Record of Determinations – Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 23/04/2019

Medical Practitioner’s name: Dr Mayowa OLUWATOSIN

GMC reference number: 7497862

Primary medical qualification: MB BS 2011 Igbinedion University

Type of case: Outcome on impairment

Outcome on impairment: Not Impaired

Summary of outcome: Suspension to expire

Tribunal:

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<th>Role</th>
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<tr>
<td>Legally Qualified Chair</td>
<td>Mr Lindsay Irvine</td>
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<tr>
<td>Lay Tribunal Member:</td>
<td>Mr Darren Shenton</td>
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<td>Medical Tribunal Member:</td>
<td>Dr Candida Borsada</td>
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Tribunal Clerk: Miss Jan Smith

Attendance and Representation:

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<td>Medical Practitioner:</td>
<td>Present and represented</td>
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<td>Medical Practitioner’s Representative:</td>
<td>Mr Ranald Davidson, Counsel, instructed by the Medical Protection Society.</td>
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<td>GMC Representative:</td>
<td>Ms Emma Gilsenan, 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 partly in public and partly in private.

Determination on Impairment – 23/04/2019

1. The Tribunal has convened to review Dr Oluwatosin’s case in accordance with Rule 22 of the General Medical Council’s (‘GMC’) (Fitness to Practise) Rules 2004, as amended (‘the Rules’).

2. Dr Oluwatosin’s case was first considered by a Medical Practitioners Tribunal in December 2018 (‘the 2018 Tribunal’). This is the planned review of his case. The Tribunal does not intend to rehearse the full background to this case but has had regard to the determinations of the previous Tribunal.

Background

3. Dr Oluwatosin qualified in 2011 at Igbinedion University in Nigeria. He then undertook FY1 and FY2 rotations in Obstetrics and Gynaecology, Paediatrics, Medicine and Surgery in Nigeria. In 2014, Dr Oluwatosin undertook employment in a position in General Practice (‘GP’) at Hafr Abatin Central Hospital in Saudi Arabia.

4. In 2015, Dr Oluwatosin moved to the United Kingdom (having completed the registration requirements with the GMC) and undertook a clinical attachment at Peterborough City Hospital. He then practised in numerous locum post with various agencies at different locations.

5. In August 2016, Dr Oluwatosin obtained a place on a GP training scheme with the East Midlands Deanery. His first rotation was in Cardiology at the Pilgrim Hospital (‘the Hospital’), Boston.

6. Shortly after beginning his position at the Hospital, Dr Oluwatosin was requested by the locum agency, NC Healthcare, to update his references. The allegation that brought Dr Oluwatosin to the attention of the GMC related to his submission of false Urgent Reference Request forms in the name of two Consultants. It was alleged that his actions in this regard were dishonest. Dr Oluwatosin admitted the allegation in its entirety.

Misconduct

7. Dr Oluwatosin told the 2018 Tribunal that he had completed and submitted the references as he was under pressure of time due to his impending paternity leave, which he was only going to be at the Hospital for a few days before moving on in his training. Dr Oluwatosin said that he preferred to give the forms to Dr A and
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Dr B personally but the opportunity never presented itself. He also did not feel that it was appropriate to raise the issue of Locum work which was outside of his obligations to the Hospital at these times and considered that he was asking his senior colleagues for a favour by asking them for references for work of that nature. Dr Oluwatosin admitted that he had fallen short of the standards expected of a registered Medical Practitioner and that he was ashamed.

8. On the Urgent Reference Request forms Dr Oluwatosin gave himself a good score. The 2018 Tribunal was concerned that NC Healthcare could have potentially offered him clinical positions above his competency. Although there was no evidence to suggest that patient safety was put at risk, the 2018 Tribunal concluded that there was a potential for such a risk.

9. The 2018 Tribunal was also concerned that there was no opportunity for Dr Oluwatosin’s practice to be monitored to see if his locum work was having an impact on his day to day practice at the Hospital as he had not informed his Consultants. It was of the view that junior doctors had to be honest with their Consultants so that they could be appropriately supervised and patients protected.

10. The 2018 Tribunal considered that there was forethought in Dr Oluwatosin’s dishonest conduct, in that he tried to minimise the likelihood of being discovered by using different handwriting styles, lower case and capital letters, dating the references with different dates, and marking himself differently on each reference. It considered that public confidence in the profession would be considerably undermined if they knew a doctor had falsified a reference.

11. The 2018 Tribunal was of the view that Dr Oluwatosin’s deliberate, calculated actions in falsifying references would be considered deplorable by fellow practitioners. It concluded that Dr Oluwatosin’s conduct fell far below the standards expected, was contrary to the guidance in GMP and breached one of the fundamental tenets of medical profession. The 2018 Tribunal therefore determined that Dr Oluwatosin’s conduct brought the profession into disrepute and that his actions amounted to misconduct which was serious.

