Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 08/04/2019 - 10/04/2019

Medical Practitioner’s name: Dr Abdel BABIKER

GMC reference number: 344423

Primary medical qualification: MB BS 1975 University of Khartoum

Type of case
New - Misconduct

Outcome on impairment
Not Impaired

Summary of outcome
Warning

Tribunal:

<table>
<thead>
<tr>
<th>Role</th>
<th>Name</th>
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<tbody>
<tr>
<td>Legally Qualified Chair</td>
<td>Miss Rachel Wedderspoon</td>
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<tr>
<td>Lay Tribunal Member:</td>
<td>Ms Deborah Spring</td>
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<td>Medical Tribunal Member:</td>
<td>Dr Timothy Walls</td>
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Tribunal Clerk: Ms Jeanette Close

Attendance and Representation:

<table>
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<tr>
<th>Role</th>
<th>Details</th>
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<tr>
<td>Medical Practitioner:</td>
<td>Not present and not represented</td>
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<tr>
<td>Medical Practitioner’s Representative:</td>
<td>None</td>
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<tr>
<td>GMC Representative:</td>
<td>Mr Fraser Coxhill, Counsel</td>
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Attendance of Press / Public

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

Throughout the decision making process the tribunal has borne in mind the statutory overarching objective as set out in s1 Medical Act 1983 (the 1983 Act) to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

Determination on Facts - 09/04/2019

Background

1. Dr Babiker qualified in 1975 from the University of Khartoum and first registered with the GMC in October 2005 and worked in a number of locum placements in the UK. In January 2018, he was working as a locum Consultant in Geriatric Medicine at Eastbourne District General Hospital (the Hospital). Dr Babiker’s placement with them initially began on 8 January 2018, and was due to end on 23 February 2018. On 21 February 2018, the Hospital offered to extend Dr Babiker’s placement until the beginning of November 2018.

2. The allegation that has led to Dr Babiker’s hearing can be detailed as follows. In January 2018 Dr Babiker had already accepted a placement at Forth Valley NHS Trust (the Trust). On 21 February 2018 the Trust was informed that Dr Babiker was not going to take up the placement, which was due to commence on 26 February 2018. As a result the Trust referred their concerns to the GMC on 25 February 2019.

3. It is also alleged that Dr Babiker failed to provide information to the GMC in a timely manner by not completing a Work Details Form and by refusing to provide the information when reminded to do so.

4. Dr Babiker held a locum position at the Hospital from 8 January 2018 which was due to end on 23 February 2018. On 17 January 2018 Dr Babiker accepted a post as a locum Consultant in Elderly Care with the Trust to commence on 26 February 2018 until July 2018 with the opportunity of a further extension. The Trust set up clinics and appointed patients to Dr Babiker on the basis that he would be commencing employment on 26 February 2018.

5. In an email dated 17 January 2018, Ms C confirmed the details of the placement to Dr Babiker. On 20 February 2018 the Trust contacted the Athona locum agency (the Agency) to confirm details of Dr Babiker’s placement and were assured that all was confirmed and his accommodation booked.
6. On 21 February 2018, just three working days before Dr Babiker was due to commence his placement, the Trust was informed that Dr Babiker had changed his mind and had accepted an offer of an extension to his contract from the Hospital. The Agency contacted the Trust and told them that Dr Babiker was adamant that he was staying at the Hospital.

7. In her witness statement dated 30 January 2018 Dr B, Consultant Geriatrician at the Trust outlined the effect Dr Babiker’s actions had on the Trust in that two stroke clinics had to be cancelled with the additional work re-allocated to colleagues at the Health Board. The patients allocated to Dr Babiker also had to be transferred to colleagues who were already burdened with other clinical commitments. It was also expected that Dr Babiker would fill a number of gaps in the roster.

8. Retinue is a managed services provider with responsibility for the West of Scotland NHS Trusts, and acts as an intermediary between Trusts and Agencies. Retinue had informed the Agency that it was totally unacceptable of Dr Babiker to cancel his placement at such a late stage and that the Trust would be taking the matter further.

