email at paragraph 2b was not untrue, it follows that in making that statement Dr Taliercio's action was not dishonest. Accordingly, the Tribunal found paragraph 8 in relation to paragraph 2b not proved.

Paragraphs 7 and 8 in relation to paragraph 3

29. The Tribunal considered the evidence it had analysed in relation to Allegation 2a. It determined that Dr Taliercio's reference to decision making based on what he

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felt ‘...was right to make in light of the information available at the time’ was reflective of the same state of mind he held at the time of writing the email on 2 July 2015. Consequently, it determined that for the same reasons as outlined in paragraphs 15 - 18 that Dr Taliercio knew the camp would not be cancelled if he did not attend it and therefore knew that the statements made in the email on 14 July 2015 were untrue

30. In considering whether the conduct was dishonest, the Tribunal first considered whether or not Dr Taliercio held a belief or was under the impression that the camp would be cancelled if he did not attend. It had already determined that Dr Taliercio knew that the statements about the camp being cancelled were not true. Therefore, he did not hold a genuine or mistaken belief as to this fact. The Tribunal then went on to consider whether, by the standards of ordinary decent people, the statement that he made to his employers was dishonest. The Tribunal determined that Dr Taliercio’s conduct in making that statement on 14 July 2015 was dishonest.

Paragraphs 7 and 8 in relation to paragraph 6a

31. The Tribunal next considered whether Dr Taliercio knew it was untrue when he answered ‘no’ to a question regarding whether he was subject to a fitness to practise investigation when applying for a subsequent Over The Wall Camp in December 2015 (‘the question’).

32. The Tribunal had unchallenged testimonial evidence that Dr Taliercio behaved in a manner indicating a high level of integrity. The Tribunal also had unchallenged evidence that Dr Taliercio had informed all relevant parties (including the Deanery, his Educational Supervisor, and his current employers) of the Fitness to Practise investigation. The Tribunal heard oral evidence from Dr Taliercio that he had filled in the form without taking the care that he should have, and that he had, intended to fill in ‘yes’ using the drop down menu. He told the Tribunal that he had made a mistake.

33. The GMC’s case on the other hand was that Dr Taliercio’s wish to attend the camp was sufficient motivation for him to lie on the form. The GMC asked Dr Taliercio in cross examination to find any other errors on the form and he was unable to do so.

34. The Tribunal considered all the available evidence as summarised above carefully and was unable to find on the balance of probabilities that Dr Taliercio had deliberately put ‘no’ on the form. There was a balance of evidence from both sides and in that situation the GMC had not proved their case. Accordingly, the Tribunal found paragraph 8 in relation to paragraph 6a not proved.

Paragraphs 7 and 8 in relation to paragraph 6b

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35. For the reasons it discussed with regard to Allegation 6a, the Tribunal determined that there was not sufficient evidence proving that Dr Taliercio knew he was wrong when answering the question, nor did he realise this before signing the declaration of the application form. The Tribunal determined that therefore, Dr Taliercio did not know the statement or declaration he was making when signing the application form was incorrect. Accordingly, the Tribunal found paragraph 7 in relation to paragraph 6b not proved. Having found that Dr Taliercio did not knowingly sign the application form's declaration untruthfully and, it follows that Dr Taliercio's action was not dishonest. Accordingly, the Tribunal found paragraph 8 in relation to paragraph 6b not proved.

The Tribunal's Overall Determination on the Facts

36. The Tribunal has determined the facts as follows:

Leave

1. Between 6-10 July 2015, you took unauthorised leave from Barts Health NHS Trust ('the Trust') to attend the 2015 Over The Wall camp.

Admitted and Found Proved

2. In an email dated 2 July 2015, you informed the Trust:

a. in relation to the leave referred to at paragraph 1, 'If I cancel attending this camp, the entire camp would have to be cancelled as there will be no doctors on the medical staff';

Admitted and Found Proved

b. that 'Dr C [sic] would do my long day next Thursday the 9th, as well as my night shifts on the 17,18,19th of July. This has been agreed by Dr A in June.'

Admitted and Found Proved

3. In an email dated 14 July 2015, in relation to the leave referred to at paragraph 1, you informed the Trust 'This is a decision I feel was right to make in light of the information available at the time, as my lack of attendance would have canceled [sic] the camp'.

