Record of Determinations – Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 18/03/2019 - 21/03/2019

Medical Practitioner’s name: Dr Leonardo MARTELLI

GMC reference number: 7240514

Primary medical qualification: Laurea 1997 Universita degli Studi di Firenze

Type of case: New - Misconduct

Outcome on impairment: Impaired

Summary of outcome
Erasure

Immediate order imposed

Tribunal:

<table>
<thead>
<tr>
<th>Legally Qualified Chair</th>
<th>Ms Louise Sweet QC</th>
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<tbody>
<tr>
<td>Lay Tribunal Member:</td>
<td>Mrs Barbara Larkin</td>
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<tr>
<td>Medical Tribunal Member:</td>
<td>Dr Vishal Agrawal</td>
</tr>
</tbody>
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Tribunal Clerk: Mr John Poole

Attendance and Representation:

<table>
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<tr>
<th>Medical Practitioner:</th>
<th>Not present and represented</th>
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<tbody>
<tr>
<td>Medical Practitioner’s Representative:</td>
<td>Mr Stephen Brassington, Counsel, instructed by the MPS</td>
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<tr>
<td>GMC Representative:</td>
<td>Ms Rebecca Chalkley, 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.
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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 Facts - 20/03/2019

Background

1. Dr Martelli qualified in 1997 from the University of Florence in Italy and has been practising in the NHS as a locum in orthopaedics.

2. The matter that has led to Dr Martelli’s hearing arises from two allegedly false references he submitted as part of an application for a job in the United Arab Emirates (‘UAE’).

3. In January 2018, the Ministry of Health UAE sent Dr Martelli’s application to The Dataflow Group (‘Dataflow’), an immigration screening and background verification company which Dr Martelli authorised to verify the information and documents presented with his application.

4. Following various checks, Dataflow found that a reference purporting to be from NHS Lanarkshire ‘the First Reference’, was not legitimate. In correspondence between NHS Lanarkshire and Dataflow, NHS Lanarkshire confirmed that the reference had not been supplied by the Human Resources team. It contained a number of falsifications most obviously the signatory of the reference was not the name of someone who worked at NHS Lanarkshire. The allegations relating to the First Reference are detailed in paragraphs 1-3 of the Allegation below.

5. Dataflow also found that a reference purporting to be from NHS Grampian, ‘the Second Reference’, was not legitimate. In correspondence between NHS Grampian and Dataflow, NHS Grampian advised that the reference was a forgery. It contained similar falsifications to the First Reference and the signatory on the reference was also false. The allegations relating to the Second Reference are detailed in paragraphs 4-6 below.
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The Outcome of Applications Made during the Facts Stage

6. On the first day of the hearing, Mr Brassington, counsel on behalf of Dr Martelli, made an application for the hearing to be adjourned until the following day. The Tribunal acceded to this application and its decision is included at Annex A.

7. At the conclusion of the GMC’s case, Mr Brassington made an application under Rule 17(2)(g) of the Rules with regard to paragraphs 2(d)ii and 5(d)ii of the Allegation. The Tribunal’s full determination on this application is included at Annex B.

The Allegation and the Doctor’s Response

8. The Allegation made against Dr Martelli is as follows:

Paragraph 1
On 5 January 2018 you submitted a reference in the name of NHS Lanarkshire to the Dataflow Group dated 5 January 2018 (‘the First Reference’).

Admitted and found proved

Paragraph 2
The First Reference had been falsified by you in that you:

a. completed the First Reference yourself;
   Admitted and found proved

b. held out the First Reference as having been, when you knew that it was not:
   
   i. provided by NHS Lanarkshire;
      Admitted and found proved

   ii. completed by a Miss A within the Human Resources Department at NHS Lanarkshire;
      Admitted and found proved

c. included NHS Lanarkshire’s logo;
   Admitted and found proved

d. stated in the First Reference that you had, when you knew that you had not, been employed:
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i. directly by NHS Lanarkshire, or words to that effect;
   Admitted and found proved

ii. as an Orthopaedic Surgeon;
   To be determined

iii. since March 2016 “to the present time”.
   Admitted and found proved

Paragraph 3
Your conduct as set out at paragraph 1 was dishonest by reason of paragraph 2.
Admitted and found proved

Paragraph 4
On 6 January 2018 you submitted a reference in the name of NHS Grampian to the Dataflow Group dated 6 January 2018 (‘the Second Reference’).
Admitted and found proved

Paragraph 5
The Second Reference had been falsified by you in that you:

a. completed the Second Reference yourself;
   Admitted and found proved

b. held out the Second Reference as having been, when you knew that it was not:
   i. provided by NHS Grampian;
   Admitted and found proved
   ii. completed by a Mr B within the Human Resources Department at NHS Grampian;
   Admitted and found proved

c. included NHS Grampian’s logo;
   Admitted and found proved

d. stated in the Second Reference that you had, when you knew that you had not, been employed:
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i. directly by NHS Grampian, or words to that effect;
Admitted and found proved

ii. as an Orthopaedic Surgeon;
To be determined

iii. between April 2014 and the end of July 2015.
Admitted and found proved

Paragraph 6
Your conduct as set out at paragraph 4 was dishonest by reason of paragraph 5.
Admitted and found proved

The Admitted Facts

9. At the outset of these proceedings, through his counsel, Mr Brassington, Dr Martelli made admissions to the majority of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended (‘the Rules’). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

The Facts to be Determined

10. The Tribunal is required to determine sub-paragraphs 2(d)ii and 5(d)ii of the Allegation. Dr Martelli stated that he had, when he knew that he had not, been employed as an Orthopaedic Surgeon.