Impairment

12. The 2018 Tribunal was of the view that patients expect doctors to be honest and it considered that this was a serious case of dishonesty.

13. The 2018 Tribunal noted that Dr Oluwatosin had tried to remediate his misconduct and had been provided with evidence that demonstrated that he had insight into his actions, namely that he had:
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- undertaken various courses relating to his dishonesty;
- apologised to Dr A and Dr B in person;
- self-referred himself to the GMC;
- admitted to the entirety of the Allegation at the outset of the 2018 hearing;
- provided a reflective statement detailing his shame, remorse, and wider understandings of his actions; and
- provided testimonials.

14. Whilst the 2018 Tribunal accepted that the risk of repetition was low, it noted that Dr Oluwatosin had not provided any evidence of coping mechanisms to deal with times of financial pressure which could adversely impact his judgement.

15. The 2018 Tribunal acknowledged that Dr Oluwatosin had demonstrated insight into the gravity of his misconduct. However, it was of the view that in order to promote and maintain public confidence in the medical profession and to promote and maintain proper professional standards of conduct for members of that profession, the only conclusion it could properly reach was that Dr Oluwatosin’s fitness to practise was impaired by reason of misconduct.

Sanction

16. The 2018 Tribunal had already identified Dr Oluwatosin’s insight as developing. It had not received any evidence which suggested that remediation was unlikely to be successful. The 2018 Tribunal considered that, in the circumstances, Dr Oluwatosin did not pose a significant risk of repeating the behaviour which led to his referral to the GMC. There had not been any suggestion of a repetition of his dishonesty since his completion of the 2016 appraisal form.

17. In those circumstances, the 2018 Tribunal concluded that a period of suspension would be an appropriate and proportionate sanction. It was of the view that erasing his name from the medical register would be disproportionate. The 2018 Tribunal concluded that the imposition of suspension for a period of four months would be sufficient for it to meet its overarching objective and to allow Dr Oluwatosin an opportunity to develop his insight further.

18. The 2018 Tribunal determined to direct a review of Dr Oluwatosin’s case. It emphasised that at the review hearing the onus would be on Dr Oluwatosin to demonstrate how he has developed his insight. The 2018 Tribunal suggested that it may therefore assist the reviewing Tribunal if Dr Oluwatosin were to provide:

- A reflective statement, specifically addressing the conflict between the need to work more hours to meet his financial obligations and impact this may have on patient safety, together with his obligations under GMP; and
- Evidence that he has kept his medical skills and knowledge up to date.
Today’s Review Hearing

19. This Tribunal must consider, under Rule 22(1)(f) of the Rules, whether Dr Oluwatosin’s fitness to practise is currently impaired by reason of his misconduct.

The Evidence

20. The Tribunal has taken into account all the documentary evidence adduced by the parties. This included, but was not limited to:

- the determinations of the 2018 Tribunal;
- evidence of Continuing Professional Development (CPD) activities;
- a detailed reflective statement
- a further reflective statement dated 18 April 2019
- a testimonial letter from Ms C, the Practice Manager of Glenside Country Practice, Grantham, Lincolnshire
- a number of testimonial letters from professional colleagues

Dr Oluwatosin’s Oral Evidence

21. The Tribunal has also taken into account the oral evidence given by Dr Oluwatosin under oath.

22. Dr Oluwatosin told the Tribunal that he had always wanted to be a general practitioner and that he had been on a GP training scheme with a national training number. Since his suspension from 3 January 2019 he is no longer on the training scheme and his national training number has been withdrawn. Dr Oluwatosin explained that he would have to re-apply for a place on the scheme once his suspension had been lifted. He said that he would apply for locum positions in hospitals, preferably in dermatology or rheumatology where he identified a gap in his clinical experience, whilst he made his application for a place on a GP training scheme.

23. Dr Oluwatosin told the Tribunal that he tried to obtain clinical attachments within a GP setting but had been unable to do so because he would have to be directly supervised and GP practices do not have sufficient time to deal with their patients and discuss each case with a doctor on attachment.

24. Dr Oluwatosin said that he had asked the Glenside Country Practice if he could carry out audits, reviewing patient notes and ensuring that current procedures and guidelines were being adhered to. He told the Tribunal that this work was voluntary and purely administrative and he was interested to see the other side of a GP practice. Dr Oluwatosin said that he did not have any patient contact and he did not
require GMC registration or a licence to practise for this role. This was confirmed in an email from Ms C of the Glenside practice to the GMC, dated 4 February 2019.

25. Dr Oluwatosin referred to the online courses he had undertaken in order to maintain his medical knowledge and skills. He also referred to the one-day course in pain management he had attended at the Glenside Country Practice.

