Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 25/07/2019 - 09/08/2019

Medical Practitioner’s name: Dr Ria KUBAISI

GMC reference number: 5198613

Primary medical qualification: MB ChB 1989 University of Baghdad

Type of case
New - Misconduct

Outcome on impairment
Not Impaired

Summary of outcome
Warning

Tribunal:

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<tr>
<td>Legally Qualified Chair</td>
<td>Ms Kim Kneale</td>
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<tr>
<td>Lay Tribunal Member</td>
<td>Mr Geoffrey Brighton</td>
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<td>Medical Tribunal Member</td>
<td>Dr Ranjana Rani</td>
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<tr>
<td>Tribunal Clerk</td>
<td>Ms Keely Crabtree 29 July – 2 August 2019 &amp; 7 – 9 August 2019</td>
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<td>Ms Jennifer Hatch 5 - 6 August 2019</td>
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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 James Leonard, Counsel, instructed by RadcliffesLeBrasseur</td>
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<tr>
<td>GMC Representative:</td>
<td>Mr Robin Kitching, 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.

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 - 07/08/2019

Background

1. Dr Kubaisi qualified in 1989 at the University of Baghdad and prior to the events
which are the subject of the hearing Dr Kubaisi joined Sussex Healthcare NHS Trust
('the Trust') in November 2003 as a clinical fellow in anaesthetics. Between August 2004
and August 2009, Dr Kubaisi worked as a registrar in anaesthetics at the Trust. Between
2009 and 2014, Dr Kubaisi worked as a Specialty Doctor in anaesthetics. In August
2014, Dr Kubaisi was promoted to the post of Associate Specialist in anaesthetics.

2. The allegation that has led to Dr Kubaisi’s hearing can be summarised as that,
whilst employed by the Trust, Dr Kubaisi claimed for both additional annual leave
and locum shift payment via Medacs on 11 separate occasions between 27
November 2013 and 25 March 2014. It is alleged that Dr Kubaisi knew that she was
entitled to claim either additional annual leave or locum shift payments for these 11
dates, but not both.

3. It is further alleged that Dr Kubaisi over-claimed locum shift payments on five
occasions between 4 December 2013 and 1 April 2014, and claimed for work which
she knew she had not undertaken on 26 November 2014.

4. In addition, it is alleged that on one or more occasions in December 2016 Dr
Kubaisi amended the Trust’s theatre books whilst subject to an ongoing Trust
investigation.

5. It is further alleged that, prior to 27 February 2017, Dr Kubaisi was charged
with fraud under section 2 of the Fraud Act 2006. It is alleged that Dr Kubaisi failed
to notify the GMC that she had been charged with this offence.

6. It is alleged that some of Dr Kubaisi’s actions were dishonest, and that her
fitness to practise is impaired by reason of misconduct.
7. The referral to the GMC was further to a local investigation which arose from an investigation by the Trust's Local Counter Fraud Specialists, TIAA, which concluded in May 2016.

The Outcome of Applications Made during the Facts Stage

8. The Tribunal granted Mr Kitching’s application, on behalf of the GMC, made pursuant to Rule 17(6) of the rules, to amend paragraphs 6, 9 and 10 of the allegation and associated schedule. Mr Leonard on behalf of Dr Kubaisi had no objections. The Tribunal was satisfied that no injustice would be caused by allowing it.

The Allegation and the Doctor’s Response

9. The Allegation made against Dr Kubaisi is as follows:

1. Between 2009 and 2017 you were employed by Surrey and Sussex Healthcare NHS Trust (“the Trust”). Admitted and found proved

2. For working on the dates set out in Schedule 1 you claimed for both:
   a. additional annual leave; To be determined
   b. locum shift payment via Medacs. To be determined

3. In respect of your actions at Paragraph 2 you knew you were entitled to claim additional annual leave or locum shift payments for those dates set out in Schedule 1 but not both. To be determined

4. For the dates set out in Schedule 2a you over-claimed locum shift payments via Medacs for at least the hours set out in Schedule 2b. To be determined

5. In respect of your actions at paragraph 4 you knew you had claimed for work which exceeded the actual hours you had worked. To be determined

6. For the dates set out in Schedule 3 You claimed locum shift payments via Medacs for work you did not undertake on 26 November 2014. Amended under Rule 17(6). To be determined

7. In respect of your actions at paragraph 6 you knew you had claimed for work you did not undertake. To be determined
8. On two occasions in or around December 2016 you were provided with unsupervised access to the Trust’s theatre books. **Admitted and found proved**

9. On one or more of the occasions referenced at paragraph 8 you amended the theatre books at the dates set out in Schedule 4 Schedule 3 (‘your entries’). **Amended under Rule 17(6). To be determined**

