Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 04/12/2019 & 09/01/2020

Medical Practitioner’s name: Dr Hannah AUSTIN

GMC reference number: 6163270

Primary medical qualification: MB ChB 2007 University of Glasgow

Type of case

Outcome on impairment

Review - Misconduct

Impaired

Summary of outcome

Suspension, 3 months.

Review hearing directed

Tribunal:

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Tribunal Clerk: Mr John Poole

Attendance and Representation:

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<td>Ms Claire Thomas of Beltrami &amp; Co. Solicitors (09/01/2020)</td>
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<td>GMC Representative:</td>
<td>Mr Ryan Donoghue, 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.

MPT: Dr AUSTIN
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Overarching Objective

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

Determination on Impairment - 04/12/2019

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

Background

2. Dr Austin qualified in 2007 and prior to the events which are the subject of
the hearing she worked as a Public Health Trainee on attachment to Health
Protection Scotland (HPS).

3. Dr Austin was referred to the GMC by NHS Lothian on 8 November 2017
following an internal investigation in relation to alleged dishonesty with colleagues
relating to her completion and submission of work during a six month attachment
with HPS.

4. Dr Austin’s case was first considered by a Medical Practitioners Tribunal on 21-29
May 2019 (the May 2019 Tribunal). Dr Austin was not present for the facts stage of the
hearing but did attend for the impairment and sanction stages.

5. The May 2019 Tribunal found proved that between 14 June 2016 and 21 July
2016, while on attachment to HPS, Dr Austin made statements which she knew to be
untrue in regard to reports she was to provide to Dr A and Dr C. Further, that on 1
December 2016, she made statements which she knew to be untrue in relation to a
report she had co-authored about an outbreak of mumps ("the Mumps Paper"). The May
2019 Tribunal found proved that Dr Austin’s actions were dishonest.

6. The May 2019 Tribunal determined that Dr Austin’s dishonesty was repeated,
persistent and sustained over a six-month period, taking place in both her email
correspondence and during face to face meetings with colleagues, and was directly
related to her professional practice. The May 2019 Tribunal noted that one act of
dishonesty found proved, took place during the formal investigatory hearing at Dr
Austin’s employing Trust which was held four months after her first admission of
dishonesty in August 2016. The May 2019 Tribunal noted a further feature of her
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dishonesty arose in the Mumps Paper which had the potential to have adverse consequences for her co-authors.

7. The May 2019 Tribunal noted that there were no patient safety concerns or concerns in relation to Dr Austin’s clinical work. However, it determined that through her dishonest conduct, Dr Austin’s conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to serious misconduct.

8. The May 2019 Tribunal acknowledged that Dr Austin did make admissions of dishonesty in an email to her colleagues in August 2016. It further noted her subsequent express admission of dishonesty at the hearing in relation to the allegations concerning the Mumps Paper. The May 2019 Tribunal bore in mind that during her oral evidence, Dr Austin apologised for her dishonesty and recognised that her actions were a departure from Good Medical Practise (GMP). The May 2019 Tribunal also found that the acts of dishonesty occurred during a six-month period in 2016 and that there had been no suggestion of any repetition of her actions.

9. However, the May 2019 Tribunal considered that during her evidence Dr Austin concentrated on matters relating to performance and at times appeared to be reluctant to openly discuss the dishonesty matters when being questioned specifically on this point. It considered that the focus of her subsequent remediation had been predominantly focused on the development of her professional skills such as time management and project management training needs. Although she gave evidence to the effect that she had benefited from, she had not undertaken any remediation specifically focussed on developing her insight into her failings in relation to honesty and integrity. The May 2019 Tribunal therefore considered that there remained a risk of repetition of dishonest behaviour if adverse circumstances were to arise again.

10. The May 2019 Tribunal determined that public confidence in the medical profession and the maintenance of proper professional standards and conduct for members of the profession would be undermined if a finding of impairment was not made. It determined that Dr Austin’s fitness to practise was impaired by reason of her misconduct.

