Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD


Medical Practitioner’s name: Dr Beatrice Lorena CHERCHESIU

GMC reference number: 7438903

Primary medical qualification: Doctor - Medic 2011 Carol Davila

Type of case
New - Misconduct

Outcome on impairment
Impaired

Summary of outcome
Suspension, 1 month.

Tribunal:

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<tr>
<th>Role</th>
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<tr>
<td>Legally Qualified Chair</td>
<td>Mr Stephen Killen</td>
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<tr>
<td>Lay Tribunal Member:</td>
<td>Mr Stephen Marr</td>
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<tr>
<td>Medical Tribunal Member:</td>
<td>Dr Anjali Ahluwalia 27/08/2019</td>
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<td></td>
<td>Dr Nigel Langford 28/08/2019 – 30/08/2019 &amp; 23/09/2019</td>
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<tr>
<td>Tribunal Clerk:</td>
<td>Ms Keely Crabtree</td>
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Attendance and Representation:

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<tr>
<td>Medical Practitioner:</td>
<td>Present and not represented</td>
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<tr>
<td>GMC Representative:</td>
<td>Mr Paul Williams, 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.

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 - 29/08/2019

1. Dr Cherchesiu completed her medical training in Romania and qualified in 2011. She has been working as a Clinical Fellow (Tier 1 Doctor) on the Neonatal Unit at Wythenshawe Hospital, Manchester University NHS Foundation Trust (‘the Trust’) since 13 February 2017. As part of the requirements for General Medical Council (GMC) revalidation Dr Cherchesiu had to distribute and collect 360 feedback forms from colleagues and patients.

2. The allegation that has led to Dr Cherchesiu’s hearing can be summarised as follows:
   - In or around April 2018 whilst working at the Trust, Dr Cherchesiu distributed patient feedback forms to patients’ family members and inserted a number of comments onto those forms without the knowledge and consent of those completing the forms;
   - Dr Cherchesiu included information on one or more of the forms which was untrue and which she knew to be untrue;
   - Dr Cherchesiu’s actions were dishonest; and
   - By reason of misconduct, Dr Cherchesiu’s fitness to practise is impaired.

3. The initial concerns regarding these matters were first raised with the GMC on 13 September 2018 by Dr Cherchesiu’s Responsible Officer/Medical Director within the Trust, following a local investigation which concluded in June 2018.

The Outcome of Applications Made during the Facts Stage

4. The Tribunal granted Mr Williams’ application, on behalf of the GMC, for the initial medical Tribunal member to recuse herself. The Tribunal’s full decision is included at Annex A.

5. The Tribunal granted Mr Williams’ application, made pursuant to rule 17(6) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended (‘the Rules’) to amend typographical errors to paragraphs 1, 3, 4 and 5 of the...
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allegation. Dr Cherchesiu had no objections. The Tribunal was satisfied that the proposed changes were not substantive in nature and that therefore no injustice would be caused by allowing them to be made.

The Allegation and the Doctor’s Response

6. The Allegation made against Dr Cherchesiu is as follows:

1. In or around April 2018, at Manchester University NHS Foundation Trust, you distributed patient feedback forms (‘the Forms’) to patients’ family members in order to gather patient feedback as a part of your revalidation process. **Admitted and found proved**

2. On one or more of the Forms, you inserted feedback comments without the patient’s and or patients’ family members:
   a. knowledge; **Admitted and found proved**
   b. consent. **Admitted and found proved**

3. You included information on one or more of the Forms that were untrue. **Admitted and found proved**

4. You knew that the information on one or more of the Forms were untrue. **Admitted and found proved**

5. Your actions as described at paragraphs 2 and 3 were dishonest by reason of paragraph 4. **To be determined**

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

The Admitted Facts

7. At the outset of this hearing, Dr Cherchesiu made admissions to paragraphs 1 and 2 of the allegation, as set out above, in accordance with rule 17(2)(d). In accordance with rule 17(2)(e), the Tribunal announced these paragraphs of the Allegation as admitted and found proved.

8. Subsequently, during evidence and submissions on facts, Dr Cherchesiu expanded her admissions to include paragraphs 3 and 4 of the Allegation. This was as a result of questioning by Mr Williams during which he explained to Dr Cherchesiu the basis upon which the inserted comments were alleged by the GMC to be ‘untrue’. That is, Mr Williams explained that, as the comments inserted by Dr Cherchesiu were intended to give the impression that they were written by others, they were, on that basis, untrue.
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9. These additional paragraphs were therefore also found proved.

