Dates: 12/08/2019 - 22/08/2019

Medical Practitioner’s name: Dr Sarah LOTZOF

GMC reference number: 3547838

Primary medical qualification: MB BS 1991 University of London

Type of case
New - Misconduct
Outcome on impairment
Not Impaired

Summary of outcome
Case concluded

Tribunal:

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<th>Role</th>
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<tr>
<td>Legally Qualified Chair</td>
<td>Mr Sean Ell</td>
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<tr>
<td>Lay Tribunal Member:</td>
<td>Mrs Anna Crawley</td>
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<td>Medical Tribunal Member:</td>
<td>Mr Robert Mansel</td>
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Tribunal Clerk: Mr Matt O’Reilly

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 Ian Stern QC, instructed by Kyriakides &amp; Braier Solicitors</td>
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<td>GMC Representative:</td>
<td>Mr Charles Garside, QC</td>
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Attendance of Press / Public
In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held in public.
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Overarching Objective

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

Determination on Facts - 22/08/2019

Background

1. Dr Lotzof is a General Practitioner (‘GP’) at The Chase Lodge Hospital “Chase Lodge”. During June 2015 whilst Dr Lotzof was Patient A’s registered GP at Chase Lodge, it is alleged that Dr Lotzof breached Patient A’s confidentiality in that she discussed Patient A’s mental health with Patient A’s father (‘Mr E’) without the consent of Patient A. It is also alleged that on 15 June 2015, Dr Lotzof created a false note within Patient A’s medical records of an alleged telephone call that she knew had not taken place and that was dishonest.

2. Patient A transferred from Chase Lodge to Centennial Medical Centre (‘CMC’) sometime between June and July 2015.

3. It is alleged that on 9 April 2016 Dr Lotzof prescribed Propranolol to Patient A and failed to: record any clinical reasons for writing a prescription; have regard to ongoing treatment and medication that Patient A was receiving at that time; document any advice given to Patient A regarding the possible side effects of taking the medication; or, report this to Patient A’s GP.

4. On 10 April 2016 Patient A went to Dr Lotzof’s home. Dr Lotzof’s notes of the appointment state that Patient A had been brought to see her by Patient A’s then husband (‘Mr R’). Patient A was showing symptoms of mania, with poor sleep, pressure of speech and ideas of grandeur. Dr Lotzof ascertained that Patient A was not suicidal. Dr Lotzof recorded that she made an appointment for Patient A to see a psychiatrist and also obtained advice from a Consultant Psychiatrist, who advised that Olanzapine be prescribed.

5. It is alleged that on 10 or 11 April 2016 Dr Lotzof prescribed Olanzapine to Patient A and failed to document the advice given regarding the possible side effects of taking the medication nor reported this to Patient A’s GP.

6. On 11 April 2016 Patient A had been admitted to Clementine Churchill Hospital as she thought she was having a heart attack. Mr R notified Dr Lotzof and Dr Lotzof’s contacted the hospital as she had concerns about Patient A’s mental health. Dr Lotzof spoke to a consultant who agreed that Patient A was ‘mentally
unstable’ and that this was one element of consideration in transferring her to another hospital. Patient A had requested that no information be given to Dr Lotzof as she was no longer her GP. The hospital records include a handwritten form, signed by Patient A, refusing the hospital permission for information to be given to Dr Lotzof.

7. On 12 April 2016 Dr Lotzof reported her concerns about the welfare of Patient A’s children to social services. On 14 April 2016 Dr Lotzof was contacted by Social Services who were concerned about Patient A’s welfare. Dr Lotzof’s records state that she was asked to do a home visit to assess Patient A. Dr Lotzof informed Mr R of this request and they arranged to meet at Patient A’s house in order to assess her. Dr Lotzof was then advised that Patient A had left the house but her whereabouts were unknown. Dr Lotzof rang the police to ask them to search for Patient A, but while travelling Dr Lotzof and Mr E came across Patient A in the street and approached her. Dr Lotzof’s records stated that she advised Patient A that she was very unwell and would need to go to hospital. According to Dr Lotzof’s record she was then assaulted by Patient A and Patient A was restrained by Mr R and others. The police arrived and Patient A was taken into custody.

8. It is alleged that on 14 April 2016 Dr Lotzof made arrangements for Patient A to be detained under the Mental Health Act and failed to report her involvement to Patient A’s GP.

9. Patient A was assessed later by a Consultant Psychiatrist who found that she may have been paranoid but did not meet the criteria for sectioning under section 32 of Mental Health Act. Patient A was discharged under the care of Mr E.