Factual Witness Evidence

11. The Tribunal received evidence on behalf of the GMC in the form of witness statements from the following witnesses who were not called to give oral evidence:

- Miss A, Head of Human Resources Team at NHS Lanarkshire;
- Ms B, Assistant Human Resources manager at NHS Grampian;
- Mr C, Director of Business Development for Europe and the UK at the Dataflow Group.

12. While Miss A and Ms B were not called to give evidence, they provided further information in the form of written responses via GMC legal, to specific clarifying questions from the Tribunal.
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13. Dr Martelli did not provide a witness statement.

Documentary Evidence

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

- NHS Lanarkshire reference, dated 5 January 2018;
- NHS Grampian reference, dated 6 January 2018;
- DataFlow Group Letter of Authorization, dated 12 January 2018;
- Copy of email correspondence between NHS Lanarkshire and DataFlow provided by NHS Lanarkshire, 18 – 30 January 2018;
- Copy of email correspondence between NHS Grampian and DataFlow provided by NHS Grampian, 18-25 January 2018;
- Screenshot of Dr Martelli’s details on the List of Registered Medical Practitioners (produced by the doctor’s counsel post Galbraith submission);
- Responses to Tribunal’s questions to Miss A and Ms B via emails dated 18 March 2019.

The Tribunal’s Approach

15. 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 Martelli 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

16. The Tribunal has considered sub-paragraphs 2(d)ii and 5(d)ii of the Allegation and evaluated all the evidence in order to make its findings.

17. These sub-paragraphs allege that Dr Martelli stated in the references, that he was employed as an Orthopaedic Surgeon, when he knew that he had not.

18. It was agreed evidence that Dr Martelli had been employed by the Lanarkshire Trust as a ‘Speciality Training Registrar’ which was as a ‘junior doctor who was in training’. It was also agreed evidence that Dr Martelli had been employed by the Grampian Trust as a ‘locum ST3 in orthopaedics’ which was as a ‘speciality trainee in their third year of training’. These both signify clinical
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experience at a training level rather than the ‘more autonomous level’ of an Orthopaedic Surgeon.

19. The Tribunal noted that Dr Martelli is on the Specialist Register and as such, is entitled to call himself an Orthopaedic Surgeon.

20. The Tribunal had regard to the evidence of Miss A and Ms B. Both made clear in their evidence that they draw a distinction between employment as an Orthopaedic Surgeon and employment in a training role.

21. The Tribunal was of the view that this misrepresentation could be considered as a mistake if it were in isolation. However, it was in the context of the other admitted deceptions as detailed at paragraphs 14 and 15 in the determination on the Rule 17(2)(g) application – Annex B. This related to his apparent competence and time worked at each trust.

22. The Tribunal also noted that in each of the references Dr Martelli had described himself as an Orthopaedic Surgeon in the introduction. There was no doubt he was sufficiently qualified to do that. He had, however, then separately described himself as ‘employed as an orthopaedic surgeon by Hairmaires [sic] Hospital’ (the First Reference) and ‘working for [Grampian] NHS Trust as an orthopaedic surgeon (the Second Reference).’

23. The Tribunal concluded he was entitled to call himself an Orthopaedic Surgeon but that this did not entitle him to state he was employed in this capacity when he was not and knew that he was not.

24. The Tribunal considered that, on the balance of probabilities, it was more likely than not, that Dr Martelli knew that he had not been employed as an Orthopaedic Surgeon by either trust. The Tribunal considered his actions to be part of Dr Martelli’s deliberate deception in over representing his work experience in his application. He had falsified each reference in this regard and he had done so dishonestly.

25. Accordingly, the Tribunal found proved sub-paragraphs 2(d)ii and 5(d)ii.

The Tribunal’s Overall Determination on the Facts

26. The Tribunal has determined the facts as follows:
Paragraph 1
On 5 January 2018 you submitted a reference in the name of NHS Lanarkshire to the Dataflow Group dated 5 January 2018 (‘the First Reference’).

Admitted and found proved

Paragraph 2
The First Reference had been falsified by you in that you:

a. completed the First Reference yourself;
   Admitted and found proved

b. held out the First Reference as having been, when you knew that it was not:
   i. provided by NHS Lanarkshire;
      Admitted and found proved
   ii. completed by a Miss A within the Human Resources Department at NHS Lanarkshire;
       Admitted and found proved

c. included NHS Lanarkshire’s logo;
   Admitted and found proved

d. stated in the First Reference that you had, when you knew that you had not, been employed:
   i. directly by NHS Lanarkshire, or words to that effect;
      Admitted and found proved
   ii. as an Orthopaedic Surgeon;
      Determined and found proved
   iii. since March 2016 “to the present time”.
      Admitted and found proved

Paragraph 3
Your conduct as set out at paragraph 1 was dishonest by reason of paragraph 2.