Admitted and Found Proved

4. On 17-19 July 2015, you failed to work night shifts without:

a. authorisation;

Admitted and Found Proved

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b. ensuring that appropriate medical cover was in place.

Admitted and Found Proved

Resignation

5. On 14 July 2015, in a meeting with the Trust, you refused to:

a. work your full notice period of three months following your resignation from the Trust on or around 1 July 2015;

Admitted and Found Proved

b. continue working at the Trust until the end of August 2015 at the Trust's request.

Admitted and Found Proved

Over The Wall Application

6. On 11 December 2015, you submitted an application to attend the 2016 Over The Wall camp in which you:

a. answered 'No' to the question 'Are you currently subject to a fitness to practise investigation or proceedings by an employer or regulatory body or licensing body in the UK or any other country?';

Admitted and Found Proved

b. signed the application confirming 'I declare that the information I have given on this form is complete and accurate'.

Admitted and Found Proved

7. You knew that your statements at paragraphs 2a-b, 3, and 6a-b above were untrue.

Found Proved in relation to paragraphs 2a and 3. Found Not Proved in relation to paragraphs 2b, 6a and b.

8. Your actions at paragraphs 2a-b, 3, and 6a-b above were dishonest.

Found Proved in relation to paragraphs 2a and 3. Found Not Proved in relation to paragraphs 2b, 6a and b.

Determination on Impairment - 02/07/2018

1. 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 before, Dr Taliercio's fitness to practise is impaired by reason of his misconduct.

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The Evidence

2. 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 documentary evidence as follows:

- Dr Taliercio's curriculum vitae
- training certificates of professional development courses attended by Dr Taliercio
- e-portfolio documentation assessing performance in paediatrics and general practice training
- log of 'professional conversations' formally recorded by Dr Taliercio
- Responsible Officer statement dated 1 May 2018 of Professor G of the Wales Deanery.

Submissions

Submissions on behalf of the GMC

3. On behalf of the GMC, Mr Brook submitted that a finding of misconduct is entirely a matter for the judgment of the Tribunal, and such a finding can only be made where Dr Taliercio's actions are considered sufficiently serious. Mr Brook submitted that Dr Taliercio's actions in the present case are of a sufficiently serious nature to amount to misconduct. In making his submissions, Mr Brook first drew the Tribunal's attention to the inside cover of Good Medical Practice (2013 Edition) ('GMP'), pointing out in particular the paragraph regarding working with colleagues in ways that best serve patients interests, and the paragraph indicating that he should be honest and open and act with integrity. Mr Brook also referred the Tribunal's attention to paragraphs 35, 36, 37, 38, 68 and 71 of GMP. In referring to these paragraphs, Mr Brook submitted that Dr Taliercio's dishonest behaviour contravened GMP, stating he had not been honest and had not acted with integrity; he did not treat his colleagues fairly by being absent; his actions could have affected patient safety if sufficient cover could not be arranged during his unauthorised absence; he was mandated to work his notice period as other arrangements had not been agreed with the Trust; and he was not open and honest during his communications with the Trust. In addition, Mr Brook submitted that the Tribunal should have regard to paragraph 71 GMP regarding Doctors taking reasonable steps to ensure information and forms they sign are correct. Despite the Tribunal not finding that he had knowingly put the incorrect information in the form and not finding that he was dishonest with respect to the form, Mr Brook submitted that the carelessness, as admitted by Dr Taliercio in evidence, was a factor that the Tribunal should consider. Dr Taliercio had a duty under paragraph 71a take reasonable steps to ensure that documents were not false or misleading.

4. In addition to submitting that Dr Taliercio's actions amounted to misconduct, Mr Brook stated that Dr Taliercio's fitness to practise is currently impaired. Mr Brook referred to a number of evidentiary features, including but not limited to, Dr Taliercio's

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lack of insight at the time of the events as evidenced in email exchanges between him and colleagues at the Trust; Dr Taliercio is not a 'fool' as represented by Mr Brassington on behalf of Dr Taliercio, but a bright young man who could not, as previously acknowledged by the Tribunal, blame illogical thought for his actions; he has not remediated his conduct as a majority of the training courses are of a clinical nature and an improved clinical competence cannot mitigate his dishonesty; and that his conduct undermines the public's confidence in the profession.