10. You knew that:

   a. at the time you made your entries the Trust were investigating what work you had undertaken for the Trust on the dates set out in Schedule 4 Schedule 3; **Amended under Rule 17(6). To be determined**

   b. your entries would give the appearance that you had participated in theatre sessions you had not participated in. **To be determined**

11. Prior to 27 February 2017, you were charged with fraud under section 2 of the Fraud Act 2006. **Admitted and found proved**

12. You failed to notify the GMC that you had been charged with the offence outlined at paragraph 11. **Admitted and found proved**

13. Your actions as described at paragraphs 2, 4, 6, and 9 were dishonest by reason of paragraphs 3, 5, 7 and 10. **To be determined**

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

**The Admitted Facts**

10. At the outset of these proceedings, through her counsel, Mr Leonard, Dr Kubaisi made admissions to some paragraphs and sub-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.

**Factual Witness Evidence**

11. The Tribunal received evidence on behalf of the GMC from the following witnesses:
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- Dr A, previously chief of cancer and diagnostics at the Trust, appointed case investigator by the Trust, in person;
- Dr B, Consultant Anaesthetist at the Trust, in person;
- Ms C, Office Manager within the Anaesthetics department employed by the Trust, in person.

12. The Tribunal also received evidence on behalf of the GMC in the form of a witness statement from the following witness who was not called to give oral evidence:

- Ms E, General Manager in the Surgery department employed by the Trust.

13. Dr Kubaisi provided her own witness statement dated 28 June 2019 and also gave oral evidence at the hearing. In addition, the Tribunal received evidence, including witness statements, from the following witnesses on Dr Kubaisi’s behalf:

- Dr D, Consultant Anaesthetist at the Trust, in person;
- Dr F, Consultant Ophthalmic Surgeon employed by the Trust, in person.

Documentary Evidence

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

- Medacs (locum recruitment Agency) timesheets and booking documentation
- Record of additional time worked
- CLW Rota (the anaesthetics electronic rota system showing work allocation and leave allowance)
- Swipe card access records for Crawley Hospital
- LastHost reports (the Trust intranet log in records)
- Surginet records (the Trust’s computerised theatre record system)
- Documents from Dr A’s full review dated March 2017 and investigation meeting notes
- Theatre book entries
- Anaesthetic charts
- Testimonials

The Tribunal’s Approach

15. In reaching its decision on the 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 Kubaisi 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.
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16. Dr Kubaisi is a person of good character. This can count in Dr Kubaisi’s favour in terms of credibility and propensity.

17. The Tribunal also had regard to the Crown Court Compendium Part 1, section 10-4 and noted the effect that the passage of time may have on Dr Kubaisi’s ability to recollect events accurately and to produce documents which may have helped her defence.

18. In relation to the allegations of dishonesty, the correct test is as set out in the case of Ivey v Genting Casinos [2017]. This has been confirmed to apply to regulatory proceedings in GMC v Krishnan [2017] EWHC 2892 (Admin) and Raychaudhuri v GMC and PSA [2018] EWCA Civ 2027. A two stage test must be applied as follows:

1. first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of their belief is a matter of evidence going to whether they held the belief, but it is not an additional requirement that their belief must be reasonable; the question is whether it is genuinely held.

2. When once the doctor’s actual state of mind as to knowledge or belief as to facts is established, the question whether their conduct was honest or dishonest is to be determined by [this tribunal] by applying the (objective) standards of ordinary decent people. There is no requirement that the doctor must appreciate that what they have done is, by those standards, dishonest.

19. The Tribunal also reminded itself of the case of Lawrance v GMC [2015] EWHC 586 (Admin), in which Mr Justice Collins stated in paragraph 35:

‘The civil standard applies, but where dishonesty or a particularly serious offence is alleged the decision makers must be aware of the need for such cogent evidence. A direction making clear that need is in my judgment required coupled with a requirement for them to consider the full circumstances ...’.

The Tribunal’s Analysis of the Evidence and Findings

20. The Tribunal has considered each outstanding paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts.

2. For working on the dates set out in Schedule 1 you claimed for both:
   a. additional annual leave;
21. It was accepted by Dr Kubaisi that she had made claims for payment for working locum shifts via Medacs on the dates set out in Schedule 1 and this was supported by claim forms signed by Dr Kubaisi and authorised for each of the dates in Schedule 1.

22. At the time of the relevant events, if a locum elected to receive time off in lieu (TOIL) rather than payment for the session, then this system was less fixed than that for when payment was claimed. The Tribunal heard evidence that the expectation was that the person working the locum shift would complete an ‘additional time worked form’ and submit this to Ms C. The form would be counter signed by Ms C and/or the clinical lead and the additional time inputted on to the CLW rota.