Admitted and found proved
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Paragraph 4
On 6 January 2018 you submitted a reference in the name of NHS Grampian to the Dataflow Group dated 6 January 2018 (‘the Second Reference’).

Admitted and found proved

Paragraph 5
The Second Reference had been falsified by you in that you:

a. completed the Second Reference yourself;
   Admitted and found proved

b. held out the Second Reference as having been, when you knew that it was not:
   i. provided by NHS Grampian;
      Admitted and found proved
   ii. completed by a Mr B within the Human Resources Department at NHS Grampian;
      Admitted and found proved

c. included NHS Grampian’s logo;
   Admitted and found proved

d. stated in the Second Reference that you had, when you knew that you had not, been employed:
   i. directly by NHS Grampian, or words to that effect;
      Admitted and found proved
   ii. as an Orthopaedic Surgeon;
      Determined and found proved
   iii. between April 2014 and the end of July 2015.
      Admitted and found proved

Paragraph 6
Your conduct as set out at paragraph 4 was dishonest by reason of paragraph 5.

Admitted and found proved
Determination on Impairment - 20/03/2019

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 as set out before, Dr Martelli’s fitness to practise is impaired by reason of misconduct.

2. The Tribunal has had regard to all the evidence received during the facts stage of the hearing. In addition, it received further documentary evidence (stage 2 bundle) on behalf of Dr Martelli. This included but was not limited to:

   • An appraisal form dated 20 March 2017;
   • Colleague Feedback - Multi Source Feedback dated 16 December 2015;
   • Various references dated between 2015-2016;
   • A 'Statement of no concerns' from Total Assist, dated 24 January 2019;
   • CPD Certificate of Completion 2015 and 2016 and CPD Certificate dated 26 January 2019;
   • an email correspondence between Dr Martelli and GMC Investigation Officer, dated 13 April 2018.

Submissions

GMC Submissions

3. On behalf of the GMC, Ms Chalkley submitted that the facts found proved and admitted in this case, meant that there is little doubt that Dr Martelli’s fitness to practise is impaired by reason of misconduct.

4. Ms Chalkley submitted that dishonest conduct such as that displayed in this case, brings the reputation of the profession into disrepute. She submitted that Dr Martelli had breached fundamental tenets of the profession.

5. Ms Chalkley referred the Tribunal to various paragraphs of Good Medical Practice (2013 edition) (‘GMP’). She submitted the following paragraphs in particular were engaged in this case:

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

66. You must always be honest about your experience, qualifications and current role.

68. You must be honest and trustworthy in all your communication with patients and colleagues. This means you must make clear the limits of your knowledge and make reasonable checks to make sure any information you give is accurate.

71. You must be honest and trustworthy when writing reports, and when completing or signing forms, reports and other documents. You must make sure that any documents you write or sign are not false or misleading.

   a You must take reasonable steps to check the information is correct.
   b You must not deliberately leave out relevant information.

6. Ms Chalkley submitted that Dr Martelli’s dishonest acts fell seriously below the standards expected of any doctor. She submitted that Dr Martelli created the references to deceive and to achieve an advantage for himself.

7. Ms Chalkley submitted that employers and the public are entitled to know who is being employed, including the skills of the applicants, and more importantly, their limitations. Ms Chalkley referred the Tribunal to paragraph 41 of GMP and submitted that it is clear that the writers of GMP had in mind how important honesty was with regard to references.

8. Ms Chalkley submitted there was an absence of remediation. She submitted that Dr Martelli had not attended, not made a statement and not given evidence. While he had made admissions, they were not in full. It was agreed his absence was explicable by the lack of a visa which she commented that he could and should have organised sooner.

9. Ms Chalkley submitted that the majority of the documents provided by the defence at this stage pre-dated the misconduct and should be disregarded for the purpose of remediation.

10. Ms Chalkley submitted that a finding of impairment was necessary in order to maintain public confidence in the profession and maintain proper professional standards of conduct for members of the profession.
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Submissions on behalf of Dr Martelli

11. On behalf of Dr Martelli, Mr Brassington accepted that impairment was a matter for the Tribunal’s judgement. He did not make a submission that the Tribunal should not find misconduct and impairment.

12. Mr Brassington submitted that Dr Martelli was on his way back to England and due to land on Friday. He wanted to attend. He submitted that a suggestion Dr Martelli has displayed a lack of engagement in the proceedings is wrong. He submitted his absence was irrelevant to his insight and remediation.

13. Mr Brassington referred the Tribunal to the stage 2 bundle. Mr Brassington accepted the documents he produced on behalf of Dr Martelli did not show remediation but he submitted they were relevant to how his misconduct should be characterised. He suggested that Dr Martelli’s administrative skills were weak and invited the Tribunal to consider it as a theme that runs through his professional career.

14. Mr Brassington directed the Tribunal to two positive references in the bundle. He submitted that had Dr Martelli had a “modicum of organisational ability”, he could have obtained positive and accurate references.

15. He also relied upon the fact that Dr Martelli had signed a consent form on 12 January 2018 for the forged references to be checked by Dataflow.

16. Mr Brassington submitted that the above facts demonstrated that Dr Martelli’s deceit was not as sophisticated as suggested.