11. The May 2019 Tribunal had regard to the aggravating and mitigating factors in Dr Austin’s case. In regard to aggravating factors, the Tribunal noted that her actions were a significant departure from the principles of GMP involving deliberate and persistent acts of dishonesty in a professional context towards several colleagues.

In regard to mitigating factors, the May 2019 Tribunal noted that:

- Dr Austin had apologised and expressed regret for her actions and the need for further remediation;
- there has been no evidence of any repetition since 2016;
- there were no patient safety or clinical concerns;
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- XXX;
- the dishonesty was not for personal gain;
- there had been positive reports from her educational supervisor in regard to her progress in clinical work and Dr Austin had worked to rebuild the trust of colleagues and attempted to demonstrate her reliability in the workplace.

12. The May 2019 Tribunal considered that any sanction lower than a period of suspension would not be sufficient to maintain public confidence in the profession, or to promote and maintain proper professional standards and conduct for the members of the profession. It considered that a period of suspension would be appropriate. The May 2019 Tribunal did not consider Dr Austin’s misconduct to be fundamentally incompatible with continuing registration due to the mitigating factors in her case. Instead, it considered a period of suspension to be appropriate.

13. The May 2019 Tribunal took into account the impact a period of suspension may have on Dr Austin but was satisfied that in all the circumstances her interests were outweighed by the need to promote and maintain public confidence in the medical profession and the need to promote and maintain proper professional standards and conduct for members of that profession. The May 2019 Tribunal stressed that acting with honesty and integrity at all times is a fundamental tenet of the medical profession. It was satisfied that a period of suspension was necessary to send a clear message to Dr Austin, the profession, and the wider public, that dishonesty constitutes behaviour unbefitting of a registered doctor.

14. The May 2019 Tribunal determined that a period of suspension would be an appropriate and proportionate sanction which would fulfil the statutory overarching objective. It determined that a period of six months would give Dr Austin adequate time to reflect on her misconduct, its seriousness and its consequences and to develop fully her insight.

15. The May 2019 Tribunal determined to direct a review of Dr Austin’s case and clarified that at the review hearing, the onus would be on Dr Austin to demonstrate that she has developed insight into and remedied her misconduct. It advised Dr Austin that the reviewing Tribunal might be assisted by:

- Evidence that Dr Austin had developed sufficient insight into her misconduct, its seriousness and its consequences;
- Evidence that she has maintained her medical skills and knowledge during the period of her suspension;
- Further evidence of remediation such as continuing efforts in building and mending relationships with colleagues and attendance on relevant courses relating to probity and ethics;
- Maintenance of a reflective and learning log, with particular reference to probity;
- Any further documentation or testimonials, which Dr Austin considered would be helpful to a reviewing Tribunal.
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The Evidence

16. The Tribunal has taken into account all the evidence received. It had regard to the Record of Determinations from the May 2019 hearing and the various outcome and pre-hearing correspondence sent to Dr Austin by the GMC and MPTS.

17. The Tribunal had regard to a telephone note of a call from Dr Austin to the MPTS on 2 July 2019 in which it was recorded that she had called to confirm that she had appealed the MPT outcome to the Court in Scotland. It is reported that no proof of an appeal was provided. The May 2019 Tribunal’s direction of suspension took effect from 2 July 2019.

18. The Tribunal was provided with a written statement from Dr D dated 3 December 2019. Dr D had been Dr Austin’s Educational Supervisor from August 2017 until Dr Austin’s suspension. Dr Austin explained that she had continued to meet and discuss matters with Dr D since the start of her suspension.

19. Dr Austin gave oral evidence to the Tribunal. In summary, Dr Austin stated that she was ashamed of her misconduct and had reflected and taken steps to remediate it. She apologised for her delayed engagement with the process and stated that, while it may give the impression that she did not take the matters seriously, this was not the case.