Submissions of behalf of Dr Taliercio

5. On behalf of Dr Taliercio, Mr Brassington stated that he offered no challenge to the GMC's submission on misconduct and impairment. Further, he conceded that Dr Taliercio's actions did amount to misconduct in the circumstances. He submitted that fellow colleagues in the medical professional would find his behaviour 'deplorable' and acknowledged that the public is entitled to expect their doctors to behave honestly.

6. With regard to impairment, Mr Brassington stated that the Tribunal was entitled to find Dr Taliercio currently impaired. He invited the Tribunal to consider Dr Taliercio's reflection on the events and focus on whether there was a risk of repetition in this case. Mr Brassington submitted that there was low risk of repetition. He directed the Tribunal to the evidence that Dr Taliercio, in all professional assessments and reports, had excelled during his training periods and not repeated a series of foolish mistakes. Mr Brassington further stated that the GMC had initially discontinued their initial investigation, and upon their reversing this decision approximately 12 months later, Dr Taliercio had still not repeated that unprofessional behaviour, nor was there any subsequent evidence of him putting his own interests before those of patients. Mr Brassington submitted that it was ultimately for the judgment of the Tribunal as to whether Dr Taliercio was currently impaired.

The Relevant Legal Principles

7. 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.

8. 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 that the misconduct was serious, and then whether the finding of that misconduct which was serious could lead to a finding of impairment.

9. The Tribunal must determine whether Dr Taliercio's fitness to practise is impaired today, taking into account Dr Taliercio's conduct at the time of the events and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.

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10. The Tribunal reminded itself that Dr Taliercio’s clinical competence was not in dispute, and that it was his behaviour with respect to professionalism, relationships with colleagues and the taking of unauthorised leave, that need to be considered when determining whether Dr Taliercio is impaired.

11. The Tribunal referred itself to the statutory overarching objective, as well as the guidance set down by Dame Janet Smith in the Fifth Shipman Report and the more recent approach in *CHRE v NMC and Paula Grant* both of which recognise that as part of the process in determining whether a doctor is fit to practise today it must take account of past actions or failures to act. In particular, the relevant considerations as to whether Dr Taliercio’s Fitness to Practise is impaired in the sense that 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 or is liable in the future to bring the medical profession into disrepute; and/or
- c. Has in the past breached or is liable to breach in the future 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.’

The Tribunal’s Determination on Impairment

Misconduct

12. The Tribunal first considered whether Dr Taliercio’s actions amounted to misconduct. Misconduct can be found in circumstances where there have been serious departures from expected standards of conduct and behaviour, which can be identified by reference to GMP.

13. With regard to Dr Taliercio’s dishonest conduct the Tribunal noted that paragraphs 1, 36, 38, 68 and 71 (a) of GMP applied. These state as follows:

- ‘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 and within the law.

...

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36. You must treat colleagues fairly and with respect.

...

38. Patient safety may be affected if there is not enough medical cover. So you must take up any post you have formally accepted, and work your contractual notice period before leaving a job, unless the employer has reasonable time to make other arrangements.

...

68. You must be honest and trustworthy in all your communication with patients and colleagues. This means you must make clear the limits of your knowledge and make reasonable checks to make sure any information you give is accurate.

...

71. You must be honest and trustworthy when writing reports, and when completing or signing forms, reports and other documents. You must make sure that any documents you write or sign are not false or misleading.

a You must take reasonable steps to check the information is correct.

...'

14. The Tribunal also considered the duty of a Doctor to 'work with colleagues in the ways that best serve patients' interests, to 'be honest and open and act with integrity' and to 'never abuse...the public's trust in the profession' as set out on the opening page of GMP to be relevant in this case.

15. The Tribunal considered each paragraph outlined above of GMP in turn. Firstly, it considered that Dr Taliercio did not treat his colleagues fairly when he took unauthorised leave and refused to work his notice period, and that such actions showed he did not act with integrity toward his colleagues. Secondly, the Tribunal determined that Dr Taliercio should have worked his notice period with the Trust. It recognised that he was asked to work two months out of the full three month notice period that was required but which he refused to do, stating he was leaving on 30 July 2015 and had scheduled leave prior to this point. The Tribunal considered the Trust's decision to terminate Dr Taliercio's contract was justified in the circumstances. Additionally, the Tribunal determined that Dr Taliercio was not

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honest in his email communications with colleagues when stating the camp would be cancelled, or that adequate cover had been arranged, and that such actions were not trustworthy. Furthermore, the Tribunal determined that Dr Taliercio, when completing the Over The Wall Application in December 2015, was either careless or reckless. It determined that Dr Taliercio should have checked and taken greater care, which is inherent in the declaration at the end of such forms, that act as a final reminder to check information before submitting them.

