Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

Medical Practitioner’s name: Dr Ngozi GBENOBA

GMC reference number: 4545435
Primary medical qualification: Lekarz 1988 Poznan

Type of case
Outcome on impairment
New - Misconduct
Impaired

Summary of outcome
Suspension, 4 months.
Review hearing directed

Tribunal:

<table>
<thead>
<tr>
<th>Role</th>
<th>Name</th>
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<tr>
<td>Legally Qualified Chair</td>
<td>Mr Lee Davies</td>
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<tr>
<td>Lay Tribunal Member:</td>
<td>Mr Peter Brown</td>
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<tr>
<td>Medical Tribunal Member:</td>
<td>Dr Vivek Sen</td>
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<tr>
<td>Tribunal Clerk:</td>
<td>Miss Evelyn Kramer</td>
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<td>Mrs Sam Montgomery</td>
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Attendance and Representation:

<table>
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<tr>
<th>Role</th>
<th>Description</th>
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<tbody>
<tr>
<td>Medical Practitioner:</td>
<td>Present and represented</td>
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<tr>
<td>Medical Practitioner’s Representative:</td>
<td>Mr Simon Blakebrough, Counsel, instructed by Cartwright King</td>
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<tr>
<td>GMC Representative:</td>
<td>Mr Lee Fish, Counsel, instructed by GMC Legal</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.
Record of Determinations –
Medical Practitioners Tribunal

Overarching Objective

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

Determination on Facts and Impairment - 23/09/2019

Background

1. Dr Gbenoba qualified Lekarz 1988 Poznan. At the time of the events Dr Gbenoba was practising as a Locum Consultant Gastroenterologist at Bedford Hospital ('the Hospital').

2. The allegation that has led to Dr Gbenoba’s hearing can be summarised as involving himself with seeking treatment for Patient A with whom he had a close personal relationship. It is alleged that Dr Gbenoba requested treatment for Patient A using Dr B’s name without his knowledge or permission.

3. It is also alleged that Dr Gbenoba deliberately failed to follow the Hospital’s Overseas Patient Policy; that he sought treatment for Patient A when he knew she was an overseas patient and not eligible for free NHS care; and that in so doing he acted dishonestly.

4. The initial concerns were raised with the GMC on 26 July 2018 by Dr C, Consultant Paediatric Hepatologist and Dr Gbenoba’s Responsible Officer by way of a Fitness to Practise Referral Form. The referral to the GMC was further to a local investigation undertaken by Mr D at Bedford Hospitals NHS Trust.

The Allegation and the Doctor’s Response

5. The Allegation made against Dr Gbenoba is as follows:

   1. Whilst working as a Locum Consultant Gastroenterologist at Bedford Hospital ('the Hospital'), you completed an Endoscopy Request Form dated 20 April 2018 ('the Form') for Patient A, and you:

      a. wrote on the Form that Dr B was Patient A’s named Consultant;  
         Admitted and found proved

      b. did not inform Dr B that you had:  
         Admitted and found proved
i. requested the endoscopy for Patient A;  
   **Admitted and found proved**

ii. provided his details as the named Consultant on the Form.  
   **Admitted and found proved**

2. You knew that you did not have Dr B’s permission to request the endoscopy for Patient A.  
   **Admitted and found proved**

3. Your actions as described at paragraph 1 were dishonest by reason of paragraph 2.  
   **Admitted and found proved**

4. You initiated Patient A’s admissions to the Hospital’s Day Treatment Unit for iron transfusions on the dates set out in Schedule 1 ('the Admissions') and you:
   
   a. named Dr B as the treating Consultant for the Admissions;  
      **Admitted and found proved**
   
   b. did not inform Dr B that you had named him as the treating Consultant for the Admissions.  
      **Admitted and found proved**

5. When requesting the treatments set out in paragraphs 1 and 4, you:
   
   a. involved yourself in the treatment of Patient A, with whom you had a close personal relationship;  
      **Admitted and found proved**
   
   b. deliberately failed to follow the Hospital’s Overseas Patient Policy.  
      **Admitted and found proved**

6. When you sought the treatments set out in paragraphs 1 and 4 you knew that Patient A was an overseas patient who was not eligible for free NHS care.  
   **Admitted and found proved**

7. Your actions as described at paragraph 5b were dishonest by reason of paragraph 6.  
   **Admitted and found proved**
Record of Determinations – Medical Practitioners Tribunal

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct.