9. In response to an email dated 24 April 2018 from Ms A, Investigation Officer at the GMC, attempted to make contact with her by telephone on the same day. As Ms A was in a meeting Dr Babiker says he left a message with a colleague, although there is no record of this call available. In an undated written response to this email, Dr Babiker stated “There was no gain in pay by acting in this way and this was most definitely not the reason for staying. I am sorry that the Trust feel that it’s appropriate to penalise a consultant working hard for the cause because of the notice period given. I don’t think there are grounds to question my fitness to practice”.

10. In a letter to the GMC dated 8 May 2018, the Agency confirmed that the Hospital was very late in requesting an extension to Dr Babiker’s contract as it was not confirmed until 21 February 2018. The Agency also confirmed “We understand the notice given was short, however locum placements can be cancelled by either party with as little as four hours’ notice, which does leave either party with little room for rearrangement... We have confirmed with Retinue there is no notice period although best practice would be to provide as much notice as possible.”

The Outcome of Applications Made during the Facts Stage

11. The Tribunal granted the GMC’s application, made pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended (‘the Rules’), that
The Allegation and the Doctor’s Response

12. The Allegation made against Dr Babiker is as follows:

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

1. On 26 February 2018 you failed to take up a placement that you had formally accepted as a Consultant in Elderly Medicine at NHS Forth Valley NHS (‘the Placement’).
   **To be determined**

2. You failed to give Forth Valley NHS reasonable time to make other arrangements in that on 21 February 2018 you notified Athona Recruitment of your intention not to commence the Placement.
   **To be determined**

3. On the dates set out in Schedule 1, the GMC wrote to you requesting that you provide your completed Work Details Form (’WDF’) and you:

   a. failed to provide your completed WDF to the GMC in a reasonable timeframe;
      **To be determined**

   b. stated in a telephone conversation with the GMC on 14 May 2018 that you would ‘not be completing any form or providing any information,’ or words to that effect.
      **To be determined**

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

Oral Witness Evidence

13. The Tribunal received oral evidence on behalf of the GMC from the following witness:
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- Ms C, Director at Athona Recruitment, (the Agency) by telephone link along with her witness statement dated 22 October 2018, as well as supplementary documents in the form of an email dated 17 January 2018 sent to Dr Babiker, together with a copy of the Agency’s Terms of Engagement for Agency Workers (the Terms).

Documentary Evidence

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

- Witness statement of Ms A, Investigation Officer, GMC dated 11 October 2018
- Witness statement of Dr B, Consultant Geriatrician, the Trust dated 30 January 2019
- Witness statement of Ms C, Director Athona Recruitment, dated 22 October 2018

Submissions

15. Mr Coxhill told the Tribunal that on 12 March 2018 the GMC informed Dr Babiker of the complaint by letter, and he was asked to complete a work details form. No response was received by the GMC and so a second letter dated 3 April 2018 was sent to Dr Babiker, again Dr Babiker did not respond. This resulted in a further request to Dr Babiker on 18 May 2018, to date Dr Babiker has not responded to the request that he complete a work details form. In a telephone conversation with Ms A on 14 May 2018 Dr Babiker refused to complete the forms and stated “I will not be putting anything in writing, this is nothing to do with me”. Mr Coxhill added that despite Dr Babiker being warned by Ms A that his conduct could be escalated, Dr Babiker still refused to complete any forms or put anything in writing.

16. Mr Coxhill submitted that no patient had come to harm due to the cancellation of clinics and he drew the Tribunals attention to 'Good Medical Practice 2013’ (GMP) paragraph 38 which states:

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.
17. Mr Coxhill submitted that charges 1 and 2 of the Allegation relate to Dr Babiker’s conduct in respect of not taking up the post at the Trust and not giving reasonable time to make other arrangements. He invited the Tribunal to consider whether three days was a reasonable period of notice.

18. Mr Coxhill stated that charge 3 a. and b. of the Allegation referred to Dr Babiker’s fitness to practice and referred the Tribunal to paragraph 73 of GMP which states:

73 You must cooperate with formal inquiries and complaints procedures and must offer all relevant information while following the guidance in Confidentiality

The Tribunal’s Approach

19. 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 Babiker 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.

