

Dates: 22/05/2018 & 30/07/2018

Medical Practitioner's name: Dr Twakondwa MACHINA

GMC reference number: 7319810

Primary medical qualification: MUDr 2012 Masaryk Univerzity

Type of case **Outcome on impairment**

Review - Misconduct Impaired

Summary of outcome

Conditions, 12 months.
Review hearing directed

Tribunal:

Legally Qualified Chair	Mr Leighton Hughes
Medical Tribunal Members:	Dr Pamela Cowan, Dr Maria Broughton
Tribunal Clerk:	Mrs Jo Johnson

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Lee Gledhill, Counsel instructed by the Doctors Defence Service
GMC Representative:	Ms Georgina Goring, Counsel

Attendance of Press / Public

The tribunal agreed, in accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004, that the press and public be excluded from those parts of the hearing where matters under consideration were deemed confidential.

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Determination on Impairment - 22/05/2018

1. During the hearing, the Tribunal granted an application for parts of this hearing XXX to be held in private. This determination will therefore be read in private. However, as this case also involves Dr Machina's misconduct a redacted version will be published at the close of the hearing XXX.

Background

2. This Tribunal does not intend to rehearse the full factual background to Dr Machina's case, as this is set out in previous determinations, which are a matter of record. At a MPT hearing in May 2017 (2017 Tribunal) Dr Machina admitted and the Tribunal found proved that in 2015 he had created a work related reference for work he had undertaken at the Walton Centre NHS Foundation Trust. Dr Machina forged the signature of Doctor A on the reference and fraudulently used the Walton Centre's letterhead without their permission. In 2015 Dr Machina also created a work related reference for work that he had undertaken at Mersey Care NHS Trust. He fraudulently used an electronic signature of Dr B on the reference and fraudulently used Mersey Care's letterhead without their permission. Both references contained information which was untrue and Dr Machina knew it was untrue. Dr Machina submitted both references to the following locum agencies:

- 27 October 2015 – ID Medical
- 15 February 2016 – NC Healthcare Ltd
- 7 March 2016 – Corrigan's Door Ltd

Dr Machina's actions in doing this were misleading and dishonest.

3. The 2017 Tribunal was satisfied that this was not negligent conduct on Dr Machina's part, but was deliberate and calculated self-serving dishonesty. The 2017 Tribunal found that Dr Machina's actions were contrary to the guidance set out in 'Good Medical Practice (2013) and that he fell seriously short of the standards expected of him as a medical practitioner.

4. Whilst the 2017 Tribunal noted that there had been no information to suggest any clinical failings on the part of Dr Machina, it considered that by creating and submitting false references to gain employment as a doctor, those seeking to employ him were not provided with accurate information about his competence and abilities. Therefore there was potential for patients to be put at risk of harm. The 2017 Tribunal therefore concluded that, in order to ensure that public confidence in the profession was upheld, and to promote and maintain the proper standards of conduct, that Dr Machina's fitness to practise was impaired by reason of his misconduct.

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5. The 2017 Tribunal was of the view that whilst Dr Machina's conduct was serious, it was not fundamentally incompatible with continued registration. It noted that Dr Machina had acknowledged and apologised fully for his dishonesty. The 2017 Tribunal was satisfied that the likelihood of Dr Machina being dishonest in the future was very low. The 2017 Tribunal recognised the extreme and unusual nature of the pressures that Dr Machina had experienced and acknowledged that he had identified appropriate resources to support him in the future. Taking all of the evidence into account, the 2017 Tribunal was satisfied that suspension was the appropriate and proportionate sanction in Dr Machina's case. It determined that this would uphold public confidence in the profession and would send a message to both the public and the profession that dishonesty is unacceptable.

6. The 2017 Tribunal determined to suspend Dr Machina's registration for a period of 12 months as this was both appropriate and proportionate.