16. The Tribunal took a holistic approach to assess Dr Taliercio's behaviour, and contravention of the GMP, as a series of connected acts, rather than examining each of the actions individually. It determined that when examining this behaviour as a whole, it was misconduct which was serious.

17. Bearing in mind these principles, the Tribunal has determined that Dr Taliercio's behaviour fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct.

Impairment

18. The Tribunal having found that the facts found proved amounted to misconduct, went on to consider whether, as a result of that misconduct, Dr Taliercio's fitness to practise is currently impaired.

19. The Tribunal determined that Dr Taliercio did adduce some evidence that he is capable of reflection and has reflected on his behaviour to some extent. The Tribunal also took into account the evidence in the statement of the Responsible Officer that he had reflected. However, by reference to his non-admissions at the outset of the current proceedings, the Tribunal considered Dr Taliercio's denial shows a continued lack of acknowledgment to date, which it determined was demonstrative of a need for further reflection.

20. In addition the Tribunal had regard to the comments from his supervisor regarding his communication and sharing of his stressors with colleagues, as stated in the following passage in his e-portfolio:

'...couple of comments suggesting that you need to reflect a bit more on feedback and possibly accept other people's opinions or advice more, maybe you can reflect why this has been commented on. No issues in your clinical performance again suggesting more reflection.'

The Tribunal considered that based on these comments, which are more recent than the allegation, he required further reflection in his professional practice.

21. In the opinion of the Tribunal Dr Taliercio's dishonesty and lack of integrity constitutes a breach of a fundamental tenet of the medical profession which, it

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determined, is likely to bring the profession into disrepute. The Tribunal agreed with Mr Brassington's submission that Dr Taliercio's behaviour is likely to be seen as deplorable in the eyes of other medical professionals and that the public was entitled to trust that their Doctors behave in an honest way. In addition, the Tribunal determined that whilst it was fortunate that the hurt done here was not to patients, it was unfortunate that damage was suffered by colleagues in that they had to cover his unauthorised absence. The Tribunal concluded that public confidence in the profession would be undermined if a finding of impairment were not made in the circumstances.

22. Additionally, the Tribunal determined that despite no evidence of repetition being adduced, it could not be convinced that where Dr Taliercio was in a similar position of distress, typically at times of extreme pressure or difficult personal circumstances, he might not act in the same way or repeat his conduct.

23. The Tribunal has therefore determined, taking into account all the evidence, admissions and findings of the present case, that Dr Taliercio's fitness to practice is impaired by reason of his misconduct.

Determination on Sanction - 03/07/2018

1. Having determined that Dr Taliercio's fitness to practise is impaired by reason of his 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.

The Evidence

2. The Tribunal has taken into account evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction.

Submissions

Submissions on behalf of the GMC

3. On behalf of the GMC, Mr Brook submitted that this is a case where a period of suspension from the medical register is appropriate. Mr Brook referred to the case of *Parkinson v Nursing and Midwifery Council [2010] EWHC 1898 (Admin)* ('Parkinson') in stating that it was possible to impose a lesser sanction than erasure in cases of dishonesty. Mr Brook further submitted that the sanction should be sufficient to maintain public confidence in the profession and mark the gravity of Dr Taliercio's dishonesty, as well as his departure from the expected standards of a medical practitioner. Mr Brook acknowledged that, in mitigation to Dr Taliercio, the misconduct was not at the more serious end of dishonesty and not so serious that erasure is necessary. Mr Brook also raised a number of aggravating factors, essentially stating that

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Dr Taliercio's misconduct shows a significant lack of care and concern for colleagues and his employer. Mr Brook ultimately submitted that suspension was necessary for deterrence and to maintain public confidence in the profession.

