**Record of Determinations – Medical Practitioners Tribunal**

**PUBLIC RECORD**

**Dates:** 11/09/2017 - 15/09/2017  
**Medical Practitioner’s name:** Dr David ANDREW

**GMC reference number:** 3168484

**Primary medical qualification:** MB ChB 1986 University of Manchester

**Type of case**  
New - Misconduct

**Outcome on impairment**  
Consideration of impairment not reached

**Summary of outcome**  
Case concluded

**Tribunal:**

<table>
<thead>
<tr>
<th>Position</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical Tribunal Member (Chair)</td>
<td>Dr Tim Walls</td>
</tr>
<tr>
<td>Lay Tribunal Member</td>
<td>Ms Deborah Spring</td>
</tr>
<tr>
<td>Medical Tribunal Member</td>
<td>Dr Maria Dyban</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Position</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Assessor</td>
<td>Mr Alastair McFarlane</td>
</tr>
<tr>
<td>Tribunal Clerk</td>
<td>Ms Rosanna Sheerin</td>
</tr>
</tbody>
</table>

**Attendance and Representation:**

<table>
<thead>
<tr>
<th>Position</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical Practitioner</td>
<td>Present and represented</td>
</tr>
<tr>
<td>Medical Practitioner’s Representative</td>
<td>Mr Alan Jenkins, Counsel, instructed by RadcliffesLeBrasseur</td>
</tr>
<tr>
<td>GMC Representative</td>
<td>Mr Jeremy Lasker, Counsel</td>
</tr>
</tbody>
</table>

**Allegation and Findings of Fact**

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

1. On 6 January 2011 you consulted with Patient A during which you:

   a. placed the palm of your hand and fingers underneath Patient A’s vagina;  
**Found Not Proved**
Record of Determinations –
Medical Practitioners Tribunal

b. touched Patient A’s vagina with your hand.
   Found Not Proved

2. Your actions at paragraph 1 above were sexually motivated.
   Found Not Proved

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

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.

Determination on Facts - 15/09/2017

1. At the outset of these proceedings the Tribunal determined that certain parts of this case should be heard in private pursuant to Rule 41 of the General Medical Council (‘GMC’) (Fitness to Practise) Rules 2004 (“the Rules”). Therefore, the press and public were excluded from those parts of the hearing relating to XXX and this determination will be read in private. However, as this case primarily concerns your alleged misconduct, a redacted version will be published after the hearing with those matters XXX removed.

Background in relation to events relating to Patient A

2. This case concerns an allegation that during a consultation on 6 January 2011 between yourself and Patient A, in relation to Patient A’s injury to her coccyx, you touched her vagina. The GMC allege that this was sexually motivated. You deny any touching of Patient A’s vagina and any sexual motivation.

3. On the morning of 6 January 2011 Patient A attended the A+E at Leicester Royal Infirmary following a fall in her home on Boxing Day 2010. At the A+E Patient A was diagnosed with a fractured coccyx. The details of the assessment and treatment vary in evidence from different sources but it appears that she was unable to take the recommended analgesia, Diclofenac, either because of adverse effects or because of asthma. She therefore contacted the Anstey Surgery (“the Practice”) the same day and obtained an appointment with you. She was seen that afternoon by you at the Practice.

4. On 7 January 2011 Ms F wrote a letter of complaint, dictated to her by Patient A and addressed to the Practice. In this letter Patient A stated that you did not wash your hands before or after undertaking your examination of her, that you did not wear gloves, that you did not ask whether she would like to have anyone else
present, when you asked her to loosen her jeans. Patient A alleged that you put your hand down the back of her jeans and pressed hard against her body which exacerbated the pain of her injury, and that you also went “further down in an inappropriate manner”. Patient A stated that the examination was unnecessary and left her feeling upset.

5. The substantive response to Patient A’s letter of complaint dated 7 January 2011 was issued by the Practice in a letter dated 12 January 2011. The details of the examination you undertook were outlined in the letter and which explained that you had examined Patient A’s lower spine for swelling, bruising, tenderness and any deformity of bones to assess the severity of the injury and any complications.

6. Patient A did not pursue the complaint further with the Practice. It was not until three years later in 2014 during a complaint to the police about an unrelated matter in her past that Patient A alleged you had touched her vagina during the examination on 6 January 2011. Patient A made a statement to the police and you were interviewed by them. The CPS did not pursue any criminal charges.