To be determined

6. At the outset of these proceedings, through his counsel, Dr Gbenoba made admissions to all paragraphs 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.

Impairment

7. In light of the full admissions made by Dr Gbenoba, 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 Gbenoba’s fitness to practise is impaired by reason of misconduct.

The Evidence

8. The Tribunal received written evidence on behalf of the GMC from the following witnesses:

   • Dr B, Locum Consultant in General and Colorectal Surgery at Bedford Hospital;
   • Mr D, Medical Director and Responsible Office at Bedford Hospital;
   • Ms E, Management Accountant at Bedford Hospital.

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

   • Witness statement of Dr B, dated 6 November 2018;
   • Amended witness statement of Dr B, dated 16 June 2018;
   • Witness statement of Mr D, dated 7 November 2018;
   • Witness statement of Ms E, dated 3 December 2018;
   • Endoscopy request form, dated 20 April 2018;
   • Summary Care Record relating to Patient A;
   • Various items of inhouse correspondence from Bedford Hospital;
   • Trust Policy – ‘Managing Conduct, Capability and Ill Health Policies and Procedures for Practitioners’;
   • Overseas Visitors Policy, dated December 2015;
   • Updated Overseas Visitors Policy, dated March 2018;
   • Trust Investigation report and documents, dated June 2018;
   • Letters relating to payment;
Record of Determinations – Medical Practitioners Tribunal

- Email from Dr C attaching Fitness to Practise Referral form, Medical Practice Information Transfer Form and Dr Gbenoba’s reflection;
- Patient A’s medical records.

Submissions

10. On behalf of the GMC, Mr Fish took the Tribunal through the background to the admitted facts of this case. He reminded the Tribunal that the issue of impairment is one for its independent judgment when taking into account the overarching objective to determine whether or not Dr Gbenoba’s fitness to practice currently impaired.

11. Mr Fish invited the Tribunal to consider the case of CHRE v NMC and Paula Grant [2011] EWHC 297 (Admin) as the relevant authority when considering impairment in this case. Mr Fish submitted that limbs c and d as set out are engaged in this case.

   c has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

   d has in the past acted dishonestly and/or is liable to act dishonestly in the future.

He stated that Dr Gbenoba had breached a fundamental tenet of GMP by treating a family member and that the related admitted dishonesty passed the test set out in Ivey v Genting Casinos [2017] UKSC 67. Further, Mr Fish submitted that the seriousness of this dishonesty was sufficient to find Dr Gbenoba’s fitness to practise currently impaired.

12. Regarding the likelihood of Dr Gbenoba’s actions being repeated in the future, Mr Fish sought to draw the Tribunal’s attention to Dr Gbenoba’s repeated response that if the situation arose again, Dr Gbenoba’s actions would be the same.

13. Mr Fish submitted that Dr Gbenoba’s actions would be considered deplorable by his colleagues, particularly when considering the use, without his knowledge or consent, of Dr B’s name to authorise treatment for Patient A, XXX.

14. Mr Fish submitted that Dr Gbenoba’s conduct fell far short of what is expected of a doctor and that for those reasons his fitness to practise is currently impaired.

15. On behalf of Dr Gbenoba, Mr Blakebrough did not concede that Dr Gbenoba’s fitness to practise is currently impaired and submitted that any lack of insight was tempered by Dr Gbenoba’s admissions. Mr Blakebrough agreed with the relevant legal authorities stated by Mr Fish.
The Relevant Legal Principles

16. 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.

17. Throughout its deliberations, the Tribunal has borne in mind its overarching objective which is to:

   a. protect and promote the health, safety and wellbeing of the public
   b. promote and maintain public confidence in the medical profession
   c. promote and maintain proper professional standards and conduct for the members of the profession.

18. In approaching the decision, the Tribunal was mindful of the two stage process to be adopted: first whether the facts as found proved amounted to misconduct that was serious, and then whether by reason of the finding of that misconduct which was serious could lead to a finding of impairment.