Submissions on behalf of Dr Taliercio

4. On behalf of Dr Taliercio, Mr Brassington submitted this was not a case where erasure would be appropriate as it would be disproportionate, unnecessary and was not contended for by Mr Brook on behalf of the GMC. Furthermore, Mr Brassington acknowledged that this was not a case where taking no action would be appropriate, given the findings of impairment made by the Tribunal.

5. Mr Brassington stated that any sanction should be governed by the principle of proportionality, and should do no more than necessary to achieve the statutory purpose as outlined by the overarching objective. Mr Brassington agreed with the submissions of Mr Brook that suspension was the appropriate and proportionate sanction in this case. Mr Brassington invited the Tribunal to consider and balance mitigating and aggravating factors, and take into account the personal circumstances of Dr Taliercio at the time of the incidents. Mr Brassington invited the Tribunal to bear in mind the fact Dr Taliercio was performing charitable work during the misconduct that brought him before the panel, that the misconduct was at the lowest end of dishonesty offences, that the misconduct took place over a narrow compass of time, that Dr Taliercio has shown meaningful reflection as supported by his supervisor, there is a low prospect of repetition, and, that the finding of impairment in itself humiliates and shames Dr Taliercio. Mr Brassington ultimately submitted that, bearing these factors in mind, and the need to send a deterrent message where dishonesty offences are committed, a sanction of suspension with the shortest length possible is appropriate and proportionate in the circumstances.

The Tribunal's Determination on Sanction

6. The decision as to the appropriate sanction, if any, is a matter for this Tribunal exercising its own judgement. In reaching its decision, the Tribunal has taken account of the Sanctions Guidance (February 2018) ('the SG') and the statutory overarching objective, in particular, the need to maintain public confidence in the medical profession.

7. Throughout its deliberations, the Tribunal has applied the principles of proportionality, balancing Dr Taliercio's interests with the public interest. In deciding what sanction, if any, to impose the Tribunal considered each of the sanctions available, starting with the least restrictive. It also considered and balanced the mitigating and aggravating factors in this case.

Aggravating and Mitigating Factors

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8. The Tribunal considered that a finding of dishonesty is in itself serious and acts as an aggravating factor. In addition, the Tribunal had regard to the extent to which Dr Taliercio departed from GMP. It relied on its previous determination on impairment that Dr Taliercio did depart from GMP, particularly in working with his colleagues where he did not treat them fairly or act with integrity towards them when taking unauthorised leave and refusing to work his notice period. The Tribunal also took account of the fact that in his misconduct, Dr Taliercio showed a lack of responsibility toward his clinical duties and following from that, patient care. The Tribunal classed these factors as aggravating in the circumstances.

9. The Tribunal determined that Dr Taliercio's dishonest behaviour was partly mitigated by a number of factors. Firstly, the Tribunal considered that Dr Taliercio's intention was to engage in charitable work with no financial gain, and that was of value to society. Although his actions were misguided and accompanied by a lack of judgment in his approach, his charitable activity shows Dr Taliercio as a person who wants to do good. The Tribunal also had regard to the fact that the dishonesty, albeit during two separate incidents, was a repetition of the same statement – that the camp would be cancelled if he did not attend – both incidents occurring over a 12 day period. The Tribunal agreed with Mr Brassington's submission that Dr Taliercio was facing a 'perfect storm' where a number of difficult personal and work related issues had all come together at the same time. The Tribunal accepted that the time when the misconduct occurred was an unusually difficult and stressful time for Dr Taliercio. Additionally, the Tribunal had regard to the testimonials and e-portfolio provided and considered that Dr Taliercio was highly regarded by his colleagues both clinically and in his communication and team work skills. Furthermore, the Tribunal took account of the limited evidence of repetition, the fact there has been no similar misconduct since the initial behaviour and acknowledged the early admission to a majority of the paragraphs of the allegation.

No action

10. The Tribunal considered whether paragraph 68 of the SG applied as follows:

'68 Where a doctor's fitness to practise is impaired, it will usually be necessary to take action to protect the public (see paragraphs 14–16). But there may be exceptional circumstances to justify a tribunal taking no action.'

11. The Tribunal acknowledged that a case where no action was taken would have to be highly exceptional where a finding of dishonesty and impairment had already been made, bearing in mind that dishonesty is at the more serious end of misconduct. The Tribunal could not find any such special or exceptional circumstances in the present case to warrant taking no action.