10. On 8 July 2016 Mr E submitted a complaint to the GMC including a statement of complaint from Patient A in relation to Dr Lotzof’s care and treatment of Patient A.

11. Patients B and C were patients at Chase Lodge who underwent medical terminations. Chase Lodge was neither registered not licenced to carry out terminations. It is alleged that on 25 November 2014 Dr Lotzof made arrangements for Patient B to undergo a medical termination at Chase Lodge and that on 25 September 2015 she made arrangements for Patient C to undergo a medical termination at Chase Lodge.

12. In November 2015 the Care Quality Commission (‘CQC’) were notified by the Department of Health (‘DoH’) that a termination of pregnancy had taken place at Chase Lodge on 25 September 2015. The DoH had received an ‘Abortion Notification form (‘HSA4 form’) signed by Dr D, a Consultant Obstetrician and Gynaecologist who had practising privileges at Chase Lodge. The form was returned to Chase Lodge from the DoH as it had not been fully completed as it required the clinic code identifying that Chase Lodge was registered to undertake terminations to be included.
13. The HSA4 form was amended and returned to the DoH with a covering letter from Dr Lotzof indicating that Chase Lodge was not registered to undertake terminations and set out the reasons why the termination took place.

14. It is alleged that on a date between 30 September 2015 and 29 October 2015 Dr Lotzof retrospectively amended Patient C’s Form HSA4 by adding an additional ground for termination. The GMC allege that Dr Lotzof knew that she was making the amendment retrospectively; failed to make it clear that she made the amendment retrospectively; that the additional ground was not a valid ground at the time of the termination; and that this was dishonest.

15. Dr D told the GMC that another termination had been undertaken at Chase Lodge on an earlier date, 24 November 2014 and that in both instances Dr Lotzof had told her Chase Lodge was registered to undertake terminations. It is alleged that when Dr Lotzof told Dr D that the Practice was registered with the Care Quality Commission to undertake terminations on 26 November 2014 and 25 September 2015 she knew the practice was not registered and that her behaviour was dishonest.

16. In November 2016 following their investigation, the CQC issued Chase Lodge with a £4000 fixed penalty fine due to their criminal breach of Regulation 10 Health and Social Care Act 2012 of undertaking an unregistered activity.

The Allegation and the Doctor’s Response

17. The Allegation made against Dr Lotzof is as follows:

1. On an occasion in June 2015 whilst you remained her registered GP at Chase Lodge Practice (‘the practice’) you breached Patient A’s confidentiality in that you discussed her mental health with her father without her consent. **To be determined**

2. You created a false note within Patient A’s medical records of an alleged telephone call with Patient A on 15 June 2015 (‘the telephone call’). **To be determined**

3. On 9 April 2016 you prescribed Propranolol to Patient A and you failed to:

   a. record any clinical reasons for writing a prescription; **To be determined**
b. have regard to ongoing treatment and medication that Patient A was receiving at that time; To be determined

c. document any advice given to Patient A regarding the possible side effects of taking the medication; To be determined

d. report this to Patient A’s GP. To be determined

4. On 10 or 11 April 2016 you prescribed Olanzapine to Patient A and you failed to:
   a. document the advice given to Patient A regarding the possible side effects of taking the medication; To be determined
   b. report this to Patient A’s GP. To be determined

5. On 14 April 2016 you made arrangements for Patient A to be detained under the Mental Health Act and you failed to report your involvement to Patient A’s GP. To be determined

6. On 25 November 2014 you made arrangements for Patient B to undergo a medical termination at the practice. To be determined

7. On 25 September 2015 you made arrangements for Patient C to undergo a medical termination at the practice. To be determined

8. On a date between 30 September 2015 and 29 October 2015 you retrospectively amended Patient C’s Form HSA4 by adding an additional ground for termination (‘the amendment’). To be determined

9. You failed to make it clear that you made the amendment as set out at paragraph 8 retrospectively. To be determined

10. On the following dates you told Dr D that the practice was registered with the Care Quality Commission to undertake terminations:
    a. 26 November 2014; To be determined
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b. 25 September 2015. **To be determined**

11. When you:
   a. created the note as set out at paragraph 2 you knew the telephone call had not taken place;
      **To be determined**
   
b. made the amendment as set out at paragraph 8 you knew:
      i. you were making the amendment retrospectively;
         **To be determined**
      ii. the additional ground was not a valid ground at the time of the termination;
         **To be determined**
   
c. made the comments as set out at paragraph 10 you knew the practice was not registered with the Care Quality Commission to undertake terminations. **To be determined**