23. Dr Kubaisi’s evidence was that the usual process to claim TOIL was to complete a form for ‘Additional time worked’. However, it was accepted by Ms C, Dr Kubaisi and Dr D that sometimes additional leave was claimed by email or verbally with Ms C.

24. The Tribunal heard from Ms C and Mr A that a box containing the other ‘Additional time worked’ forms for Dr Kubaisi and other members of staff had been lost during an office move. The one available form had been found in a pile of other forms elsewhere in the office. There was no evidence before the Tribunal of any claims being made via email. However, both Dr Kubaisi and Ms C confirmed that there were occasions when they had sat down together to discuss additional time worked and other leave and work arrangements.

25. When additional leave was claimed it would be put into the managed leave allowance part of the CLW system, to which approximately 5-6 people had access, including Ms C. Dr Kubaisi did not have access to this part of the system and only had access to a restricted view of the running total of her leave. She could not see detail of what had been inputted or by whom or when the change had been made or the reason why leave had been accrued.

26. The Tribunal was only provided with a claim form for one of the 11 dates listed in Schedule 1. This was for a date which could have been either 5 or 6 March 2014. It was accepted by Ms C that the date on the form was difficult to read and that she had inputted it as 5 March when it was possible it related to 6 March.

27. Dr Kubaisi’s evidence was that she acknowledged that claims for additional time worked in relation to the dates in Schedule 1 had been logged on the system, but she did not know how the entries had got there. She stated that she did not
believe that she had completed and submitted claim forms for those dates. However, given the passage of time between the dates of the allegations and the date when Dr Kubaisi first became aware of them, Dr Kubaisi no longer had any recollection of the specific dates in question.

28. The Tribunal considered how the information could have come to be entered onto the managed leave allowance system. It found Ms C to be a credible, honest and helpful witness and therefore concluded that it was unlikely that she would have made the dates up or altered the records.

29. The Tribunal noted that the administration system in the anaesthetic office was in a state of transition from a paper system to a computer system. At the relevant time, both systems were in operation and this gave rise to a somewhat chaotic situation in which errors could occur. Dr A gave evidence that the paperwork was ‘poorly organised’ and that the process for signing off additional work and leave ‘lacked good governance’.

30. Given the scope for communication errors in the system in place at the time, the Tribunal considered it plausible that verbal information exchanged between Dr Kubaisi and Ms C could have been misinterpreted and resulted in additional leave being entered on to the CLW system.

31. Dr B’s evidence was that he thought people were honest, but the department needed to record things better. His evidence was that there was always the potential for someone to do something wrong. He did not cross-check every single form but did undertake random checks as he was aware of the potential for mistakes. Ms C also agreed that there was room for error in the system being used at the time.

32. There are many examples of errors and unreliability in the system. The Tribunal considered that it is easy to see how mistakes and misinterpretations could have arisen given the inadequate record keeping and diaries.

33. The Tribunal also considered the evidence including testimonials and oral evidence of Dr D and Dr F attesting to Dr Kubaisi’s good character. It also had regard to the passage of time and memory loss which meant that there was no direct evidence about the specific dates.

34. In the circumstances, the Tribunal was of the view that it was more likely than not that Dr Kubaisi had verbally mentioned having worked the dates in Schedule 1 to Ms C and there had been a misinterpretation and these had been inputted as a claim for additional leave into the CLW system. The Tribunal noted that there is no evidence to suggest that the additional annual leave was taken by Dr Kubaisi. The managed leave allowance document shows a balancing exercise was undertaken at the end of the leave year.
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35. The Tribunal concluded that, on the balance of probabilities, it was more likely than not that information provided by Dr Kubaisi was treated as a claim for both additional annual leave and locum shift payments via Medacs, albeit this was not done in a deliberate way.

36. Accordingly, the Tribunal found paragraph 2. a and b of the Allegation proved.

3. In respect of your actions at Paragraph 2 you knew you were entitled to claim additional annual leave or locum shift payments for those dates set out in Schedule 1 but not both.

37. Dr Kubaisi accepted that she knew that she was not entitled to claim both additional annual leave and locum shift payments for the dates set out in Schedule 1. Accordingly, the Tribunal found paragraph 3 of the Allegation proved.

4. For the dates set out in Schedule 2a you over-claimed locum shift payments via Medacs for at least the hours set out in Schedule 2b.

38. It was not in dispute that locum work was paid by the hour. Evidence given to the Tribunal was consistent that, if employed by the Trust and doing Trust locum work paid by Medacs, it was accepted practice that the locum doctor would check to see if assistance was needed with extra work after the theatre list had ended and before leaving. It was noted that completion of such additional work was not always recorded. The evidence was consistent that Dr Kubaisi was a well-respected anaesthetist who would always offer to help and put the care of her patients first.