17. Mr Brassington submitted that it was important to consider Dr Martelli’s interim order when considering the question of insight. He submitted that Dr Martelli had confessed his dishonesty in communication with the GMC and attended the IOT hearing unrepresented, where he gave full and frank admissions. Mr Brassington submitted that this shows “near total insight” into his misconduct.

The Relevant Legal Principles

18. 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 judgement alone.

19. In approaching its decision, the Tribunal was mindful of the two-stage process to be adopted: first, whether the facts as found proved amounted to serious
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misconduct and secondly, whether the doctor’s fitness to practise is currently impaired by reason of that serious misconduct.

20. The Tribunal must determine whether Dr Martelli’s fitness to practise is impaired today, taking into account Dr Martelli’s 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

21. In reaching its decision on impairment the Tribunal bore in mind that its primary responsibility is to the statutory overarching objective, which is as follows:

- To protect, promote, and maintain the health, safety, and well-being of the public;
- To promote and maintain public confidence in the medical profession;
- To promote and maintain proper professional standards and conduct for members of that profession.

All three elements must be properly placed in the balance.

22. The Tribunal also took account of the criteria for impairment identified by Dame Janet Smith in the 5th Shipman report:

"Do our findings of fact ... 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
 d. has in the past acted dishonestly and/or is liable to act dishonestly in the future."

23. The Tribunal noted that misconduct and impairment was not disputed in this case. It considered that all four criteria for impairment, as identified by Dame Janet Smith, are engaged in this case.

24. The Tribunal considered the nature of Dr Martelli’s actions which involved the manufacturing of references from start to finish, including false letterhead, false
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representations, fake personalities from HR and fake signatures. The references were designed to look different in order to avoid suspicion being aroused.

25. The Tribunal rejected the submission that Dr Martelli’s deceit lacked sophistication and that Dr Martelli can be characterised as having administrative shortcomings. This was conduct that could be characterised as fraudulent and therefore criminal in nature.

26. The Tribunal considered that fellow members of the medical profession would consider these actions to be deplorable. The Tribunal was confident that Dr Martelli’s conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to serious professional misconduct.

27. The Tribunal was of the view that Dr Martelli has breached a fundamental tenet of the profession as to honesty and probity. The Tribunal determined that Dr Martelli has breached paragraphs 1, 65, 66, 68 and 71 of GMP. The Tribunal also had regard to further GMC Guidance ‘Writing references’ (March 2013) which it considered had also been breached. In particular the following paragraphs:

4. Prospective employers use references to gather information about a candidate’s qualifications and employment history and to help them assess their suitability for the post in question...

5. Employers need to be confident that they can rely on the information in references, particularly when they are employing healthcare professionals...

...A reference that presents an inaccurate picture of a prospective employee could lead either to an unsuitable candidate being appointed or the most suitable person not being appointed. In some cases this will put patients at risk of serious harm and it may undermine trust in the profession.

28. The Tribunal was of the view that Dr Martelli’s actions had the potential to put patients at risk were he to have been successful in passing the references off as genuine. It accepted however that there is no evidence that Dr Martelli had put patients at risk. The Tribunal accepted that the clinical skills of Dr Martelli were not the subject of criticism.

29. Dr Martelli made admissions to the majority of the Allegation and acknowledged that what he did was wrong. The Tribunal drew no adverse inference that Dr Martelli had not attended but it was a fact that the Tribunal had no explanation as to why Dr Martelli had forged these two references or why similar
conduct would not be repeated. The Tribunal is satisfied that in the light of the limited evidence presented, there is little insight and no remediation.

30. The Tribunal determined that given the serious nature of Dr Martelli’s misconduct, public confidence in the medical profession would be seriously undermined if a finding of impairment was not made in this case. It also considered that a finding of impairment was necessary in order to promote and maintain proper professional standards of conduct for members of the profession.

31. Accordingly, the Tribunal has found that Dr Martelli’s fitness to practise is impaired by reason of his misconduct.

Determination on Sanction - 21/03/2019

1. Having determined that Dr Martelli’s fitness to practise is impaired by reason of his misconduct, the Tribunal now has to decide in accordance with Rule 17(2)(n) of the Rules on the appropriate sanction, if any, to impose.

The Evidence

2. The Tribunal has taken into account evidence received during the earlier stages of the hearing where relevant in reaching a decision on sanction.

3. The Tribunal also received further evidence on behalf of Dr Martelli at this stage of the proceedings (‘stage 3 bundle’). This included a witness statement dated 15 March 2019 along with various accompanying exhibits, including Dr Martelli’s undated reflections on his actions.

Submissions

GMC submissions

4. On behalf of the GMC, Ms Chalkley submitted that a period of suspension was the appropriate sanction that would uphold the overarching objective in this case.

5. Throughout her submissions, Ms Chalkley referred the Tribunal to the Sanctions Guidance (2018 edition) (‘SG’). She submitted that there were no exceptional circumstances to justify taking no action in this case. In regard to conditions, Ms Chalkley submitted that none of the criteria for which conditions would be appropriate are met in this case.
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6. Ms Chalkley reminded the Tribunal of its findings at the impairment stage. Namely, that Dr Martelli had been dishonest; breached a fundamental tenet of the profession; fellow practitioners would consider his conduct deplorable and his conduct could be characterised as fraudulent and criminal in nature. She added that the creation of the two separate forged references demonstrated sophistication.

