Record of Determinations – Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 02/07/2019 - 10/07/2019
Medical Practitioner’s name: Dr Deyaa Al-Deen Ibrahim ABOU SAID

GMC reference number: 5202850
Primary medical qualification: MD 1996 State M University Nicolae Testimitanu

Type of case
New - Misconduct

Outcome on impairment
Not Impaired

Summary of outcome
No warning

Tribunal:

<table>
<thead>
<tr>
<th>Role</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legally Qualified Chair</td>
<td>Mr Angus Macpherson</td>
</tr>
<tr>
<td>Lay Tribunal Member:</td>
<td>Mr John Elliott</td>
</tr>
<tr>
<td>Medical Tribunal Member:</td>
<td>Dr Candida Borsada</td>
</tr>
<tr>
<td>Tribunal Clerk:</td>
<td>Mr Sewa Singh</td>
</tr>
</tbody>
</table>

Attendance and Representation:

<table>
<thead>
<tr>
<th>Role</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 Simon Cridland, Counsel, instructed by Gordons Partnership LLP</td>
</tr>
<tr>
<td>GMC Representative:</td>
<td>Mr Carlo Breen, Counsel</td>
</tr>
</tbody>
</table>

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 - 08/07/2019

Background

1. Dr Abou Said qualified as a doctor in 1996 at The State University Nicolae Testimitanu, Moldova. Between July 1997 and March 1999, he worked as a Research Fellow at the Harris Birthright Research Centre of Fetal Medicine in London. He obtained an MSc in medical ultrasound in 2003 and, after his PLAB assessment, worked for a number of hospitals as an SHO and as a Trust Grade doctor, before working as a SHO Specialty Doctor and Locum Registrar in Accident and Emergency between 2011 and 2013. In 2014, Dr Abou Said commenced specialty training in Emergency Medicine.

2. Dr Abou Said currently works as a locum SpR at Whittington Hospital, part of The Whittington Hospital NHS Trust, in London.

3. The allegations that have led to Dr Abou Said’s hearing, which occurred at three separate Trusts, can be summarised as follows:

   **Wrexham Park Hospital, part of Frimley Health NHS Foundation Trust (FHFT)**

4. On 7 July 2017, whilst working as a locum doctor at FHFT, Dr Abou Said treated an eleven year old male child wearing a turban (Patient A). During the consultation, when Patient A returned from having had his X-rays taken, Dr Abou Said allegedly said to a colleague, ‘Sister, guess if this is a boy or a girl’, or words to that effect.

5. On the same day, Dr Abou Said treated a male child who had been brought in to the A&E department by his mother (Mrs B) presenting with a seizure. It is alleged that, whilst treating Mrs B’s son, Dr Abou Said said to her, ‘so you married your cousin then’ or words to that effect.

   **Kingston Hospital NHS Foundation Trust (KHFT)**

6. It is alleged that on or around 21 July 2017, when Dr Abou Said was working as a locum doctor at KHFT, having noticed a piercing in the back of Nurse C’s neck, he asked her ‘what else have you got pierced?’ or words to that effect. It is also alleged that Dr Abou Said looked Nurse C up and down in a suggestive manner when he asked that
question. Later that day, it is alleged that he touched an earring which was in her ear cartilage and put his finger right down inside her ear. On another occasion, Dr Abou Said is alleged to have commented on Nurse C’s hair tie and put his hand in her hair.

7. On another shift at KHFT, when Dr Abou Said was working alongside Nurse D, it is alleged that he made suggestions to her concerning how to conceive a boy, including sexual positions that might be adopted. He is also alleged to have said to her that her husband should refrain from masturbation before sexual intercourse.

Colchester University Hospital NHS Foundation Trust (CHFT)

8. On 12 August 2017, Patient E presented to the A&E department at CHFT where she was treated by Dr Abou Said. It is alleged that, during the consultation, Dr Abou Said made an inappropriate comment to Patient E in that he said words to the effect that all she had to do was to put her hand on her heart and promise God to never smoke or eat sugar again and she would be cured.

9. On another shift in or around November 2017, Dr Abou Said is alleged to have made a comment to Sister F about her ‘bottom’.

The Allegation and the Doctor’s Response

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

1. On 7 July 2017 during a consultation with Patient A, an 11 year old male wearing a turban, you said ‘Sister, guess if this is a boy or a girl’, or words to that effect.
   **Admitted and found proved**

2. On 7 July 2017 during a consultation with Mrs B’s child you said to Mrs B ‘so you married your cousin then’, or words to that effect.
   **To be determined**

3. In or around July 2017 you:

   a. asked Nurse C ‘what else have you got pierced?’, or words to that effect;
      **Admitted and found proved**

   b. whilst asking the question as stated at paragraph 3a, looked Nurse C up and down in a suggestive manner;
      **To be determined**

   c. touched Nurse C’s earring with your finger;
      **To be determined**
d. put your finger right down inside Nurse C’s ear;  
**To be determined**

e. said to Nurse C ‘oh that’s a pretty hair tie’, or words to that effect;  
**To be determined**

f. whilst making the comment as stated at paragraph 3e, put your hand in Nurse C’s hair;  
**To be determined**

g. suggested to Nurse D that:
   i. Nurse D’s husband should refrain from masturbation;  
**Admitted and found proved**
   
   ii. some sexual positions that Nurse D and her husband should adopt to conceive a boy.  
**To be determined**

4. On 12 August 2017 during a consultation with Patient E you made an inappropriate comment in that you said ‘all she had to do was put her hand on her heart and promise god to never smoke or eat sugar again and she would be cured’, or words to that effect.  
**To be determined**

5. On or around 22 November 2017 you:
   a. said to Sister F ‘I would recognise your bottom anywhere’, or words to that effect;  
**deleted following Rule 17(6) application**
   
   b. made comments about Sister F’s bottom being similar to another colleague’s bottom, 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.  
**To be determined**

**The Admitted Facts**

11. Through his counsel, Mr Simon Cridland, Dr Abou Said admitted paragraphs 1, 3a and 3gi of the Allegation, as set out above, in accordance with Rule 17(2)(d) of
Record of Determinations – Medical Practitioners Tribunal

the Rules. In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs as admitted and found proved.

The Facts to be Determined

12. The Tribunal was required to determine whether the facts alleged, as set out in the Allegation, insofar as they are not admitted, occurred. Further, it was required to consider whether any facts found proved in the Allegation amounted to misconduct and, if so, whether Dr Abou Said’s fitness to practise is impaired by reason of misconduct.

Factual Witness Evidence

13. The Tribunal received written statements and oral evidence on behalf of the GMC from the following witnesses:

- Nurse C, Emergency Nurse Practitioner at KHFT; witness statement dated 4 April 2018, and evidence in person;
- Mr G, Consultant in Emergency Medicine and Clinical Lead at CHFT; witness statement dated 13 April 2018, and evidence in person;
- Sister F, Sister in Emergency Department at CHFT; witness statement dated 27 April 2018, and evidence in person;
- Patient E; witness statement dated 3 June 2018 and evidence via videolink;
- Ms H, Paediatric Sister at FHFT; witness statement dated 16 June 2018, and evidence via videolink;
- Mrs B; witness statement dated 30 June 2018, and evidence via videolink;
- Nurse D, Senior Sister; witness statement dated 14 February 2019, and evidence in person.