19. The Tribunal must determine whether Dr Gbenoba’s fitness to practise is impaired today, taking into account Dr Gbenoba’s conduct at the time of the events. The Tribunal considered the guidance of Mr Justice Silber in *Cohen vs GMC [2008] EWHC 581 (Admin)*:

   - Whether the conduct is remediable
   - Whether it has been remedied
   - Whether or not there is a likelihood of repetition.

The Tribunal’s Determination on Impairment

Misconduct

20. The Tribunal first considered whether the facts found proved amount to misconduct which is considered serious. It had regard to the paragraphs of Good Medical Practice (2013 edition) that were referred to by Mr Fish which were as follows:

   16 In providing clinical care you must:
   g wherever possible, avoid providing medical care to yourself or anyone with whom you have a close personal relationship

   65 You must make sure that your conduct justifies your patients’ trust in you and the public’s trust in the profession.
Record of Determinations –
Medical Practitioners Tribunal

21. The Tribunal also considered paragraph 71 of Good Medical Practice to be relevant:

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.

22. The Tribunal considered that honesty and integrity is a fundamental tenet of the profession and that Dr Gbenoba’s conduct constitutes a significant departure from Good Medical Practice.

23. When considering paragraph 16g, the Tribunal noted that it is not prohibited to treat yourself or family members in exceptional circumstances, such as an emergency. However, Patient A’s treatments and surgery were elective and so the circumstances cannot be considered exceptional.

24. When considering paragraph 71, the Tribunal was concerned that Dr Gbenoba used Dr B’s name without his knowledge to authorise treatment for Patient A with whom Dr Gbenoba had a close personal relationship. It determined that Dr Gbenoba’s actions in falsely stating that both Patient A’s endoscopy and iron transfusions had been requested and authorised by Dr B were deliberately misleading and could be construed as fraudulent. It considered Dr Gbenoba’s actions to have been particularly serious given that Dr B had not been informed at any point about the treatment Dr Gbenoba had requested for Patient A on behalf of Dr B. The Tribunal noted that accurately completing forms, reports and other documents, including treatment request forms is a fundamental duty of the profession.

25. The Tribunal considered that Dr Gbenoba had taken the correct action in registering Patient A with a GP as a temporary resident and that Patient A’s subsequent referral to Bedford Hospital by a GP was considered clinically necessary. However, it was concerned that the nature of Dr Gbenoba’s involvement in Patient A’s care once the referral to Bedford Hospital had been made was inappropriate given their close relationship.

26. The Tribunal noted that Dr Gbenoba was aware of Patient A’s status as an Overseas Patient from at least as early as 26 February 2018 when he called the Overseas Visitors team to ask if he qualified for a staff discount for payments. The Tribunal further noted that the treatment received by Patient A took place on 9 April, 20 April and 27 April 2018 which was clearly some time after Dr Gbenoba had the telephone conversation with the Overseas Visitors team.
Record of Determinations –
Medical Practitioners Tribunal

27. The Tribunal concluded that Dr Gbenoba’s dishonest conduct fell so far short of the standards reasonably to be expected of a doctor as to amount to misconduct which is serious.

Impairment

28. The Tribunal having found that the facts found proved amounted to serious misconduct went on to consider whether, as a result of that Dr Gbenoba’s fitness to practise is currently impaired.

29. The Tribunal is aware that dishonesty is difficult to remediate. It bore in mind that Dr Gbenoba made full admissions at the outset of the hearing which of itself demonstrates partial insight. However, it had regard to statements made by Dr Gbenoba to the Bedford Hospital NHS Trust as follows:

“I had to help [Patient A]. I would do it again if I had the opportunity”

“On reflection, I would still do the same of ensuring that [Patient A] had the best care as I did and incur the financial cost.”

The Tribunal considers that Dr Gbenoba’s makes quite clear that Patient A’s health was his chief concern and he would repeat the behaviour should the situation arise again. The Tribunal is concerned that these statements demonstrate only partial insight. It has received no further evidence of insight and is therefore bound to conclude that there remains a real risk of repetition.

