Record of Determinations – Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 29/10/2019 - 29/10/2019

Medical Practitioner’s name: Dr George FITZJOHN

GMC reference number: 5179682

Primary medical qualification: Vrach 1994 Kubanskij Medicinskij Institute

Type of case
Review - Misconduct
Review - Conviction / Caution

Outcome on impairment
Not Impaired
Not Impaired

Summary of outcome
Suspension revoked

Tribunal:

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<th>Miss Catherine Hartley</th>
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<tr>
<td>Legally Qualified Chair</td>
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<td>Lay Tribunal Member:</td>
<td>Ms Deborah Spring</td>
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<td>Medical Tribunal Member:</td>
<td>Dr Neil Shastri-Hurst</td>
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<th>Mr Edward Kelly</th>
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<td>Tribunal Clerk:</td>
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Attendance and Representation:

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<th>Present and represented</th>
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<td>Medical Practitioner:</td>
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<td>Medical Practitioner’s Representative:</td>
<td>Mr Lee Gledhill, Counsel</td>
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<td>GMC Representative:</td>
<td>Mr David Birrell, 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 Impairment - 29/10/2019

1. The Tribunal has to determine in accordance with Rule 22(1)(f) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended (‘the Rules’) whether Dr Fitzjohn’s fitness to practise remains impaired by reason of his misconduct and by reason of his conviction.

Background

2. The Tribunal does not intend to rehearse the full background of Dr Fitzjohn’s case, but had regard to the determinations of the previous Tribunal which heard Dr Fitzjohn’s case in October 2018 (‘the 2018 Tribunal’).

3. Dr Fitzjohn qualified in 1994 and prior to 2015 he was registered and undertaking work nationwide for a number of healthcare professional recruitment agencies. The services he provided included out of hours, urgent care and GP duties.

4. The matters that brought Dr Fitzjohn before the Medical Practitioners Tribunal in October 2018 can be summarised as: first, he failed to notify the GMC without delay that he had been charged with the fraudulent evasion of approximately £87,000 worth of income tax and national insurance contributions. When he did inform the GMC, he gave inaccurate information. He told the GMC he was under investigation when in fact he had been charged, and had appeared before both the Magistrates Court and the Crown Court in respect of the criminal offence. Second, Dr Fitzjohn was convicted on 2 September 2016 of being knowingly concerned in the fraudulent evasion of income tax and national insurance contributions between 2008 and 2013 and was sentenced to a community order of unpaid work for 200 hours.

5. At the 2018 Tribunal hearing, Dr Fitzjohn admitted his conviction and that he failed to inform the GMC without delay that he had been charged. He also accepted that he had been dishonest in giving inaccurate information about the status of his criminal case to the GMC.

6. The 2018 Tribunal found that delaying notification of being charged with a criminal offence and misleading the regulator about criminal proceedings was a serious breach of Good Medical Practice. The 2018 Tribunal was satisfied that Dr Fitzjohn’s dishonesty to the GMC amounted to misconduct.

7. The 2018 Tribunal had concerns about Dr Fitzjohn’s insight in relation to his misconduct. It noted that he appeared to minimise the gravity of behaviour in his oral evidence using phrases such as “I was economical with the truth...my choice of words was wrong...I did not mean to mislead”. The Tribunal noted that he continued to attribute the inaccurate account to his difficult personal circumstances at the time and that it would have expected Dr Fitzjohn to have undertaken more reflection and training in the area of probity. The 2018 Tribunal felt that Dr Fitzjohn had a degree
of insight but concluded he still had some way to go to demonstrate full insight into the gravity of his misconduct.

8. The 2018 Tribunal concluded Dr Fitzjohn’s fitness to practise was impaired by reason of misconduct.

9. In considering whether Dr Fitzjohn’s fitness to practise was also impaired by reason of conviction the 2018 Tribunal noted that engagement in the tribunal hearing process would be a salutary lesson which might have gone some way to mitigate the risks of repetition but it again had concerns as regards Dr Fitzjohn’s level of insight. It noted that on occasion Dr Fitzjohn still sought to minimise the gravity of his misconduct through reliance on his personal circumstances and chaotic administration and considered that there "is still some way to go in his development of full insight into his offending".

10. The 2018 Tribunal accepted that Dr Fitzjohn had repaid the tax owed with interest, regularised his tax payments and hired a private accountant. It recognised that he had paid money in advance of any future tax liability. However, it considered his difficulties and his actions thereafter could not fully mitigate the seriousness of the conviction. Given the length of time the tax evasion continued and the substantial sums involved the 2018 Tribunal concluded that Dr Fitzjohn’s fitness to practise was also impaired by reason of conviction.

11. At the sanction stage of its proceedings, the 2018 Tribunal concluded that a period of suspension would be an appropriate and proportionate sanction which would protect public confidence in the profession and promote and maintain proper standards of conduct and behaviour. It took into account that Dr Fitzjohn’s behaviour had departed from the fundamental tenets of GMP on two occasions, by avoiding paying tax and then being dishonest to the GMC.

