Date: 02/09/2019 - 05/09/2019

Medical Practitioner’s name: Dr Robert Ballantyne

GMC reference number: 4018250

Primary medical qualification: MB ChB 1993 University of Glasgow

Type of case: New - Misconduct

Outcome on impairment: Not Impaired

Summary of outcome: No action (warning not considered)

Tribunal:

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<th>Role</th>
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<tr>
<td>Legally Qualified Chair</td>
<td>Mr Kenneth Hamer</td>
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<tr>
<td>Lay Tribunal Member:</td>
<td>Ms Deborah Spring</td>
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<td>Medical Tribunal Member:</td>
<td>Professor Irving Benjamin</td>
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Tribunal Clerk: Mrs Samantha Montgomery

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 Matthew McDonagh, Counsel,</td>
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<td></td>
<td>instructed by Brodies LLP</td>
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<tr>
<td>GMC Representative:</td>
<td>Ms Chloe Hudson, 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. 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.
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Overarching Objective

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

Determination on Facts - 05/09/2019

Background

1. Dr Ballantyne qualified in 1993 from the University of Glasgow. He currently works as a Specialty Doctor in Clinical Genetics at the Queen Elizabeth University Hospital in Glasgow.

2. The allegation that has led to Dr Ballantyne’s hearing is that in October 2017 Dr Ballantyne verbally and physically assaulted Mrs A. The initial concerns were raised with the GMC on 09 October 2017 when Dr Ballantyne sent an email informing the GMC that he had been arrested and charged with assault.

The Outcome of Applications Made during the Facts Stage

3. The Tribunal refused Mr McDonagh’s application, made pursuant to Rule 17(2)(g) of the General Medical Council (Fitness to Practise Rules) 2004 as amended (‘the Rules’), of no case to answer. The Tribunal’s full decision on the application is included at Annex A.

The Allegation and the Doctor’s Response

4. The Allegation made against Dr Ballantyne is as follows:

1. On 6 October 2017 you:
   a. called Mrs A a ’c**t’, or words to that effect;  

      To be determined

   b. grabbed Mrs A from behind, pulling her backwards.

      To be determined

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

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

- Mrs A, in person and via video-link;
- Ms B, via video-link.

6. Dr Ballantyne provided his own witness statements and also gave oral evidence at the hearing.

Documentary Evidence

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

- Text messages from Dr Ballantyne to Mrs A, dated 06/01/2017;
- Text messages from Dr Ballantyne to XXX (neighbour) dated 06/10/2017;
- Police Scotland crime recording dated 06/10/2017;
- Mrs A’s undated typed initial statement (Exhibit MrsA1);
- Police Scotland record of complaint 07/10/2017;
- Police Scotland incident recording document, various dates;
- Police Scotland report – Full CR details, undated;
- Police Scotland police officer notebook, undated;
- Dr Ballantyne self-referral to the GMC dated 09/10/2017;
- Ms B’s statement to Police Scotland dated 10/10/2017;
- Letter from Procurator Fiscal to Dr Ballantyne dated 17/1/02017;
- Two letters from Dr C dated 03/11/2017 and 02/02/2018;
- Preliminary enquiry record dated 19/10/2017;
- Dr Ballantyne’s email to GMC dated 26/11/2017
- Dr Ballantyne’s email to Paul Hannah Solicitors dated 10/04/2017
- Dr Ballantyne’s supplementary witness statement (undated);
- Transcript of a call from Dr Ballantyne to the MDDUS on 21 April 2017;
- Testimonials.

The Tribunal’s Approach

8. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Ballantyne 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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9. The Tribunal has borne in mind that Dr Ballantyne is of good character.

The Tribunal’s Analysis of the Evidence and Findings

10. 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.

11. The Tribunal heard widely differing accounts of what occurred between Dr Ballantyne and Mrs A on 6 October 2017.

12. It is common ground that the alleged incident occurred against the background of an acrimonious XXX.

13. Ms Hudson, Counsel, on behalf of the GMC, submitted that Dr Ballantyne had been drinking alcohol, lost his temper and verbally and physically assaulted Mrs A. The case rests or falls on the evidence of Mrs A. Dr Ballantyne denies the allegation in its entirety. Mr McDonagh, Counsel, on behalf of Dr Ballantyne, submitted that Mrs A has lied and embellished her account of the alleged incident.