30. The Tribunal determined that Dr Gbenoba has breached the standards set out in Good Medical Practice and therefore public confidence in the medical profession would be undermined if it did not make a finding of impairment. The Tribunal also considered that Dr Gbenoba’s dishonest conduct would be regarded as deplorable by fellow practitioners and determined that a finding of impairment is also necessary to promote and maintain proper professional standards of conduct of members of the medical profession. Therefore, it determined that Dr Gbenoba’s fitness to practise is impaired by reason of misconduct.

Determination on Sanction - 26/09/2019

1. Having determined that Dr Gbenoba’s fitness to practise is impaired by reason of 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 the background of this case and the evidence received during the previous stages of the hearing, where relevant, in
Record of Determinations — Medical Practitioners Tribunal

reaching a decision on what action, if any, it should take with regard to Dr Gbenoba’s registration.

3. The Tribunal received no further evidence on behalf of the GMC.

4. The Tribunal received further evidence on behalf of Dr Gbenoba. Dr Gbenoba provided his own witness statement dated 25 September 2019 and gave oral evidence at this stage of the hearing.

5. In his oral evidence, which was supplementary to the witness statement before the Tribunal, Dr Gbenoba explained that his reflections in previous statements and interviews provided to the Bedford Hospital NHS Trust that he would repeat his actions were he in the same situation again were not taken in their full context. He explained that given the situation with Patient A’s health and his relationship to her, emotion overrode reason. Dr Gbenoba told the Tribunal that he apologised unreservedly for what had happened and that he would not act in the same way again.

6. Dr Gbenoba told the Tribunal that if presented with the same situation again, he would follow Trust guidelines regarding Overseas Patients and strictly adhere to the guidelines of the GMC. He said that he acknowledges where he went wrong in his actions and would not use another consultant’s name to request treatment without their knowledge again. He stated that should Patient A or another person with whom he has a close personal relationship require medical treatment, he would seek medical help for them but not involve himself in their active treatment.

7. Dr Gbenoba explained to the Tribunal that while he may not be liable for the charges incurred for Patient A’s care, he felt a moral obligation to pay this back, has taken steps to do so and intends to pay the amount in full subject to his ability to do so. He also offered some information about his personal circumstances.

8. Dr Gbenoba informed that Tribunal of the emotional cost of his actions and these proceedings on himself and his family and said that he would never want to subject his family to this again.

The Tribunal also received:

- References in support of Dr Gbenoba’s clinical competency from a number of former and current colleagues.

Submissions on behalf of the GMC

9. On behalf of the GMC, Mr Fish sought to remind the Tribunal that in deciding whether to impose a sanction on Dr Gbenoba’s registration, it will do so exercising its own independent judgement, considering all of the evidence before it and by
taking each possible sanction in turn. He further reminded the Tribunal that the purpose of sanctions was not to be punitive, though they can have a punitive effect, but to ensure public confidence in the profession is maintained.

10. Mr Fish submitted that a period of suspension in this case would an appropriate and proportionate sanction. He drew the Tribunal’s attention to relevant sections of Good Medical Practice (2013 edition) (‘GMP’) and Sanctions Guidance (2018 edition) (‘SG’) to support this and explained that 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. Mr Fish requested that the Tribunal consider paragraphs 97, 120 and 124 of 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...

f No evidence of repetition of similar behaviour since incident.

g The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.

120 Good medical practice states that registered doctors must be honest and trustworthy, and must make sure that their conduct justifies their patients’ trust in them and the public’s trust in the profession.

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 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.

Along with paragraphs 78 and 79 of GMP:
78 You must not allow any interests you have to affect the way you prescribe for, treat, refer or commission services for patients.

79 If you are faced with a conflict of interest, you must be open about the conflict, declaring your interest formally, and you should be prepared to exclude yourself from decision making.

11. Mr Fish submitted that paragraph 97a of GMP was clearly made out in this case. He stated that there had been a serious breach of GMP, as the Tribunal confirmed in its own determination on impairment which would warrant a period of suspension. He further submitted that Dr Gbenoba’s departure from GMP was particularly serious as it undermined public confidence in the medical profession as well as undermining the confidence of other medical professionals in their colleagues.