**Factual Witness Evidence**

10. The Tribunal received witness statements and oral evidence (both by telephone link) on behalf of the GMC from the following witnesses:

- Dr B, Consultant Paediatrician and Neonatal Lead at the Trust;
- Dr C, Consultant specialising in Paediatrics and Neonates at the Trust.

11. Dr Cherchesiu provided her own statement dated 27 December 2018 and also gave oral evidence during the hearing.

12. The Tribunal also received evidence on behalf of Dr Cherchesiu in the form of testimonial letters from:

- Dr B;
- Dr D, Educational Supervisor & Consultant Neonatologist (Governance Lead) at the Trust.

**Summary of Evidence of Dr B**

13. In his witness statement, Dr B indicated that he had been employed by the Trust as a consultant Paediatrician and Neonatal Lead for approximately 5 years and that he had known and worked alongside Dr Cherchesiu for approximately 2 years. He indicated that as the Neonatal Lead, he was asked to conduct a meeting with Dr Cherchesiu in relation to an issue with patient feedback forms. During that meeting on 22 May 2018, Dr B presented 17 feedback forms to Dr Cherchesiu and queried whether 8 of the comments which appeared on the forms had been inserted by her. Dr B stated that Dr Cherchesiu admitted to having inserted 6 of the comments with the intention for these to be regarded as feedback from patients parents.

14. In his oral evidence, Dr B stated that, when the issue was put to Dr Cherchesiu, she immediately made admissions and did not try to deny her actions. He indicated that Dr Cherchesiu became very upset during the meeting and that his impression was that, overall, Dr Cherchesiu was not completely aware of the workings of the Revalidation process.

**Summary of Evidence of Dr C**

15. In his witness statement, Dr C stated that he is a consultant specialising in Paediatrics and Neonates at the Trust and that he was Dr Cherchesiu’s educational supervisor until approximately August 2018.
16. Dr C stated that he first met with Dr Cherchesiu on 14 March 2017 to discuss the appraisal system and to agree a personal development plan. He indicated that at that meeting Dr Cherchesiu confirmed that she did not have a portfolio and that he therefore told her to apply for one. Dr C stated that Dr Cherchesiu did not engage with the appraisal process ‘much after this, despite repeated reminders from me. I saw her on the ward and told her we needed to meet to discuss the appraisal process. I think I may have also sent her a few emails to remind her but she did not engage’. Dr C stated that on 1 March 2018 he met with Dr Cherchesiu again and advised her that if she did not engage, she would not be able to maintain her GMC licence. He stated that he ‘made her aware that Revalidation will help her to develop practice and improve clinical governance. That is when she started engaging a bit more about the procedure and what needed to be done’. Dr C indicated that Dr Cherchesiu 360-degree feedback was outstanding and that he directed her to the Edgecumbe website, to their guidance documents and that he gave her their telephone number.

17. Dr C could not recall Dr Cherchesiu asking for any further support after that meeting and he stated that, in his view, he had provided enough support to her.

18. In his oral evidence Dr C indicated again that Dr Cherchesiu did not engage with the appraisal process and that she was ‘unfortunately focussing much more on her clinical work and focussing on settling down’. Dr C stated that his impression was that Dr Cherchesiu was a very shy person and that she was not aware that the appraisal process was particularly important, given that there was nothing similar which she had completed in Romania. Dr C indicated that, in his view, he had no issue around Dr Cherchesiu’s probity, that he would not say that her actions were habitual, but he considered that this was an isolated incident.

Summary of Evidence of Dr Cherchesiu

19. In her statement, Dr Cherchesiu outlined that she completed her medical training in Romania and qualified in 2011. She had worked at the Trust since February 2017, Dr Cherchesiu stated that this was the first time she had been required to complete the 360 degree process and that there had been no equivalent system of appraisal and Revalidation in Romania. Dr Cherchesiu indicated that, whereas she had completed 360 degree feedback from colleagues, she only realised close to the submission date that she needed to obtain patient feedback as well. Dr Cherchesiu indicated that she received advice from the Revalidation Team at the Trust that she would need to obtain patient feedback from the parents of her infant patients. Dr Cherchesiu indicated that she did not know that at that time that it is preferable for another colleague to collect the feedback forms on the appraisee’s behalf. She also indicated that she was unsure of how to return the forms and was advised initially to scan the forms but later to personally hand them to the
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Revalidation team. Dr Cherchesiu stated that she realised that almost all of the forms had no comments and ‘at that moment I thought that was necessary to have comments on all of them. I was concerned there would not be enough feedback to complete the 360 appraisal, to complete the Revalidation which was due June 2018, hence added comments myself’.