7. The matter was referred to the GMC by NHS England and Leicestershire in December 2014.

Witnesses and Evidence

8. In reaching its decision on the facts, the Tribunal has given careful consideration to all the evidence adduced in this case, both oral and documentary. The Tribunal was provided with documentary evidence which included:

- Extracts from Patient A’s medical records,
- Complaint Letter dated 7 January 2011 written by Ms F, but dictated by Patient A,
- Complaint Acknowledgment Letter from The Anstey Surgery dated 10 January 2011,
- Complaint Response Letter from The Anstey Surgery dated 12 January 2011,
- Leicestershire Constabulary Witness Statement of Patient A dated 3 November 2014,
- Leicestershire Constabulary Witness Statement of Ms F, dated 11 November 2014,
- GMC Witness Statement of Patient A dated 20 March 2016,
- GMC Witness Statement of Ms F dated 5 March 2017,
- Dr G’s GMC Expert Report dated 30 January 2017,

9. The Tribunal has had the benefit of hearing oral evidence from both the principal witnesses, namely Patient A and yourself. It also heard oral evidence from:
Record of Determinations –
Medical Practitioners Tribunal

- Ms F - to whom Patient A first reported the incident,
- Dr G, GMC Expert witness.

10. The Tribunal also heard from 4 character witnesses called on your behalf:

- Ms B, Receptionist/Administrator, Anstey Surgery,
- Ms C, Receptionist/Administrator and also a patient at Anstey Surgery,
- Ms D, Practice Nurse, Anstey Surgery,
- Ms E, Patient, Anstey Surgery.

Assessment of Evidence

11. Given the direct conflict of evidence between you and Patient A, the Tribunal specifically made an assessment of the credibility, reliability and accuracy of your evidence and that of Patient A.

Evidence of Patient A

12. The Tribunal considered that Patient A was, as you accepted, XXX. It considered that Patient A’s recall of many details of events at the time of the consultation in 2011, was poor. Whilst it made allowance for the fact that the events were more than six years ago, it considered that her evidence was littered with inconsistencies. For example, there was a significant variation between her description recorded in her initial complaint letter in 2011 and that detailed in her 2014 statement to the police and 2016 statement to the GMC. In addition, the Tribunal noted that in her oral evidence Patient A was adamant that she had attended Glenfield Hospital, the A+E at Leicester Royal Infirmary and Anstey Surgery all on 6 January 2011. However, the Tribunal has been provided documentation which confirms that Patient A attended Glenfield Hospital on 5 January 2011. The Tribunal concluded that there was a tide of inconsistency throughout Patient A’s evidence, ranging from issues such as the dates and times of appointments and attendances, through to methods of transport to and from different appointments, the persons accompanying her, and to whom she complained and to what extent. Whilst some of these matters may be described as peripheral to her central complaint, the Tribunal concluded that the inconsistencies were so widespread and frequent that overall they undermined the reliability, accuracy and credibility of her evidence.

13. The Tribunal accepted that, at the consultation on 6 January 2011, Patient A had been upset by what had taken place. However, it was satisfied that the issues raised in her initial complaint letter of 7 January 2011 were confined to: a) she believed that no examination by you was required, b) she believed that a chaperone should have been present during the examination, c) she believed that you had not washed your hands before or after the examination, d) she believed that you should
Record of Determinations –
Medical Practitioners Tribunal

have worn gloves to perform the examination, e) that in performing the examination you had moved your hand lower down her back than you should have done and f) that the examination had been painful and had exacerbated her symptoms. In respect to e) the Tribunal noted the agreed fact that there is no documentation of her complaining of you having touched her vagina or the area around it until the time of her police interview about another matter in November 2014. Thereafter Patient A complained of the touching of her vagina. The Tribunal accepted that she attempted to give her evidence to the best of her ability.

Your evidence

14. The Tribunal considered you to be a clear, reliable and accurate witness. There were no inconsistencies between your version of events after the consultation in 2011 and the oral evidence you provided to this Tribunal. The Tribunal considered that you had a clear memory of the consultation and it did not consider that you attempted to mislead with your version of events. It considered that you gave your evidence to the best of your ability and made appropriate concessions during the course of your evidence.

Ms F

15. The Tribunal considered Ms F to be a reliable and credible witness. She conceded that it was a long time since she had assisted in the writing of the complaint letter with Patient A. The Tribunal considered that she gave her evidence to her best of her ability and made appropriate concessions during the course of her evidence when she could not recollect certain details. She told the Tribunal that Patient A had dictated the letter to her, and they had agreed the letter word for word.

16. The Tribunal found that your character witnesses, who were both professional colleagues and patients, gave impressive and supportive evidence.