14. Dr Abou Said provided his own witness statement, dated 13 May 2019, and also gave oral evidence.

Documentary Evidence

15. The Tribunal had regard to the documentary evidence provided by the parties. This included the initial statements of Nurse C, Mr G, Sister F, Ms H, Nurse D, two letters from Patient E and a copy of Dr Abou Said’s Curriculum Vitae (CV) dated 2018.

The Tribunal’s assessment of the witnesses

16. Sister F: The Tribunal found Sister F to be a forthright witness who did her best to assist the Tribunal. She was clear in her evidence and maintained her account throughout. The Tribunal noted from the documentary evidence, and from her oral evidence, that when Dr Abou Said called her by another colleague’s name,
Record of Determinations –
Medical Practitioners Tribunal

Sister F appeared to have responded in a challenging manner asking him why he had done so. The Tribunal felt that she may have mistaken what Dr Abou Said said to her.

17. **Nurse D**: The Tribunal found Nurse D to be a credible witness. She maintained her account and her evidence was consistent. She was clear about what Dr Abou Said said to her. She told the Tribunal that she was 'shocked' by it, it made her uncomfortable and she felt it was inappropriate and intrusive. She reported it to another colleague on the same day. She did, however, concede that his advice was given in the manner of a doctor giving advice to a patient.

18. **Nurse C**: The Tribunal found Nurse C to be a credible witness. Her evidence was reliable. She told the Tribunal how the events in question occurred. She was prepared to make concessions when questions were put to her in cross examination. She did her best to assist the Tribunal.

19. **Ms H**: The Tribunal found Ms H did her best to assist the Tribunal. She tried to recollect the sequence of events in relation to Mrs B’s child when he was brought into the busy A&E department. The situation which presented at the time was stressful, especially for Mrs B. It noted that there were some inconsistencies between Ms H’s evidence and that of Mrs B. For example, Ms H stated in her witness statement that the first words which Dr Abou Said said, as alleged in the Allegation, were spoken as soon as he arrived to tend to Mrs B’s child. Mrs B, however, told the Tribunal that Dr Abou Said did not say the words alleged, and that he had asked her about her relationship to her husband after at least two or three other questions about her child’s medical condition.

20. **Patient E**: The Tribunal found Patient E did her best to assist the Tribunal. She broadly maintained her account as to what took place.

21. **Mrs B**: The Tribunal found Mrs B to be a credible witness. Her account differed from Ms H’s account. Mrs B was consistent in her evidence. She did her best to assist the Tribunal. She was clear about the sequence of events. Her approach and attitude to the scenario was based on the fact that she knew what needed to be done to stop her son from fitting. She considered that Dr Abou Said’s questions about her son’s medical condition and about her relationship with her husband did not help matters.

22. **Mr G**: The Tribunal found Mr G did his best to assist it by his recollection of the complaints about Dr Abou Said which he had received. However, some elements of his evidence were inconsistent with the evidence of those complainants. For example, he stated that Sister F told him that she was happy with an apology from Dr Abou Said which she had received, whereas Sister F said that whilst she would have been happy with an apology from Dr Abou Said, she never received one.
Record of Determinations –
Medical Practitioners Tribunal

23. The relevant detail of the evidence of the GMC witnesses is to be found in this determination where it considers the individual paragraphs of the Allegation.

24. Dr Abou Said: The Tribunal found that he was anxious when he gave his evidence but that he answered the questions which were put to him. He told the Tribunal that he recognised and accepted that some of his actions were unprofessional, inappropriate and unbefitting of a doctor, and that he over-stepped professional boundaries. He told the Tribunal that he has attended two Maintaining Boundaries courses since the events in question.

25. Dr Abou Said described his and his family’s experience living in Hastings when he worked at the Conquest Hospital. XXX. He referred in detail to the difficulties which he and his wife had when she was pregnant during this time. Dr Abou Said went on to explain that when he returned to work, all he wanted to do was to retain his locum position. As a result, he was over-friendly with colleagues and patients and always tried to be ‘the super-helpful’ doctor and to impress everyone. He said that he always tried to see good in people and wanted to make everyone feel welcomed.

26. In relation to charge 1 concerning Patient A, Dr Abou Said said that he thought it would compliment Patient A if he asked the Sister to guess if he was a boy or girl. He said that his aim was to try to make Patient A feel comfortable and relaxed. However, he accepted that this may have been offensive to Patient A and his mother and that it was not appropriate.

27. In relation to charge 2 which concerned an alleged remark he made to Mrs B that she had married her cousin, Dr Abou Said explained that, as in his own Arab community, the Muslim community can marry their cousins. Dr Abou Said then explained the sequence of events on the day he treated Mrs B’s child. He said that he was called to the cubicle because the child was fitting. He noticed that the child was very small in stature, which led him to believe that there may have been an underlying syndrome. He also noticed that the child looked unwell and was febrile and would likely need admission. He asked for the nurse to fetch Midazolam. He said that he recalled having a conversation with Mrs B regarding the possible cause of the child’s developmental delay and history of fitting. He maintained that he asked Mrs B whether she and her husband were related. He considered that a consanguineous marriage might have explained the child’s appearance. He said the conversation was part of history taking so that, if it became necessary to refer the child to a paediatrician, the referral would be supported by accurate information. He told the Tribunal that in hindsight, he appreciated that, given the stressful situation, it was not appropriate to ask Mrs B this question. In response to the allegation brought against him, Dr Abou Said said that he did not say ‘so you married your cousin then’ to Mrs B. He wished he had never said anything to her about it. He told the Tribunal that he later explained to Mrs B the purpose of asking the questions and apologised to her. In response to questions during cross examination, he accepted that the priority was to administer the appropriate medication to the child.
He said that he also wanted to establish some history from Mrs B about her child’s condition and to exclude other causes for the seizure.

28. In relation to charge 3 concerning Nurse C, Dr Abou Said acknowledged that sexual undertones could be understood from his asking her what else she had pierced. However he said this is not how the words were meant and that he was just being friendly. He said that a lot of ladies liked to talk about their piercings. He said that Nurse C was ‘nice to me’ and he had no ulterior motive in asking the question. He told the Tribunal that they were on the way to the Human Resources department so that he could get a card to use the computer system. He said he did not look at Nurse C in a suggestive manner and added that, as Nurse C was walking in front of him while going down a flight of stairs, how could she say that he looked at her in such manner. Dr Abou Said denied touching Nurse C’s earring with his finger but accepted that he pointed to her earrings. This was because one of her earrings was a daith earring. He pointed to it when he asked her to confirm if that was the case. Dr Abou Said denied putting his finger down Nurse C’s ear. He accepted, however, that his actions were inappropriate and could be misinterpreted and could be considered offensive. In relation to Nurse C’s hair tie, Dr Abou Said said that he recalled commenting on it and believed he may have said ‘I like your hair band’ but did not use the work ‘pretty’. He also denied putting his hand in Nurse C’s hair.