12. The 2018 Tribunal determined that a period of suspension for 12 months would be sufficient to uphold public confidence in the medical profession and to maintain proper standards and conduct for the member of the profession. It viewed this period as being sufficient for him to develop his insight into his misconduct and to continue his remediation whilst not depriving the public of a competent medical practitioner.

13. It also determined that a reviewing Tribunal may be assisted by Dr Fitzjohn producing the following:

- A reflective statement on his misconduct and offending;
- Evidence of Continuing Professional Development focusing on probity and ethics;
- Evidence of his keeping his clinical skills up to date;
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- Any other relevant evidence he wishes to present to assist the Tribunal.

The Outcome of Application Made during the Impairment Stage

14. The Tribunal determined to grant Mr Gledhill’s application, made on behalf of Dr Fitzjohn, to admit an additional bundle of defence evidence. The Tribunal’s full determination is included at Annex A.

15. The Tribunal determined to grant Mr Gledhill’s application, pursuant to Rule 34(13) of the Rules for the witness evidence of Dr A, Senior GP partner, to be heard by telephone link. The Tribunal’s full determination is included at Annex B.

The Evidence

16. The Tribunal has taken into account all the evidence received including, but not limited to, a reflective statement from Dr Fitzjohn, dated 21 September 2019, a bundle of testimonials, a log of Continuing Professional Development and evidence of courses attended and completed. It received oral evidence from Dr Fitzjohn and Dr A. It considered the submissions made by Mr Birrell, Counsel, on behalf of the GMC, and submissions from Mr Gledhill, Counsel, on behalf of Dr Fitzjohn.

GMC Submissions

17. Mr Birrell submitted that the GMC adopts a neutral stance in relation to whether Dr Fitzjohn’s fitness to practise is currently impaired by reason of his misconduct. He directed the Tribunal’s attention to the impairment and sanction determinations of the 2018 Tribunal.

18. Mr Birrell noted that the 2018 Tribunal suggested that a reviewing Tribunal would be assisted by a reflective statement, evidence of PDP focusing on probity and ethics and evidence of maintaining clinical skills, and he observed that Dr Fitzjohn had provided evidence of each of these before this Tribunal.

19. In taking a neutral stance, Mr Birrell suggested that the Tribunal would want to consider whether Dr Fitzjohn had provided an appropriately clear explanation for the motivation underpinning his criminal conviction and the extent to which Dr A, who provided oral evidence to the reviewing Tribunal, appreciated the full extent of Dr Fitzjohn’s offending. He submitted that it is a matter for this Tribunal to determine if Dr Fitzjohn’s FTP is currently impaired.

Defence Submissions

20. Mr Gledhill submitted that Dr Fitzjohn had spent the last year undergoing a process of self reflection. He submitted that Dr Fitzjohn’s insight has evolved during the time of his suspension and that he had undergone significant soul searching to
reach the position where he accepts full responsibility for his actions and has been totally open with this Tribunal. Mr Gledhill submitted that Dr Fitzjohn has demonstrated very real and genuine remorse, shame and regret for his actions. He directed the Tribunal's attention to Dr Fitzjohn's reflective statement, which he suggested is both comprehensive and complete.

21. Mr Gledhill submitted that the Tribunal should find the written and oral evidence of Dr A persuasive in determining whether Dr Fitzjohn had been open, fully explored his dishonesty and developed in-depth insight. Further, Mr Gledhill drew the Tribunal's attention to a letter from Dr A and his GP partners which extends a formal offer of employment to Dr Fitzjohn in full knowledge of his previous impairment and having had sight of the determination of the 2018 Tribunal.

22. Mr Gledhill submitted that Dr Fitzjohn had developed full insight, as demonstrated by his genuine and heartfelt expression of remorse in his reflective statement and in his oral evidence before this Tribunal. He submitted that this Tribunal had extensive evidence of remediation and made submissions regarding the relevance and benefit of the courses on ethics and probity which Dr Fitzjohn had attended.

23. In light of all of the evidence before this Tribunal, Mr Gledhill submitted that Dr Fitzjohn is no longer impaired.

The Relevant Legal Principles

24. The Tribunal received advice on the approach to take at the impairment stage from the Legally Qualified Chair which it accepted in full. The Tribunal reminded itself that the decision of impairment is a matter for the Tribunal's judgement alone. As noted above, the 2018 Tribunal set out the matters that a future Tribunal may be assisted by.

25. In deciding whether Dr Fitzjohn’s fitness to practise remains impaired, the Tribunal was aware throughout of the overarching objective to protect the public which involves protecting and promoting the health, safety and wellbeing of the public, promoting and maintaining public confidence in the medical profession and promoting and maintaining proper professional standards and conduct for the members of the profession.