12. Your behaviour as described at paragraphs 2 and 8-10 were dishonest by reason of paragraph 11. **To be determined**

Factual Witness Evidence

18. The Tribunal received oral evidence and witness statements on behalf of the GMC from the following witnesses:

   - Patient A, in person;
   - Dr D, Consultant Obstetrician and Gynaecologist (who had practising privileges at Chase Lodge at the time of the events in relation to Patients B and C), in person;
   - Mr F, Hospital Inspection Manager at the CQC by telephone link.

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

   - Mr E, Patient A’s father.

20. The Tribunal also received evidence on behalf of Dr Lotzof in the form of witness statements from:

   - Ms G, Business Manager at Chase Lodge, dated 1 August 2019;
   - Ms H, Superintendent Pharmacist at Chase Lodge, dated 5 August 2019;
   - Ms I, General Practitioner at Chase Lodge, dated 8 August 2019.
Expert Witness Evidence

21. The Tribunal received evidence from Dr J FRCGP, General Practitioner, expert witness on behalf of the GMC in relation to the Allegations concerning Patient A only. Dr J provided two expert reports, dated 8 March 2019 and 16 April 2019. Dr J also gave oral evidence.

Documentary Evidence

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

- Patient A’s initial account, dated 20 May 2016;
- Mr E’s initial account, dated July 2016;
- Note on Patient A’s medical record from Chase Lodge, dated 15 June 2015;
- Patient A’s medical records;
- Patient C’s medical records;
- Dr Lotzof’s statement to the CQC, dated 20 November 2015;
- Dr D’s statement to the CQC, dated 21 January 2016;
- HSA1 forms relating to Patients B and C;
- HSA1 form in relation to Patient C returned to Chase Lodge from DoH;
- Cover letter from Dr Lotzof to the DoH, dated 29 October 2015.

The Outcome of Applications Made during the Facts Stage

23. On day 1 of the hearing Mr Charles Garside QC, on behalf of the GMC, made an application to amend paragraph 1 of the Allegation pursuant to Rule 17(6) of the GMC (Fitness to Practise) Rules 2004 (‘the Rules’). In summary, he submitted that the proposed amendment to change the wording from ‘mental health’ to ‘confidential medical information’ was necessary to better reflect the evidence of Mr E as set out in his witness statement. Mr Ian Stern QC, on behalf of Dr Lotzof, objected to the proposed amendment submitting that the proposed change was one of substance, unfair and unjust at this late stage. The Tribunal accepted the submission of Mr Stern and determined that the application was one of substance and would be unjust to Dr Lotzof at such a late stage. It therefore rejected the application. The Tribunal’s full decision on the application is included at Annex A.

24. On day 1 of the hearing Mr Garside also made an application for the hearing to be heard in private in its entirety. In summary he submitted that as matters of Patient A’s medical condition would be discussed and that of two patients who had terminations. He submitted that it would be the most efficient way to proceed administratively for the Tribunal to remain in private session. Mr Stern submitted that the starting point is one of open justice and where possible the hearing should remain in public. He invited the Tribunal to consider only going into private session where matters of Patient A’s health and medical records are discussed should the
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Tribunal consider it appropriate. The Tribunal considered Rule 41 of the Rules that hearings should be held in public unless one of the exceptions apply. As all the patients had been anonymised the Tribunal concluded the Public interest in the hearing being held in public was not outweighed. It determined that in terms of procedure this hearing would be held in public in its entirety unless it became necessary to go into private session. It would rely on both Counsel to tailor their questions to avoid identifying the patients in public.

25. On day 2 of the hearing Mr Stern made an application on the admissibility of evidence pursuant to Rule 34(1) of the Rules. In summary, Mr Stern submitted that paragraph 38 of Mr E’s witness statement was inadmissible as this paragraph was the basis for head of charge 1 but that Mr E made no reference to mental health in paragraph 38 of his witness statement. Mr Garside submitted that the GMC does not concede that the un-amended Allegation is not capable of being proven and that this evidence along with the oral evidence of Patient A demonstrates the conversation was relevant to mental health. The Tribunal were satisfied that Patient A’s mental health was not a concern at that time and therefore acceded to the application. The Tribunal’s full decision is included at Annex B.