7. The 2017 Tribunal determined that no review would be directed because:

- there had been a sufficient level of insight and remorse expressed by Dr Machina
- Dr Machina had provided evidence of ongoing learning and continuing professional development
- no clinical risks had been identified.
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8. On 3 August 2017 the GMC wrote to Dr Machina to advise that although the 2017 Tribunal did not direct a review hearing a GMC Assistant Registrar had considered Dr Machina's case and decided, under S35D of the Medical Act, that a review hearing was necessary. Given the length of Dr Machina's suspension the Assistant Registrar had determined that it would be desirable to check that Dr Machina's practice has remained up to date before he returned to unrestricted practice. The Assistant Registrar requested that the following information be available at the review of Dr Machina's case:

- Objective evidence to demonstrate: reflection, insight and remediation, that knowledge and skills have been kept up to date and that a return to unrestricted practice would not put patient safety at risk.

Today's review

9. This Tribunal has met to review Dr Machina'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, both documentary and oral and the submissions made by Ms Goring, Counsel, on behalf of the GMC and those made by Mr Gledhill, Counsel, on Dr Machina's behalf.

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Written evidence

10. The Tribunal has received the following documents from Dr Machina:

- A question list with detailed notes covering various clinical scenarios
- Online Continuing Professional Development Course Certificates
- Confirmation letter for attendance on Advanced Life Support course on 23 – 24 May 2018
- Reflective statement.

11. In his reflective statement Dr Machina stated that he had continued to reflect on his misconduct during his period of suspension. He had read around the issues of probity, integrity and honesty and this had helped him to realise and understand more about the importance of these traits in the medical profession and its practice. He noted that he realised that in the absence of these traits or attributes, the trust of patients in a doctor and indeed the trust of the public in the medical profession as a whole would be eroded. Dr Machina noted that he had realised that because of his dishonesty he had failed the public, his colleagues, the NHS and the GMC. He stated that he realised that during his suspension he had failed to contribute towards the good work the medical profession is providing to patients, the public and the National Health Service at large. Dr Machina explained that he realised that it is not only a doctor's integrity that is damaged and sometimes lost but indeed that of the medical profession as a whole. Dr Machina strongly and genuinely apologised for his failures.

12. Dr Machina in his reflective statement recognised that his dishonesty led to an investigation which cost the public and the NHS money. Further Dr Machina explained that he believed that it was important that not only does he acknowledge his mistakes and admit to them but he must also learn from them and take the necessary steps to ensure that he is able to prevent them happening again. Dr Machina stated that whilst he cannot change his historical mistakes, accepting responsibility for them has helped him learn from his behaviour.

13. In his reflective statement Dr Machina explained how his period of suspension has impacted on him personally. He explained that he had lost most of his professional friends who were doctors as they no longer considered him part of the "circle". XXX he had to move out of his flat because of financial difficulties. Dr Machina explained that he was currently working as an UBER taxi driver. However, despite experiencing all these difficulties and XXX changes in his personal life, Dr Machina explained that somehow he felt grateful that he went through them. Dr Machina believes he has come out as a person of stronger character who can effectively deal with challenges or difficulties that "life throws at him" in the future

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and thereby maintain his professional standards as he now realises and fully understands the outcome of not doing so.

14. Dr Machina explained that he has developed and maintained his professional knowledge during his period of suspension by regular reading, studying and going through question lists relating to his profession. Dr Machina explained that he had also used educational videos from the Kaplan USMLE group.

15. Dr Machina explained that as he has been out of practice for two years he will need to repeat his Foundation Year 2 again. This would involve completing the required competencies as set out by the Foundation training programme. Dr Machina explained that he intended to closely liaise with his supervisor to monitor his progress and to get advice on maximising his chances of being accepted for surgical training. Dr Machina stated that it was his intention to begin speciality training in Urology by 2021.

16. Dr Machina outlined the strategies he would use to prevent him repeating the mistakes he has made in the past.

Oral evidence

17. During his oral evidence Dr Machina explained what he had been doing his suspension, including working as an UBER driver. He told the Tribunal that he continued to keep his medical knowledge up to date by reading and using on-line teaching videos. He was also developing a teaching programme that included some videos. Dr Machina explained that due to his registration being suspended XXX he had lost a lot of friends.