17. Dr G gave expert opinion evidence on the examination of the coccyx which was not disputed. The Tribunal noted that he confirmed that, given the symptoms presented by Patient A on 6 January 2011, it was appropriate for you to examine Patient A’s lower spine over the coccyx to check the degree of local tenderness and presence of swelling or bruising. He stated that if you had simply touched Patient A’s lower spine over the coccyx this would not constitute an intimate examination and therefore a chaperone would not be required. He also confirmed that for an examination as you described it would not be necessary for you to wear gloves or wash your hands prior to the examination. He also stated in his evidence that in order to carry out a coccyx examination it would be necessary for a patient to loosen their trousers.
Legal Advice

18. The Tribunal heard detailed legal advice. It noted that it was prepared in consultation with the parties, and that neither took exception to it.

19. The Tribunal has noted and accepted the advice of the Legal Assessor.

The Tribunal’s Approach

20. The Tribunal has considered each of the paragraphs of the Allegation separately. In doing so it has considered all of the evidence adduced in this case and reminded itself that the burden of proof rests with the GMC and that the standard of proof is the civil standard, that is, on the balance of probabilities.

21. The Tribunal has taken account of Mr Lasker’s submissions on behalf of the GMC, and Mr Jenkins’ submissions on your behalf.

22. The Tribunal noted that you are of good character and have been well regarded by patients and colleagues over a long period. The Tribunal took this into account in your favour.

The Tribunal’s Findings

Paragraph 1a:

"On 6 January 2011 you consulted with Patient A during which you:

placed the palm of your hand and fingers underneath Patient A’s vagina;”

Found not proved

23. The Tribunal assessed the competing accounts of what happened in the consultation. It found you to be a more credible and accurate historian than Patient A.

24. Further, it specifically considered the feasibility of Patient A’s complaint that you touched her vagina given her own description of the consultation and demonstration of the examination in her oral evidence.

25. The Tribunal noted that in the course of Patient A’s oral evidence she demonstrated the manner in which she deemed you had carried out the examination of her coccyx at the consultation on 6 January 2011. The Tribunal noted that during the course of this demonstration Patient A placed her hand on her lower lumbar spine which she deemed to be her coccyx. The Tribunal is aware that the coccyx is located much further down on the body than was demonstrated by Patient A in her
oral evidence and is palpated during examination at the upper end of the cleft
between the patient’s buttocks. Patient A acknowledged that your hand had moved
down into that area as you had described in your oral evidence. Patient A also
demonstrated the manner in which she was standing during the course of your
examination of her. The Tribunal noted that her thighs were not placed far apart and
she stated that her jeans had been loosened at the waist band but had not been
removed. It noted that Patient A stated in her oral evidence that you had not
touched her anus at the time of the examination but that your hand had gone from
her lumbar spine to her vagina inside her underwear and trousers. The Tribunal has
determined that it would be physically extremely difficult for your hand to reach her
vagina from the position in which you both agree you were standing and that it
would have been highly unlikely that your hand could come into contact with her
vagina without there being anal contact as well. For these reasons the Tribunal did
not consider Patient A’s account to be feasible.

26. Further, the Tribunal considered it significant that Patient A’s original letter of
complaint did not mention the touching of her vagina. The Tribunal considered
possible explanations for such a significant omission, including Patient A’s possible
embarrassment and that the relating of her complaint to Ms F was in the staff room
at work where other people may have been present. Nonetheless, given its
assessment of Patient A, the Tribunal concluded that this omission makes it far less
likely that touching of the vagina occurred. It was satisfied that Patient A’s mindset
was centred on the necessity for the examination which she had perceived to be
overly forceful and which had “very much aggravated my injury”. Her injury had
been to her coccyx.

27. Further, the Tribunal accepted your denial of undertaking such touching as
true.

28. The Tribunal considers that you appropriately examined Patient A’s spine in
the course of your consultation beginning in the lumbar region and ending at the
coccyx where pressure caused Patient A acute pain. For the reasons above the
Tribunal has concluded that she is mistaken in her allegation that you touched her
vagina and accordingly has found this paragraph not proved.

**Paragraph 1b:**
“touched Patient A’s vagina with your hand.”
**Found not proved**

29. Given the findings made at paragraph 1a the Tribunal has determined that
paragraph 1b is also found not proved for the same reasons as above.

**Paragraph 2:**
“Your actions at paragraph 1 above were sexually motivated.”
**Found not proved**
Record of Determinations – Medical Practitioners Tribunal

30. As a consequence of its findings above at paragraph 1a and 1b, the Tribunal did not consider paragraph 2. Accordingly, the Tribunal has found this paragraph not proved.

31. As a result of the findings there is no impairment of your fitness to practise and the case is therefore concluded.

Confirmed
Date 15 September 2017

Dr Tim Walls, Chair