Application pursuant to Rule 17(2)(g)

26. Following the conclusion of the case by the GMC, Mr Stern on behalf of Dr Lotzof, 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 Lotzof

27. In summary, Mr Stern referred the Tribunal to the relevant legal principles. He submitted that where there is an allegation of a ‘failure’ to do something then the GMC must prove, as a pre-requisite, that there was a duty to act in the specific way alleged. He submitted that ultimately, there is a single ‘charge’ alleged that of impairment of fitness to practise. In this case, the route to such a finding can only be made upon ‘misconduct’ and misconduct has been held to mean ‘serious misconduct’ or conduct that is seriously below the relevant standard. Although there is a single charge, the courts have made it clear that any factual allegations relied upon to make up the alleged ‘misconduct’, must be set out with sufficient clarity that the practitioner knows what it is that they have to meet. The evidence in relation to each factual allegation must be considered separately and any allegation that
cannot, on the evidence, meet the necessary threshold, should be stopped and dismissed by the Tribunal.

28. In relation to head of charge 1, Mr Stern submitted that the Tribunal has, in effect, already determined the relevant issue in this allegation. The evidence of Mr E, at paragraph 38 which has previously been set out, was determined to be inadmissible on the basis that it could not be relevant to Patient A’s “mental health”. It follows that, if his evidence could not amount to such a conclusion then Patient A’s comments must likewise short fall of coming within that term. Therefore, there is no evidence on this head of charge.

29. In relation to head of charge 2 and 11a, Mr Stern referred to the note dated 15 June 2015. He submitted that Patient A’s witness statement made whilst she was in the Nightingale Hospital stated that “this document has been falsified”, though she does not say in what way. Mr Stern submitted that the Allegation is that there was no telephone call, “you knew the telephone call had not taken place” at head of charge 11a. The Allegation, as set out is contradicted by the oral evidence of the Patient A. He submitted that it was put to Patient A in cross-examination that the Sunday after her nose operation, 14 June 2015, she was distressed and there was a decision about her medication and how and when she was taking it. He submitted that the call did involve a conversation with Dr Lotzof expressing concern with regard to Patient A’s drug taking and that this discussion continued on 17 June 2015 when she saw Dr Lotzof at Chase Lodge with Patient A’s husband and as a result of that discussion she thought the blood test being ordered was a drug test. He submitted that on that evidence the head of charge cannot be made out.

30. Mr Stern submitted that it is not accepted that the Allegation can now be altered to smoking of cannabis or the reporting of such, at that time. Even if such an amendment were, wrongly, to be allowed, the evidence of Patient A falls squarely within the second limb of the legal principle as set out in Galbraith as intrinsically unreliable. Mr Stern submitted Patient A’s evidence was just incredible.

31. Mr Stern submitted that in evidence, Patient A said that as soon as the notes were transferred to Centennial Medical Centre (‘CMC’), she saw or was informed of the note and requested a drug test which “came up completely clear”. He reminded the Tribunal that the GMC had telephoned the CMC to make the enquires and had been informed there was no record of Patient A undergoing any drug test.

32. Mr Stern submitted that if this note is ‘made up’ in relation to the cannabis, then there exists the most extraordinary series of coincidences, firstly, Patient A accepts that she did smoke the occasional ‘joint’, just not at this time. Secondly, it is recorded by a host of other professionals that Patient A had told them she smoked cannabis. Thirdly, Dr Lotzof had no reason to make up that Patient A was taking a few joints of cannabis, if Patient A had not said that. On the other hand, Patient A had every reason to deny the accuracy of this note when she set out her
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account in May 2016, whilst at the Nightingale Hospital uncertain whether she would be allowed supervised or unsupervised access to her children. This was in the context of her ongoing acrimonious divorce. Patient A was very concerned about Social Services finding drugs or medication since she admits to having cleared out the ‘medicine’ cabinet on the day before they were to visit her at the house in April 2016. Fourthly, Despite Patient A seeing or being aware of that note in July 2015, she did not contact Dr Lotzof in any way to complain about the note and that if she had complained to CMC about it at any point, they do not seem to have recorded that concern.