7. Ms Chalkley, in submitting that suspension was the appropriate sanction in this case, directed the Tribunal to paragraphs 91 and 92 of the SG which provide that:

91 Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention.

92 Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (ie for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession).

8. Ms Chalkley directed the Tribunal to paragraph 120 of the SG and stated that the misconduct was a serious breach of the public’s trust. Although this misconduct was outside Dr Martelli’s clinical responsibility it was all the more serious as it undermined the public’s trust in the profession as a whole. She reminded the Tribunal it had found little insight and no remediation at stage 2.

9. Ms Chalkley stated the reputation of the medical profession as a whole was more important than the interests of the individual doctor.

10. Ms Chalkley submitted that if the Tribunal was not satisfied suspension was the appropriate sanction in this case to meet the overarching objective, it could consider erasure. She directed the Tribunal to the relevant paragraphs of the SG. In particular, paragraph 108. While she accepted there was no actual risk to public safety or evidence of harm, doctors should not lie. ‘If the referee system was to have any integrity then it must be trustworthy’.

11. She directed the Tribunal to paragraph 109 of the SG and submitted this was a particularly serious departure from GMP, as the creation of the forged references
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showed a deliberate disregard for GMP, in particular, the breach of the fundamental
tenet of honesty and probity. She submitted Dr Martelli had abused the public trust
placed in him and in the profession as a whole.

Submissions on behalf of Dr Martelli

12. On behalf of Dr Martelli, Mr Brassington submitted that the appropriate and
proportionate sanction in this case was one of suspension. He reminded the Tribunal of
the purpose of sanctions and that while they may have punitive effect, this was not their
purpose. He also invited the Tribunal to have regard to the principle of proportionality
and the need to consider sanctions in ascending order of severity.

13. Mr Brassington submitted that there were mitigating factors present in this case.
He submitted that Dr Martelli has displayed insight because he had offered a fulsome
and complete apology to the GMC at an early stage and to the Interim Orders Tribunal
(‘IOT’)

14. Mr Brassington also referred the Tribunal to the stage 3 bundle including Dr
Martelli’s witness statement and a reflection piece. With regard to the context of this
misconduct, he submitted that Dr Martelli felt under pressure and overwhelmed at the
time, albeit that Dr Martelli did not seek to excuse his actions. He submitted that Dr
Martelli has demonstrated contrition and accepts the gravity of his wrong doing.

15. Mr Brassington added that there have been no concerns raised surrounding Dr
Martelli’s clinical competence.

16. Mr Brassington submitted that Dr Martelli should be given an opportunity to
continue his registration so that he can demonstrate he has remediated the concerns in
this case. Although he acknowledged that remediation was more difficult to demonstrate
in a dishonesty case.

17. Mr Brassington submitted that Dr Martelli’s dishonesty was neither persistent nor
covered up.

18. Mr Brassington submitted that in all the circumstances of the case, a period of
suspension would be sufficient to protect the public interest and send a clear and
unambiguous message to the public and the profession of the consequences of
providing dishonest references.
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19. Mr Brassington agreed the correct approach for the Tribunal was to assess the seriousness of the dishonesty when deciding the severity of sanction necessary to maintain standards and public confidence in the profession as a whole.

20. He stated that Dr Martelli had “been desperate and looking for a way out” of his post at Gloucestershire Hospital. He frankly conceded this was “a deliberate and carefully executed creation of two references”.

21. Mr Brassington informed the Tribunal that Dr Martelli had been suspended by the IOT for eleven months and the Tribunal could take this into account to a “limited extent”.

22. He accepted that there had been serious misconduct but submitted that the sanction of erasure was unnecessary to meet the overarching objective.

The Relevant Legal Principles

23. The decision as to the appropriate sanction is a matter for this Tribunal’s own independent judgement. In reaching its decision, the Tribunal took into account the SG and the statutory overarching objective, which includes 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 members of the profession.

24. The Tribunal recognised that the purpose of any sanction imposed is not to be punitive, although it may have a punitive effect. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Martelli’s interests with the public interest.

25. The Tribunal has already provided a detailed determination on facts and impairment and it took those matters into account during its deliberations on sanction.

The Tribunal’s Determination on Sanction

26. In deciding what sanction, if any, to impose, the Tribunal reminded itself that it must consider each of the sanctions available, starting with the least restrictive, to establish which, if any, is appropriate and proportionate in this case.
No Action

27. The Tribunal first considered whether to conclude the case by taking no action.

28. The Tribunal was satisfied that there were no exceptional circumstances in Dr Martelli’s case which could justify it taking no action. It determined that given the seriousness of Dr Martelli’s misconduct, taking no action would be inappropriate and would not be in the public interest.

Conditions

29. The Tribunal next considered whether to impose an order of conditions on Dr Martelli’s registration. It reminded itself that any conditions imposed should be appropriate, proportionate, workable and measurable.

30. The Tribunal considered that given the circumstances of this case which involves serious dishonesty, an order of conditions would not be appropriate.

Suspension

31. The Tribunal next considered whether a period of suspension would be an appropriate and proportionate sanction to impose on Dr Martelli’s registration.