12. Mr Fish reminded the Tribunal that although Dr Gbenoba’s clinical skills are not being called into question, according to SG such evidence “of clinical competences cannot mitigate serious and/or persistent dishonesty”. Mr Fish submitted that it was a matter for the Tribunal to determine whether there is serious dishonesty in this case.

13. Considering the mitigating factors in this case, Mr Fish submitted that the Tribunal had received no evidence of repetition in a similar incident since these events. He submitted that before the hearing commenced, there was limited, if any, evidence of insight. However, Mr Fish sought to remind the Tribunal that the GMC submissions were made on the basis of Dr Gbenoba’s full admissions and further evidence presented at this stage of proceedings. He further submitted that it was a matter for the Tribunal to establish how far insight has developed since these proceedings began. Regarding remediation, Mr Fish acknowledged that dishonesty is difficult to remediate and that there was some limited evidence before the Tribunal of Dr Gbenoba’s attempts to remediate given his payments of Patient A’s debt as outlined in his witness statement.

14. In closing, Mr Fish submitted that the length of any suspension is for the consideration of the Tribunal alone.

Submissions on behalf of Dr Gbenoba

15. On behalf of Dr Gbenoba, Mr Blakebrough explained to the Tribunal that Dr Gbenoba accepts that suspension is the least sanction he can expect to receive at these proceedings. He submitted that suspension is the most appropriate sanction in this case and went on to address the length of the proposed suspension separately.

16. Mr Blakebrough acknowledged that dishonesty is an issue which good clinical practice cannot mitigate. Mr Blakebrough submitted that while there was serious
misconduct here, Dr Gbenoba’s actions did not amount to a serious act of dishonesty when considering dishonesty as a spectrum. He submitted that there are gradations of dishonesty and that it was relevant for the Tribunal to consider Dr Gbenoba’s motivations which were at all stages to ensure the best care of Patient A, which he confirmed in his evidence to the Tribunal.

17. Mr Blakebrough submitted that Dr Gbenoba’s actions were not for financial gain. He further submitted that Dr Gbenoba had no intention, primary or otherwise that Patient A received free NHS care that she was not entitled to. He also submitted that Dr Gbenoba was not seeking to cover up any errors he might have made. Additionally, Mr Blakebrough submitted that this was not a case of persistent dishonesty and while there were two separate incidents they were linked.

18. Mr Blakebrough also acknowledged that dishonesty is difficult to remediate and that comments such as “I would do it again if I had the opportunity” without qualification would be cause for concern when considering whether the behaviour was likely to be repeated. Mr Blakebrough submitted that as far as Dr Gbenoba’s actions are concerned, he never denied taking the steps that he did to obtain care for Patient A. He submitted that while Dr Gbenoba may have failed to fully understand the impact of what he had done, there was an appreciation of that now as evidenced in his witness statement and in his reflective statement to Bedford Hospital written previously:

“I would have asked [Patient A’s] consultant to request the OGD and not assume that he would have suggested I do it”

Mr Blakebrough submitted that this shows the Tribunal that Dr Gbenoba recognised that he would do some things differently in the future.

19. Mr Blakebrough submitted that Dr Gbenoba’s admissions were full and without qualification. He further submitted that although the debt incurred by Patient A may not be his, he feels a moral responsibility to pay it.

20. Mr Blakebrough then drew the Tribunal’s attention to the references submitted by some of Dr Gbenoba’s colleagues. He explained that Dr F is a current colleague of Dr Gbenoba’s at Rotherham Hospital and that the other references from Ms G and Dr H are from former colleagues at Bedford Hospital with Dr H having known Dr Gbenoba since 2008. Mr Blakebrough submitted that the references provided are positive and cover a significant amount of time.

21. Mr Blakebrough acknowledged that any sanction is considered in the public interest to maintain public confidence in the profession. He submitted that allowing a highly competent doctor to continue in his work was in the public interest. Mr Blakebrough told the Tribunal that Dr Gbenoba has no previous record of Fitness to
Record of Determinations –
Medical Practitioners Tribunal

Practise proceedings against him, no criminal record and that there was no evidence that such behaviour had occurred before or after the matters before the Tribunal.