The Tribunal’s Findings

20. The Tribunal has considered each outstanding paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts.

21. Ms C gave her evidence by telephone and confirmed the documentation provided to the GMC was taken from Dr Babiker’s personal record and supplied by her former colleague Ms D, Quality and Compliance Manager.

22. Ms C confirmed that Retinue are responsible for collating all available job vacancies and sending the information to Agencies, they also deal with doctor’s time sheets and payments to Agencies, who in turn pay the doctors.

23. When asked how difficult it was to recruit a locum Consultant in Elderly Care Medicine, Ms C stated that it was quite difficult to fill this type of placement due to a shortage of Consultants available to work in this specialty.
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24. In respect of a notice period, Ms C stated the details were contained in the Terms of Engagement issued by the Agency and she agreed to provide a copy to the Tribunal along with any other relevant documentation.

The Tribunal’s Overall Determination on the Facts

Paragraph 1

25. The Tribunal noted the paucity of information provided but noted the email which had been “cut and pasted” from another document which indicated that Dr Babiker had formally accepted the placement at the Trust. On the balance of probabilities the Tribunal has found this paragraph of the Allegation proved.

Paragraph 2

26. The Tribunal has noted that Dr Babiker was due to start his placement with the Trust on 26 February 2018. On 21 February 2018 Dr Babiker told the Agency that he would remain at the Hospital in Eastbourne and therefore would not take up the placement with the Trust.

27. The Tribunal has had regard to the terms and conditions of the contracts for locum doctors drawn up by the Agency in particular paragraph 9.1 which states:

“Any of the Employment Business, the Agency Worker or the Hirer may terminate the Agency Worker’s assignment at any time without prior notice or liability.”

28. The Tribunal acknowledged that Dr Babiker was not in breach of his contract but considered if it was reasonable to give notice of only three working days. The Agency suggested that the minimum was usually one week’s notice. The Tribunal considers that a notice period of three working days was insufficient. It noted that no patient had come to harm, but it recognised that Dr Babiker’s withdrawal from his placement placed a heavy burden on the Trust’s workloads. It has therefore found this paragraph of the Allegation proved.

Paragraph 3 a

29. The Tribunal noted that Dr Babiker failed to provide a work details form despite three separate requests from the GMC to do so on 12 March 2018, 3 April 2018 and 14 May 2018. The Tribunal concluded that these were reasonable requests
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by Dr Babiker’s professional Regulator. Therefore it has found this paragraph of the Allegation proved.

Paragraph 3b

30. On 14 May 2018 the GMC called Dr Babiker and asked him to confirm if he had received the work details form. Dr Babiker confirmed that he had but stated:

"I will not be putting anything in writing, this is nothing to do with me”.

31. The Tribunal has borne in mind that the GMC required this information from Dr Babiker as his Regulator and that he was obliged to provide it. In the circumstances the Tribunal found this paragraph proved.

32. The Tribunal has determined the facts as follows:

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

1. On 26 February 2018 you failed to take up a placement that you had formally accepted as a Consultant in Elderly Medicine at NHS Forth Valley NHS (‘the Placement’).

   Found Proved

2. You failed to give Forth Valley NHS reasonable time to make other arrangements in that on 21 February 2018 you notified Athona Recruitment of your intention not to commence the Placement.

   Found Proved

3. On the dates set out in Schedule 1, the GMC wrote to you requesting that you provide your completed Work Details Form (‘WDF’) and you:

   a. failed to provide your completed WDF to the GMC in a reasonable timeframe;

      Found Proved

   b. stated in a telephone conversation with the GMC on 14 May 2018 that you would ‘not be completing any form or providing any information,’ or words to that effect.

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

To Be Determined

Determination on Impairment - 10/04/2019

33. 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 Babiker’s fitness to practise is impaired by reason of misconduct.

The Evidence

33. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary. No further evidence has been adduced at this stage of the hearing.