29. In relation to charge 3 concerning Nurse D, Dr Abou Said told the Tribunal that he overheard Nurse D in conversations with other colleagues and therefore knew that she already had a girl. In answer to his question, Nurse D said she was expecting another girl. He said that he wanted to be friendly and helpful and because of this, he asked her if she wanted advice on how to conceive a boy. He said that Nurse D replied ‘go on’ and he then asked her to go into a cubicle where he explained to her that male sperm travel faster than female sperm. Therefore it was important for the male not to engage in any ejaculation or masturbation, prior to intercourse. He said he gave Nurse D advice in a clinical context and that he had no other intention. He told the Tribunal that he regretted doing so as it was not his place to interfere in her private life. He accepted his actions were inappropriate and unprofessional. Dr Abou Said said that after the conversation Nurse D just walked out of the cubicle and he realised that she felt uncomfortable about the conversation. He said he intended to apologise to Nurse D the next time he saw her but he did not see her again. He told the Tribunal that he was not aware of any sexual positions which would improve the chances of conceiving a boy and he did not suggest any to Nurse D. He told the Tribunal that he had learnt the relevant information from a senior registrar whilst working in the area of fertility and from lectures he has attended on the subject.

30. In relation to charge 4 concerning Patient E, Dr Abou Said told the Tribunal that he accepted that he did say ‘God bless you’ to Patient E at the end of the consultation. He explained that when Patient E presented with pain, he was aware she had previously been struck by a shopping trolley. He arranged for her to
undergo x-rays to make sure she had not sustained a fracture. When the x-rays showed no bony injury, he told her to hop off the bed and walk to the stool so he could show her the x-ray images. He said that while he was talking to Patient E, he established that she smoked. He said he advised her to give up smoking. He also said that he gave some advice about her diet. Dr Abou Said denied saying to Patient E that ‘all she had to do was put her hand on her heart and promise God to never smoke or eat sugar again and she would be cured’.

31. In relation to charge 5 concerning Sister F, Dr Abou Said told the Tribunal that this was a case of mistaken identity. He said that it was a mistake on his part caused by the fact that when he saw Sister F standing at the Majors Board with her back to him, he thought Sister F was another colleague who had been working within him on an earlier shift. He said Sister F and the other colleague had a similar build and hair, and were of a similar height. He said that, when Sister F questioned him about why he had called her by her colleague’s name, he told Sister F that he did not recognise her from the back-side. Dr Abou Said explained that, in Arabic, reference to back-side simply means the rear view as opposed to the front or side view. It is not a reference to a person’s bottom. He said he apologised to Sister F immediately for mistaking her for the other colleague. Dr Abou Said told the Tribunal that he never used the word ‘bottom’. Further, he said that he did not laugh. Dr Abou Said went on to mention, in response to a question as to why Sister F stated this, that a few weeks before the incident, Sister F had applied for a position which she was unsuccessful in securing, and that as a result, there may have been some friction between him and her and she did not like him.

The Tribunal’s Approach

32. 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 Abou Said 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 Analysis of the Evidence and Findings

33. The Tribunal considered the facts in dispute with regard to each paragraph of the Allegation.

Paragraph 1
1. On 7 July 2017 during a consultation with Patient A, an 11 year old male wearing a turban, you said 'Sister, guess if this is a boy or a girl', or words to that effect.  
**Admitted and found proved**

**Paragraph 2**

2. On 7 July 2017 during a consultation with Mrs B’s child you said to Mrs B ‘so you married your cousin then’, or words to that effect.

34. Ms H told the Tribunal that Dr Abou Said said the words which are set out in the allegation as soon as he arrived to tend to Mrs B’s child, and that this was the first thing he said to her. She maintained this throughout her evidence to the Tribunal. The allegation suggests that Dr Abou Said made a statement.

35. In his statement dated 13 May 2019, in response to the allegation, Dr Abou Said stated 'I do not recall saying the words stated in the allegation and believe that instead I asked [Mrs] B if her husband was her first cousin.’ In his evidence to the Tribunal, he maintained this. He explained why he asked the questions of Mrs B, as set out above.

36. In paragraph 8 of her statement, dated 30 June 2018, Mrs B stated 'Dr Abou Said turned to me and asked “are you and dad related?”.’ In her evidence during cross examination, Mrs B told the Tribunal that Dr Abou Said did not say the words alleged in the allegation. Mrs B’s also told the Tribunal that Dr Abou Said asked her this question after two or three other questions about her son’s medical condition, and that he had later apologised to her and explained his reasons for asking. Mrs B also said that she accepted that Dr Abou Said asked the question as part of taking her child’s medical history.

37. The Tribunal accepted Mrs B’s evidence and noted Dr Abou Said’s evidence in his witness statement dated 13 May 2019. It concluded that the words used by Dr Abou Said were in the form of a question and that he did not the make the remark as alleged in paragraph 2. The Tribunal finds that the words which he used are significantly different to those alleged. The Tribunal considered that, had Dr Abou Said made that remark, it would have been wholly inappropriate, even outrageous. However, it accepted that Dr Abou Said asked a question to ascertain the child’s medical condition for the purpose set out in his evidence above.

38. The Tribunal determined that Dr Abou Said did not say to Mrs B ‘so you married your cousin then’, or words to that effect. It therefore found paragraph 2 of the Allegation not proved.

**Paragraph 3**
Record of Determinations – Medical Practitioners Tribunal

3. In or around July 2017 you:

a. asked Nurse C ‘what else have you got pierced?’, or words to that effect;
   **Admitted and found proved**

b. whilst asking the question as stated at paragraph 3a, looked Nurse C up and down in a suggestive manner;

39. In her statement dated 4 April 2018, Nurse C stated:

   ‘I explained that he would need to get one from Human Resources (‘HR’) and I offered to walk him to HR otherwise he would have got lost. I had to take him through the bottom of A&E and through a car park in order to get there and so there were not many people around. On the way he commented on a piercing that I have in the back of my neck and said it was unusual, which I agreed with. He then said “what else have you got pierced?” (or words to that effect) and he looked me up and down at the same time in what I would describe as being a suggestive manner.’

40. Nurse C maintained this account throughout her evidence to the Tribunal, although during cross examination, she accepted that when Dr Abou Said looked her up and down, it could have been to look for further piercing.

41. In his evidence, Dr Abou Said told the Tribunal that whilst he and Nurse C were walking down a flight of stairs on the way to HR, with Nurse C walking in front of him, he asked her about the piercing at the back of her neck. He said that he did not look at Nurse C in a suggestive manner. He accepted that his question could be interpreted as being suggestive, but that he was just trying to be friendly. He said that with Nurse C in front, she would not have seen how he looked at her because he was walking behind her.

42. The Tribunal noted that in her initial statement, Nurse C makes not mention that Dr Abou Said looked at her in a suggestive manner, nor does she make any mention of it in her email of 27 July 2017 to Ms I.