22. Mr Blakebrough accepted on behalf of Dr Gbenoba that there has been serious misconduct which does need to be marked in a serious way. He submitted that Dr Gbenoba’s motivation was not financial, but emotionally driven. Dr Gbenoba has shown insight by making full admissions and this insight means he is unlikely to repeat his behaviour. Mr Blakebrough submitted that these proceedings had a salutary effect on Dr Gbenoba and that he had been emotionally affected.

23. In closing, Mr Blakebrough submitted that Dr Gbenoba’s misconduct fell short of being fundamentally incompatible with being a doctor. He further submitted that the length of any suspension was a matter for the Tribunal to determine but did submit that a long suspension would have a serious effect on Dr Gbenoba.

The Tribunal’s Determination on Sanction

24. The decision as to the appropriate sanction, if any, to impose in this case is a matter for the Tribunal exercising its own judgement. In reaching its decision, the Tribunal has taken account of the Sanctions Guidance (2018 edition) together with the overarching objective.

25. The Tribunal reminded itself that the main reason for imposing any sanction is to protect the public and that sanctions are not imposed to punish or discipline doctors, even though they may have a punitive effect. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Gbenoba’s interests with the public interest.

26. Having considered and balanced the aggravating and mitigating factors in this case, the Tribunal concluded that the significant mitigation in this case must be borne in mind when considering the appropriate and proportionate sanction.

Aggravating and Mitigating Factors

27. The Tribunal considered the mitigating factors in this case to be:

- Dr Gbenoba’s full admissions at the outset of proceedings
- Dr Gbenoba’s understanding of the problems arising from his actions and his partial insight
- That Dr Gbenoba has no previous Fitness to Practise findings against him
- Dr Gbenoba’s personal circumstances XXX
- That there is no evidence of repetition since the incident
- That the risk of repetition is tempered by the nature of Dr Gbenoba’s misconduct and the additional evidence presented at this stage of proceedings
28. The Tribunal then considered the aggravating factors in this case to be:

- Dr Gbenoba’s actions constitute an abuse of his professional position pertaining to his involvement in Patient A’s care
- Doctors are expected to be honest and trustworthy. Dr Gbenoba’s actions compromised his probity by combining his personal and professional life by treating Patient A when this was not necessary.

29. The Tribunal has already set out its decision on the facts and impairment which it took into account during its deliberations on sanction. Before considering what action, if any, to take in respect of Dr Gbenoba’s registration, the Tribunal considered and balanced the mitigating and aggravating features in this case.

30. The Tribunal also had regard to the references presented at this stage of proceedings. It determined that little weight could be attached to them as they focused on Dr Gbenoba’s clinical performance and not his probity. However, the Tribunal were reassured by the references that there are no issues with Dr Gbenoba’s clinical performance.

31. The Tribunal also noted that Dr Gbenoba has been making payments on behalf of Patient A for the debt incurred as a result of her treatment.

32. In deciding what sanction, if any, to impose the Tribunal considered each sanction in ascending order of severity, starting with the least restrictive.

**No action**

33. The Tribunal first considered whether to conclude the case by taking no action. Taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances. The Tribunal determined that there are no exceptional circumstances in this case and that, given the seriousness of its findings, it would not be sufficient, proportionate, or in the public interest to conclude this case by taking no action.

**Conditions**

34. The Tribunal next considered whether to impose conditions on Dr Gbenoba’s registration. In considering the guidance, the Tribunal was not aware of any conditions it could impose that could be appropriate, proportionate, workable, and measurable given the facts of this case.

35. In any event, the Tribunal was of the view that imposing conditions on Dr Gbenoba’s registration would not sufficiently mark the seriousness of Dr Gbenoba’s dishonest conduct.
Suspension

36. The Tribunal next considered whether it would be appropriate and proportionate to suspend Dr Gbenoba’s registration. In so doing, it bore in mind that suspension from the medical register has a punitive effect (in that Dr Gbenoba would be prevented from practising medicine during any period of suspension) although this is not the intended effect of such a sanction (as noted at paragraph 91 of SG).