Undertaking

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12. The Tribunal considered whether it was appropriate to impose an undertaking on Dr Taliercio, however determined it would not be suitable given that he had not offered any undertaking during submissions or otherwise.

Conditions

13. The Tribunal acknowledged that neither Mr Brook nor Mr Brassington had made submissions asking the Tribunal to impose conditions.

14. The Tribunal had regard to paragraphs 81 and 85 of the SG as follows:

- '81. Conditions might be most appropriate in cases:
- a. involving the doctor's health
 - b. involving issues around the doctor's performance
 - c. where there is evidence of shortcomings in a specific area or areas of the doctor's practice
 - d. where a doctor lacks the necessary knowledge of English to practise medicine without direct supervision.

...

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

15. Bearing the above objectives in mind, the Tribunal determined it would be difficult to formulate and impose conditions due to the circumstances of the current case. It considered that Dr Taliercio's misconduct does not fit the categories as described at paragraph 81 of the SG above and determined that conditions would not be appropriate or workable in the present case.

Suspension

16. The Tribunal considered paragraphs 91, 92 and 93 of the SG in determining whether to impose a period of suspension on Dr Taliercio's registration:

- '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. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention.
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

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will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (ie for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession).

93. Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions (see paragraphs 24–49).'

17. The Tribunal bore these paragraphs in mind during their deliberations, as well as the submissions of both Counsel that suspension was the appropriate and proportionate sanction in the present case.

18. In addition, the Tribunal considered the mitigating factors as outlined above. It also took account of the period of time that had passed since the misconduct and evidence that Dr Taliercio had reflected and gained some insight. Additionally, it considered that the public finding of impairment and a period of suspension is adequate to deter Dr Taliercio in repeating the misconduct. Suspension would also send a clear message to the medical profession about the importance of maintaining proper professional standards and conduct. The Tribunal also determined it was appropriate to achieve and maintain public confidence in the profession.

19. Having considered the facts of the case, and bearing the above factors in mind, the Tribunal determined that a suspension order is appropriate as Dr Taliercio's misconduct was not so serious that it was fundamentally incompatible with his continued registration, as directed by paragraph 92 of the SG above.

20. In determining the length of suspension, the Tribunal had due regard to the need to send a message to the medical profession, to deter Dr Taliercio and to maintain public confidence in the medical profession. It balanced these considerations against the fact that the misconduct was at the lower end of the dishonesty scale, and the importance of not depriving the public of an otherwise competent doctor from working. Bearing these factors in mind, the Tribunal considered that a period of two months is an appropriate and proportionate sanction to address the public interest concerns.

21. The Tribunal had no concerns regarding Dr Taliercio's clinical performance, nor that patient safety was at risk as a result of his past misconduct, or in the future. Given that the period of suspension was to deter Dr Taliercio and others in the medical profession from engaging in similar misconduct, as well as to maintain public

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confidence in the profession, the Tribunal considered that no review hearing was required.

Determination on Immediate Order - 03/07/2018

1. Having determined that Dr Taliercio's registration should be suspended for a period of two months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Taliercio's registration should be subject to an immediate order.

Submissions

2. On behalf of the GMC, Mr Brook submitted that the GMC does not seek an immediate order be placed on Dr Taliercio's registration and stated this was not a case where such an order is required.

3. On behalf of Dr Taliercio, Mr Brassington submitted that Dr Taliercio opposes the imposition of an immediate order. He further stated that there was no risk to patients in this case and it is therefore unnecessary for an immediate order of suspension to be made.

The Tribunal's Determination

4. In reaching its decision, the Tribunal had regard to paragraphs 172 and 173 of the Sanctions Guidance, which state:

'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 the doctor poses a risk to patient safety. For example, where they have provided poor clinical care or abused a doctor's special position of trust, or where immediate action must be taken to protect public confidence in the medical profession.'

5. The Tribunal was of the view that as there were no patient safety issues in the present case, and the substantive sanction is adequate to meet the public interest aspects, it would be disproportionate to invoke an immediate order.

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6. This means that Dr Taliercio's registration will be suspended 28 days from when notice of this decision is deemed to have been served upon him, unless he lodges an appeal. If Dr Taliercio does lodge an appeal he will remain free to practise unrestricted until the outcome of any appeal is known.

7. That concludes the case.

Confirmed

Date 03 July 2018

Ms Chitra Karve, Chair