14. XXX.

15. The Tribunal notes that shortly after the alleged incident, and on the same day, Mrs A went to the Police in Falkirk accompanied by her sister Ms B. The Police Scotland Crime Recording Report refers to an alleged offence of common assault and gives the date and time of the incident as 6 October 2017 between 1400 and 1410 hours. In a box entitled “Method” the report says: “Did shout and swear at complainant, grab her by her shoulders with both hands and pull complainant backwards to her hurt.” In an entry dated 7 October 2017 the Recording Report states: “Police witness [D] noted details and a signed statement from the witness”. The “witness” is presumed to be Mrs A.

16. A copy of Mrs A’s signed Police statement has not been provided by the GMC. Instead it provided a typed document (Exhibit MrsA1), which the Tribunal has been told is a copy of the original. The Tribunal notes that Exhibit MrsA1 is undated, unsigned and not on headed paper. The Tribunal has been informed that the GMC has been unable to secure the original witness statement from Police Scotland. Mrs A told the Tribunal that she was not sure when the typed version was created, and that her solicitor may have given it to her.

17. The Tribunal notes that the GMC Allegation is based on what is recorded in Exhibit MrsA1. In that document Mrs A says Dr Ballantyne called her a “C**T” (Allegation 1a) and that “he grabbed me with both hands from behind, on my shoulders and round my chest and pulled me backwards” (Allegation 1b).
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18. The Tribunal is concerned that it has not had sight of the actual statement Mrs A made to Police Scotland. The Tribunal has received no satisfactory answer why a copy has not been forthcoming from the GMC.

19. Notwithstanding the above the Tribunal has considered the merits of each paragraph of the Allegation in the light of the whole of the evidence before it including Exhibit MrsA1.

Allegation 1b

20. The Tribunal considered Allegation 1b first as it relates to the more serious allegation made by Mrs A.

21. XXX.

22. XXX.

23. XXX. An argument between Mrs A and Dr Ballantyne ensued. It was bitter and bad language was exchanged on both sides. It ended when Mrs A left XXX. She travelled to her sister’s and made a complaint to the Police in Falkirk the same day.

24. In October 2018, over a year after the incident, Mrs A made a witness statement to the GMC. Mrs A’s GMC witness statement is markedly different to what she is said to have told Police Scotland as recorded in Exhibit MrsA1. In paragraph 9 of her GMC witness statement, Mrs A describes the incident and says that Dr Ballantyne “jumped on my back and put me in a lock hold with his arms around my neck and both his hands on my back”.

25. In her oral evidence before the Tribunal, Mrs A gave another version. She described a “frenzied” attack with “repeated punches” to her shoulder, arms and upper body, and that Dr Ballantyne was “out of control”. She mentioned none of this to the Police or to her sister. Further, in her oral evidence Mrs A said that she suffered bruising from these “repeated punches” and that she took photographs of the bruises. She recalled giving copies of the photographs to the Police and the GMC.

26. The Tribunal was told by Ms Hudson, at the conclusion of the GMC’s case, that there is no record of Mrs A informing the GMC or the Police of the evidence of any photographs of any injuries.

27. XXX. On 10 October 2017 Ms B made a statement to Police Scotland. She signed a police officer’s notebook in which she recounted what her sister told her of the incident. The notebook entry refers to Mrs A claiming that Dr Ballantyne had assaulted her by grabbing her from behind and pulling her back as she was trying to leave XXX.
There is no mention in the above Police record of Mrs A claiming that Dr Ballantyne “jumped on her back” or “repeatedly punched” Mrs A or there being a “frenzied attack”.

Ms B told the Tribunal that she was present when her sister visited the Police and she said they were together on all occasions when the Police came to her home. Yet at no point did Ms B see or even know of any photographs. In her oral evidence, Ms B did say that she saw red marks on her sister’s arm and neck, but Mrs A did not tell her how they were caused.

Mrs A was and is close to her sister and told the Tribunal that they discussed what happened. Ms B said she would have remembered if her sister had said she had been punched. Also, Ms B confirmed that neither she nor Mrs A had mentioned injuries in their accounts to the Police.

Mrs A told the Police that her neighbour had witnessed the alleged incident. On 10 October 2017 the neighbour was interviewed by Police Scotland and signed an entry in the interviewing officer’s notebook. The entry records that the neighbour did not see anything of the incident.

Dr Ballantyne gave evidence to the Tribunal and maintained that at no stage did he physically assault Mrs A.

Having heard all the evidence in the case the Tribunal considered the credibility of each of the witnesses.