20. Dr Austin stated that neither she nor her educational supervisor had been able to identify a formal course on probity. She explained that she has had much time to reflect on her career and is now focussed on moving forward.

21. Dr Austin stated that she hoped her involvement at this hearing shows her commitment to returning to practice and stated that she can offer a lot to public health if given the opportunity. Dr Austin stated that she had lost her trainee number since being suspended and told the Tribunal that, if she was fortunate enough to be reinstated to the medical register, she would have to wait until November 2020 to apply for her training again which would then restart in August 2021. In questioning, she acknowledged that she might work in a non medical role in public health until November 2020 but could work in other fields of medicine.

22. When asked by the Tribunal why probity was important, Dr Austin stated that it was an essential component of having constructive working relationships. She stated that being able to trust your colleagues and have them trust you is essential to effective teamworking. She added that it was also important for an individual’s wellbeing to know that they are being open and honest with colleagues. This would mean, in a similar situation, she could turn to colleagues and discuss matters with them.


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Submissions

23. Mr Donoghue, Counsel on behalf of the GMC, referred to the case of Abrahaem v GMC [2008] EWHC 183 (Admin) that:

"In practical terms there is a persuasive burden on the practitioner at a review to demonstrate that he or she has fully acknowledged why past professional performance was deficient and through insight, application, education, supervision or other achievement sufficiently addressed the past impairments."

He stated that this case related to Dr Abrahaem’s deficient professional performance but that this was considered in the case of R (on the application of Adeyemi) v GMC [2012] EWHC 425 (Admin), where it was stated that the persuasive burden on the practitioner was applicable in relation to all types of impairment generally.

24. Mr Donoghue stated that there was some indication before the hearing in May 2019 that Dr Austin had started to accept her previous dishonesty. However, he noted that following the May 2019 hearing Dr Austin had stated she was going to appeal the decision and he suggested that this might be indicative that her acceptance of the Tribunal’s findings may not have been complete.

25. Mr Donoghue submitted that prior to this hearing Dr Austin had provided no evidence in response to the five points which the May 2019 Tribunal had advised her would be of use to a reviewing tribunal. He submitted that the failure to submit any evidence in advance suggests that Dr Austin’s engagement in the process had only been a very recent decision.

26. Mr Donoghue submitted that the original misconduct was serious and not easy to remediate. He submitted that it is right to expect significant evidence of remediation from Dr Austin and added that, while she has attended proceedings today, this is insufficient in itself to assure the Tribunal that she has fully remediated her misconduct.

27. Mr Donoghue submitted that a finding of impaired fitness to practise was required when considering the overarching objective, particularly in terms of maintaining public confidence in the profession and the need to uphold standards and conduct for members of the profession.

28. Dr Austin submitted that dishonesty only makes matters worse and told the Tribunal that she appreciated her actions fell below the standards expected. She stated she accepted the serious misconduct found against her.
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29. Dr Austin submitted that there has been no repetition of dishonest behaviour since 2016. She submitted that she has extensively reflected on how her misconduct has impacted on herself and the profession in general over the last three years.

30. Dr Austin submitted that she never wished to downplay or trivialise her misconduct. She submitted that steps have been taken and that she recognises the need to continue to reflect and focus on her practise moving forward to ensure that the learning she has undertaken is put into practice. She invited the Tribunal to consider that her fitness to practise is no longer impaired by reason of her misconduct.

The Relevant Legal Principles

31. The Tribunal reminded itself that the decision of impairment is a matter for the Tribunal’s judgement alone. This Tribunal is aware that there is a persuasive burden on Dr Austin to satisfy it that her fitness to practise is no longer impaired.

32. This Tribunal must determine whether Dr Austin’s fitness to practise is impaired today, taking into account her 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

33. The Tribunal considered whether Dr Austin’s fitness to practise is currently impaired by reason of misconduct.

34. The Tribunal considered that in her oral evidence Dr Austin demonstrated a recognition of how her dishonesty has affected herself and others. However, the Tribunal considered that while she has demonstrated some insight in her oral evidence, she has provided very little practical examples of how her insight has developed or how she had remediated her misconduct.