32. It considered whether suspension was sufficient to protect the reputation of the profession and uphold proper standards.

33. The Tribunal accepted that there have been no previous concerns in regard to Dr Martelli’s practice. It also noted his admissions at an early stage in an email dated 13 April 2018 to the GMC, at the interim orders hearing and at this hearing via his Counsel.

34. The Tribunal accepted that Dr Martelli was stressed in work and his new post did not meet his expectations. XXX.

35. The Tribunal considered the nature and seriousness of Dr Martelli’s dishonesty was the key issue in this case.
36. The Tribunal determined that it involved the deliberate and careful forgery of two references involving multiple falsehoods. In each reference:

   a) He used fake headed paper copying the logo of each Trust;
   b) He exaggerated the length of his employment at each Trust by at least a year in each case;
   c) He created a false signature purporting to be someone employed by HR;
   d) He lied about his employment status, he was employed as a locum through an agency and not directly employed by either Trust;
   e) He omitted to mention he was working in a training post, therefore over representing his work experience at both Trusts;
   f) He added manufactured comments regarding his clinical performance.

The Tribunal has already characterised these false representations as criminal in nature.

37. While Dr Martelli’s dishonesty was for a single purpose and not covered up or persistent, the Tribunal was of the view that such conduct seriously damages and undermines the public’s trust in the medical profession. There is an expectation from the public that doctors conduct themselves with integrity notwithstanding pressures of work XXX. He has just begun the process of reflection and remediation.

38. The Tribunal noted that Dr Martelli has been suspended for 11 months and on the evidence available, he has only provided one piece of reflection and undertaken one hour of CPD in this time.

39. The Tribunal acknowledged that such serious dishonesty is very difficult to remediate. There is, however, insufficient evidence to satisfy the Tribunal that there is no risk of repetition of Dr Martelli’s misconduct if he faced similar work and life pressures.

40. Although a single episode of dishonesty, the Tribunal considered the creation of two forged references to be very serious. It acknowledged that this is not a conviction case but considered the misconduct can be readily characterised as criminal in nature. He breached a fundamental tenet of the medical profession and has brought the profession into disrepute by his actions. He betrayed the trust that the public put in doctors and fellow practitioners would consider his actions to be deplorable.

41. The Tribunal took into account that Dr Martelli had been suspended for eleven months but considered that this was insufficient to mark the severity of the misconduct.
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42. The Tribunal determined that Dr Martelli’s conduct is fundamentally incompatible with continued registration. As such, it considered that a period of suspension would not be sufficient in order to uphold the overarching objective.

Erasure

43. Having decided that an order of suspension would not be sufficient to uphold the overarching objective, the Tribunal determined that it was necessary to erase Dr Martelli’s name from the Medical Register.

44. In confirming this decision, it had regard to paragraph 108 of the SG:

108 Erasure may be appropriate even where the doctor does not present a risk to patient safety, but where this action is necessary to maintain public confidence in the profession.

45. It also had regard to paragraph 109 of the SG, which lists a number of factors which may indicate when erasure is appropriate. The Tribunal considered the following factors were present in this case:

a) A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor.

b) A deliberate or reckless disregard for the principles set out in Good medical practice...

...  
d) Abuse of position/trust (see Good medical practice, paragraph 65: ‘You must make sure that your conduct justifies your patients’ trust in you and the public’s trust in the profession’)

...  
h) Dishonesty...

46. The Tribunal in considering the seriousness of the dishonesty had regard to paragraph 124 and 125c of the SG:

124 Although it may not result in direct harm to patients, dishonesty related to matters outside the doctor’s clinical responsibility (eg providing false statements or fraudulent claims for monies) is particularly serious. This is because it can undermine the trust the public place in the medical profession. Health authorities
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should be able to trust the integrity of doctors, and where a doctor undermines
that trust there is a risk to public confidence in the profession. Evidence of clinical
competence cannot mitigate serious and/or persistent dishonesty.

125 Examples of dishonesty in professional practice could include:

c submitting or providing false references

47. The Tribunal determined that this was a particularly serious departure from GMP. The two forged references were designed to deceive those responsible for admitting Dr Martelli to the Register held by the Ministry of Health UAE. Such conduct, unchecked by the most severe sanction, fundamentally destroyed public confidence in the medical profession as a whole.

48. The interests of the medical profession of the whole must come before Dr Martelli’s individual interests.

49. The Tribunal determined therefore, only the sanction of erasure would uphold public confidence in the medical profession and promote and maintain proper professional standards and conduct for the members of the profession. It determined that erasure would send a clear message to the profession and the public that Dr Martelli’s misconduct constituted behaviour unbefitting and fundamentally incompatible with that of a registered doctor.

50. Taking all matters into consideration, including the character of the doctor, the nature and seriousness of the misconduct, and achieving the overarching objective, the sanction of erasure therefore, was not disproportionate in this case.

51. Accordingly, the Tribunal has directed that Dr Martelli’s name be erased from the Medical Register.

Determination on Immediate Order - 21/03/2019

1. Having determined that Dr Martelli’s name be erased from the Medical Register, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Martelli’s registration should be subject to an immediate order.