The Tribunal found Dr Ballantyne to be a good witness and it accepted his evidence, which it considered was consistent throughout. Dr Ballantyne conceded that there had been an argument but maintained that there had been no physical contact. In his witness statement Dr Ballantyne said that when he heard Mrs A shouting for help XXX, he realised that she was trying to stage some form of incident as she had threatened to do. Dr Ballantyne sent a text message to Mrs A on 6 October 2017 at 15:07 hours saying that he would be contacting Police Scotland regarding property she had taken XXX. Mrs A replied saying that she was on her way to the police and that their neighbour was a witness that he had assaulted her. In the event he telephoned his solicitor for advice and contacted the neighbour whom Mrs A had said in her text had witnessed “the assault”. The Tribunal found nothing unusual in Dr Ballantyne’s text messages.

The Tribunal noted that testimonials from both professional colleagues and family members attest to Dr Ballantyne’s ‘gentle’ nature, and many additionally state that they have never witnessed him lose his temper or swear.
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36. The Tribunal found Ms B to be a credible witness. She sought to assist the Tribunal and gave a truthful account of what she could recall.

37. The Tribunal had considerable difficulties in regard to Mrs A’s evidence. Mrs A’s differing accounts of the incident are inconsistent and irreconcilable with other evidence. However, and notwithstanding Mrs A’s differing accounts, the Tribunal recognises that within a short period of time Mrs A reported the alleged incident to her sister and to the Police. Such accounts of the alleged incident as were given by Mrs A to her sister or the Police are fundamentally different to her later accounts given to the GMC and the oral evidence before the Tribunal.

38. During her evidence Mrs A admitted that the text message she sent Dr Ballantyne whilst on the train en-route to Falkirk was untrue. In that text message Mrs A said that she was on her way to the Police. In truth she was on her way to meet her sister and there had been no discussion between Mrs A and her sister, with whom she had been speaking from the train, about going to the Police. Mrs A conceded during her evidence that she sent the text message to frighten Dr Ballantyne.

39. The Tribunal is not persuaded that Dr Ballantyne ‘lost it’ as the GMC submitted. The Tribunal is of the view that Mrs A has embellished the incident, whether deliberately or otherwise, and it is unable to accept her account of what took place XXX. In all the circumstances, the Tribunal is not satisfied that the GMC has proved allegation 1b to the requisite standard of proof.

40. Accordingly the Tribunal finds allegation 1b not proved.

Allegation 1a

41. As to allegation 1a, the Tribunal considers that if allegation 1b fails for the reasons above stated, then 1a falls away. It is part and parcel of the same incident. Dr Ballantyne denies calling Mrs A a “c**t” and the Tribunal is not satisfied that he used that word, although he admits he called her a “vicious little bint”.

42. The only evidence to support allegation 1a is Exhibit MrsA1. However, the Tribunal has considerable reservations about this document and has not seen any signed Police statement.

43. Accordingly the Tribunal finds allegation 1a not proved.

The Tribunal’s Overall Determination on the Facts

44. The Tribunal has determined the facts as follows:
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1. On 6 October 2017 you:
   a. called Mrs A a ‘c**t’, or words to that effect;
      Found Not Proved
   b. grabbed Mrs A from behind, pulling her backwards.
      Found Not Proved

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

Found Not Proved

45. As the Facts have not been found proved it therefore follows that
Dr Ballantyne’s fitness to practise is not impaired.

Confirmed
Date 05 September 2019

Mr Kenneth Hamer, Chair
Application pursuant to Rule 17(2)(g)

1. Following the conclusion of the case by the GMC, Mr McDonagh on behalf of Dr Ballantyne made an application pursuant to Rule 17(2)(g) of the General Medical Council (Fitness to Practise) Rules Order of Council 2004 (as amended), which states:

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

Submissions of behalf of Dr Ballantyne

2. In summary, Mr McDonagh submitted that there is no case to answer in relation to both allegations faced by Dr Ballantyne:

   ‘1. On 6 October 2017 you:

   c. called Mrs A a ‘c**t’, or words to that effect;
   d. grabbed Mrs A from behind, pulling her backwards.’

3. Mr McDonagh referred to the case of R v Galbraith [1981] 1 WLR 1039 and the relevant legal approach as set out in that judgment.

4. Mr McDonagh submitted that the second limb of Galbraith applies in this case, that the evidence of Mrs A is of tenuous character, and her evidence is inherently weak and inconsistent with the other evidence in the case. He submitted that her evidence is simply not capable of belief.

