Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 29/07/2019 - 30/07/2019
Medical Practitioner’s name: Dr Gerard FURLONG
GMC reference number: 3587180
Primary medical qualification: MB BS 1992 University of London

Type of case
Restoration following disciplinary erasure

Summary of outcome
Restoration application refused. No further applications allowed for 12 months from last application.

Tribunal:

<table>
<thead>
<tr>
<th>Role</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legally Qualified Chair</td>
<td>Mr James Newton-Price</td>
</tr>
<tr>
<td>Lay Tribunal Member</td>
<td>Mr Andrew Gell</td>
</tr>
<tr>
<td>Medical Tribunal Member</td>
<td>Mrs Deborah McInerny</td>
</tr>
</tbody>
</table>

Tribunal Clerk: Ms Jennifer Hatch

Attendance and Representation:

<table>
<thead>
<tr>
<th>Role</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical Practitioner</td>
<td>Present and represented</td>
</tr>
<tr>
<td>Medical Practitioner’s Representative</td>
<td>Mr Rad Kohanzad, Counsel</td>
</tr>
<tr>
<td>GMC Representative</td>
<td>Mr Alan Taylor, 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 partly in public and partly in private.
Record of Determinations –
Medical Practitioners Tribunal

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 Application for restoration - 30/07/2019

1. Dr Furlong has applied to the General Medical Council ('GMC') for the restoration of his name to the Medical Register. The Tribunal noted that this is Dr Furlong’s second application for restoration. His first application was refused on 4 March 2016.

2. The Tribunal has considered Dr Furlong’s current application in accordance with Section 41 of the Medical Act 1983 (as amended) and Rule 24 of the GMC (Fitness to Practise) Rules 2004 (as amended).

The Outcome of Applications Made

Application to admit further evidence

3. At the outset of the hearing, Mr Rad Kohanzad, Counsel, on behalf of Dr Furlong, made an application under Rule 34(1) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules') to admit further evidence. The evidence consisted of a bundle including XXX. Mr Alan Taylor, Counsel, confirmed that, despite the late receipt of XXX being unfortunate, the GMC was neutral on whether the Tribunal should agree to admit it. The Tribunal determined that XXX was relevant to the case and noted that its content could be tested during oral evidence. As such, the Tribunal determined that it was fair to admit the further bundle.

Hearing matters in private

4. The Tribunal determined that any part of the hearing relating to XXX would be held in private session. This included excluding the press and public from parts of the hearing, and reading in private any determinations XXX. However, a redacted version of the determinations will be published after the hearing XXX.

Background

5. Dr Furlong’s case was first considered by a Fitness to Practise Panel in February 2007 ('the 2007 Panel'). The 2007 Panel determined that Dr Furlong’s inappropriate sexual behaviour amounted to misconduct which risked bringing the
Dr Furlong admitted, and the 2007 Panel found proved that, while employed as a consultant anaesthetist by the University Hospitals Coventry and Warwickshire NHS Trust, he had been given warnings in 2002 and 2003 about inappropriate behaviour towards female colleagues. These warnings included not making any physical contact, other than handshakes, and/or the making of crude and lewd comments towards them or in their presence. Dr Furlong admitted that, on 24 December 2003, when he was on duty in an operating theatre and waiting for a patient to awake from anaesthetic, he walked up behind a theatre sister, placed his arms around her and placed his hands on her breast. He behaved in a similar manner towards a theatre support worker, placing his hands down her scrubs. When he was asked what he was doing by the theatre support worker, he said that ‘I am a leg man myself, but you are growing on me’.

The 2007 Panel also heard that Dr Furlong had been a teacher at the Warwick Medical School. At a meeting on 2 August 2004, he was warned that concerns had been raised by students regarding inappropriate comments he had made during lessons. He was advised to exercise care to ensure that his dialogue with students in the future was appropriate. He gave assurances that he would ensure that his relationships with students in the future would be professional but said that he was XXX.

Dr Furlong admitted that, on 6 October 2005, at the end of a group work session he was teaching, he asked a student whether she had noticed that men either loved her or hated her and whether she would like to know why. When she said that she would like to know, Dr Furlong explained to her that redheads’ body secretions were more acidic and tasted nicer. This conversation was overheard by other students.

Dr Furlong admitted that his actions had been inappropriate, unprofessional, likely to bring the medical profession into disrepute, were below the standards reasonably expected of a registered medical practitioner and amounted to sexual harassment.

The 2007 Panel considered that, in view of the repeated nature of serious instances of sexual harassment, Dr Furlong’s fitness to practise was impaired by reason of misconduct. The 2007 Panel took into account Dr Furlong’s apologies and the positive testimonials provided, as well as the submissions made on his behalf XXX. However, it considered that those matters had no real bearing on his misconduct. The 2007 Panel was concerned that, despite the admissions made, Dr Furlong had given different accounts regarding his behaviour. It considered that he had sought to minimise the seriousness of the incidents and concluded that he...
Record of Determinations – Medical Practitioners Tribunal

had shown no insight into his conduct. The 2007 Panel could not be satisfied that Dr Furlong’s behaviour would not be repeated.