26. In relation to his managing financial pressures, Dr Oluwatosin had completed an Open University course in “Managing My Money”. He told the Tribunal that he no longer contributed to his brother’s or sister’s educational needs and that he and his wife had made sufficient reductions in household expenditure that they have been able to manage during the period of his suspension. Dr Oluwatosin said that he had gained budgetary experience from the courses he had attended and that he and his family lived simply and used a credit facility. He had no income during the period of suspension but his wife was currently in employment.

GMC Submissions

27. Ms Gilsenan stated that she had no definitive submissions to make on the issue of impairment other than to remind the Tribunal that it was a matter solely for their judgement. She referred to case law which deals with all the issues to be taken into account when considering impairment of fitness to practise, in particular the case of Abrahaem v General Medical Council [2008] EWHC 183 (Admin) in which Blake J stated:

“In my judgment, the statutory context of the Rule relating to reviews must mean that the review has to consider whether all the concerns raised in the original finding of impairment through misconduct have been sufficiently addressed to the Panel’s satisfaction. 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 has sufficiently address the past impairments.”

Submissions on Behalf of Dr Oluwatosin

28. Mr Davidson referred to the previous Tribunal’s determination in December 2018. He reminded the Tribunal that the previous Tribunal considered that Dr Oluwatosin had demonstrated insight into his misconduct and had emphasised that his remediation involved an ongoing period of reflection. Mr Davidson referred to the statement of reflections submitted by Dr Oluwatosin today, as well as the additional comments in his statement of 18 April 2019.
29. Mr Davidson reminded the Tribunal that Dr Oluwatosin’s acts of dishonesty occurred two and a half years ago and that the testimonial evidence submitted on his behalf does not suggest that this doctor is typically dishonest.

30. Mr Davidson directed the Tribunal’s attention to the efforts Dr Oluwatosin has made in the last three months to maintain his medical knowledge and skills, in particular his involvement in administrative work in a GP practice, albeit with no patient contact. Mr Davidson submitted that there is little risk of Dr Oluwatosin becoming de-skilled because of all the CPD activity he has undertaken during the period of, and the short length of his suspension.

31. In relation to financial matters, Mr Davidson submitted that there is very little prospect of any repetition of his previous behaviour and that Dr Oluwatosin has learned his lesson.

32. In all these circumstances, Mr Davidson invited the Tribunal to conclude that Dr Oluwatosin’s fitness to practice is not impaired at this time.

The Relevant Legal Principles

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

34. The Tribunal must determine whether Dr Oluwatosin’s fitness to practise is impaired today. It has borne in mind that, in accordance with the legal authority referred to earlier, at a review hearing there is a persuasive burden on the medical practitioner to demonstrate that the concerns of the previous Tribunal have been sufficiently addressed.

35. In considering whether the concerns of the previous Tribunal have been addressed, the Tribunal reminded itself that it should consider issues such as the level of Dr Oluwatosin’s insight, whether there is likely to be any recurrence, whether he has taken steps to mitigate the concerns raised, and whether there is any evidence of him having remediated.

36. Throughout its deliberations, the Tribunal has borne 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; and
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- promoting and maintaining proper professional standards and conduct for members of that profession.

Determination on Impairment

37. The Tribunal has taken into account the reflective statements provided at this hearing and Dr Oluwatosin's oral evidence during which the Tribunal considered he was open and straightforward and answered all questions without prevarication.

38. In relation to the matters which the 2018 Tribunal considered would assist the reviewing Tribunal, it has noted the significant CPD activity Dr Oluwatosin has undertaken during the period of suspension and accepted that he has fulfilled all the requirements to ensure he has kept his medical knowledge and skills up to date. The Tribunal was impressed with his work in administration at the Glenside practice as evidenced by the letter of reference from Ms C, the Practice Manager.

39. In relation to financial matters, the Tribunal acknowledged that Dr Oluwatosin is now much more financially astute and able to manage his finances whilst he has not had any income. He has demonstrated how he has reduced his expenses by using the experience gained from his budget management courses and applying it to his current circumstances.

40. The Tribunal has concluded that the public interest has been served by Dr Oluwatosin’s suspension and it has borne in mind the need to return an otherwise competent doctor to unrestricted practice. It was satisfied that Dr Oluwatosin has met all the requirements of the previous Tribunal.

41. The Tribunal has therefore determined that Dr Oluwatosin’s fitness to practise is no longer impaired by reason of his misconduct. It has noted that Dr Oluwatosin’s registration is currently suspended until 9 May 2019. Given that the 2018 Tribunal imposed a four month suspension of Dr Oluwatosin’s registration in order to mark the seriousness of his misconduct, the Tribunal has determined that it should remain in place until it expires on 9 May 2019.

42. That concludes this case.

Confirmed
Date 23 April 2019  Mr Lindsay Irvine, Chair
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