39. The Tribunal had regard to the fact that it is alleged that on 4 December 2013, 10 December 2013, 26 February 2014 and 1 April 2014 the alleged claims were for between 1 and 1.5 hours. The Tribunal took into account Dr Kubaisi’s good character. The Tribunal accepted the evidence of Dr B and Dr D who both said that anaesthetists would make themselves available for additional work once they had satisfied their clinical responsibilities to individual patients.

40. The Tribunal noted that on the five days in question Dr Kubaisi had worked on isolated units where there would not have been many anaesthetists on call. It determined therefore that if there was any work outstanding it would have been likely that she was the one to undertake it.

41. The Tribunal therefore found, that it was more likely than not, Dr Kubaisi did not over-claim for these locum shifts.

42. The Tribunal looked in more detail at 4 February 2014 since the alleged claim on this date was for 3.5 hours. The Tribunal noted that the claim form for 4 February 2014 had been authorised by Ms C and countersigned. It also noted that
for one patient on the theatre list the discharge time is 17:30 and for another patient there was no discharge time recorded.

43. The Tribunal was of the view that, in light of the evidence in relation to Dr Kubaisi’s good character and the unknown nature of the time the last patient was discharged on that date, it was more likely than not that Dr Kubaisi had worked the additional 3.5 hours for which she submitted a claim on 4 February 2014.

44. The Tribunal therefore found paragraph 4 of the Allegation not proved.

5. In respect of your actions at paragraph 4 you knew you had claimed for work which exceeded the actual hours you had worked.

45. In light of the Tribunal’s findings in relation to paragraph 4 of the Allegation, it follows that the Tribunal found paragraph 5 of the Allegation not proved.

6. For the dates set out in Schedule 3 You claimed locum shift payments via Medacs for work you did not undertake on 26 November 2014.

46. The GMC’s case is that the absence of Dr Kubaisi’s name from the swipe card data, Lasthost, Surginet and the maternity records supports their case that Dr Kubaisi did not work on 26 November 2014.

47. Dr Kubaisi accepts that she claimed locum shift payments via Medacs for work on 26 November 2014. However, it is her case that this was in relation to work she had undertaken; she believes she was on obstetric on call cover on that date. It is also her evidence that she believes that she took over from Mr I to supervise Dr H in theatre.

48. The Tribunal was aware that the anaesthetic department’s diaries had been altered on the relevant dates at some time after Dr Kubaisi had viewed and photographed them in January 2016. It is unknown who made the alterations and when they occurred but the Tribunal noted that many of the alterations related to Dr Kubaisi. It is not alleged that the changes were made by Dr Kubaisi. The Tribunal took the photographic versions of the diaries supplied by Dr Kubaisi as being the most contemporaneous and made reference to these in its deliberations.

49. The Tribunal noted that no name appears on the rota for the obstetric on call cover for 26 November 2014. It bore in mind the evidence that a doctor must cover such an on call duty. Further, although there is no evidence in Surginet to the effect that Dr Kubaisi took over from Mr I to supervise Dr H, the GMC accept that this is not conclusive proof that that it did not happen.

50. The operation register shows Dr Kubaisi as being in theatre from 12:20 - 13:30 and from 15:47 - 16:25. The claim form shows a claim for 12:30 - 18:00.
51. The photograph of the diary entry for 26 November 2014 shows a change in Dr Kubaisi’s work pattern which supports her proposition that she had been covering the vacant obstetric on call shift. The Tribunal also had regard to Dr Kubaisi’s email to Ms G dated 27 November 2014 in which she wrote ‘...I had a pm shift yesterday which I forgot to mention’.

52. The Tribunal concluded that, on the basis of the evidence provided, it was more likely than not that Dr Kubaisi had worked on 26 November 2014 for which she had claimed a locum shift payments via Medacs. As such, the Tribunal found paragraph 6 of the Allegation not proved.

7. In respect of your actions at paragraph 6 you knew you had claimed for work you did not undertake.

53. In light of the Tribunal’s findings in relation to paragraph 6 of the Allegation, it follows that it found paragraph 7 of the Allegation not proved.

9. On one or more of the occasions referenced at paragraph 8 you amended the theatre books at the dates set out in Schedule 4 Schedule 3 (‘your entries’).

54. The GMC’s case is that Dr Kubaisi added her name to the theatre books after the investigation had begun. It is the GMC’s case that the Tribunal’s assessment of the reliability of Mr A’s review of the relevant books will determine this issue. Mr A’s evidence was that (his) human error was possible and he may have missed seeing her name on his first review of the theatre books as it was misspelt in some entries, but he felt it unlikely that he had made four such errors.