2. The Tribunal may impose an immediate order if it determines that it is necessary to protect members of the public or is otherwise in the public interest or is in the best interests of the doctor.
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Submissions

3. On behalf of the GMC, Ms Chalkley submitted that given the circumstances of this case, it was necessary to impose an immediate order of suspension in order to uphold the public interest. She also invited the Tribunal to revoke the interim order of suspension.

4. On behalf of Dr Martelli, Mr Brassington did not oppose the GMC’s submissions.

The Tribunal’s Determination

5. The Tribunal considered the circumstances of Dr Martelli’s case. It determined that in light of its earlier findings in relation to the seriousness of Dr Martelli’s misconduct, an immediate order is necessary in order to protect public confidence in the medical profession and uphold proper standards and conduct for the profession.

6. This means that Dr Martelli’s registration will be suspended from when notification of this decision is deemed to have been served on him. The substantive direction will take effect 28 days from when written notice of this determination has been served upon him, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.

7. The interim order currently imposed on Dr Martelli’s registration will be revoked when the immediate order takes effect.

Confirmed
Date 21 March 2019 Ms Louise Sweet QC, Chair
Application to adjourn

1. At the outset of the hearing, Mr Brassington, Counsel on behalf of Dr Martelli, made an application for the hearing to be adjourned until the following day.

2. Mr Brassington informed the Tribunal that Dr Martelli has been working in a hospital in Saudi Arabia and remains in the country due to difficulties in obtaining an exit visa. He explained that this had to be provided by Dr Martelli’s employers.

3. Mr Brassington told the Tribunal that Dr Martelli tried to leave Saudi Arabia on 12 February 2019 but was prevented from doing so. He added that since then, Dr Martelli has been trying to get the requisite signatures from people at the hospital in order for the HR department to facilitate the exit visa.

4. Mr Brassington stated that he had spoken with Dr Martelli this morning. He said that Dr Martelli was hopeful the remaining signature needed could be obtained today and that HR could facilitate the exit visa. Mr Brassington added that if the exit visa is obtained today, Dr Martelli would go straight to the airport so that he could be present at the hearing from tomorrow onwards.

5. Mr Brassington stated that this adjournment would cause no significant delay to the proceedings as dishonesty will be admitted and no witnesses are required. He indicated to the Tribunal that there were two sub-paragraphs of the allegations, relating to the same issue on which he would be making half time submissions.

6. Mr Brassington added that if Dr Martelli was not able to attend tomorrow, there would be no further application to adjourn the hearing. He assured the Tribunal that he was fully instructed to proceed and confident that this case can be concluded in the time allocated.

7. On behalf of the GMC, Ms Chalkley did not oppose the application. She indicated that the GMC had been notified of the visa difficulties in February 2019. She also accepted that the witnesses were agreed in this case, although invited the Tribunal to consider if it had any questions to ask of these witnesses.

8. Ms Chalkley agreed that there should be plenty of time to conclude this hearing.
The Tribunal’s decision

9. The Tribunal carefully considered the submissions made by both parties and had regard to paragraph Rule 29(2) of the Rules which provides that:

‘Where a hearing of which notice has been served on the practitioner in accordance with these Rules has commenced, the Committee or Tribunal considering the matter may, at any stage in their proceedings, whether of their own motion or upon the application of a party to the proceedings, adjourn the hearing until such time and date as they think fit.’

10. The Tribunal was conscious of Dr Martelli’s right to attend this hearing and his expressed desire to do so. It also had regard to the circumstances preventing Dr Martelli from being present at the hearing today. The Tribunal considered that no application to proceed in absence was being made by the GMC at this stage.

11. The Tribunal considered the indications made on behalf of Dr Martelli, namely, that admissions would be made to most of the allegations and in particular, the allegation of dishonesty. As such, the Tribunal considered that if it did grant an adjournment for the remainder of today; there would still be ample time in the timetable allowed by the MPTS to complete all stages of this hearing.

12. The Tribunal also bore in mind, that if Dr Martelli was unable to attend the hearing tomorrow, a further adjournment application would not be made on his behalf. It has been indicated that Dr Martelli would wish the hearing to proceed in his absence.

13. The Tribunal noted that this application for a short adjournment has not been opposed by the GMC, who have been kept appraised of the difficulties faced by Dr Martelli since his unsuccessful attempt to leave Saudi Arabia on 12 February 2019.

14. Taking all things into consideration, the Tribunal determined that it was fair and reasonable to adjourn the hearing until tomorrow in order to give Dr Martelli an opportunity to attend.
Application under Rule 17(2)(g)

1. Following the conclusion of the GMC’s case, Mr Brassington made submissions under Rule 17(2)g, which provides that:

"the practitioner may make submissions as to whether sufficient evidence has been adduced to find some or all of the facts proved and whether the hearing should proceed no further as a result, and the Medical Practitioners Tribunal shall consider any such submissions and announce its decision as to whether they should be upheld”

2. Mr Brassington submitted that there was no evidence in relation to sub-paragraphs 2(d)ii and 5(d)ii of the Allegation.