37. The Tribunal acknowledged that a sanction of suspension does have a deterrent effect and can be used to send a signal to Dr Gbenoba, the profession, and the public about what is regarded as behaviour unbefitting a registered doctor. The Tribunal also acknowledged that suspension is an appropriate response to misconduct which is sufficiently serious that action is required in order to maintain public confidence in the profession while marking the seriousness of the behaviour, but which falls short of being fundamentally incompatible with continued registration (as at paragraph 92 of SG). Further, it acknowledged that suspension may be appropriate, for example, where there has been an acknowledgement of fault and where it is satisfied that the behaviour is unlikely to be repeated.

38. The Tribunal was satisfied that a period of suspension was the appropriate sanction to mark the serious nature of Dr Gbenoba’s misconduct. However, while the misconduct was serious, the Tribunal was of the opinion Dr Gbenoba’s dishonesty was at the lower end of the spectrum. The Tribunal accepted Mr Blakebrough’s submission that the two acts of dishonesty were linked and that Dr Gbenoba’s dishonesty was not persistent.

39. The Tribunal considered that if, at the conclusion of a period of suspension, Dr Gbenoba was able to continue to work, then this would benefit the public purse, as he would be able to make payments of Patient A’s debts for which Dr Gbenoba had no legal liability but felt he had a moral duty to pay. This is a factor which, while not determinative, the Tribunal felt was proper to bear in mind in determining the length of suspension.

40. The Tribunal determined to suspend Dr Gbenoba’s registration for a period of four months. It determined that this amount of time would allow Dr Gbenoba to fully reflect on his misconduct, undertake relevant remediation and develop his insight. The Tribunal considered that this period would also serve the public interest by maintaining public confidence in the medical profession and promoting and maintaining proper professional standards and conduct for the members of the profession. However, the Tribunal also had regard to the public interest in not seeking to deprive the public of an otherwise competent doctor.
41. The Tribunal determined to direct a review of Dr Gbenoba’s case. A review hearing will convene shortly before the end of the period of suspension, unless an early review is sought. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Gbenoba to demonstrate how he has addressed this Tribunal’s concerns. It therefore may assist the reviewing Tribunal if Dr Gbenoba provides:

- A written reflective statement on his misconduct and the steps he has taken in respect of remediation. This could include:
  - reflection on any courses on probity, whether attended in person or online
  - reflection on any articles or journals read which have informed his level of insight
- Evidence that Dr Gbenoba has maintained his clinical skills and that his CPD is up to date.
- Any further evidence which may assist the Tribunal.

**Determination on Immediate Order - 26/09/2019**

1. Having determined to suspend Dr Gbenoba’s registration for a period of four months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Gbenoba’s registration should be subject to an immediate order.

**Submissions**

2. On behalf of the GMC, Mr Fish submitted that an immediate order would not be necessary.

3. On behalf of Dr Gbenoba, Mr Blakebrough concurred that an immediate order would not be necessary. He submitted that this was not a case where any patients were put at risk and Dr Gbenoba has continued to practise throughout this process.

**The Tribunal’s Determination**

4. The Tribunal had regard to paragraph 172 and 173 of the SG which state:

172 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. The interests of the doctor include avoiding putting them in a position where they may come under pressure from patients, and/or may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.”
An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety. For example, where they have provided poor clinical care or abused a doctor’s special position of trust, or where immediate action must be taken to protect public confidence in the medical profession.

5. Bearing in mind the above paragraphs, and taking into account the specific basis upon which the Tribunal reached its sanction determination, it did not consider an immediate order to be necessary. It determined that the substantive order upholds the overarching objective in maintaining public confidence in the profession and that in the absence of any concerns about patient safety, an immediate order would not be necessary in this case.

6. The Tribunal therefore determined not to impose an immediate order of suspension on Dr Gbenoba’s registration.

7. This means that Dr Gbenoba’s registration will be suspended from the Medical Register 28 days from when notice of this decision is deemed to have been served upon him, unless he lodges an appeal. If Dr Gbenoba does lodge an appeal he will remain free to practise unrestricted until the outcome of any appeal is known.

8. There is no interim order to revoke.

9. That concludes the case.

Confirmed
Date 26 September 2019
Mr Lee Davies, Chair