Submissions

34. On behalf of the GMC, Mr Coxhill submitted that the findings of fact amount to serious misconduct and that Dr Babiker’s fitness to practise is currently impaired as a result. He drew the Tribunal’s attention to relevant case law which deals with misconduct which is so serious as to amount to impairment of fitness to practise, namely:

Roylance v GMC [2001] 1 AC 311;
GMC v Meadow [2006] EWCA Civ 1390; and
GMC v Nandi [2004] EWHC 2317 (Admin)

36. Mr Coxhill referred to paragraph 38 of GMP as set out in the Tribunal’s determination on the facts but reminded the Tribunal that this is guidance only and not a statutory code. He accepted that not all failures equate to impairment of fitness to practise. However, in this particular case, he submitted that Dr Babiker’s actions did amount to misconduct.

37. Mr Coxhill submitted that Dr Babiker’s fitness to practise is impaired because of his misconduct. He referred the Tribunal to Dame Janet Smith’s fifth report to the Shipman Inquiry referred to in particular by Cox J in CHRE v NMC and Grant [2011] EWHC 927 (Admin) who set out the following as an appropriate test for panels considering impairment of a doctor’s fitness to practise:

“a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or

b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or

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c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

d. has in the past acted dishonestly and/or is liable to act dishonestly in the future."

It was Mr Coxhill’s contention that (a) and (b) above are engaged in this case. He submitted that the Tribunal is entitled to conclude that Dr Babiker has put patients at risk of harm by not taking up his post at short notice. Mr Coxhill submitted that Dr Babiker has not shown any insight because he does not think he has done anything wrong as evidenced by his comments in his telephone call with the GMC. Mr Coxhill submitted that Dr Babiker has not engaged in the regulatory process or provided any evidence of remediation.

38. Mr Coxhill submitted that Dr Babiker’s failure to complete his Work Details Form hampered his professional regulator’s attempts to conduct a proper investigation.

The Tribunal’s Approach

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

40. 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 second whether the finding of serious misconduct could lead to a finding of impairment.

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

42. The Tribunal has also borne in mind the overarching objective of the GMC set out in section 1 of the Medical Act 1983 (as amended) to:

   a. Protect, promote and maintain the health, safety and well-being of the public,

   b. Promote and maintain public confidence in the medical profession, and

   c. Promote and maintain proper professional standards and conduct for members of that profession.
The Tribunal’s Determination on Impairment

Misconduct

43. The Tribunal first considered whether Dr Babiker’s actions amounted to misconduct and whether it was serious.

44. The Tribunal considered that Dr Babiker’s actions in failing to take up a locum placement after formally accepting the post was inconvenient to the Trust and Dr Babiker had let that organisation down. The Tribunal has taken into account the context; Dr Babiker was only offered an extension of his existing locum placement on the 21 February 2018 and he immediately notified the Agency that he was declining the locum post at the Trust to continue his current placement and maintain the care and treatment of the Hospital’s patients. Further, it has taken into account that no patients came to harm and that Dr Babiker did not leave any patients in a life-threatening situation. The Tribunal has also borne in mind that the Agency commented that Dr Babiker was a good doctor; he worked hard and had done well.

45. In respect of the GMC’s requests that Dr Babiker complete a Work Details Form, the Tribunal considers that this demonstrated a lack of judgement, rather than a morally blameworthy act and it did not put patient safety at risk.

46. In these circumstances, the Tribunal has concluded that Dr Babiker’s conduct did not reach the high threshold of serious misconduct. His behaviour in the context of these particular circumstances did not fall so far short of the standards of conduct reasonably to be expected of a doctor as to amount to serious misconduct.

47. Having determined that there is no misconduct in this case, there is nothing on which to base a finding of impairment.

48. Therefore, Dr Babiker’s fitness to practise is not impaired.

Determination on Warning - 10/04/2019

49. As the Tribunal determined that Dr Babiker’s fitness to practise was not impaired it considered whether in accordance with s35D(3) of the 1983 Act, a warning was required.