35. The Tribunal considered that Dr Austin could have done more to develop her insight and remediate her misconduct during the period of her suspension as advised by the May 2019 Tribunal. It considered that the evidence provided is insufficient to suggest that there has been any significant development of insight into her actions since the May 2019 Tribunal or that she has taken any steps to remedy her misconduct.

36. The Tribunal acknowledged that dishonesty is difficult to remediate, but considered that the maintenance of a learning log, which included her reflections, would have been particularly useful for Dr Austin. It would have enabled demonstration of developing insight over this period. It was of the opinion that Dr
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Austin did not fully appreciate the importance of the five points made by the May 2019 Tribunal, namely:

- Evidence that Dr Austin had developed sufficient insight into her misconduct, its seriousness and its consequences;
- Evidence that she has maintained her medical skills and knowledge during the period of her suspension;
- Further evidence of remediation such as continuing efforts in building and mending relationships with colleagues and attendance on relevant courses relating to probity and ethics;
- Maintenance of a reflective and learning log, with particular reference to probity;
- Any further documentation or testimonials, which Dr Austin considered would be helpful to a reviewing Tribunal.

37. The Tribunal had regard to the overarching objective. It determined that Dr Austin’s fitness to practise remains impaired by reason of misconduct. The Tribunal concluded that this was appropriate and necessary given that the limited evidence of developing insight or remediation. The Tribunal considered that public confidence in the profession and the need to maintain proper professional standards would be undermined if a finding of impaired fitness to practise was not made in this case.

38. The Tribunal has therefore determined that Dr Austin’s fitness to practise remains impaired by reason of her misconduct.

Determination on Sanction - 09/01/2020

1. Having determined that Dr Austin’s fitness to practise is impaired by reason of misconduct, the Tribunal now has to decide in accordance with Rule 22(h) of the Rules what action, if any, it should take with regard to Dr Austin’s registration.

The Evidence

2. The Tribunal has taken into account the background to the case and the evidence received during the earlier stage of the hearing where relevant to reaching a decision on what action, if any, it should take with regard to Dr Austin’s registration.

3. The Tribunal received further evidence at this stage. This included a letter dated 20 December 2019 from Prof. E, Director of Postgraduate GP Education, NHS Educations for Scotland, to Dr Austin.

4. This letter confirmed the outcome of a hearing held on 19 December 2019 with Dr Austin in relation to her employment at NES. An initial hearing was held on 27 November 2019 to consider and confirm the impact of the removal of Dr Austin’s
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National Training Number (NTN) on her employment with NES as a Public Health Speciality Registrar. She was informed that she was unable to continue working in the Public Health Speciality Training Programme. Dr Austin was offered the opportunity to be placed on a redeployment register so that alternative employment could be sought. However, no posts were found to be a suitable match and it was not possible to redeploy her in another role within NES. After due consideration, it was decided to terminate Dr Austin’s employment with NES with immediate effect.

5. The Tribunal was also provided with a proforma Certificate of Readiness to Enter Speciality Training 2020, Evidence of Foundation Competence 2020 and an Activity Log.

Submissions

6. On behalf of the GMC, Mr Donoghue invited the Tribunal to consider the Sanctions Guidance (2019 edition) (‘SG’) and referred to each of the possible sanctions in turn.

7. Mr Donoghue submitted that there were no exceptional circumstances to justify taking no action on Dr Austin’s registration. He further submitted that none of the features are present in the case whereby a period of conditional registration would be appropriate.

8. Mr Donoghue invited the Tribunal to consider the guidance that suspension may be appropriate where there has been acknowledgement of fault and where there has been a serious breach of GMP but where the doctor’s misconduct is not fundamentally incompatible with their continued registration.