18. XXX Dr Machina told the Tribunal that XXX had been involved in a car accident in 2014 and he had become the main breadwinner XXX. Dr Machina explained that the GMC investigation had helped him in terms of how he lived his life. He apologised that the incident had to take place before he was able to address his XXX fears. XXX He explained that XXX he had been afraid to ask for a reference from his Consultants, even though there was no reason to feel that way. He said that XXX he did not fear in the future having to ask for a reference.

19. In terms of honesty and professionalism, Dr Machina explained that he now understands how important this is. He explained that this has been achieved by reading and his attendance on a professional ethics course. Further, Dr Machina explained that this professionalism now extended to his personal as well as professional life as a doctor. Dr Machina told the Tribunal that if he was not trustworthy then this would extend to the profession as a whole. Dr Machina explained that he wanted to say sorry again to the Consultants for forging their references. He also apologised for the cost of the investigations which had to take place and the Tribunal having to convene today to consider his case.

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20. Dr Machina explained that XXX would help him cope in the future and that he had developed strategies to help with this. XXX Dr Machina explained that in the future he would be sharing his XXX responsibilities XXX.

GMC submissions

21. Ms Goring submitted that Dr Machina's fitness to practise remains impaired by reason of his misconduct. She submitted that whilst there is clearly evidence of some insight on Dr Machina's part that insight appears to be limited. It was her submission that there is very little detail of any reflections or insight on the impact that Dr Machina's behaviour could have had on patient safety or evidence as to how his behaviour has impacted on the profession as a whole. It was Ms Goring's submission that Dr Machina's references to "mistakes" in his reflective statement show little insight and are of concern. Whilst noting that Dr Machina has undergone training over a period of time, it was her submission that there is nothing to show what re-training he has done, if any, in terms of working as a doctor with integrity and honesty. Ms Goring submitted that in relation to patient safety Dr Machina has demonstrated insufficient insight. Finally, Ms Goring submitted that it was the GMC's submission that Dr Machina does remain at risk of repetition of this type of behaviour as he has not addressed the issue of his actions in relation to patient safety. Furthermore, she submitted that the level of Dr Machina's dishonesty coupled with his limited insight would result in public confidence being undermined in the profession if his fitness to practise was found not to be impaired.

Submissions made on Dr Machina's behalf

22. Mr Gledhill submitted that the Tribunal should look at the 2017 Tribunal determinations. He submitted that the 2017 Tribunal did find that Dr Machina had insight. Mr Gledhill referred to the testimonial witnesses who were called on behalf of Dr Machina at his last hearing, and the positive testimonials submitted on Dr Machina's behalf. Whilst acknowledging that Dr Machina's dishonesty was not short lived he explained that it was contextualised and occurred during a period when he had family issues XXX. Mr Gledhill submitted that Dr Machina XXX is in a very different place than he was then and that he feels much more confident in himself. He noted that the 2017 Tribunal had taken account of Dr Machina's personal circumstances at the time of these events. It was Mr Gledhill's submission that Dr Machina accepted that he had been fundamentally dishonest. However, Mr Gledhill reminded the Tribunal that Dr Machina had apologised at his 2017 hearing to those whose details he had forged, to the Tribunal and the profession and the public.

23. Mr Gledhill reminded the Tribunal that the Assistant Registrar when determining what information that this Tribunal should have before it today, had not heard any of the evidence presented to the 2017 Tribunal. Therefore, he submitted that the Tribunal should give greater weight to the 2017 Tribunal's findings.

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24. Mr Gledhill submitted that Dr Machina has shown remorse and that he had practised well prior to the index complaint occurring. It was Mr Gledhill's submission that Dr Machina's fitness to practise is not impaired.

Tribunal decision

25. The Tribunal is aware of its statutory over-arching objective which is to protect the public which includes 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 the medical profession.

26. In making its decision the tribunal took account of the fact that it is for Dr Machina to satisfy this tribunal that his fitness to practise is no longer impaired.

27. The Tribunal has considered the guidance on Review hearings set out in the Sanctions guidance (February 2018) and in particular paragraphs 163 and 164:

Paragraph 163 states:

"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."