11. The 2007 Panel considered that Dr Furlong’s behaviour demonstrated a pattern of behaviour which was much more serious than any of its constituent parts and, seen in the context of the warnings received, appeared to demonstrate unwillingness or inability to learn from experience or to recognise inappropriate behaviour.

12. Dr Furlong appealed the decision of the 2007 Panel to erase his name from the Medical Register but his appeal was dismissed by the High Court on 21 July 2008, when his name was erased from the Medical Register.

First restoration application - March 2016

13. Dr Furlong’s first application for restoration was considered by a Medical Practitioners Tribunal in March 2016 (‘the 2016 Tribunal’). The 2016 Tribunal determined to refuse Dr Furlong’s application.

14. XXX

15. XXX

16. The 2016 Tribunal took account of the documentary evidence provided, which included documents relating to Dr Furlong’s patented invention, XXX, general papers in the area of equine anaesthesia, documentation regarding Dr Furlong’s attendance at interest groups, copies of articles and papers Dr Furlong had read, testimonials, a previous CV and two reflective statements.

17. Dr Furlong also gave oral evidence at the 2016 hearing.

18. The 2016 Tribunal had concerns that Dr Furlong’s evidence lacked credibility, and it was of the view that he showed a reluctance to accept full responsibility for the things he did in the past. The 2016 Tribunal was concerned that Dr Furlong placed emphasis on the impact of erasure on himself, rather than on the harm his behaviour caused to others.

19. The 2016 Tribunal considered that Dr Furlong had not explored why the pressures in his life resulted in his behaviour, and that there was no evidence that he had taken any steps towards remediation. Despite the passage of time and his statements in his oral evidence and reflective statements presented at the 2016 hearing, the 2016 Tribunal considered that there was no evidence of any meaningful reflection or proactive engagement in this regard. The 2016 Tribunal was not satisfied that Dr Furlong would be in a position to recognise his difficulties if they should arise again, and was not satisfied that he had an adequate support network.
Record of Determinations –
Medical Practitioners Tribunal

or strategies in place which would prevent him from behaving in the same way, should he be faced with personal difficulties or stressful life events in the future.

20. The 2016 Tribunal could not be satisfied that Dr Furlong had kept his knowledge and skills up to date, and concluded that, if he were allowed to return to unrestricted practice, there could be a risk to patients.

21. XXX

22. The 2016 Tribunal concluded that it was not satisfied that there had been objective evidence to indicate that he had satisfactorily addressed the issues raised in the hearing before the 2007 Panel. It considered that Dr Furlong’s application for restoration appeared to have been motivated for his own fulfilment and without any meaningful concern for the need for public confidence in the profession. XXX. Further, the 2016 Tribunal considered that there was no evidence to demonstrate that Dr Furlong had kept his clinical knowledge and skills up to date. The 2016 Tribunal could not be satisfied that it would be safe or in the public interest for Dr Furlong to be deemed fit to practise and therefore determined to refuse his application for restoration.

Evidence before the current Tribunal

23. This Tribunal took account of the documentary evidence provided, which included, but was not limited to:

- XXX
- Statement by Dr Furlong dated 8 July 2019;
- CPD certificates;
- XXX.

24. On the morning of Day 1 of the hearing, the Tribunal took time to read the additional bundle provided. In the afternoon, following Mr Taylor’s case opening, Mr Kohanzad made opening submissions. It became clear during the course of these submissions that Dr Furlong’s current medical knowledge and skills were not up to date. Mr Kohanzad therefore submitted that the Tribunal should first focus on whether Dr Furlong has sufficiently remedied the matters for which he was erased from the Medical Register, and then, if necessary, adjourn the hearing to seek XXX performance assessments. Mr Kohanzad subsequently requested time overnight for him and his client to decide how to proceed, which was not opposed by Mr Taylor. The Tribunal agreed to allow until 09:00 on the morning of Day 2 for Dr Furlong to consider his position.

25. At 09:00 on Day 2 of the hearing, Mr Kohanzad made an application to ‘withdraw’ Dr Furlong’s application for restoration on the basis that Dr Furlong accepted that his medical knowledge and skills are not up to date.
Record of Determinations –
Medical Practitioners Tribunal

26. Following a further adjournment to allow Mr Taylor to seek instructions on how to properly dispose of this case in the circumstances, it was agreed between the parties that ‘withdrawing’ the case was not applicable since Rule 28 refers only to pre-hearing cases. However, this case had been opened. Further, it was agreed that ‘adjourning’ the case under Rule 29 was not applicable since there would be no date to adjourn to and neither party had applied for an adjournment.