43. In light of the evidence before it, and on the balance of probabilities, the Tribunal determined that Dr Abou Said did not look at Nurse C in a suggestive manner when she was asked the question set out in paragraph 3a of the Allegation. It therefore found paragraph 3b of the Allegation not proved.

   c. touched Nurse C’s earring with your finger;
44. During her evidence, Nurse C described how Dr Abou Said touched her earring with his finger. She explained that this was during a conversation about one of her earrings being a daith earring. Nurse C mentioned this in her initial statement and also mentioned it in her email of 27 July 2017 to Ms I.

45. In his statement of 13 May 2019, Dr Abou Said denied touching Nurse C’s earring with his finger. He stated and maintained in his evidence:

‘I do accept however that I may have pointed at her earring. I may have done this as one of her earrings may have been a daith earring and I was asking whether this was the case.’

46. The Tribunal has already found Nurse C to be a credible witness. It preferred Nurse C’s evidence. Taking all the evidence into account, it determined that it is more likely that Dr Abou Said touched Nurse C’s earring with his finger. It therefore found paragraph 3c of the Allegation proved.

d. put your finger right down inside Nurse C’s ear;

47. The Tribunal had regard to Nurse C’s initial statement in which she stated:

‘Later on this shift he again looked at my ears and commented on a daith piercing I have and asked if it helped to relieve migraines as this piercing is said to help with them. In the process put his finger in my ear, with his little finger in my ear canal, and pulled my earring. I found this to be rather intrusive.’

48. In her email of 27 July 2017 to Ms I, Nurse C stated ‘... but I have had personal experience and feedback that he has been inappropriate with some members of staff (for example, he put his finger in my ear to touch a piercing I have,...’

49. Dr Abou Said denied the allegation. In his statement of 13 May 2019, he stated ‘I do not accept that I put my finger right down inside Nurse C’s ear.’

50. The Tribunal has already found Nurse C to be a credible witness, and it has taken into account her evidence about how Dr Abou Said put his finger in her ear.

51. Having found proved paragraph 3c above, the Tribunal determined, on the balance of probabilities, that it is more likely that Dr Abou Said put his finger right inside Nurse C’s ear. It therefore found paragraph 3d of the Allegation proved.

e. said to Nurse C ‘oh that’s a pretty hair tie’, or words to that effect;
Record of Determinations –
Medical Practitioners Tribunal

52. The Tribunal had regard to Nurse C’s initial statement in which she stated:

‘On another shift I worked with him, I was starting my night shift and the Dr came and said hello. He commented that I had a pretty hair and a pretty hair tie on, asked me if I had made it myself, and touched my hair whilst saying this.’

53. Dr Abou Said, in his evidence, denied the allegation. In his statement of 13 May 2019, he stated ‘

‘I have some recollection of commenting on Nurse C’s hair and believe I may have said words to the effect "I like your hair band." I do not recall using the word “pretty” and believe I did not do so.’

54. The Tribunal has already found Nurse C to be a credible witness, and it has taken into account her evidence. By his own admission, Dr Abou Said states that he may have said words to the effect ‘I like your hair band’.

55. The Tribunal determined, on the balance of probabilities, that it is more likely that Dr Abou Said ‘oh that’s a pretty hair tie.’ In the alternative, it accepted that the words which Dr Abou Said said he spoke to Nurse C as set out above, are words to the same effect as those set out in the allegation. It therefore found paragraph 3e of the Allegation proved.

   f. whilst making the comment as stated at paragraph 3e, put your hand in Nurse C’s hair;

56. During her evidence, Nurse C described how she had hair tied up in a bun. She told the Tribunal that her hair would have been entwined with her hair tie.

57. The Tribunal noted that, in her initial statement, Nurse C makes no mention of Dr Abou Said putting his hand in her hair, nor did she make any mention of it in her email of 27 July 2017 to Ms I.

58. In his statement of 13 May 2019, Dr Abou Said denied touching Nurse C’s hair. He maintained this throughout his evidence.

59. The Tribunal considered that when Dr Abou Said touched Nurse C’s hair tie, which was entwined with her hair, he would have touched her hair. However, it was not persuaded, on the evidence before it, that he put his hand in Nurse C’s hair. It therefore found paragraph 3f of the Allegation not proved.

   g. suggested to Nurse D that:

      i. Nurse D’s husband should refrain from masturbation;
Admitted and found proved

ii. some sexual positions that Nurse D and her husband should adopt to conceive a boy.

60. In his statement of 13 May 2019, Dr Abou Said stated:

‘I suggested that in order to increase the number of male sperm her husband should refrain from masturbation. I would not have suggested some sexual positions that Nurse D and her husband should adopt as this not part of what is believed are the steps that can be taken to increase the chances of having a boy. …’

61. In his evidence, Dr Abou Said told the Tribunal that he did not mention sexual positions to Nurse D. He said that he had no knowledge in this area and therefore could not have done so. He maintained this account throughout his evidence. He did however acknowledge that there were some out-dated beliefs that sexual positions could affect the chances of conceiving a male child.

62. In her evidence, Nurse D was clear that Dr Abou Said spoke of sexual positions which she and her husband could adopt to conceive a boy.

63. The Tribunal took into account that Dr Abou Said has already admitted that he said to Nurse D that her husband should refrain from masturbation.

64. The Tribunal determined that, on the balance of probabilities, Dr Abou Said suggested some sexual positions to Nurse D, as alleged. It therefore found paragraph 3gii of the Allegation proved.

Paragraph 4

4. On 12 August 2017 during a consultation with Patient E you made an inappropriate comment in that you said ‘all she had to do was put her hand on her heart and promise god to never smoke or eat sugar again and she would be cured’, or words to that effect.

65. In her evidence, Patient E acknowledged that Dr Abou Said did not use the word ‘cured’. She told the Tribunal that she taken aback by his reference to ‘God’.

66. At the outset of his evidence, Dr Abou Said made an amendment to his statement of 13 May 2019. He said that he recalled that he used the words ‘God bless you.’ During his evidence, Dr Abou Said said that Patient E’s x-ray images showed that she had not suffered any fractures and that she was okay. He said that he asked her to jump up and walk over to the stool so that he could show her the x-ray images. He said he would have told Patient E she will be fine given that her x-
record of determinations —
medical practitioners tribunal

rays results showed she was okay. He added that he offered Patient E some general
dietary advice.

67. The Tribunal considered that it is more likely that Dr Abou Said may have
used the word ‘fine’ during his conversation with Patient E based on the results of
her x-ray images.

68. The Tribunal was of the view that there is a considerable difference in the
meaning of the words ‘cured’ and ‘fine’. The word cured implies that the patient had
been suffering from a medical condition. The word fine does not. It did not find that
Dr Abou Said uttered the word God in this context. It therefore determined that Dr
Abou Said did not, on the balance of probabilities, use the words alleged and it
found paragraph 4 of the Allegation not proved.

5. On or around 22 November 2017 you:

a. said to Sister F ‘I would recognise your bottom
anywhere’, or words to that effect;

Deleted following Rule 17(6) application

b. made comments about Sister F’s bottom being similar to
another colleague’s bottom, or words to that effect.