Paragraph 164 states:

"In some misconduct cases it may be self-evident that, following a short suspension, there will be no value in a review hearing. However, in most cases where a period of suspension is imposed, the tribunal will need to be reassured that the doctor is fit to resume practice – either unrestricted or with conditions. A review hearing is therefore likely to be necessary, so that the tribunal can consider whether the doctor has shown all of the following (by producing objective evidence):

a they fully appreciate the gravity of the offence

b they have not reoffended

c they have maintained their skills and knowledge

d patients will not be placed at risk by resumption of practice or by the imposition of conditional registration."

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28. Whilst acknowledging the findings of the 2017 Tribunal, this Tribunal has undertaken a thorough review of Dr Machina's case. It has been able to do this by reviewing the written evidence it has been provided with and having the opportunity to hear oral evidence from Dr Machina. The Tribunal reminded itself that dishonesty is not easily remediable but that remediation of dishonest conduct is not impossible.

29. The Tribunal is not satisfied that Dr Machina has shown today that he has developed full insight into his misconduct. The Tribunal determined that during his oral evidence Dr Machina was not able to explain fully the gravity that his actions, in producing false references, impacted on patient safety. The Tribunal considered that this was compounded by Dr Machina's use of the word "mistake". The Tribunal concurred with the 2017 Tribunal that Dr Machina's actions were deliberate and resulted in calculated self-serving dishonesty. The Tribunal was of the view that the use of the word "mistake" which Dr Machina used during his oral evidence and in his reflective statement minimised what he had done and appeared to suggest that he did not realise how serious his misconduct had been. Furthermore, the Tribunal noted that in his oral evidence Dr Machina gave a different explanation, as to why he felt that he could not ask a senior clinician for a reference, than he did to the 2017 Tribunal.

30. The Tribunal was concerned that the focus of Dr Machina's reflection remained upon the impact his dishonesty and subsequent suspension has had on him, rather than its effect upon the reputation of the profession and the wider public interest.

31. The Tribunal determined that Dr Machina's developing insight was still incomplete and therefore it could not safely exclude the risk of this type of behaviour being repeated. Furthermore, any risk of dishonesty on the part of a doctor has the potential to impact patient safety. Whilst the Tribunal had regard to the work that Dr Machina has undertaken to keep his clinical knowledge and skills up to date, it had some residual concerns about the applicability of some of the continuing professional development that Dr Machina has undertaken to keep his clinical knowledge and skills up to date. The Tribunal had not been presented with any up to date cogent evidence of training concerning ethics and probity that would address the specific misconduct in Dr Machina's case.

32. The tribunal therefore determined that Dr Machina's fitness to practise remains impaired by reason of his misconduct.

Determination on Adjourning and Extending Current Sanction - 22/05/2018

1. Due to the lateness of the hour, the Tribunal is unable to conclude its consideration of Dr Machina's case today. As such, the Tribunal determined to adjourn this hearing part heard.

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2. The first date which the Tribunal can reconvene is 30 July 2018.
3. The Tribunal was aware that the suspension imposed on Dr Machina's registration by the 2017 Tribunal will expire on 13 June 2018. The Tribunal has not yet determined what sanction, if any, should be imposed on Dr Machina's registration. As such, it was of the view that it would not be appropriate to allow the current suspension to lapse during the intervening period before it can reconvene.
4. Therefore, the Tribunal determined to extend the current order of suspension for a period of two months. Unless Dr Machina exercises his right of appeal, this decision will take effect when the current period of suspension expires. Dr Machina will have 28 days to appeal the decision from when written notice of this determination is deemed to have been served upon him. A note explaining Dr Machina's right of appeal will be provided to him.
5. The hearing is now adjourned and will reconvene at 9.30am on 30 July 2018 and is listed for one day.

Determination on Sanction - 30/07/2018

1. Having determined that Dr Machina's fitness to practise is impaired by reason of his misconduct, the Tribunal has considered what action, if any, to take in respect of his registration.
2. In so doing, the Tribunal has given careful consideration to all the evidence adduced, together with the submissions made by Ms Goring, Counsel, on behalf of the GMC and those made by Mr Gledhill, Counsel, on Dr Machina's behalf.