26. This Tribunal is aware that there is a persuasive burden on Dr Fitzjohn to satisfy it that his fitness to practise is no longer impaired. The Tribunal recognised that, at a review hearing, the onus is on the doctor to satisfy the reviewing Tribunal that concerns regarding his practice raised by previous Tribunals have been sufficiently addressed and that the doctor can safely return to unrestricted practice without undermining any of the three limbs of the over-arching objective.
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27. This Tribunal must determine whether Dr Fitzjohn’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 remedied and any likelihood of repetition.

The Tribunal’s Determination on Impairment

28. The Tribunal considered whether Dr Fitzjohn’s fitness to practise is currently impaired.

29. The Tribunal received further oral and written evidence from Dr Fitzjohn which demonstrated his genuine remorse at the misconduct and criminal behaviour which brought him before the MPTS. It was clear to the Tribunal that these proceedings and the 12 month period of suspension had been a salutary experience for this doctor. He has been afforded significant time to reflect and remediate and has used this effectively to engage in clinical and personal development activities.

30. The Tribunal accepted that the misconduct and conviction considered by the 2018 Tribunal was very serious. It was clear to this Tribunal that Dr Fitzjohn appreciated the gravity of his offending. The issues raised in this case do not relate to Dr Fitzjohn’s clinical performance and the Tribunal accept that it is difficult to remediate dishonest behaviour. Nevertheless, this Tribunal noted that Dr Fitzjohn had paid back the money he dishonestly appropriated, has given fulsome apologies, has completed his community order and undertaken additional voluntary work in his community placement in order pay back to society. The Tribunal felt that Dr Fitzjohn had done everything possible to remediate.

31. The 2018 Tribunal had concerns that Dr Fitzjohn’s insight was incomplete and still in the process of development. This Tribunal considered that Dr Fitzjohn’s insight was now full, it having developed during his period of suspension. In particular, the Tribunal was impressed by Dr Fitzjohn taking full responsibility for his actions, not seeking to minimise his reprehensible behaviour in any way, and being frank with fellow professionals from whom he has sought guidance and support.

32. During his period of suspension Dr Fitzjohn has undertaken a significant range of training and an independently arranged clinical attachment. Both Dr A and Dr Fitzjohn gave thoughtful and considered evidence about the challenges Dr Fitzjohn will face in returning to clinical practice after a period of suspension. The Tribunal were reassured by the return to work plan suggested. Having heard directly from Dr A, the Tribunal were satisfied that Dr Fitzjohn’s proposed work place is a supportive and appropriate environment for a planned return to work.

33. The Tribunal was satisfied that in light of Dr Fitzjohn’s insight, remediation and genuine remorse that the risk of repetition of the behaviour which led to the conviction and misconduct is low.
34. In all the circumstance, the Tribunal finds Dr Fitzjohn’s fitness to practise is no longer impaired by reason of his misconduct or his criminal conviction. The Tribunal determined to revoke the current order of suspension of Dr Fitzjohn’s registration.

Confirmed
Date 29 October 2019  Miss Catherine Hartley, Legally Qualified Chair
Defence application to admit evidence (29 October 2019)

Submissions

1. On behalf of Dr Fitzjohn, Mr Gledhill made an application to admit an additional bundle of defence evidence. He submitted that the information within the bundle is highly relevant and that it had been provided to the GMC, however it had not been disclosed with sufficient time to be put before the Tribunal in advance. Mr Gledhill submitted that there would be no injustice to the GMC to grant the application.

2. On behalf of the GMC, Mr Birrell informed the Tribunal that he had had sight of the bundle and did not oppose the application.

Tribunal Decision

3. The Tribunal had regard to Rule 34(1) which states:

"The Committee or a Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law."

4. The Tribunal determined that there would be no injustice to the GMC to grant the application and taking into account the fact that there were no objections and that the information within the bundle will be relevant to its decision making, it determined it would be fair and proper to grant the application to admit a further defence bundle.

5. Accordingly, the Tribunal determined, under Rule 34(1), to grant Mr Gledhill’s application to admit the further evidence.
Application to admit witness evidence by telephone Link
(29 October 2019)

Submissions

1. On behalf of Dr Fitzjohn, Mr Gledhill made an application under Rule 34(13) of the General Medical Council (‘GMC’) (Fitness to Practise Rules) 2004 as amended (‘the Rules’) for the witness evidence from Dr A, GP Senior Partner at the Bedford Street Surgery, to be heard by telephone link.

2. Mr Gledhill submitted that Dr A is a very busy GP who has clinical commitments today and also that it would be difficult and disruptive for patients for Dr A to be present at these proceedings today.

3. On behalf of the GMC, Mr Birrell did not oppose the application

Tribunal Decision

4. The Tribunal had regard of Rule 34(13) of the General Medical Council (‘GMC’) (Fitness to Practise Rules) 2004 as amended 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.”

5. The Tribunal determined that there would be no injustice to the GMC to grant the application and, taking into account the fact that there were no objections and that Dr A is a practicing GP and has current professional responsibilities, it determined it would be fair and proper, under Rule 34(13), to grant the application to hear the evidence of Dr A by telephone link.