69. The Tribunal had regard to Sister F’s statement dated 27 April 2018 in which
she stated:

‘On the day of the incident, I recall being stood at the majors board in
Accident and Emergency (‘A&E’). I was stood with a colleague checking the
board when Dr Abou Said approached me from behind and referred to me by
a different colleague’s name. I turned around and asked him why he was
calling me that name. Dr Abou Said then said it was because of my bottom
and that it was similar to the other colleague’s bottom.’

70. In her evidence to the Tribunal, Sister F maintained that Dr Abou Said
referred to her bottom.

71. In his evidence, Dr Abou Said said that he did not say the word ‘bottom’. He
said that he used the word ‘backside’. The Tribunal had regard to his evidence that,
in Arabic, reference to backside is a reference to the rear view. It is not a reference
to a person’s bottom. The Tribunal considered that it would be most unlikely that Dr
Abou Said made a reference to ‘bottom’ when he was looking for another colleague.

72. The Tribunal therefore found paragraph 5b of the Allegation not proved.

the tribunal’s overall determination on the facts
73. That being registered under the Medical Act 1983 (as amended):

1. On 7 July 2017 during a consultation with Patient A, an 11 year old male wearing a turban, you said 'Sister, guess if this is a boy or a girl', or words to that effect.

**Admitted and found proved**

2. On 7 July 2017 during a consultation with Mrs B’s child you said to Mrs B ‘so you married your cousin then’, or words to that effect.

**Found not proved**

3. In or around July 2017 you:

   a. asked Nurse C ‘what else have you got pierced?’, or words to that effect;

   **Admitted and found proved**

   b. whilst asking the question as stated at paragraph 3a, looked Nurse C up and down in a suggestive manner;

   **Found not proved**

   c. touched Nurse C’s earring with your finger;

   **Found proved**

   d. put your finger right down inside Nurse C’s ear;

   **Found proved**

   e. said to Nurse C ‘oh that’s a pretty hair tie’, or words to that effect;

   **Found proved**

   f. whilst making the comment as stated at paragraph 3e, put your hand in Nurse C’s hair;

   **Found not proved**

   g. suggested to Nurse D that:

      i. Nurse D’s husband should refrain from masturbation;

      **Admitted and found proved**

      ii. some sexual positions that Nurse D and her husband should adopt to conceive a boy.

      **Found proved**
Record of Determinations –
Medical Practitioners Tribunal

4. On 12 August 2017 during a consultation with Patient E you made an inappropriate comment in that you said ‘all she had to do was put her hand on her heart and promise god to never smoke or eat sugar again and she would be cured’, or words to that effect.

Found not proved

5. On or around 22 November 2017 you:

a. said to Sister F ‘I would recognise your bottom anywhere’, or words to that effect;

Deleted following Rule 17(6) application

b. made comments about Sister F’s bottom being similar to another colleague’s bottom, or words to that effect.

Found not 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 - 09/07/2019

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 Abou Said’s fitness to practise is 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. In addition, the Tribunal received two bundles from Dr Abou Said. These included:

- His CV dated 2018;
- XXX Disclosure Report issued on 9 November 2018;
- Continued Professional Development (CPD) activity;
- Certificates of courses he has attended which included Maintaining Professional Boundaries 26 – 28 February 2018 and 30 May 2019 together with his reflective learning from these, and confirmation of his booking on an Advanced Communication Skills course to take place on 14 and 15 September 2019;
- His Personal Development Plan (PDP) dated 9 February 2018;
- Multi source Feedback Report dated 9 February 2018;
- His Appraisal and Appraisal Certificate dated October 2018;
- Colleague feedback reports;
- His reflective statement concerning the allegations brought against him by the GMC;
Record of Determinations –
Medical Practitioners Tribunal

- Testimonial evidence from his colleagues attesting to his good clinical work and character, and also a testimonial from a patient.

Submissions

On behalf of the GMC

3. Mr Breen submitted that the Tribunal should find Dr Abou Said’s fitness to practise impaired. He said that Dr Abou Said’s behaviour constituted misconduct which was serious. He reminded the Tribunal that Dr Abou Said acknowledged that his conduct was inappropriate, unprofessional and unbefitting of a doctor. He said that this case involved multiple instances of inappropriate behaviour. He referred the Tribunal to relevant case law. Mr Breen submitted that the matters found proved amount to serious misconduct, individually and collectively.

4. He told the Tribunal that Dr Abou Said’s misconduct brought the medical profession into disrepute. He told the Tribunal that a member of the public, aware of the full facts, would be surprised if a finding of impairment were not made. Mr Breen reminded the Tribunal that it should look at the past, present and the future. He said that two limbs of the Overarching Objective are engaged, namely the maintenance of public confidence in the profession and the promotion and maintenance of proper professional standards and conduct for members of the profession. Mr Breen invited the Tribunal to find that Dr Abou Said’s fitness to practise is currently impaired.

On behalf of Dr Abou Said

5. Mr Cridland submitted that Dr Abou Said’s fitness to practise is not impaired. He told the Tribunal that, for Dr Abou Said’s conduct to amount to serious misconduct, his actions must fall far short of the standards expected of a doctor. He submitted that they did not. He said that the GMC’s submission at this stage of the proceedings is the first occasion when it has sought to establish serious misconduct based collectively on all of the matters found proved. He said that the Tribunal should consider whether the matters found proved amounted to serious misconduct. Mr Cridland referred the Tribunal to relevant case law and submitted that Dr Abou Said’s behaviour fell far short of serious misconduct.

6. He reminded the Tribunal of Dr Abou Said’s evidence in relation to the matters admitted and/or found proved. Mr Cridland said that Dr Abou Said recognised that his actions were serious, inappropriate and unprofessional and indeed he acknowledged this during his evidence to the Tribunal at stage one of the proceedings. Mr Cridland reminded the Tribunal of the context in which these occurred. He said that Dr Abou Said is embarrassed and regretful for his actions.

7. Mr Cridland told the Tribunal that since these events, which occurred some two years ago, Dr Abou Said has undertaken considerable reflection. He referred the
Record of Determinations –
Medical Practitioners Tribunal

Tribunal to Dr Abou Said’s stage two bundles. In particular, he drew the Tribunal’s attention to Dr Abou Said’s CPD; the Maintaining Professional Boundaries courses which he has attended and his learning from those courses; appraisals and testimonials from his colleagues and nursing staff. Mr Cridland also took the Tribunal to Dr Abou Said’s reflective statement and submitted that Dr Abou Said had demonstrated that he has taken steps to address the conduct giving rise to the concerns about him. Mr Cridland submitted that this demonstrated good evidence of Dr Abou Said’s insight and of appropriate and professional behaviour since these events.

8. Mr Cridland submitted that this is a good example of a case where the doctor’s behaviour constitutes misconduct which falls short of serious misconduct. He reminded the Tribunal that it had the power to issue a warning and submitted that this case could be concluded with a warning.

The Relevant Legal Principles

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

10. 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 which was serious and second, whether that misconduct led to a finding of impairment.

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

12. The Tribunal has already given a detailed determination in relation to the facts of Dr Abou Said’s case. It has taken those matters into account in its deliberations. It has also taken into account the submissions made by Mr Breen and Mr Cridland.