55. Dr Kubaisi refutes the suggestion that she amended the theatre books at the dates set out in Schedule 3 or at all.

56. The Tribunal noted that other staff members in theatres had access to the theatre books. The Tribunal was of the view that although Dr Kubaisi had been given private access to the theatre books, this does not necessarily lead to the conclusion that she made the amendments. The Tribunal also noted that Dr Kubaisi knew that Mr A had seen the books prior to her having access to them, and he had undertaken a review of them. The Tribunal therefore determined that it was more likely than not, that Dr Kubaisi had not amended the theatre books at the dates set out in Schedule 3 or at all. Accordingly, it found paragraph 9 of the Allegation not proved.
10. You knew that:

   a. at the time you made your entries the Trust were investigating what work you had undertaken for the Trust on the dates set out in Schedule 4 Schedule 3;

   b. your entries would give the appearance that you had participated in theatre sessions you had not participated in.

57. Given the Tribunal’s findings in relation to paragraph 9 of the Allegation and the references in paragraph 10 to ‘your entries’, it follows that the Tribunal found paragraph 10. a and b of the Allegation not proved.

13. Your actions as described at paragraphs 2, 4, 6, and 9 were dishonest by reason of paragraphs 3, 5, 7 and 10.

58. Given the Tribunal’s findings that paragraphs 4, 6, 9, 5, 7 and 10 of the Allegation were not proved, it follows that the Tribunal found paragraph 13 of the Allegation not proved in relation to those paragraphs.

59. The Tribunal considered whether Dr Kubaisi’s actions as described at paragraph 2 were dishonest by reason of paragraph 3. Dr Kubaisi knew that she was not entitled to claim both additional annual leave and locum shift payments for the dates set out in Schedule 1. The Tribunal has already determined that it was more likely than not that Dr Kubaisi did claim for additional annual leave and locum shift payment via Medacs, but this double claim could have arisen from a miscommunication between her and Ms C.

60. The Tribunal found Dr Kubaisi to be a credible witness whose evidence was consistent and corroborated by others. It also bore in mind the evidence of Dr Kubaisi’s good character, and noted from the oral evidence and written testimonials received that she was a well-respected colleague who had worked with no issues at the same hospital for about ten years. As such, the Tribunal was of the view that it was more likely than not that the double claim did not arise as a means to gain double benefit for the time worked.

61. Given its finding that it was more likely than not that Dr Kubaisi double claimed unintentionally and without any resulting personal gain, the Tribunal was satisfied that, objectively, her actions would not be considered as dishonest by the standards of ordinary decent people.

62. Accordingly, the Tribunal found paragraph 13 of the Allegation not proved in relation to paragraphs 2 and 3.
The Tribunal’s Overall Determination on the Facts

63. The Tribunal has determined the facts as follows:

1. Between 2009 and 2017 you were employed by Surrey and Sussex Healthcare NHS Trust ("the Trust"). Admitted and found proved

2. For working on the dates set out in Schedule 1 you claimed for both:
   a. additional annual leave;
   b. locum shift payment via Medacs.

   Determined and found proved in its entirety

3. In respect of your actions at Paragraph 2 you knew you were entitled to claim additional annual leave or locum shift payments for those dates set out in Schedule 1 but not both. Determined and found proved

4. For the dates set out in Schedule 2a you over-claimed locum shift payments via Medacs for at least the hours set out in Schedule 2b.

   Determined and found not proved

5. In respect of your actions at paragraph 4 you knew you had claimed for work which exceeded the actual hours you had worked. Determined and found not proved

6. For the dates set out in Schedule 3 you claimed locum shift payments via Medacs for work you did not undertake on 26 November 2014. Amended under Rule 17(6). Determined and found not proved

7. In respect of your actions at paragraph 6 you knew you had claimed for work you did not undertake. Determined and found not proved

8. On two occasions in or around December 2016 you were provided with unsupervised access to the Trust’s theatre books. Admitted and found proved

9. On one or more of the occasions referenced at paragraph 8 you amended the theatre books at the dates set out in Schedule 4 Schedule 3 (‘your entries’). Amended under Rule 17(6). Determined and found not proved

10. You knew that:
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a. at the time you made your entries the Trust were investigating what work you had undertaken for the Trust on the dates set out in Schedule 4 Schedule 3;

b. your entries would give the appearance that you had participated in theatre sessions you had not participated in.