33. In relation to head of charge 3, Mr Stern submitted that the evidence that Propranolol was ‘prescribed’ by Dr Lotzof is so tenuous as to be intrinsically unreliable. The only ‘evidence’ is that Patient A says that is what her ex-husband told her but there is no ability to cross examine or question her ex-husband and there is no support for this assertion. There was no conversation between Patient A and Dr Lotzof regarding medication, even if the call took place. He submitted there is no record in the patient records of any call or discussion on 9 April 2016 when all other matters are recorded and there is no record of Dr Lotzof having prescribed Propranolol at this time. Dr Lotzof had prescribed it to Patient A, some years earlier. He submitted that whilst Patient A may believe that she was prescribed this at the beginning of April 2016, in the absence of her husband or some other evidence this is not a reliable basis for being satisfied that there is a case to answer. He suggested that the Tribunal cannot ignore her mental state in April 2016 and for the month thereafter and not to mention the many important aspects that reflect on Patient A’s reliability.

34. Mr Stern submitted that Patient A’s witness statements dated 27 March 2017 and 20 May 2016 make it clear that the medication was obtained by her then husband, from Chase Lodge. He submitted that when it was put to her that there was no such medication prescribed by Chase Lodge at the time and in fact throughout 2016, Patient A changed her evidence saying; “That is because she had them at home”, “she called them sweeties”, “she had a stash”, “her sweetie box”. Mr Stern pointed out to the Tribunal that Patient A had previously given this evidence about an earlier prescription and this change further highlighted confusion in Patient A’s evidence.

35. Mr Stern submitted that in the expert report of Dr J, dated 16 April 2019, he states the only criticism if the call took place is the absence of a record and this is below but not seriously below the expected standard. He submitted that Dr J made it clear that there was no obligation to report matters to CMC. Mr Stern submitted that head of charge 3 cannot amount to misconduct on the GMC’s own evidence and therefore should not be included.

36. In relation to head of charge 4, Mr Stern submitted the GMC had failed to adduce evidence of any duty on Dr Lotzof to record possible side effects in her
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Notes, having not done so cannot be said to be a failure on Dr Lotzof’s part. Mr Stern pointed out that there are no other records in this case, including hospitals records, that have the side effects recorded and it is not clear where this suggestion comes from. Mr Stern invited the Tribunal to consider the expert report from Dr J who made no criticism of any matter relating to the medical records, save for the matter referred to above regarding the 9 April 2016, if it occurred. In relation to head of charge 4b, Mr Stern submitted that the evidence is that there is no obligation to provide such information to Patient A’s GP and that Dr J does not criticise this aspect of the case. He noted that in any event all the medical records were supplied to the Nightingale Hospital on 16 April 2016.

37. In relation to head of charge 5, Mr Stern submitted that this Allegation is limited to a failure to report to Patient A’s GP and again, the evidence does not establish any duty on Dr Lotzof to have done what is alleged.

38. In relation to heads of charge 8, 9, 11bi and ii and 12, Mr Stern submitted that it is the responsibility of the person carrying out the termination to complete and return the ‘HSA4 notification’ form and in this instance that was Dr D who carried out the procedure. He submitted that Dr D accepted that these are forms obtained elsewhere other than Chase Lodge and are not seen or completed by the referring GP and are not stored at Chase Lodge. Mr Stern submitted that this means that staff at Chase Lodge would not have seen the completed form.

39. Mr Stern submitted that the original form is signed and dated by Dr D and the Hospital/Clinic code that needs to be entered has been left blank. Mr Stern invited the Tribunal to consider why Dr D did not ask for this reference. He submitted that the place of treatment for the Prostaglandin (Misoprostol) has been left blank which tells the Department of Health (‘DoH’) that this treatment was taken at the same place as the first part of the treatment, which was untrue and was, in fact, contrary to the law in England until December 2018. Even on Dr D’s evidence, there was no discussion between her and Dr Lotzof about where the second medication would be taken.

40. Mr Stern submitted that the letter from the DoH with the returned HSA4 form was addressed to Dr D who was content to deposit it with the reception staff and never enquired of them or anyone else at Chase Lodge, including Dr Lotzof, whether it had been returned. The letter specifically requested the person ‘ensure all information is entered accurately’ and requests the form is amended. He submitted that the amended part was self-evident as the DoH had sent the form back and that Dr Lotzof’s enclosed letter to the DoH makes the status of Chase Lodge clear.

41. Mr Stern submitted that the HSA1 form is the relevant form for setting out the grounds for termination since there is a clear requirement under the Abortion Act that, in order for a ground to be appropriate, it must be considered to be as such in the opinion of two practitioners. He submitted that head of
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charge 8 cannot therefore amount to adding ‘an additional ground’, as there is no such thing. He submitted that Dr Lotzof made it clear in the body of the form that she was returning it, not Dr D, that the form had been amended and that Chase Lodge was not registered as an official termination centre. He submitted that this was on 29 October 2015, nearly a month before the Care Quality Commission (‘CQC’) became involved and there is absolutely no evidence at all that she acted dishonestly.