3. Mr Brassington submitted that it was for the GMC to provide evidence to suggest that Dr Martelli was not entitled to call himself an Orthopaedic Surgeon. He submitted that neither answer provided by HR representatives from NHS Lanarkshire and NHS Grampian, suggested that Dr Martelli was not entitled to call himself an Orthopaedic Surgeon. Mr Brassington stated to the Tribunal that Dr Martelli would have been undertaking orthopaedic surgery in his day to day work.

4. Mr Brassington invited the Tribunal to disregard the evidence of the HR representatives. He submitted that the HR departments do not deal with these type of job applications and that they were dealt with by clinicians. Mr Brassington submitted that the level of understanding from the HR departments was of limited assistance.

5. Ms Chalkley submitted that the answers provided by the HR representatives came from those who would ordinarily oversee or receive such references. She highlighted that both had very deliberately corrected and used the title Specialty Trainee rather than ‘Orthopaedic Surgeon’, in describing the position that Dr Martelli undertook at the respective trusts.

6. Ms Chalkley submitted that the references were prepared by Dr Martelli to be read as a whole, each one intended to deceive by omitting the fact he was in training in both roles. She added that the description ‘Orthopaedic Surgeon’ without
qualification, was intended to do that. Ms Chalkley submitted that there was sufficient evidence for the Galbraith Test to be met.

**The Tribunal’s Approach**

7. In reaching its decision the Tribunal heard and accepted the advice of the Legally Qualified Chair, who advised it to adopt the approach set out in the case of *R v Galbraith* [1981] 1 WLR 1039. The Tribunal acknowledged that whilst this was an authority arising in the criminal jurisdiction, it noted that this is the accepted test in regulatory cases. Accordingly, the Tribunal distinguished between its approach to the evidence at this stage of the proceedings and its approach at the end of the fact finding stage. It bore in mind that its role at this stage is not to make findings of fact but to determine whether the evidence heard in the GMC’s case, taken at its highest, is such that the Tribunal could properly find an alleged fact proved on the balance of probabilities. The Tribunal bore in mind that if it finds that there is sufficient evidence for the hearing to proceed on a particular allegation, it will have to decide in the light of all the evidence before it at the end of the fact finding stage, whether that allegation has in fact been found proved or not.

**The Tribunal’s Decision**

8. The Tribunal rejected the proposition that there was no evidence to suggest that Dr Martelli was not entitled to call himself an Orthopaedic Surgeon.

9. The Tribunal also rejected the submission that it should disregard the responses from the HR representatives from NHS Lanarkshire and NHS Grampian both of whom gave responses independently of each other. Both these witnesses were clear that each Trust would have been misled by Dr Martelli’s use of the term ‘Orthopaedic Surgeon’. The two references were both directed at a prospective employer who would rely on the content of the references and potentially rely on their own human resources department to authenticate any representations made in those documents.

10. Miss A, Head of the HR team at NHS Lanarkshire since 2005, stated that: ‘...an Orthopaedic Surgeon would be a term we would expect to see next to a more autonomous practitioner [rather] than a junior doctor who was in training.’

11. Ms B, Assistant HR manager at NHS Grampian for the last 18 years, stated:
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‘It would usually mean it is a Career Grade Level – NOT [her emphasis] at training level’

12. The Tribunal noted that even if this may not be subjectively dishonest, objectively, this is evidence that the description ‘Orthopaedic Surgeon’ was both deliberately false and dishonest by the standards of ordinary decent people.

13. The Tribunal accepted that this representation should be seen in the context of the other representations made in the references as a whole. Ms Chalkley pointed to a number of deceptions now admitted.

14. In relation to the reference in the name of NHS Lanarkshire, ‘the First Reference’, the deceptions relate to:

   a) the exaggerated length of employment, twenty-two months rather than ten;
   b) Dr Martelli purporting to be currently employed by NHS Lanarkshire. He was not;
   c) fake headed paper of the Trust used to deceive the recipient that the reference came from the Trust;
   d) a creation of a fake identity for the referee’s signature said to be employed by HR;
   e) his employment status where he was employed through an agency and not directly employed by the Trust;
   f) the comments on performance which were outside the remit of HR and accepted to be wholly invented by Dr Martelli.

15. Dr Martelli admitted he made similar dishonest representations in the reference to NHS Grampian, ‘the Second Reference’, these related to;

   a) the length of his employment, fifteen months rather than three;
   b) the use of fake headed paper of the Trust intended to deceive;
   c) the creation of a fake identity for the referee’s signature said to be employed by HR;
   d) his employment status where he was employed as a locum through an agency and not directly employed by the Trust;
   e) his manufactured comments on his own performance. It is accepted such comments would normally be outside the remit of HR.
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16. The Tribunal considered that it was an important omission on Dr Martelli’s part, to not state in the references that he was in a training role at both trusts, no matter what level of training, objectively this would give a different impression to the recipient of the reference about his qualifications/experience as evidenced by Miss A and Ms B.

17. There is ample evidence from which the Tribunal can infer that Dr Martelli knew when he described himself as an ‘Orthopaedic Surgeon’ he was giving an exaggerated and therefore false impression of the capacity in which he had worked for both trusts than was actually the case.

18. Taking all the above into consideration, the Tribunal could not conclude that there is insufficient evidence to support sub-paragraphs 2(d)ii and 5(d)ii of the Allegation. Accordingly, the Tribunal determined to refuse Mr Brassington’s application.