GMC Submissions

3. Ms Goring submitted that the appropriate sanction in Dr Machina's case is to impose a further period of suspension on his registration. In terms of mitigating factors she noted that Dr Machina has shown some insight, is engaging with the GMC and there have been no further complaints or concerns. In terms of aggravating factors, Ms Goring noted that Dr Machina's insight is limited as he still does not seem to fully grasp how his behaviour could have impacted on patient safety. Further, she noted that Dr Machina's reflective statement appeared to focus upon the impact that his dishonesty and suspension has had on him rather than the impact it has had on the reputation of the profession. It was Ms Goring's submission that Dr Machina has still not fully appreciated the gravity of the offence, she reminded the Tribunal that his dishonesty was persistent and intentional. Ms Goring referred the Tribunal to the Sanctions guidance (February 2018) and in particular paragraph 124 which refers to dishonesty and states:

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“Although it may not result in direct harm to patients, dishonesty related to matters outside the doctor’s clinical responsibility (eg providing false statements or fraudulent claims for monies) is particularly serious. This is because it can undermine the trust the public place in the medical profession. Health authorities should be able to trust the integrity of doctors, and where a doctor undermines that trust there is a risk to public confidence in the profession. Evidence of clinical competence cannot mitigate serious and/or persistent dishonesty.”

Ms Goring submitted that it would not be appropriate to take no action in respect of Dr Machina as there are no exceptional circumstances in his case. In relation to conditions Ms Goring submitted that they would not provide an adequate level of protection in terms of patient safety. It was Ms Goring’s submission that in light of all the factors in Dr Machina’s case a further period of suspension would be the appropriate and proportionate sanction.

Submissions made on behalf of Dr Machina

4. Mr Gledhill submitted that Dr Machina has been out of practice now for two years, he reminded the Tribunal that during this time XXX he lost his home. He submitted that during this time Dr Machina has reflected daily on what he had done. Mr Gledhill accepted that whilst it may be the case that Dr Machina’s insight is not fully developed, it is sufficiently developed that an order of conditions could be imposed on his registration. Mr Gledhill submitted that this will allow Dr Machina to return to work and develop his skills. Mr Gledhill told the Tribunal that initially Dr Machina will seek to undertake a clinical attachment, obtain testimonials and then apply for jobs. It was Mr Gledhill’s submission that during this period Dr Machina will be exposed to fellow clinicians and will be able to see people working with probity and integrity. Mr Gledhill submitted that Dr Machina is safe to return to practice because of how far he has come and that by imposing conditions on Dr Machina’s registration he can demonstrate how he has further developed his insight and the steps he has taken towards that. Finally, Mr Gledhill submitted that a further period of suspension would be disproportionate and manifestly excessive.

Tribunal Decision

5. The decision as to the appropriate sanction to impose, if any, is a matter for this Tribunal exercising its own judgement.

6. In reaching its decision, the Tribunal has taken account of the Sanctions guidance (February 2018). It has borne in mind that the purpose of sanctions is not to be punitive, but to protect patients and the wider public interest which encompasses the maintenance of public confidence in the profession, and declaring

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and upholding proper standards of conduct and behaviour. Sanctions are not intended to, but may have, a punitive effect.

7. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Machina's interests with the public interest.

No Action

8. The Tribunal first considered whether to conclude Dr Machina's case by taking no action. The Tribunal determined that given its findings in its impairment determination, that Dr Machina has not shown full insight into his misconduct, it would not be appropriate to conclude his case by taking no action. Further, the Tribunal noted that there are no exceptional circumstances in Dr Machina's case to support this course of action.

Conditions

9. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Machina's registration. It has borne in mind that conditions need to be appropriate, proportionate, workable and measurable. The Tribunal has noted the mitigating and aggravating factors in Dr Machina's case as set out by the 2017 Tribunal and referred to by Ms Goring in her submissions today. The Tribunal has had regard to Dr Machina's personal circumstances and the steps that he has undertaken to address them, since his registration was suspended. The Tribunal has determined that a further period of suspension would serve no purpose in Dr Machina's case as it would not provide him with a path to full remediation. The Tribunal has noted that it is abundantly clear that Dr Machina wishes to return to clinical practice and that no concerns have ever been raised about his clinical practice.