42. In relation to head of charge 11bii, Mr Stern submitted that it is clear that Dr Lotzof agreed that the basis for the termination was ‘C’ as that is what she signed for when the HSA1 form was signed. When she came to review the HSA4 form, a form that she was unaware of and which she was only looking at as Dr D had abrogated her responsibility, she clearly felt that the form needed more details to be accurate. He submitted that the ground could never be a valid one since it was an expression of her view after the termination and not before. Mr Stern reminded the Tribunal that there are no guidelines as to what constitutes an emergency and the GMC has called no expert in this regard. He submitted that Dr Lotzof is not an expert and she was just setting out what she thought was an accurate statement of the facts as she understood them. Mr Stern submitted that this was an urgent situation that Dr Lotzof assessed from all the circumstances, was an emergency and that it is clear that Dr D was of the same view as she attended an emergency appointment, sought to arrange the commencement of the termination at other location(s) and was present for about two hours at Chase Lodge on the day.

43. In relation to heads of charge 7, 10 and 12, Mr Stern submitted that contrary to Dr D’s statements, it is clear that the terminology as set out in the head of charge was not used by Dr Lotzof. He submitted that Dr D specifically said that “I can’t remember the terminology, I don’t think I said are you CQC regulated for terminations”. Dr D had in fact made assumptions. Mr Stern submitted that in order for this Allegation to be sustained by the GMC there would have to be clarity of words and not what Dr D described as an impression. He submitted that Dr D gave a variety of answers as to what she recalls was said. Most of the answers were that she could not recall but in 2015 she thought she had said something to the effect of, “are you still okay to do terminations?”. This could be interpreted in a number of ways.

44. Mr Stern submitted that Dr D stated that in 2012 she had had a telephone conversation with a previous practice manager (unnamed) who had apparently given her comfort that she could carry out terminations at Chase Lodge and thereafter, on her own evidence, made a number of assumptions.

45. In her statement to the CQC, Dr D had said that she “offered to see the patient at the BMI Hendon on the following Monday to supervise the administration of the first of the medication there” Mr Stern pointed out BMI Hendon was also not registered to carry out terminations. He submitted that it is highly indicative of the
level of interest and regard Dr D had to whether a place was registered. Mr Stern submitted that Dr D said she was unaware of the law in relation to the fact that the second medication for termination must also be taken in a registered place and had later learnt about the change from the radio.

46. Mr Stern submitted that when Dr Lotzof left Chase Lodge the arrangements were uncertain as to where the taking of the first medication would be. He submitted that as a matter of law a termination is the taking of both medications not just the first one. There is no evidence that there was ever a discussion or any arrangements made for this patient, or any other, to have the second medication at Chase Lodge. Both patients took the second medication in their own home. He submitted that on any view there are very serious questions regarding Dr D’s evidence.

47. In relation to head of charge 6, Mr Stern submitted that Dr D said words to the effect of, “I think I said are you still ok to do terminations” which does not amount to the head of charge as drafted.

Submissions of behalf of the GMC

48. In summary, Mr Garside confirmed he was in agreement with Mr Stern as to the relevant legal principles. It is for the Tribunal at this stage to answer, in respect of each Allegation individually, the question posed in Rule 17(2)g, namely “whether sufficient evidence has been adduced to find some or all of the facts proved”. The issue is not whether having heard all the evidence the Tribunal will in fact find any particular Allegation proved but whether evidence exists that could lead to that outcome. Mr Garside submitted that the word “proved” in this context means proved on a balance of probabilities.

49. In relation to paragraph 1 of the Allegation Mr Garside indicated that he had no factual submissions to make.

50. In relation to paragraph 2 of the Allegation, Mr Garside submitted that Patient A confirmed in her cross examination that she had not been smoking cannabis at the relevant time and had not told Dr Lotzof that she was. He submitted that the note was false in that it contained false information, whether or not a telephone call took place on 15 June 2015.

51. In relation to paragraph 3 of the Allegation, Mr Garside submitted that Patient A continued to assert that she was given this Propranolol on 9 April 2016 as alleged. He submitted that there are no records of any clinical reasons for writing a prescription and that there had been no enquiry as to ongoing treatment and medication that Patient A was receiving at that time, according to Patient A. There is also no evidence of a record of advice given to Patient A regarding the possible side effects of taking the medication. Mr Garside submitted that in relation to paragraph
3d of the Allegation in reporting this to Patient A’s GP, he had no factual submissions to make.