20. In her oral evidence Dr Cherchesiu again stated that she was unfamiliar with the Revalidation process, that she was confused by the documentation and how it was to be collected and submitted and that she did not fully understand the importance of the procedure or paperwork. Dr Cherchesiu accepted that, as the comments which she inserted were not written by the patient or person completing the form, those comments were, on that basis, ‘untrue’. Dr Cherchesiu also accepted that, as a result, her actions were serious and dishonest but she stated that she did not know this at the time.

Documentary Evidence

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

- Patient Feedback Forms (EDGECUMBE DOCTOR 360);
- Patient Feedback Declaration Form (EDGECUMBE DOCTOR 360) signed by Dr Cherchesiu on 25 September 2018;
- GMC Fitness to Practise referral form;
- Trust Investigation Report;
- Dr Cherchesiu’s Reflection statement.

GMC Submissions

22. Mr Williams, on behalf of the GMC, submitted that Dr Cherchesiu’s actions were committed on one day and that they did not, therefore, amount to a course of conduct. He submitted, however, that the seven comments that Dr Cherchesiu inserted were untrue and that she knew them to be untrue. Mr Williams submitted that Dr Cherchesiu’s actions were dishonest and that she now readily concedes that they were dishonest, but that Dr Cherchesiu cannot bring herself to admit that she knew her actions were dishonest at the time. Mr Williams submitted that although there may be issues around the degree to which Dr Cherchesiu was supported or given guidance, her actions were plainly dishonest.

Dr Cherchesiu’s Submissions

23. Dr Cherchesiu submitted that ‘in that moment I didn’t know these were formal documents. Now I have realised it is dishonest, but not in that moment’.
The Tribunal’s Approach

24. In light of Dr Cherchesiu’s admissions at the outset of the hearing, and subsequently during her evidence and submissions, the only remaining paragraph which the Tribunal was required to find proved or not proved was paragraph 5.

25. 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 Cherchesiu does not need to prove or disprove 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.

26. In relation to the allegation of dishonesty, the Tribunal was reminded that the correct test is as set out in the case of Ivey v Genting Casinos [2017]. This has been confirmed to apply to regulatory proceedings in GMC v Krishnan [2017] EWHC 2892 (Admin) and Raychaudhuri v GMC and PSA [2018] EWCA Civ 2027. A two stage test must be applied as follows:

1. First ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of their belief is a matter of evidence going to whether they held the belief, but it is not an additional requirement that their belief must be reasonable; the question is whether it is genuinely held.

2. When once the doctor’s actual state of mind as to knowledge or belief as to facts is established, the question whether their conduct was honest or dishonest is to be determined by [this tribunal] by applying the (objective) standards of ordinary decent people. There is no requirement that the doctor must appreciate that what they have done is, by those standards, dishonest.

27. The Tribunal also reminded itself of the case of Lawrance v GMC [2015] EWHC 586 (Admin), in which Mr Justice Collins stated in paragraph 35:

‘The civil standard applies, but where dishonesty or a particularly serious offence is alleged the decision makers must be aware of the need for such cogent evidence. A direction making clear that need is in my judgment required coupled with a requirement for them to consider the full circumstances ...’.

28. The Tribunal was of the view that whereas it was clear that Dr Cherchesiu had initially not fully grasped the importance of the Revalidation or appraisal process or the procedures involved, she ultimately did have some understanding of what was required and why. It considered that, although it was clear that Dr Cherchesiu had prioritised clinical duties and patients over the 360 feedback process, it was ultimately explained to her and she understood that it must be completed. Dr
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Cherchesiu was therefore aware that the Revalidation and appraisal process was required for her to be permitted to continue practising as a doctor and she knew that the feedback forms she was submitting would be used for this purpose. The Tribunal noted that at the time the comments were inserted by Dr Cherchesiu onto the forms she felt under pressure to obtain all of the necessary evidence in advance of the close deadline for submission.