Submissions

50. On behalf of the GMC, Mr Coxhill referred to the GMC’s ‘Guidance on warnings’ document (February 2018) (‘the warnings guidance’). With reference to paragraph 11 of the warnings guidance, under the heading ‘The purpose of warnings’, Mr Coxhill stated that warnings provide an indication to a doctor that any given conduct or behaviour
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represents a departure from the standards expected of members of the profession and should not be repeated. In relation to paragraph 14 of the warnings guidance, Mr Coxhill submitted that warnings should be viewed as a deterrent. They are intended as a reminder to the doctor that their conduct or behaviour fell significantly below the standard expected and that a repetition is likely to result in a finding of impaired fitness to practise.

51. With reference to paragraph 16 of the warning guidance, Mr Coxhill stated that a warning will be appropriate if there is evidence to suggest that the practitioner’s behaviour or performance has fallen below the standard expected to a degree warranting a formal response by the GMC or by a MPTS tribunal. A warning would therefore be appropriate in the following circumstances:

‘there has been a significant departure from Good medical practice, or

there is a significant cause for concern following an assessment of the doctor’s performance.’

52. In reference to Paragraphs 17 and 18 of the warning guidance Mr Coxhill stated that there is no definition of ‘significant’ in the Medical Act or in the Fitness to Practise Rules. The guidance is intended to help decision makers, at both the investigation and hearing stage to consider whether a warning is appropriate. He further submitted that the guidance aims to identify some of the factors that decision makers will need to take into account when determining whether a warning is appropriate and that each case must be considered on its own merits.

53. Mr Coxhill invited the Tribunal to consider the factors outlined in paragraph 20 a – d of the warnings guidance:

'a There has been a clear and specific breach of Good medical practice or our supplementary guidance.

b The particular conduct, behaviour or performance approaches, but falls short of, the threshold for the realistic prospect test or in a case before a tribunal, that the doctor’s fitness to practise has not been found to be impaired.

c A warning will be appropriate when the concerns are sufficiently serious that, if there were a repetition, they would likely result in a finding of impaired fitness to practise. Warnings may be an appropriate response to any type of allegation (subject to the comments in paragraph 7 regarding cases solely relating to a doctor’s health); the decision makers will need to consider the degree to which
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the conduct, behaviour or performance could affect patient care, public confidence in the profession or the reputation of the profession. If the decision makers consider that a warning is appropriate, the warning should make clear the potential impact of the conduct, behaviour or performance in question, accordingly.

d There is a need to record formally the particular concerns (because additional action may be required in the event of any repetition).

54. Mr Coxhill added that Dr Babiker in failing to take up his placement with the Trust he potentially put patient safety at risk although Mr Coxhill recognised that Dr Babiker would not have known that at the time.

55. In respect of Dr Babiker’s failure to complete a Work Details Form, Mr Coxhill submitted that it was a breach of GMP and a significant departure from the standards expected of a Doctor. He added that the NHS rely on Doctors to fulfil their obligations and he reminded the Tribunal of paragraph 38 of GMP, where it states:

‘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.’

56. Mr Coxhill further submitted that the Regulator relies on the cooperation of doctors in formal enquiries and the lack of engagement by Dr Babiker was serious. He added that doctors have an obligation to cooperate with their Regulator; this is not an option but a duty. Mr Coxhill submitted that in all the circumstances it would be appropriate to issue a warning to Dr Babiker.

The Tribunal’s Determination on Warning

57. The Tribunal took into account the GMC’s guidance on warnings issued in February 2018. A warning may be appropriate if there is evidence that the Doctor’s behaviour or performance has fallen below the standard expected to a degree warranting a formal response by the MPTS. The Tribunal was particularly concerned about the repeated failure of Doctor Babiker to complete a Work Details Form when requested, which is a breach of section 35A (2) of the Medical Act 1983 (as amended) and paragraph 73 of GMP. The Tribunal took account of Dr Babiker’s previous good character. The Tribunal considered his conduct fell short of the threshold of a finding of misconduct/impairment but a future repetition of a failure to cooperate with the Regulator could result in a
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finding of impaired fitness to practise. Although on this occasion the Tribunal determined the Doctor Babiker’s failure to cooperate with the Regulator had not affected either patient care, public confidence in the profession or the reputation of the profession, a future breach may have this risk.

35. The Tribunal took the view there was a need to record formally its particular concerns applying the principle of proportionality, weighing the interests of the public with those of the practitioner.