52. In relation to paragraph 4a of the Allegation, Mr Garside submitted that there is no record that Dr Lotzof documented the advice given to Patient A regarding possible side effects of taking Olanzapine prescribed on 10 or 11 April 2016. In relation to paragraph 4b of the Allegation that Dr Lotzof had failed to report the prescribing of Olanzapine to Patient’s GP, Mr Garside told the Tribunal he had no factual submissions to make.

53. In relation to paragraph 5 of the Allegation, Mr Garside submitted that in that it is alleged on 14 April 2016 Dr Lotzof made arrangements for Patient A to be detained under the Mental Health Act and failed to report her involvement to Patient A’s GP, he had no factual submissions to make.

54. In relation to paragraph 6 and 7 of the Allegation, Mr Garside submitted that it is admitted as fact and the evidence was undisputed that Dr Lotzof procured the involvement of Dr D at Chase Lodge and made arrangements on 25 November 2014 for Patient B and on 25 September 2015 for Patient C to undergo a medical termination at the practice.

55. In relation to paragraph 8 of the Allegation, Mr Garside submitted that it is admitted as fact that on a date between 30 September 2015 and 29 October 2015 Dr Lotzof retrospectively amended Patient C’s Form HSA4 by adding an additional ground for termination. He accepted that the form was originally submitted by Dr D but there was no dispute that Dr Lotzof amended it.

56. In relation to paragraph 9 of the Allegation, Mr Garside submitted that Dr Lotzof failed to make it clear that she made the amendment as set out at paragraph 8 retrospectively. There is nothing on the face of the form to indicate that it has been amended. He accepted that it was accompanied by the letter dated 29 October 2015 but that letter, while explaining the alleged circumstances, does not include the information that the body of the form has been altered. He submitted that Dr D did not agree that there was a discussion of the sort alleged, that the termination was an emergency.

57. In relation to paragraph 10a and b of the Allegation, Mr Garside submitted that the general effect of Dr D’s evidence was that Dr Lotzof told her that Chase Lodge was registered with the Care Quality Commission to undertake terminations in connection with each termination on 26 November 2014 and 25 September 2015. He accepted that Dr D could not now remember the exact words used but that her written statement was clear and the effect of her oral evidence supports these allegations.
58. In relation to paragraph 11a of the Allegation, Mr Garside submitted this relies on paragraph 2 of the Allegation being proven and Patient A’s evidence. Patient A’s evidence, he submitted, supports Dr Lotzof knowing the telephone call had not taken place when she created the note.

59. In relation to paragraph 11bi and ii of the Allegation, Mr Garside submitted that section 1(3) of the Abortion Act 1967 states: “Except as provided by subsection (4) of this section, any treatment for the termination of pregnancy must be carried out in ... a place approved for the purposes of this section by the Secretary of State.” He also referred the Tribunal to section 1(4) which states: “Subsection (3) of this section... shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of the opinion, formed in good faith, that the termination is immediately necessary to save the life or to prevent grave permanent injury to the physical or mental health of the pregnant woman.”

60. Mr Garside submitted that Dr Lotzof knew she was making the amendment to Patient C’s HSA4 form retrospectively and that if the Tribunal accept the evidence of Dr D, there was no discussion directed to the provisions of section 1(4) or the matters added to the form in terms of the grounds for termination and the contents of Box C. He submitted that the amendments were made without reference to Dr D who was the signatory on page 1.

61. In relation to paragraph 11c of the Allegation, Mr Garside submitted the question is not whether Dr Lotzof knew that Chase Lodge was not registered with the CQC to undertake terminations, but whether she said that it was. He submitted that this Allegation is certainly true.

62. In relation to paragraph 12 of the Allegation, Mr Garside submitted that proof of this paragraph of the Allegation depends on proof of paragraphs 1 to 11 in that Dr Lotzof’s behaviour as described at paragraphs 2 and 8-10 was dishonest by reason of paragraph 11.

63. Mr Garside reminded the Tribunal that although witness statements had been provided from proposed witnesses on behalf of Dr Lotzof, this evidence was not agreed and had yet to be tested.

**The Tribunal’s Approach**

64. The Tribunal carefully considered all the written and oral submissions of both Mr Stern, on behalf Dr Lotzof and Mr Garside on behalf of the GMC.