Amended under Rule 17(6). Determined and found not proved in its entirety

11. Prior to 27 February 2017, you were charged with fraud under section 2 of the Fraud Act 2006. Admitted and found proved

12. You failed to notify the GMC that you had been charged with the offence outlined at paragraph 11. Admitted and found proved

13. Your actions as described at paragraphs 2, 4, 6, and 9 were dishonest by reason of paragraphs 3, 5, 7 and 10. Determined and found not proved in its entirety

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

Determination on Impairment - 09/08/2019

1. The Tribunal now has to decide in accordance with Rule 17(2)(I) of the Rules whether, on the basis of the facts which it has found proved as set out before, if Dr Kubaisi’s fitness to practise is impaired by reason of misconduct.

The Evidence

2. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary.

3. In addition the Tribunal received and considered:

- Email trail between Dr Kubaisi and Medical Protection Society (MPS)
- Letter dated 30 March 2017 to Dr Kubaisi from the GMC
Submissions

4. On behalf of the GMC, Mr Kitching referred to the legal tests in relation to misconduct and impairment. He made reference to Dr Kubaisi’s departure from Good Medical Practice (2016) (GMP), in relation to paragraph 75 (b):

   **75. You must tell us without delay if, anywhere in the world:**
   
   a. [...] 
   
   b. you have been charged with or found guilty of a criminal offence 
   
   c. [...] 

5. Mr Kitching stated that the relevant paragraphs of the determination for the consideration of impairment were paragraphs 11 and 12 which were admitted, as the other findings of fact found proved did not attribute any responsibility to Dr Kubaisi.

6. Mr Kitching submitted that Dr Kubaisi’s failure to notify the GMC of the criminal charges brought against her under section 2 of the Fraud Act 2006 was serious and amounts to misconduct. He stated that the Tribunal should have regard to public confidence in the profession and the need to uphold proper professional standards.

7. Mr Kitching submitted that in order for the GMC to act, satisfy the public interest and meet its overarching objective, it needs doctors to inform it of any criminal charges they are facing and to do so promptly. This notification then prompts the GMC to investigate further and consider whether an Interim Order Tribunal would be in the public interest.

8. Mr Kitching stated that the GMC had taken into account that Dr Kubaisi did disclose the charges to her defence union and that the GMC became aware of them relatively swiftly. However, the information did not come from Dr Kubaisi but from her employer.

9. Mr Kitching submitted that Dr Kubaisi was under a duty to directly notify the GMC of the charges that had been brought against her and that her failure to do so amounted to misconduct that was serious.

10. Mr Kitching acknowledged that the Tribunal would take into consideration Dr Kubaisi’s good character, that she had admitted the charge and that future repetition was unlikely. However, he submitted that, notwithstanding those factors, a failure as serious as this requires action in respect of Dr Kubaisi’s registration and therefore a finding of impairment was in the public interest.
11. On behalf of Dr Kubaisi, Mr Leonard provided a document setting out the law in respect of impairment and making written submissions and these were considered by the Tribunal.

12. In his oral submissions Mr Leonard stated that there is no dispute that Dr Kubaisi was under a duty to inform the GMC that she had been charged with fraud and that she should be familiar with the contents of Good Medical Practice herself. However, Mr Leonard further submitted that the failure to disclose the charge was an oversight by Dr Kubaisi and was by no means a deliberate concealment. He submitted that the failure does not come close to amounting to ‘gross negligence’ and is not such that fellow members of the profession would find it ‘deplorable.’

13. Mr Leonard submitted that even if the Tribunal did make a finding of Misconduct, a finding of Impairment does not automatically flow from this. Mr Leonard submitted that the Tribunal have a commendable range of testimonial material upon which it has already relied at Stage 1. He submitted there is an irresistible inference that in all material respects Dr Kubaisi complies with her obligations under Good Medical Practice. Mr Leonard submitted that Dr Kubaisi is entitled to have her record viewed as not only ‘unblemished’ but representing a significant positive contribution to health care in her chosen specialty.

14. Mr Leonard also submitted that the chance of this failure being repeated is so small as to be barely measurable. Mr Leonard submitted that the failure to report does not raise any concerns relevant to public protection and is not ‘so egregious’ that, as an isolated event, a finding of impairment is indicated. Mr Leonard submitted that this isolated act is not so serious that it will bring the reputation of the profession into disrepute.

The Relevant Legal Principles

15. 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.

16. 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, and that the misconduct was serious and then whether the finding of that misconduct which was serious, could lead to a finding of impairment.

17. The Tribunal must determine whether Dr Kubaisi’s fitness to practise is impaired today, taking into account Dr Kubaisi’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.
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18. The Tribunal also had regard to the law as set out in the written submission prepared by Mr Leonard, which was accepted as the correct legal position by Mr Kitching.