27. Mr Kohanzad stated that Dr Furlong was, in effect, ‘abandoning’ his application. Since the case had been formally opened, the rules required this Tribunal to make a formal determination in relation to whether the restoration application should be granted or refused. It was submitted by both parties that the application for restoration should be refused on the basis of the concession made; namely, Dr Furlong’s medical knowledge and skills are such that he is not currently fit to practise unrestricted.

Submissions

28. In summary, Mr Taylor, on behalf of the GMC, submitted that Dr Furlong’s application must be refused since it has been conceded that Dr Furlong is not currently fit to practise safely.

29. Mr Taylor submitted that the Tribunal should not make any findings XXX. Similarly, Mr Taylor submitted that there was no need for the Tribunal to make any findings in relation to whether Dr Furlong has remedied the matters for which he was erased from the Register.

30. In summary, Mr Kohanzad, on Dr Furlong’s behalf submitted that he agreed with Mr Taylor that, in circumstances where the witnesses have not been called and the evidence has not been tested, it would be unsafe to make findings in relation to matters other than his medical knowledge and skills.

The Relevant Legal Principles

31. The Tribunal has taken into account the overarching objective, which includes to protect and promote the health, safety and wellbeing of the public; to promote and maintain public confidence in the medical profession; and to promote and maintain proper professional standards and conduct for the members of the medical profession.

32. The Tribunal has borne in mind that, should it determine to restore Dr Furlong’s name to the Medical Register, there is no provision for this to be on the basis of anything other than unrestricted registration. The onus of persuading the Tribunal that he is fit to practise and should be returned to the Medical Register is on Dr Furlong.
33. The Tribunal took account of the *Guidance for doctors on restoration following erasure by a medical practitioners tribunal* (‘the Guidance’), including the factors a Tribunal will consider as set out in paragraph 10:

"a. The circumstances that led to erasure.
b. The reasons given by the previous tribunal (or committee) for the decision to direct erasure.
c. Whether you have any insight into the matters that led to erasure.
d. What you have done since your name was erased from the register.
e. The steps you have taken to keep your medical knowledge and skills up to date and the steps you have taken to rehabilitate yourself professionally and socially."

34. The Tribunal had regard to the principles in *GMC v Chandra [2018] EWCA Civ 1898 and [2019] EWCA Civ 236*. It must take into consideration all matters and determine whether the doctor is fit to practise bearing in mind the overarching objective.

**The Tribunal’s Decision**

35. The Tribunal had regard to the circumstances of this case; Dr Furlong has conceded that his medical knowledge and skills are not currently up to date and he therefore wished to abandon his application for restoration.

36. The Tribunal considered that the practical reality is that no evidence was called or tested in relation to Dr Furlong’s insight, remorse and remediation in relation to his misconduct identified by the 2007 Panel. XXX. As such, the Tribunal determined that it could not properly make findings in relation to these matters.

37. The Tribunal had regard to the fact that both parties agreed that the only realistic conclusion is for the Tribunal to refuse Dr Furlong’s application for restoration. The Tribunal agreed that, on the basis of the concession made that Dr Furlong’s medical knowledge and skills are not currently up to date, it cannot be said that he is currently fit to practise unrestricted. Accordingly, the Tribunal determined to refuse Dr Furlong’s application for restoration.

**Determination on Consideration of whether to direct that the right to make further applications for restoration should be suspended indefinitely - 30/07/2019**

1. Having determined that Dr Furlong’s application for restoration be refused, the Tribunal went on to consider, in accordance with Section 41(9) of the Medical Act 1983, as amended, whether to direct that his right to make further applications for restoration should be suspended indefinitely.
2. In summary, Mr Taylor, on behalf of the GMC, reminded the Tribunal that this is Dr Furlong’s second application for restoration and so the Tribunal was entitled to consider whether to direct that Dr Furlong’s right to make any further applications for restoration should be suspended indefinitely. He made it clear that the GMC had no representations to make on this issue.

3. In summary, Mr Kohanzad, on behalf of Dr Furlong, submitted that he had nothing further to add.

4. Whilst the Tribunal took account of these submissions, it exercised its own judgement when determining whether to make a direction under Section 41(9) of the Act, or not. Section 41(9) states:

‘(9) Where, during the same period of erasure, a second or subsequent application for the restoration of a name to the register, made by or on behalf of the person whose name has been erased, is unsuccessful, a Medical Practitioners Tribunal may direct that his right to make any further such applications shall be suspended indefinitely.’

5. Throughout its deliberations, the Tribunal was mindful of the overarching objective to protect and promote the health, safety and wellbeing of the public, to promote and maintain public confidence in the medical profession and to promote and maintain proper professional standards and conduct for the members of the profession. It also had regard to the overall history of the case.

6. The tribunal bore in mind that, although this is Dr Furlong’s second application, the reality is that this application was never properly made and it was abandoned by Dr Furlong on Day 2 of the hearing. The Tribunal determined that there were no reasonable grounds for suspending indefinitely Dr Furlong’s right to make further applications for restoration.

Confirmed
Date 30 July 2019

Mr James Newton-Price, Chair