10. The Tribunal has determined that the most successful route in Dr Machina's case to fully remediate his misconduct by the development of his insight is by the imposition of conditions on his registration. The Tribunal determined that this will allow Dr Machina an opportunity to demonstrate his probity and an appreciation of the importance of probity, whilst meeting the public interest in returning to practice a doctor who has demonstrated safe practice in the past.

11. The Tribunal has determined that conditions which are appropriate and workable can be formulated and that these will protect patients and the public interest whilst allowing Dr Machina to return to work.

12. The Tribunal has therefore imposed the following conditions on Dr Machina's registration which will be published:

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1. He must notify the GMC within seven calendar days of the date these conditions become effective:
 - a of the details of his current post, including his job title, job location and responsible officer (or their nominated deputy) information
 - b of the contact details of his employer and/or contracting body, including his direct line manager
 - c of any organisation where he has practising privileges and/or admitting rights
 - d of any training programmes he is in
 - e of the contact details of any locum agency he is registered with.
2. He must notify the GMC:
 - a of any post he accepts, before starting it
 - b if any formal disciplinary proceedings against him are started by his employer and/or contracting body, within seven calendar days of being formally notified of such proceedings
 - c if he applies for a post outside the UK.
3. He must allow the GMC to exchange information with any person involved in monitoring his compliance with his conditions.
4.
 - a He must have a workplace reporter approved by his responsible officer (or their nominated deputy) and must inform the GMC of these arrangements.
 - b He must not start/restart work until his responsible officer (or their nominated deputy) has approved his workplace reporter and this approval has been forwarded to the GMC.
5.
 - a He must design a personal development plan (PDP), approved by his responsible officer (or their nominated deputy), with specific aims to address the deficiencies in the following area of his practice:
 - The fundamental importance of probity on the part of a doctor as set out in Good Medical Practice, and the

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impact of dishonest actions by a doctor on the reputation of the profession and patient safety.

- b He must give the GMC a copy of his approved PDP within three months of these conditions becoming effective.
 - c He must give the GMC a copy of his approved PDP on request.
 - d He must meet with his responsible officer (or their nominated deputy), as required, to discuss his achievements against the aims of his PDP.
6. He must get the approval of the GMC before starting work in a non-NHS post or setting.
7. He must only work up to the level of Foundation Year 2 posts.
8. He must not work in any locum post or fixed term contract of less than 3 months' duration.
9. He must inform the following persons of the conditions listed at 1 to 8:
- a his employer and/or contracting body
 - b his responsible officer (or their nominated deputy)
 - c his immediate line manager at his place of work, at least 24 hours before starting work (for current and new posts including locum posts)
 - d any prospective employer and/or contracting body, at the time of application
 - e The responsible officer of any organisation where he has, or has applied for, practising privileges and/or admitting rights, at the time of application
 - f any locum agency or out-of-hours service he is registered with.

Length of sanction

13. The Tribunal considered that a period of 12 months of conditional registration would be appropriate and proportionate. It considered that this would provide Dr Machina with sufficient time to gain further insight into the reasons for his referral to the GMC and demonstrate that he has fully developed his insight.

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14. Unless Dr Machina exercises his right of appeal, this decision will take effect when the current period of suspension expires. Dr Machina will have 28 days to appeal the decision from when written notice of this determination is deemed to have been served upon him. A note explaining Dr Machina's right of appeal will be provided to him.

15. A Tribunal will review Dr Machina's case at a hearing to be held before the end of the period of conditional registration. It will then consider whether it should take any further action in relation to his registration. Dr Machina will be informed of the date of that hearing, which he will be expected to attend. The Tribunal reviewing Dr Machina's case would be assisted by receiving:

- A copy of his PDP and evidence of the progress he has made in reaching his objectives
- Any other evidence that Dr Machina considers may assist the next Tribunal in reviewing his case.

16. That concludes Dr Machina's case.

Confirmed

Date 30 July 2018

Mr Leighton Hughes, Chair