29. The Tribunal noted, however, that Dr Cherchesiu accepted that it was ‘not right’ to insert comments on to forms which purport to come from others and which were being inserted with the objective of obtaining Revalidation. It also noted that Dr Cherchesiu said that she almost immediately realised that her actions had been serious and dishonest. The Tribunal concluded that, although Dr Cherchesiu may not have appreciated the seriousness of her actions at the time, she was aware that those actions were ‘not right’ and, in consequence, dishonest.

30. On considering the matter objectively, the Tribunal was of the view that, by the standards of ordinary decent people, there could be no dispute that Dr Cherchesiu’s actions in amending completed feedback forms to include comments complimenting her work as a doctor without the individuals’ knowledge or consent and for the purpose of obtaining Revalidation were, by those standards, dishonest.

31. Accordingly, the Tribunal found paragraph 5 of the Allegation proved.

The Tribunal’s Overall Determination on the Facts

32. The Tribunal has determined the facts as follows:

1. In or around April 2018, at Manchester University NHS Foundation Trust, you distributed patient feedback forms (‘the Forms’) to patients’ family members in order to gather patient feedback as a part of you revalidation process. **Admitted and found proved**

2. On one or more of the Forms, you inserted feedback comments without the patient’s and or patients’ family members:
   a. knowledge; **Admitted and found proved**
   b. consent. **Admitted and found proved**

3. You included information on one or more of the Forms that were untrue. **Admitted and found proved**
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4. You knew that the information on one or more of the Forms were untrue. **Admitted and found proved**

5. You actions as described at paragraphs 2 and 3 were dishonest by reason of paragraph 4. **Determined and found proved**

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 - 23/09/2019**

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, Dr Cherchesiu’s fitness to practise is currently impaired by reason of misconduct.

**The Evidence**

2. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary.

3. The Tribunal also received in support of Dr Cherchesiu, testimonials from colleagues, all of which it has read.

**Submissions on behalf of the GMC**

4. On behalf of the GMC, Mr Williams outlined the staged approach when considering misconduct and impairment and referred to Dr Cherchesiu’s departures from Good Medical Practice (2013) (GMP). Mr Williams submitted that the facts in this case amount to misconduct which is serious and that, as a result, Dr Cherchesiu’s fitness to practise is impaired.

5. Mr Williams submitted that a finding of dishonesty does not always lead to a finding of impairment. However, he submitted that any form of dishonesty by a member of the medical profession is likely to be considered to be serious and is difficult to remedy. Therefore, a finding of impairment was necessary to reaffirm the standards expected and to maintain public confidence in the medical profession.

6. Mr Williams stated that Dr Cherchesiu’s development of insight has been a ‘journey’, in that she made admissions straight away to the Trust, but her acceptance that her misconduct amounted to dishonesty had taken more time. He reminded the Tribunal that the issue of impairment is one for the Tribunal’s independent judgment, looking forwards not back.

7. Mr Williams stated that the GMC acknowledge that Dr Cherchesiu’s misconduct ‘was a short-lived instance of dishonesty’ and ‘on a sliding scale, [the GMC]
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acknowledge that this is at the lower end’. Mr Williams confirmed that the GMC was not of the view that there was a high risk of future repetition but that any future risk ‘must be low’. He submitted, however, that misconduct as serious as this requires action in respect of Dr Cherchesiu’s registration and that a finding of impairment was required in the public interest. Mr Williams submitted that a finding of impairment was needed to declare and uphold standards and also that a reasonable person would be surprised if there were no finding, there by undermining public confidence in the profession.

Dr Cherchesiu’s submissions

8. Dr Cherchesiu submitted that she completely accepts the Tribunal’s findings, that she deeply regrets her actions and that she is very sorry. Dr Cherchesiu explained that she has never acted dishonestly before, has not acted dishonestly since the actions giving rise to the Allegation, and that she will not do so in the future.

9. Dr Cherchesiu submitted that this was an isolated incident which was triggered by various factors and personal issues at the time. She stated that she had realised the seriousness of her actions straight away and that she knows that those actions were dishonest. Dr Cherchesiu submitted that the Revalidation process was completely new to her and that, having completed her medical training in Romania, she had no prior experience of a similar process.

The Relevant Legal Principles

10. The Tribunal had regard to the authorities as referred to by Mr Williams and the Legally Qualified Chair. It reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision on impairment is a matter for the Tribunal’s judgement alone.