The Tribunal’s Determination on Impairment

Misconduct

19. The Tribunal first considered whether Dr Kubaisi’s actions amounted to misconduct.

Paragraph 11 and 12

11. Prior to 27 February 2017, you were charged with fraud under section 2 of the Fraud Act 2006.

12. You failed to notify the GMC that you had been charged with the offence outlined at paragraph 11.

20. The Tribunal noted that both of the relevant heads of charge were admitted by Dr Kubaisi.

21. The Tribunal had regard to the timeline of events. In September 2015, Dr Kubaisi was first made aware that she was the subject of an investigation by the Trust. In January 2016, Dr Kubaisi was visited by the police at her home for the purposes of a police inquiry into an allegation of fraud. On the 21 January 2017, the police made the decision to charge Dr Kubaisi and on or about 27 January 2017, she received a summons to appear at the Magistrates Court.

22. On the 4 February 2017, Dr Kubaisi sought advice from the MPS by email. However, the MPS stated that they did not receive that email. Dr Kubaisi sent a further email on 4 April 2017 to the MPS advising that she had received a letter from the GMC informing her that they had been notified by her Trust regarding the police charges. On that same day Dr Kubaisi telephoned the GMC to discuss the issue and followed this up in writing on 5 April 2017.

23. The Tribunal noted that the Trust referred Dr Kubaisi to the GMC on the 17 March 2017 and informed it, that ‘the CPS had decided to prosecute’. The Tribunal noted, whilst this gave some information to the GMC about the charges, it did not take away Dr Kubaisi’s duty to inform the GMC herself.

24. The Tribunal had regard to GMP paragraph 75. (b), and was of the view that the duty upon Dr Kubaisi to notify the GMC of the charges directly and promptly was clear and unarguable.
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25. The Tribunal was of the view that the charge was serious as it related to fraud and that it would be considered to be serious by other members of the profession and by the public.

26. The Tribunal therefore determined the facts found proved in relation to Dr Kubaisi’s failure to inform the GMC that she had been charged with fraud were serious departures from what is expected of a registered medical practitioner and, accordingly amounted to misconduct that was serious.

Impairment

27. Having made a finding of serious misconduct, the Tribunal then went on to consider whether Dr Kubaisi’s fitness to practise was currently impaired.

28. The Tribunal had regard to Dr Kubaisi’s good character as demonstrated by the testimonials received and the evidence of her colleagues at the facts stage. The Tribunal noted that this was an isolated incident and there have been no such allegations previously or subsequently. The GMC did not submit that there was a likelihood of repetition. It was in this context that Dr Kubaisi failed to comply with her obligations under GMP.

29. The Tribunal noted that the aggravating factors were that Dr Kubaisi did not act promptly or proactively to chase up advice from the MPS. She did not notify the GMC prior to her appearance in Magistrates Court and only offered an apology after receipt of a letter from the GMC dated 30 March 2017, notifying her that she was in breach of GMP.

30. The Tribunal considered the mitigating factors that, at the relevant time, Dr Kubaisi was under considerable stress due to the Trust investigation and then being visited by the police and charged with a criminal offence. In addition she was dealing with XXX.

31. The Tribunal also noted that Dr Kubaisi had fully admitted her failings in not notifying the GMC of the charge of fraud.

32. The Tribunal were of the view that the risk of repetition was minimal, given Dr Kubaisi’s acknowledgement of her failure and her apology.

33. The Tribunal carefully weighed the seriousness of the criminal charge and the aggravating factors with the mitigating factors. The Tribunal was satisfied that this was a situation where Dr Kubaisi had not sought to conceal the criminal charge against her. This, together with her previous good character and other mitigation factors led the Tribunal to conclude that a finding of impairment was not required in order to maintain public confidence and proper professional standards and conduct.
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34. The Tribunal has therefore determined, on balance, that Dr Kubaisi’s fitness to practise is not currently impaired.

Determination on Warning - 09/08/2019

1. As the Tribunal determined that Dr Kubaisi’s fitness to practise was not impaired it considered whether in accordance with s35D(3) of the 1983 Act, a warning was required. The Tribunal invited submissions from the parties on this point.

Submissions

2. On behalf of the GMC, Mr Kitching submitted that the GMC seek a warning in this case. He directed the Tribunal’s attention to the document ‘General Medical Council Guidance on Warnings’ (February 2018 edition) (‘the Guidance’). With reference to paragraph 11, Mr Kitching stated that warnings provide an indication to a doctor that any given conduct or behaviour represents a departure from the standards expected of members of the profession and should not be repeated. Mr Kitching referred to the test in paragraph 16, that a warning was appropriate in circumstances where there has been a significant departure from GMP which warranted a formal response.