13. Throughout its deliberations, the Tribunal has been mindful of its responsibility to uphold the overarching objective as set out in the Medical Act 1983 (as amended). That objective is the protection of the public and involves the pursuit of the following:

   a. to protect, promote and maintain the health, safety and wellbeing of the public;
   b. to maintain public confidence in the profession;
   c. to promote and maintain proper professional standards and conduct for members of the profession.

The Tribunal’s Approach
Record of Determinations –
Medical Practitioners Tribunal

14. The Tribunal first determined whether Dr Abou Said’s actions amount to misconduct.

15. In doing so, it had regard to his evidence at stage one of these proceedings relating to his and his family’s experience living in Hastings. It also took into account his evidence that, as a locum doctor, all he wanted to do was to retain his locum position; as a result, he was over-friendly with colleagues and patients and always tried to be ‘the super-helpful’ doctor and to impress everyone.

16. The Tribunal has considered whether each allegation admitted and/or found proved amounts to misconduct which was serious.

The Tribunal’s Determination on Impairment

Misconduct

17. The Tribunal considered the matters which have been found proved individually in respect of misconduct.

Paragraph 1 of the Allegation

18. Dr Abou Said has admitted that in relation to Patient A, an eleven year old boy, he said to a colleague, ‘Sister, guess if this is a boy or a girl’, or words to that effect.

19. The Tribunal had regard to paragraphs 46 and 47 of Good Medical Practice (‘GMP’) (2013 version). These state:

‘46 You must be polite and considerate.

47 You must treat patients as individuals and respect their dignity and privacy.’

20. In her statement dated 16 June 2018, Ms H stated ‘Patient A seemed confused by the comments’. In her oral evidence she told the Tribunal that Patient A and his mother looked dismayed by the comment. By his own admission, Dr Abou Said accepted that his comments were inappropriate and unprofessional.

21. The Tribunal noted and accepted Dr Abou Said’s explanation for making this particular comment. The Tribunal considered that this comment was unfortunate and lacked sensitivity, and was made by a person who did not appear to have a good grasp of social boundaries. It made Patient A feel uncomfortable.

22. However, the Tribunal concluded that Dr Abou Said did not make the comment with any intention to cause Patient A harm or embarrassment. It therefore
determined that his actions amounted to misconduct but this was not serious misconduct.

**Paragraph 3a of the Allegation**

23. Dr Abou Said admitted that he asked Nurse C ‘what else have you got pierced?’ or words to that effect. He asked that question after he had commented on a piercing which he had noticed on the back of her neck. Nurse C had acknowledged that it was unusual. When Dr Abou Said asked the question, Nurse C answered ‘oh just my ears’ or words to that effect. She did say in her witness statement that she was used to people commenting on her piercings. The Tribunal noted that there was no allegation that the question was sexually motivated, although Dr Abou Said acknowledged in retrospect that the question could be regarded as having sexual undertones. He accepted that the question was inappropriate. The Tribunal found that it was inappropriate and that it invaded Nurse C’s privacy. It found that it amounted to misconduct but fell short of serious misconduct.

**Paragraphs 3c and 3d of the Allegation**

24. The incident concerning Dr Abou Said touching Nurse C’s earring and putting his finger right down inside her ear occurred later in the same day as the incident alleged in paragraph 3a. The Tribunal formed the view that Dr Abou Said touched Nurse C’s daith earring and in doing so placed his finger inside her ear. Dr Abou Said had already had a conversation with her about that earring. In her evidence, Nurse C told the Tribunal that although she did not mind having a conversation about her piercings, she did not like anyone to touch them. She said that she was alarmed when Dr Abou Said did this.

25. The Tribunal noted that Dr Abou Said had only met Nurse C on the day of the incident. It concluded that Dr Abou Said's actions invaded Nurse C’s personal space, and that it was inappropriate for him to have touched her ear and to have put his finger inside her ear. It was uninvited and caused Nurse C distress.

26. The Tribunal concluded that Dr Abou Said’s actions amounted to serious misconduct.

**Paragraph 3e of the Allegation**

27. In relation to its finding that Dr Abou Said said to Nurse C ‘Oh that’s a pretty hair tie’ or words to that effect, the Tribunal determined that his actions did not amount to misconduct.

**Paragraphs 3gi and ii of the Allegation**
Record of Determinations –
Medical Practitioners Tribunal

28. So far as Dr Abou Said’s behaviour towards Nurse D is concerned, there was some inconsistency between Nurse D and Dr Abou Said as to how this incident arose. On the balance of probabilities, the Tribunal preferred the account of Nurse D which was to the effect that she had a conversation with Dr Abou Said concerning her pregnancy. She said she was expecting a girl. Following that conversation, Dr Abou Said asked her whether he could give her some advice. She agreed, and they went to a cubicle in the emergency department where he asked her if she had any other children. She said she already had a little girl. It follows that the Tribunal did not accept, on the balance of probabilities, Dr Abou Said’s account, that when he invited Nurse D into the cubicle, he already knew that she had a little girl. The Tribunal therefore found that when Nurse D expressed her consent to receiving advice from Dr Abou Said, she was not anticipating any advice concerning maximising the chances of conceiving a boy. The advice which she anticipated receiving concerned her current pregnancy. The Tribunal also found that Dr Abou Said’s decision to offer Nurse D advice on maximising the chances of conceiving a boy to have been thoroughly intrusive. It invaded the personal privacy of Nurse D and, by the nature of the advice which he offered to her, trespassed on the most personal relations which she had with her husband. He had never met Nurse D before.

29. The Tribunal considered that Dr Abou Said demonstrated extraordinary insensitivity in his dealings with Nurse D. He demonstrated no understanding whatsoever of appropriate social and professional boundaries or conventions and he displayed an astonishing degree of ineptitude. However, it did not find that his motivation was sexual; indeed that was not alleged by the GMC. It does accept that the manner in which he provided the advice as set out in paragraph 3g of the Allegation was not untoward. It was the subject matter of the advice which was inappropriate. It was uninvited, delivered at work, to somebody whom he did not know and caused distress. Dr Abou Said recognised that it had caused distress at the time.

30. The Tribunal concluded that Dr Abou Said’s actions as found proved in paragraphs 3gi and ii amount to serious misconduct.

31. The Tribunal did consider whether it should approach the issue of misconduct collectively based on its findings of fact and the admissions made by Dr Abou Said. It concluded that it should not do so. There were only two findings of misconduct short of serious misconduct, namely the findings in respect of paragraph 1 and 3a of the Allegation. The first involved a comment to a patient, the second to a nurse. There was in the view of the Tribunal insufficient similarity between these two allegations to warrant them being considered together.
Record of Determinations –
Medical Practitioners Tribunal

Impairment

32. The Tribunal, having found that Dr Abou Said’s actions amounted to serious misconduct, went on to consider whether his fitness to practise is currently impaired by reason of that misconduct.

33. The Tribunal had regard to paragraph 76 of the judgment in the case of CHRE v NMC & Paula Grant [2011] EWHC 927 (Admin), in which Mrs Justice Cox provided a helpful approach to the determination of impairment:

‘Do our findings of fact in respect of the doctor’s misconduct...show that his/her fitness to practise is impaired in the sense that s/he:

a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or
b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or
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.’