11. In approaching its decision, the Tribunal was mindful of the two stage process to be adopted: first whether the facts as found proved amounted to misconduct which was serious and, if so, whether the finding of that misconduct which was serious, leads to a finding of impairment.

12. The Tribunal reminded itself that it must determine whether Dr Cherchesiu’s fitness to practise is impaired today, taking into account her actions at the time of the events giving rise to the Allegation together with any relevant factors since, to include whether the matters are remediable, have been remedied and any likelihood of repetition.

13. The Tribunal reminded itself that it must determine whether doctor Cherchesiu has demonstrated insight and, if so, to what extent. The Tribunal should bear in mind throughout its deliberations the statutory overarching objective, which includes:
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a. Protecting, promoting and maintaining the health, safety and wellbeing of the public,

b. Promoting and maintaining public confidence in the medical profession,

c. Promoting and maintaining proper professional standards and conduct for members of that profession.

14. The Tribunal also reminded itself of the need to consider any paragraphs of GMP it believes are applicable.

The Tribunal’s Determination on Impairment

Misconduct

15. The tribunal first considered whether Dr Cherchesiu’s actions amount to misconduct.

16. The Tribunal considered that the following paragraphs of the current edition of *Good Medical Practice* (2013) (‘GMP’) were engaged:

‘65. You must make sure that your conduct justifies your patients’ trust in you and the public’s trust in the profession.

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.

   b. You must not deliberately leave out relevant information.’

17. The Tribunal was of the view that doctors occupy a position of privilege and trust in society and are expected to uphold proper standards of conduct. Members of the public are entitled to place complete reliance upon doctors’ honesty. The relationship between the profession and the public is based on the expectation that medical practitioners will act at all times with integrity. Dishonesty, even where it does not result in actual harm to patients, is particularly serious because it can undermine the public’s trust and confidence in the medical profession.

18. The Tribunal accepted that Dr Cherchesiu’s dishonest behaviour was an isolated incident rather than a pattern of behaviour and that there had been no direct impact on patient safety. However, the Tribunal was of the view that a doctor
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who undermined the integrity of the Revalidation process by inserting false or misleading comments on to feedback forms would have the potential to adversely impact patient safety if that doctor were not fit to be revalidated. This process is the primary safeguard designed to protect the public and maintain high standards within the profession.

19. The Tribunal concluded that, taking account of all the circumstances in this case, Dr Cherchesiu’s dishonest conduct fell far below the standards expected of a doctor and was contrary to the GMP guidance and breached a fundamental tenet of the medical profession namely that of honesty and integrity. The Tribunal therefore concluded that Dr Cherchesiu’s actions amounted to misconduct and that that misconduct was serious.

Impairment

20. Having found that the facts found proved amounted to misconduct, the Tribunal went on to consider whether Dr Cherchesiu’s fitness to practise is currently impaired by reason of that misconduct.

21. In coming to a conclusion on this issue, the Tribunal again considered the available evidence in the context of the overarching objective. It accepted Dr Cherchesiu’s oral and written evidence and considered that she had given honest, open and direct answers to questioning. The Tribunal considered that Dr Cherchesiu had recognised and acknowledged the seriousness of her actions, had taken responsibility and had not made any attempt to shift blame or minimise her culpability. It noted that Dr Cherchesiu admitted her actions from the outset, albeit that she did not accept that her misconduct amounted to dishonesty until during the hearing. The Tribunal noted that the wording of the Allegation in this regard left the potential for misunderstanding and that, once Mr Williams explained the manner in which the GMC submitted the specific wording of the Allegation should be read, Dr Cherchesiu readily accepted that her actions were dishonest. The Tribunal considered that Dr Cherchesiu had developed full insight into her actions and it agreed with the GMC’s view that the likelihood of repetition was low.

22. The Tribunal agreed with the GMC submissions that Dr Cherchesiu’s dishonest misconduct was an isolated incident. It considered that there was no evidence of significant forethought or planning and the misconduct could be said to be a ‘heat of the moment’ decision.