5. Mr McDonagh referred to inconsistencies in Mrs A’s evidence, in particular that the evidence that Dr Ballantyne’s ‘attack’ was ‘frenzied and out of control’ with ‘repeated punches…to the upper arm and left and right sides of the lower back’ was a recent fabrication and is not capable of belief. He submitted that the allegation was allegedly made to the Police and the GMC, but neither the Police nor the GMC document this allegation at all.

6. Furthermore, photographs of Mrs A’s injuries were allegedly provided to the Police and the GMC but neither has ever been in possession of such photographs. Mr McDonagh submitted that the claim that photographs were taken and provided to
the Police and GMC was a recent fabrication and is not capable of belief. He also submitted this inconsistency in Mrs A’s evidence is further supported by Ms B’s evidence that she was not aware of any photographs or any injuries consistent with the attack that was described.

7. Mr McDonagh submitted that the fabricated evidence of Mrs A so fundamentally undermines her credibility that she is now not capable of belief. In support of this submission he also drew the Tribunal’s attention to a ‘multitude of other inherent inconsistencies in this case’.

8. Mr McDonagh submitted that all those inconsistencies could not be found in Mrs A’s favour as she has lied about a frenzied attack to this Tribunal. This has infected her evidence as a whole and it cannot be relied upon.

9. In relation to paragraph 1a of the Allegation, Mr McDonagh submitted that whilst it would be inappropriate to use such a word it is not capable of amounting to serious professional misconduct. He also submitted that the provenance of exhibit MrsA1 has not been provided to a satisfactory standard by the GMC.

Submissions of behalf of the GMC

10. In summary, Ms Hudson submitted that the application for no case to answer should be rejected by the Tribunal. She submitted that there is clearly evidence supporting the charges, provided by Mrs A. Ms Hudson submitted that Mr McDonagh’s submission regarding the tenuous nature of Mrs A’s evidence is wrong. Ms Hudson drew the Tribunal’s attention to Paragraphs 15 and 16 of the judgment of Husband v GDC [2019] EWHC 2210 (Admin) which sets out that it is for a Tribunal, at this stage of proceedings, to consider the evidence as a whole and decide whether the charge could not whether it would be made out.

11. Ms Hudson submitted that this test would not be met by acceding to Mr McDonagh’s submission. Ms Hudson also submitted that the defence’s submission that Mrs A’s evidence is so flawed is a matter to be determined by the Tribunal at the relevant stage. She stated that when Mrs A was cross-examined by Mr McDonagh she maintained that she had been assaulted by Dr Ballantyne. She referred to some of the inconsistencies in Mrs A’s evidence raised by Mr McDonagh and submitted that a Tribunal is not required to accept all or nothing of the evidence; it is perfectly possible to accept some parts of the evidence but not others. She submitted that the most recent authority of Husband v GDC makes clear how the Tribunal should approach the evidence at this stage.

12. In relation to paragraph 1a of the Allegation, Ms Hudson submitted that the Tribunal ought to look at this case as a whole as it is part of the context relating to this incident. She therefore submitted that it would be inappropriate to withdraw or delete the Allegation at this stage of proceedings.
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The Tribunal’s Approach

13. The Tribunal carefully considered the submissions of both Mr McDonagh, on behalf of Dr Ballantyne, and Ms Hudson, on behalf of the GMC.

14. In reaching its decision the Tribunal had regard to the test set out in Galbraith, and bore in mind that its role at this stage is not to make findings of fact but to determine whether the evidence heard so far, taken at its highest, is such that the Tribunal could find an alleged fact proved on the balance of probabilities.

15. The Tribunal bore in mind the judgment in Husband v GDC that the Tribunal, at this stage, must determine whether the charge could be made out and not whether it would be made out.

The Tribunal’s Decision

16. The Tribunal considered the oral and written evidence presented so far in this case. Notwithstanding Mr McDonagh’s submissions as to the evidence called by the GMC, the Tribunal considers it is open to it to form a view that despite such criticisms of the evidence the Allegation is capable of being proved to the requisite standard of proof. The Tribunal has determined that the Allegation could be made out taking “the prosecution case at its highest” and there is a prima facie case to answer. At this stage the Tribunal has formed no judgment as to whether the Allegation would be proved.

17. The Tribunal also bore in mind Mr McDonagh’s subsidiary argument that paragraph 1a of the Allegation, even if proved, could not amount to serious misconduct. Paragraph 1a forms part and parcel of the alleged incident and the Tribunal determined that this is a matter to be considered having heard all the evidence in the case.

18. The Tribunal has therefore determined to refuse Mr McDonagh’s submission of no case to answer under Rule 17(2)(g).