9. Mr Donoghue submitted the appropriate and proportionate sanction was one of suspension and while this would be a second period of suspension, the public would expect significant steps to be taken by a practitioner to reflect on their behaviour and develop insight into it. Mr Donoghue submitted that while Dr Austin gave oral evidence which was to her credit, this was indicative of a relatively recent engagement with the process. He submitted that a further period of suspension was necessary in order to uphold public confidence in the medical profession and maintain and uphold proper professional standards.

10. On behalf of Dr Austin, Ms Thomas submitted that a further period of suspension would not be appropriate and reminded the Tribunal of the guidance to use the least restrictive sanction necessary to uphold the overarching objective.

11. Ms Thomas referred the Tribunal to its finding at the impairment stage, namely, that in her oral evidence, Dr Austin had demonstrated a recognition of how her dishonesty has affected herself and others.
12. Ms Thomas submitted that Dr Austin accepts the finding that her fitness to practise remains impaired and submitted that she is fully engaged in the process of remediation. She submitted that Dr Austin has fully reflected on her misconduct and reminded the Tribunal that the conduct took place some three years ago, has not been repeated since, and that Dr Austin has had satisfactory reports from her educational supervisor.

13. Ms Thomas submitted that Dr Austin appreciates the severity of her misconduct and the impact it has on the profession. Ms Thomas submitted that Dr Austin has made significant progress on her working relationships over the last three years and that Dr Austin’s conduct and personal reflection, show she has got insight into the nature of her dishonesty. Ms Thomas further submitted that there is no likelihood of the conduct being repeated in the future.

14. Ms Thomas submitted that a further suspension would exacerbate the constraints that Dr Austin already faces. She submitted that suspension has impacted on Dr Austin’s ability to demonstrate the progress she had made with reference to some of the points identified by the May 2019 Tribunal.

15. Ms Thomas submitted that if Dr Austin’s registration was restored, albeit with restrictions, Dr Austin would be able to better demonstrate that she has developed insight, maintained her clinical skills, built relationships and it would enable her to maintain a reflective learning log. Ms Thomas submitted that a further period of suspension would be disproportionately harsh. She submitted that a period of conditions would be sufficient to uphold public confidence in the medical profession and maintain and uphold proper professional standards.

The Tribunal’s Determination on Sanction

16. The Tribunal heard and accepted the advice of the Legally Qualified Chair. The decision as to the appropriate sanction to impose, if any, is a matter for this Tribunal exercising its own judgement.

17. In reaching its decision, the Tribunal has taken account of the SG and of the overarching objective. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Austin’s interests with the public interest.

18. Throughout its deliberations the Tribunal bore in mind the statutory overarching objective, which includes:

- protecting, promoting and maintaining the health, safety and well-being of the public;
- promoting and maintaining public confidence in the medical profession;
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- promoting and maintaining proper professional standards and conduct for members of that profession.

The Tribunal’s Decision

19. The Tribunal considered each sanction in ascending order of seriousness, starting with the least restrictive.

No action

20. In coming to its decision as to the appropriate sanction, the Tribunal first considered whether to conclude the case by taking no action.

21. The Tribunal concluded that there were no exceptional circumstances in this case. It determined that, in view of the nature of the findings of the May 2019 Tribunal and this Tribunal’s decision on impairment, it would be neither sufficient, proportionate nor in the public interest to conclude this case by taking no action.

Conditions

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

23. The Tribunal had regard to paragraph 81 of the SG which advises when conditions might be appropriate:

81 Conditions might be most appropriate in cases:

a involving the doctor’s health

b involving issues around the doctor’s performance

c where there is evidence of shortcomings in a specific area or areas of the doctor’s practice

d where a doctor lacks the necessary knowledge of English to practise medicine without direct supervision.

24. The Tribunal considered that given the nature of the original misconduct and the Tribunal’s determination on impairment, an order of conditions would not be sufficient in upholding the overarching objective. The Tribunal also considered that it had insufficient evidence of Dr Austin’s insight in order to give it confidence that
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conditions would be an appropriate sanction. Accordingly, the Tribunal determined that this was not a case in which conditions would be appropriate.