3. Mr Kitching also referred to the principle of proportionality. He reminded the Tribunal that Dr Kubaisi’s actions breached paragraph 75 (b) of GMP and this required a serious response to send out a message to the public and wider profession regarding the conduct expected of a registered medical practitioner. Mr Kitching submitted that the public interest far outweighs that of the individual doctor.

4. On behalf of Dr Kubaisi, Mr Leonard submitted that it would be disproportionate to impose a warning in this case given the mitigating factors of paragraph 32 of the Guidance. Further, he stated these matters have already had a catastrophic impact on Dr Kubaisi’s career.

5. Mr Leonard acknowledged that Dr Kubaisi’s conduct fell below the standards required of a medical practitioner. However, Mr Leonard asked the Tribunal to balance this with its findings that this was an isolated incident and at the time Dr Kubaisi was under considerable stress due to the Trust investigation and then being visited by the police and charged with a criminal offence. He invited the Tribunal to have regard to Dr Kubaisi’s good character and the testimonials received at the facts stage. He also reminded the Tribunal of its finding that the risk of repetition was minimal.
The Tribunal’s Determination on Warning

6. In reaching its decision as to whether a warning would be appropriate, the Tribunal took account of the specific circumstances of this case and had regard to the submissions provided by both parties and the Guidance.

7. The Tribunal noted that the decision whether or not to issue a warning is a matter for it alone to determine, exercising its own professional judgement. It took account of the overarching objective of the public interest and applied the principle of proportionality - weighing the interests of the public with those of Dr Kubaisi.

The Tribunal’s Determination on a Warning

8. The Tribunal noted paragraph 33 of the Guidance, which states:

33. However, if the decision makers are satisfied that the doctor’s fitness to practise is not impaired or that the realistic prospect test is not met, they can take account of a range of aggravating or mitigating factors to determine whether a warning is appropriate. These might include:

- the level of insight into the failings.
  a A genuine expression of regret/apology.
  b Previous good history.
  c Whether the incident was isolated or whether there has been any repetition.
  d Any indicators as to the likelihood of the concerns being repeated.
  e Any rehabilitative/corrective steps taken.
  f Relevant and appropriate references and testimonials.

9. Taking the above into account, the Tribunal had regard to the following mitigating factors in this case:

- Dr Kubaisi had apologised for her conduct
- her good character and testimonials
- this was an isolated incident
- a low risk of repetition
10. The Tribunal reminded itself that its decision that Dr Kubaisi’s fitness to practise was not currently impaired was influenced to a considerable degree by the existence of the above mitigating factors. However, Dr Kubaisi’s conduct did fall just below the threshold for a finding of impairment and was a clear breach of paragraph 75 (b) of GMP which states:

75. You must tell us without delay if, anywhere in the world:

   a. [...] 

   b. you have been charged with or found guilty of a criminal offence

   c. [...] 

Whilst the Tribunal accepts that there is a low risk of Dr Kubaisi repeating the behaviour, it determined that it was necessary to highlight to Dr Kubaisi, the public and the medical profession that her conduct was serious and unacceptable.

11. The Tribunal therefore determined it was appropriate and proportionate to issue a warning and was satisfied that failing to do so would not fulfil its duty to:

   b. Promote and maintain public confidence in the medical profession, and 

   c. Promote and maintain proper professional standards and conduct for members of that profession.

12. The Tribunal considered that, whilst a warning does not prevent a doctor from practising, or place restrictions on their registration, it may have a significant impact on Dr Kubaisi. However, it considered that the public interest outweighed that of the individual doctor in the particular circumstances of this case.

13. The Tribunal anticipates that the warning will act as a deterrent and reminder to Dr Kubaisi and the profession as a whole that her conduct fell below the standard expected and that a repetition is likely to result in a finding of impaired fitness to practise. Further, it considered that it was necessary to reinforce the importance of maintaining proper professional conduct and highlighting that probity and integrity must be at the forefront of every doctor’s practice.

14. The Tribunal has therefore determined to issue the following warning in accordance with Section 35D(3) of the Medical Act 1983 and Rule 17(2)(m) of the Rules:

‘Dr Kubaisi you have admitted failing to provide information to the GMC promptly in accordance with your duty under GMP.'
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This conduct does not meet with the standards required of a doctor. It risks bringing the profession into disrepute and it must not be repeated.

Whilst this failing in itself is not so serious as to require any restriction on your registration, it is necessary in response to issue this formal warning.

This warning will be published on the medical register in line with our publication and disclosure policy, which can be found at www.gmc-uk.org/disclosurepolicy.’

15. There is no interim order to revoke.

16. That concludes this case.

Confirmed
Date 09 August 2019  Ms Kim Kneale, Chair
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SCHEDULE 1

Non confidential schedules
Schedule 1
27 November 2013
3 December 2013
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Schedule 3
12 February 2014
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