Mr Babiker Warning

36. Failing to cooperate with the GMC does not meet with the standard required of a Doctor. It risks bringing the profession into disrepute and it must not be repeated. The required standard is set out in section 35A (2) of the Medical Act 1983 (as amended) and paragraph 73 of GMP. Whilst this failing in itself is not so serious as to require any restriction on your registration, the Tribunal considered it is necessary to issue this formal warning.

37. This warning will be published on the medical register in line with the GMC’s publication and disclosure policy.

Confirmed

Date 10 April 2019

Miss Rachel Wedderspoon, Chair

ANNEX A – 10/04/2019

Application Service and Proceeding in Absence

38. Dr Babiker is neither present nor represented at these proceedings. The Tribunal has considered whether notice of this hearing has been properly served upon Dr Babiker in accordance with Rules 15 and 40 of the General Medical Council (Fitness to Practise) Rules 2004 (the Rules) and Schedule 4, Paragraph 8 of the Medical Act 1983 (as amended). In so doing, the Tribunal has taken into account all the information placed before it, together with submissions made by Mr Coxhill, Counsel, on behalf of the GMC.

39. Mr Coxhill drew the Tribunal’s attention to the screen shot of Dr Babiker’s email address provide by the GMC. On 14 February 2019 Dr Babiker accepted
service by email. Mr Coxhill submitted that Dr Babiker had acknowledged receipt of the Notice of Allegation sent to him by email on 25th February 2019, he replied “Received” on the same day.

40. Mr Coxhill provided further proof that Dr Babiker was properly served by referring the Tribunal’s attention to the automated email delivery receipt dated 27 February 2018 following delivery of the Notice of Hearing letter sent by email to Dr Babiker on the same date. The NoH letter was also sent to Dr Babiker’s registered home address by Royal Mail Special Delivery.

41. Having considered all the evidence, the Tribunal is satisfied that the Notice was drafted in proper form and that delivery was attempted no later than 28 days before today’s date. Accordingly the Tribunal is satisfied that Notice of this hearing has been properly served upon Dr Babiker, in accordance with Rules 15 and 40 of the Rules.

Proceeding in Absence

42. The Tribunal went on to consider whether it would be appropriate to proceed in Dr Babiker’s absence pursuant to Rule 31 of the Rules. The Tribunal was conscious that the discretion to proceed in the absence of a doctor should be exercised with the utmost care and caution. The Tribunal must decide whether to proceed in Dr Babiker’s absence having regard to all the circumstances of the case and balancing fairness to the doctor with fairness to the regulatory body and the public interest.

43. Mr Coxhill submitted that it would be appropriate for the Tribunal to proceed in Dr Babiker’s absence. He stated that Dr Babiker is aware of today’s hearing and has not sought a postponement or adjournment of the hearing at any point. Mr Coxhill further submitted that Dr Babiker has no intention of attending today’s proceedings; something he made clear in his email dated 11 March 2019 where he states “I’m not attending the hearing.” He stated that it was in the wider public interest that the hearing should proceed in Dr Babiker’s absence.

44. The Tribunal was referred to current case law mainly GMC 2016 EWCA Civ 162 and R v Jones [2002] UKHL 5. It noted that Dr Babiker has not requested an adjournment. On the basis of the information provided the Tribunal is satisfied that Dr Babiker has voluntarily waived his right to be present and represented at this hearing and that he is aware that the hearing can proceed in his absence. The
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Tribunal considers that, were it to adjourn today, it is very unlikely that Dr Babiker would attend a future hearing.

45. The Tribunal determined that there is a public interest that the hearing takes place within a reasonable time. It had regard to the overarching objective to protect and promote the health, safety and wellbeing of the public, promote and maintain public confidence in the medical profession and promote and maintain proper professional standards and conduct for the members of the profession. The Tribunal was of the opinion that any further delay could damage public confidence in the profession and therefore determined that it is in the public interest and in Dr Babiker’s own interests to exercise its discretion and proceed with the case in his absence.

SCHEDULE 1

12 March 2018

3 April 2018

14 May 2018