Suspension
25. The Tribunal then went on to consider whether it would be appropriate and proportionate to impose a further period of suspension on Dr Austin’s registration.

26. The Tribunal had regard to the paragraphs of the SG which advise when a sanction of suspension might be appropriate. In particular, the Tribunal had regard to the following factors listed at paragraph 97 of the SG:

97 Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.

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

e No evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor’s unwillingness to engage

f No evidence of repetition of similar behaviour since incident.

27. The Tribunal also had regard to paragraph 97g of the SG which states that ‘The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour’. However, the Tribunal considered that, while Dr Austin has developed her insight, it could not be satisfied on the objective evidence that this has been developed sufficiently enough so as to prevent her from behaving in the same away again should she find herself in similar circumstances.

28. The Tribunal did have regard to the submission made by Ms Thomas that a period of suspension would hinder Dr Austin’s ability to gather evidence for a future Tribunal that she has maintained her clinical skills and knowledge. However, the Tribunal rejected this submission, noting alternatives such as the wide availability of online CPD.

29. The Tribunal was disappointed by the lack of relevant written and comprehensive material provided to it to address the points identified by the May 2019 Tribunal. It also considered that further relevant material could have been gathered since this hearing adjourned following the impairment stage in December 2019.
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30. The Tribunal was satisfied that a further period of suspension was the appropriate sanction in this case and would allow Dr Austin a further opportunity to provide evidence of insight and remediation and fully address the Tribunal’s concerns.

Duration

31. The Tribunal determined that a period of 3 months suspension would allow Dr Austin sufficient time to address the matters which the May 2019 Tribunal felt would be helpful and to gather objective evidence demonstrating this.

Review

32. A Tribunal will convene to review Dr Austin’s case shortly before the end of the period of suspension. At the next hearing, the review Tribunal may be assisted by the following:

- Written evidence that Dr Austin has developed sufficient insight into her misconduct, its seriousness and its consequences. This is likely to be in the form of ongoing entries in a comprehensive reflective learning log with particular reference to probity.
- Written evidence that she has maintained her medical skills and knowledge during the period of her suspension through Continuing Professional Development
- Further evidence of remediation such as her continued learning relating to building and maintaining relationships, probity and ethics;
- Any further documentation or testimonials, which Dr Austin considers would be helpful to a reviewing Tribunal.

33. The suspension will take effect 28 days from when written notice of this decision is deemed to have been served upon Dr Austin. The current order of suspension remains in place during this 28-day appeal period. If an appeal is made, the current order of suspension on Dr Austin’s registration will remain in place until the appeal has concluded.

34. That concludes the case.

Confirmed
Date 09 January 2020                         Mrs Julia Oakford, Chair
ANNEX A - Determination to adjourn the hearing and extend the current order of suspension – 04/12/2019

1. Having determined that Dr Austin’s fitness to practise remains impaired by reason of her misconduct, the Tribunal must now consider what sanction, if any, to impose on her registration. However, due to the hour of the day, the Tribunal would not be able to conclude matters today. It therefore determined that it was necessary to adjourn the hearing.

2. The Tribunal noted that Dr Austin’s current suspension is due to expire on 01/01/2020. The Tribunal considered that it would not be appropriate to allow the suspension to lapse given its finding of impairment and that matters in this case remain unresolved.

3. The Tribunal therefore considered that it was appropriate to extend the current order of suspension until such time as the hearing is able to reconvene on 09/01/2020. Both parties did not object to the extension of the current order of suspension to 31/01/2020 and confirmed that they were able to attend on 09/01/2020.

4. The Tribunal has therefore determined to adjourn today’s hearing and has exercised its power under section 35D(5)(a) of the Medical Act 1983, as amended, to extend the current order of suspension until 31/01/2020.