23. The Tribunal accepted the testimonials written by professional colleagues who have known Dr Cherchesiu for a period of 2 years, are aware of the Allegation and who expressed the firm view that Dr Cherchesiu is a reliable, respected doctor who has insight into her actions for which she was very remorseful. Finally, the Tribunal gave weight to the fact that Dr Cherchesiu is of previous good character with no other disciplinary matters having been recorded against her. Nor has she been guilty
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of any misconduct since events giving rise to the Allegation. The Tribunal accepted that there is no evidence to suggest that there were any clinical concerns.

24. Although Dr Cherchesiu actions did not harm patients, and it appears that she is otherwise a clinically competent doctor who poses no risk to patients, a dishonest act can have serious implications. Notwithstanding its conclusion that Dr Cherchesiu is very unlikely to repeat her misconduct, the Tribunal concluded that a finding of impairment was necessary in order to satisfy the overarching objective to promote and maintain public confidence in the medical profession and to promote and maintain proper professional standards and conduct for the members of that profession. It considered that public confidence in the profession would be undermined if a finding of impairment is not made in this case.

25. Accordingly, the tribunal determined that Dr Cherchesiu’s conduct fell far short of the standards of conduct reasonably to be expected of a doctor, such that it was necessary in the public interest to declare and uphold professional standards by making a finding of impairment.

Determination on Sanction - 23/09/2019

1. Having determined that Dr Cherchesiu’s fitness to practise is impaired by reason of her 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 on behalf of the GMC

3. On behalf of the GMC, Mr Williams submitted that the appropriate and proportionate sanction in this case was one of a modest period of suspension. He said that, in the light of the Tribunal’s findings, taking no action in this case would be inappropriate. He stated that it was difficult to see how the Tribunal could formulate any workable conditions that could be imposed on Dr Cherchesiu’s registration that would be an appropriate response to her misconduct, namely her dishonesty. He drew the Tribunal’s attention to aspects of the Sanctions Guidance (February 2018) (‘the SG’), highlighting relevant sections including paragraph 97 (set out in the Tribunal’s decision below) which lists factors which may indicate that suspension is the appropriate sanction.
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Dr Cherchesiu’s submissions

4. Dr Cherchesiu submitted that she did not think that suspension would be the appropriate sanction to impose on her registration and she stated that such a sanction would be devastating to her career. She accepted that her actions had been dishonest, however she stated that she had had limited training on the Revalidation process and was not familiar with it. Dr Cherchesiu stated that the events took place two years ago and her actions have not and will not ever be repeated.

The Tribunal’s Approach to Sanction

5. The decision as to the appropriate sanction, if any, is a matter for this Tribunal exercising its own judgment. In reaching its decision, the Tribunal has taken account of the SG and the statutory over-arching objective. The Tribunal recognises that the purpose of a sanction is not to be punitive, although it may have a punitive effect.

6. Throughout its deliberations the Tribunal has applied the principle of proportionality, balancing Dr Cherchesiu’s interests with the public interest. It reminded itself that it should only impose the minimum sanction necessary to achieve the over-arching objective. 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

Mitigating factors

7. The Tribunal noted that this was an isolated incident, as opposed to a pattern of behaviour, and it considered that there was no evidence to suggest significant planning or forethought.

8. The Tribunal considered that, since the events in question and during the hearing before the Tribunal, Dr Cherchesiu has shown significant insight into her actions and that she has acknowledged the seriousness of her misconduct and has expressed significant regret. The Tribunal noted that Dr Cherchesiu’s admissions to the hospital staff were immediate and that she made no attempt to conceal, diminish or minimise those actions. Dr Cherchesiu accepted that her misconduct was dishonest. Having considered Dr Cherchesiu’s written and oral evidence, the Tribunal considered that she displayed genuine insight and remorse.

9. The Tribunal noted that no previous findings have been made against Dr Cherchesiu and that there is no evidence that she has acted in such a manner since the incidents leading to this hearing. There is no concern regarding Dr Cherchesiu’s
clinical skills and she has continued to practice without restriction. The Tribunal has already determined that the risk of Dr Cherchesiu repeating her actions is low.

Aggravating factors

10. Against those mitigating factors, the Tribunal considered that any dishonest conduct by a doctor for the purposes of securing revalidation must always be regarded as serious.

The Tribunal’s Determination on Sanction

No action

11. The Tribunal first considered whether to conclude Dr Cherchesiu’s case by taking no action with regard to her registration. It determined, however, that there were no exceptional circumstances which could justify the taking of no action in this case.