34. The Tribunal also considered whether Dr Abou Said’s conduct was capable of being remediated, has been remediated, and the likelihood of its repetition. In so doing, it considered whether there was evidence of Dr Abou Said’s insight into his misconduct and any steps taken by him to remediate it.

35. The Tribunal had regard to Dr Abou Said’s evidence in which he expressed regret and shame for his actions and for the distress he had caused his colleagues and patients. It was apparent to the Tribunal that Dr Abou Said was regretful for his actions. He recognised and accepted that his actions were inappropriate, unprofessional and unbefitting of a doctor.

36. The Tribunal was provided with Dr Abou Said’s reflective statement. In this he stated:

‘After I received complaints from nurses that I unintentionally upset them I felt bad, sorry and ashamed of myself. I should be able to do better than this. It made me feel stupid and an idiot for upsetting my colleagues without realizing.

I took all the points mentioned in the complaints to heart. I understand the complaints against me and I have full insight to the problems. I had to make serious changes in the way I think and operate so that does not happen ever again. I have to take this extremely seriously.'
Record of Determinations –
Medical Practitioners Tribunal

So I decided to take it as an opportunity to learn from this experience, analyse it and study it carefully, to see how I can improve, and never put myself in situations where I am upsetting some of my colleagues.’

37. Dr Abou Said went on to say that he has put in place measures to help him to address the concerns and to remediate his misconduct. This included appointing a colleague as a mentor with whom he discussed all of the GMC complaints made against him. In his reflective statement, Dr Abou Said stated:

’Soo I did a few measures:

1. I discussed all of my complaints with my close friend and colleague. He read all of the complaints letters from the GMC and we discussed things in great details which took a few sessions to do. We spoke in great details about them, how to avoid them in future, and what steps need to be taken to avoid such complaints.’

38. He also spoke of courses he attended which included the two parts of the Maintaining Professional Boundaries course, both of which he said provided him with learning points. He is booked to attend the Advanced Communication Skills course in September 2019. Dr Abou Said went on to say that he is now much more careful and sensitive to people’s feelings and always tries to read their body language and their reaction while he is talking to them. He added that he always maintains professional boundaries with his colleagues, patients and everyone he deals with. Further, he stated that he keeps an arm’s length distance between himself and anyone else around him as invading people’s personal space could make them feel uncomfortable. He also stated that he does not touch any colleague or patient unnecessarily and that if he does need to touch them, he explains why and seeks their permission before doing so.

39. The Tribunal also had regard to testimonials from Dr Abou Said’s colleagues, of which some were nursing staff, and one of his patients, a retired doctor. All of them spoke highly of Dr Abou Said and attested to his clinical work and good character.

40. The Tribunal considered that taking all of the evidence into account, Dr Abou Said has taken effective steps to remedy his past failings. It took into account that these events occurred in 2017 and there is no evidence before the Tribunal that he has repeated his misconduct. The Tribunal noted that there are no concerns about Dr Abou Said’s clinical practice. It concluded that his actions are remediable and have been remediated, and that there is only a very remote risk of repetition.
Record of Determinations –
Medical Practitioners Tribunal

41. The Tribunal then went on to consider whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment was not made.

42. In considering this aspect the Tribunal took into account that during these proceedings it had made findings that certain of Dr Abou Said’s actions amounted to serious misconduct. This was, in the Tribunal’s view, sufficient to uphold proper professional standards. The Tribunal considered that taking account of Dr Abou Said’s comprehensive remediation and reflection, and the evidence about the changes he has made to his practice and the way he operates, a finding of impairment was not necessary in these circumstances.

43. The Tribunal determined that Dr Abou Said’s fitness to practise is not impaired by reason of his misconduct, pursuant to Section 35C(2)(a) of The Medical Act 1983 as amended.

Determination on Warning - 10/07/2019

1. Having determined that Dr Abou Said’s fitness to practise is not impaired by reason of misconduct, the Tribunal went on to consider whether a warning should be issued.

Submissions

On behalf of the GMC

2. Mr Breen took the Tribunal through the relevant paragraphs of the GMC document entitled ‘Guidance on warnings’. He submitted that the findings of serious misconduct meant that Dr Abou Said had breached paragraphs 1, 35 – 37 and 46 and 47 of GMP. Mr Breen submitted that a warning was necessary in view of the Tribunal’s findings on misconduct in relation to paragraphs 3c, 3d and 3g of the Allegation. He said that the findings of serious misconduct should be marked with a warning and invited the Tribunal to issue a warning.

On behalf of Dr Abou Said

3. Mr Cridland submitted that the Tribunal needed to consider the seriousness of the matters found proved. He said that a warning is not warranted in every case where serious misconduct is found. He referred the Tribunal to its detailed determination on impairment, a public document, and submitted that this was sufficient to mark the seriousness of Dr Abou Said’s misconduct.

4. He reminded the Tribunal that it did not find serious misconduct in relation to the comments made by Dr Abou Said as found proved in paragraphs 1 and 3a of the Allegation. He said that these should not form part of the Tribunal’s consideration.
when deciding whether a warning is necessary. In relation to the matters where the Tribunal had found serious misconduct, Mr Cridland said it is a matter for the Tribunal as to how it viewed the seriousness of those matters.

The Tribunal’s Decision

5.  The Tribunal took into account the submissions made by both counsel. It had regard to the GMC’s ‘Guidance on warnings’ (February 2018) (‘the Guidance’).

6.  Throughout its deliberations the Tribunal took into account the overarching objective and also applied the principle of proportionality, weighing the public interest with Dr Abou Said’s interests.

7.  The Tribunal bore in mind its determination on Facts and Impairment and that it had found Dr Abou Said’s actions in certain of the allegations amounted to serious misconduct. It reminded itself that it has found that the likelihood of Dr Abou Said repeating his misconduct is very remote. It also found that Dr Abou Said has remediated his misconduct and taken steps to address the matters which gave rise to the concerns.

8.  The Tribunal considered that the only relevant paragraphs of GMP are paragraphs 1 and 36. These state:

    ‘1        Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law.

    36        You must treat colleagues fairly and with respect.’

9.  So far as paragraph 1 is concerned, the Tribunal accepted that Dr Abou Said had sought to establish and maintain good relationships with the two members of staff identified in the Allegation, namely nurses C and D. He breached paragraph 1 of GMP by his unintentional but inept behaviour which characterised his approach to the maintenance of good relationships with staff colleagues at that time.

10. So far as paragraph 36 of GMP is concerned, the Tribunal did not consider that Dr Abou Said treated his colleagues unfairly. It found that by reason of his concern to be a ‘super helpful’ doctor, he sought to treat them with respect, but in doing so he achieved the opposite.

11. Although the Tribunal considered there were two departures from GMP, neither were intentional or wilful. He had no intention of causing either Nurse C or
Nurse D harm or embarrassment by his actions. His actions were based on his ineptitude at that time. The Tribunal was therefore not satisfied there had been a significant or deliberate departure from GMP.

12. The Tribunal referred to the Guidance, including paragraphs 13 and 33 which state:

‘13. Although warnings do not restrict a doctor’s practice, they should nevertheless be viewed as a serious response, appropriate for those concerns that fall just below the threshold for a finding of impaired fitness to practise.