Conditions

12. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Cherchesiu’s registration. It has borne in mind that any conditions imposed should be appropriate, proportionate, workable and measurable.

13. The Tribunal was of the view that it could not formulate appropriate conditions to address the issues raised by Dr Cherchesiu’s misconduct. Further, given the seriousness with which it views her actions, the Tribunal determined that a period of conditional registration would not adequately protect public confidence in the profession or uphold proper standards of conduct for members of the profession.

Suspension

14. The Tribunal next considered whether it would be sufficient to impose a period of suspension on Dr Cherchesiu’s registration. It has borne in mind the SG in relation to suspension, including paragraphs 91, 92 and 93, which state:

'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 unbefitting a registered doctor....

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

15. The Tribunal also considered the following factors as set out in paragraph 97
of the SG to be relevant in Dr Cherchesiu’s case, which indicate that suspension may
be appropriate where there is:

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

b ...

c ...

d ...

e ...

f No evidence of repetition of similar behaviour since incident.

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

16. The Tribunal considered that Dr Cherchesiu’s misconduct was unacceptable
for a medical practitioner. Its findings and the reasons for them are set out in its
determination on impairment and are not repeated here. However, notwithstanding
that Dr Cherchesiu’s actions were a serious departure from the principles of GMP,
the Tribunal did not consider her behaviour to be fundamentally incompatible with
continued registration as a doctor. It therefore considered that erasure would be a
disproportionate and punitive sanction.

17. Although Dr Cherchesiu’s actions represented a serious departure from the
provisions of GMP, the Tribunal acknowledged that there are a number of strong
mitigating factors present in this case, as outlined above. These include the significant degree of insight Dr Cherchesiu has demonstrated into her actions, the apologies and expression of regret for her behaviour, and that Dr Cherchesiu is otherwise of good character.

18. In all the circumstances, the Tribunal determined to suspend Dr Cherchesiu’s registration for a period of one month. The Tribunal considered that this sanction was sufficient, appropriate and proportionate and that it marked the seriousness with which the Tribunal viewed Dr Cherchesiu’s misconduct. The Tribunal was satisfied that such a sanction would be sufficient to promote and maintain both public confidence in the profession, and standards and conduct for members of the profession.

No review hearing

19. The Tribunal gave due regard to paragraph 164 of the SG which states: ‘in some misconduct cases it may be self-evident that, following a short suspension, there will be no value in a review hearing.’ The Tribunal was satisfied that Dr Cherchesiu appreciates the gravity of her actions, has developed sufficient insight and that she is unlikely to repeat her misconduct. In these circumstances, and in the absence of any evidence of concerns regarding Dr Cherchesiu’s clinical practice or the safety of patients, the Tribunal was satisfied that a review hearing would serve no useful purpose and therefore determined not to direct such a hearing.
Application - Recusal of a Tribunal member

1. At the outset of the hearing, the Legally Qualified Chair (LQC) outlined to the parties that the Medical Tribunal Member, Dr Ahluwalia, knows both of the two GMC witnesses on a limited professional basis as she is employed by the Trust at which they and Dr Cherchesiu work. In addition, the LQC indicated that Dr Ahluwalia knows the doctor who has provided a testimonial for Dr Cherchesiu, again on a professional basis, and that she had been the line manager of this doctor’s line manager.

2. Mr Williams Counsel, on behalf of the General Medical Council made an application for Dr Ahluwalia to recuse herself from the case on the basis that her prior knowledge of the witnesses could lead to a perception of bias which could render the hearing unfair.

3. Dr Cherchesiu did not make any submissions in support or opposition to Mr William’s application.

Relevant Legal Principles

4. The LQC outlined the legal principles to be applied, to include the test outlined in the case of Porter v Magill [2002] 2 AC 357, which states:

"The question is, whether the fair minded and informed observer, having considered facts, would conclude that there was a real possibility that the Tribunal was biased"

5. The LQC also drew the Tribunal’s attention to a number of other authorities which provide guidance as to how this test should be approached.

Determination on Recusal

6. Having considered her knowledge of the two GMC witnesses and of the author of Dr Cherchesiu’s testimonial, Dr Ahluwalia considered that, although her prior connections with each of the three individuals concerned were very limited, there was a real possibility that a fair minded and informed observer would conclude that the Tribunal was biased, were she to continue to hear the case.

7. Dr Ahluwalia therefore recused herself from the case.