33 However, if the decision makers are satisfied that the doctor’s fitness to practise is not impaired or that the realistic prospect test is not met, they can take account of a range of aggravating or mitigating factors to determine whether a warning is appropriate. These might include:

- the level of insight into the failings.
  (a) A genuine expression of regret/apology.
  (b) Previous good history.
  (c) Whether the incident was isolated or whether there has been any repetition.
  (d) Any indicators as to the likelihood of the concerns being repeated.
  (e) Any rehabilitative/corrective steps taken.
  (f) Relevant and appropriate references and testimonials.’

13. The Tribunal has already determined that Dr Abou Said has insight into his behaviour and is very unlikely to repeat it. It was apparent to the Tribunal that he understood what he needed to change and that he has taken the requisite steps to achieve that change. In its determination on impairment, the Tribunal has found that all six of the mitigating factors in paragraph 33 of the Guidance, set out above, have been satisfied.

14. The Tribunal recognised the purpose of marking a doctor’s misconduct with a warning. However, in the circumstances of this case, it was satisfied that the public hearing together with the determination on impairment, which is a public document, would be sufficient to mark the seriousness of Dr Abou Said’s misconduct. These proceedings send a message to him, and to the wider profession, that this type of behaviour is unacceptable.
15. The Tribunal has therefore determined that in all the circumstances, issuing a warning would not be proportionate or appropriate.

16. That concludes the case.

Confirmed
Date 10 July 2019

Mr Angus Macpherson, Chair
Record of Determinations –
Medical Practitioners Tribunal

ANNEX A: Rule 34(13) Applications – 02/07/19

Applications to hear evidence via videolink and telephone

1. On day 1 Mr Carlo Breen, Counsel on behalf of the GMC, made applications for the evidence of Ms Amy H to be heard via videolink, and for the evidence of Patient E to be heard via telephone under Rule 34(13) of the General Medical Council ('GMC') (Fitness to Practise) Rules 2004, as amended (the Rules). In support of his applications, Mr Breen provided the Tribunal with copies of supplementary undated statements from Ms H and from Patient E, the latter unsigned but verified by a telephone attendance note.

2. Mr Breen informed the Tribunal that Ms H is currently on maternity leave and has a six month old baby. He said that she is unable to travel to Manchester to attend the hearing in person with her baby and does not have an appropriate adult to travel with her; her partner works full-time.

3. Mr Breen submitted that receiving Ms H’s evidence via videolink would not cause injustice to Dr Abou Said as his defence team would be able to cross examine her satisfactorily. He submitted that the Tribunal would be able to assess her evidence and her demeanour.

4. In relation to Patient E, Mr Breen informed the Tribunal that she suffered a stroke in December 2018, broke her ankle in January 2019, and also has a bad back. Mr Breen said that due to her poor health, Patient E is not mobile and is, therefore, unable to attend the hearing in person. He told the Tribunal that Patient E has no access to the internet or any facility from where she is able to give her evidence via videolink, the nearest location being 17 miles from her home address in Colchester. However, Mr Breen told the Tribunal that, when the GMC spoke to Patient E in relation to her evidence, it was discussed with her that a member of staff might go to her home address with a mobile device and laptop to attempt to establish a Skype connection. Patient E was content with such an arrangement.

5. Mr Breen submitted that receiving Patient E’s evidence via telephone would not cause injustice to Dr Abou Said as his defence team would be able to cross examine Patient E via a telephone link. He submitted that the Tribunal would be able to assess her evidence and her demeanour.

6. Mr Breen submitted that it is in the interests of justice for Ms H and for Patient E to be allowed to give evidence via videolink and telephone, respectively.

7. Mr Simon Cridland, Counsel on behalf of Dr Abou Said, opposed the applications. He submitted that a witness should give evidence in person unless there is a good reason not to do so.
8. He submitted that Ms H’s evidence is of particular importance as her account of the facts relating to paragraph two of the Allegation differs from Mrs B’s account. Mr Cridland said it is important that the Tribunal is able to see her body language so that it can properly assess her evidence and demeanour. He also said it is important that the defence is properly able to cross examine her.

9. In relation to Patient E, Mr Cridland said that this application is strongly opposed. He said that it is fundamentally unfair for a witness to provide evidence via telephone. He said it is important to be able to assess a witness’s character at stage 1 of the proceedings. Also, it is very important that the Tribunal is properly able to assess the credibility of the witness and their evidence and to form a reliable opinion of them, which it cannot do via telephone evidence.

10. Mr Cridland submitted that it is not unreasonable to expect the GMC to make arrangements for Patient E to provide her evidence via videolink as mentioned by Mr Breen.

The Tribunal’s Decision

11. The Tribunal had regard to Rule 34(13) and (14) which states:

‘(13) A party may, at any time during a hearing, make an application to the Committee or Tribunal for the oral evidence of a witness to be given by means of a video link or a telephone link.

(14) When considering whether to grant an application by a party under paragraph (13), the Committee or Tribunal must—
(a) give the other party an opportunity to make representations;
(b) have regard to—
(i) any agreement between the parties, or
(ii) in the case of a Tribunal hearing, any relevant direction given by a Case Manager; and
(c) only grant the application if the Committee or Tribunal consider that it is in the interests of justice to do so.’

12. The Tribunal is mindful that the preference is to hear witness evidence in person. It took into account the submissions made by both Counsel.

13. In relation to Ms H, the Tribunal took into account her circumstances. The Tribunal was of the view that Mr Cridland would be able to cross examine Ms H adequately via videolink and, that it would be able to give due weight to her evidence. The Tribunal concluded, in light of the above, that it would be in the interests of justice to allow Ms H to give evidence via videolink. It therefore determined to grant the application.
14. In relation to Patient E, the Tribunal took into account her situation. Whilst it completely understood the circumstances which give rise to the application, it was of the view that the GMC should explore the arrangements for a member of staff to attend Patient E’s home address to attempt to establish a Skype connection. The Tribunal was of the view that, in the light of the possibility of setting up a Skype link, it would not be in the interests of justice to grant the GMC’s application for Patient E to give evidence via telephone at this juncture. It therefore determined to refuse the application.
Record of Determinations –
Medical Practitioners Tribunal

ANNEX B – Rule 17(6) Application – 04/07/19

Application to Amend Allegation

1. On 4 July 2019, Mr Breen made an application to amend the Allegation by the deletion of paragraph 5a which stated:

   ‘a. said to Sister F ‘I would recognise your bottom anywhere’, or words to that effect;’

2. Mr Cridland did not oppose the application.

Tribunal’s decision

3. The Tribunal had regard to Rule 17(6) which states:

   “17(6) Where, at any time, it appears to the Medical Practitioners Tribunal that—

   (a) the allegation or the facts upon which it is based and of which the practitioner has been notified under rule 15, should be amended; and

   (b) the amendment can be made without injustice,

   it may, after hearing the parties, amend the allegation in appropriate terms.”

4. The Tribunal was satisfied that the amendment could be made without injustice. It therefore decided to grant the application.