65. In reaching its decision the Tribunal adopted the relevant legal approach as set out in *R v Galbraith* [1981] 1 WLR 1039, which states:
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- “(1) If there is no evidence that the crime alleged has been committed by the defendant there is no difficulty—the judge will stop the case. (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence. (a) Where the judge concludes that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made, to stop the case. (b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness’s reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which the jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury”

66. The Tribunal acknowledged that whilst this is a test used in criminal law, it is the accepted test when considering regulatory cases. Accordingly, the Tribunal distinguished between its approach to the evidence at this stage of the proceedings and the approach to be taken at the end of the fact finding stage. It bore in mind that its role at this stage is not to make findings of fact but to determine whether the evidence heard in the GMC’s case, taken at its highest, is such that the Tribunal could find an alleged fact proved on the balance of probabilities. The Tribunal bore in mind that if it finds that there is sufficient evidence for the hearing to proceed on a particular paragraph, it will have to decide in the light of all the evidence before it at the end of the fact finding stage, whether that paragraph has in fact been found proved or not.

The Tribunal’s decision

Paragraph 1

1. On an occasion in June 2015 whilst you remained her registered GP at Chase Lodge Practice (‘the practice’) you breached Patient A’s confidentiality in that you discussed her mental health with her father without her consent. Rule 17(2)(g) application upheld

67. The Tribunal bore in mind its previous decision as set out at Annex A in which it determined that paragraph 38 of Mr E’s witness statement was inadmissible on the basis it was not relevant to Patient A’s mental health and that the paragraph from Mr E’s witness statement was the basis of the Allegation at paragraph 1. Mr Garside did not draw to the attention of the Tribunal any evidence said to support this head of charge. The Tribunal was satisfied that there is no evidence. The Tribunal therefore upheld the Rule 17(2)(g) application in respect of paragraph 1.
Paragraph 2

2. You created a false note within Patient A’s medical records of an alleged telephone call with Patient A on 15 June 2015 (‘the telephone call’). **Rule 17(2)(g) application upheld**

68. The Tribunal noted that in opening the case the GMC’s position was that no phone call took place. The note therefore related to a telephone call that was said never to have taken place. This is reflected in the wording paragraph 11a of the Allegation. Mr Garside subsequently invited the Tribunal to consider the wording, “the telephone call” at paragraph 11 to mean there was a telephone call but that the record of what was said during the call was false. The Tribunal determined, as was set out in the GMC’s opening, that the Allegation was that there was no phone call between Dr Lotzof and Patient A, that was Patient A’s position in her written evidence. However, in her oral evidence Patient A agreed that there was a telephone call.

69. The only evidence in support of this paragraph of the Allegation is Patient A’s witness statement. The Tribunal did not consider her evidence to be plausible or consistent. It considered that given Patient A’s adverse mental health at that time her recall may not have been accurate and her memory mistaken. The Tribunal noted that Patient A had been adamant she had undertaken a drug test at CMC however, it was confirmed that no such test had taken place. The Tribunal took into account the number of extraordinary coincidences that would have to exist if Patient A was accurate in her recollection as set out by Mr Stern in his submissions. The Tribunal concluded Patient A’s evidence was unreliable and therefore taken at its highest there was insufficient evidence upon which the Tribunal properly directed could find paragraph 2 proven. The application under Rule 17(2)(g) was therefore upheld.

Paragraph 3

3. On 9 April 2016 you prescribed Propranolol to Patient A and you failed to:

   a. record any clinical reasons for writing a prescription; **Rule 17(2)(g) application upheld**

   b. have regard to ongoing treatment and medication that Patient A was receiving at that time; **Rule 17(2)(g) application upheld**

   c. document any advice given to Patient A regarding the possible side effects of taking the medication; **Rule 17(2)(g) application upheld**
70. The Tribunal considered whether there was evidence of a prescription of Propranolol to Patient A by Dr Lotzof on 9 April 2016. The only evidence the Tribunal had for this head of charge was Patient A’s own evidence that her ex-husband had told her the Propranolol had been prescribed to Patient A by Dr Lotzof. It noted this was hearsay evidence which could not be tested as Patient A’s ex-husband did not give evidence.

71. In considering Patient A’s evidence the Tribunal took account of the differences between Patient A and her father’s recollection of their discussion about Propranolol / Olanzapine. Patient A in her statements and initially in her oral evidence was clear that Dr Lotzof had prescribed her Propranolol which was collected from Chase Lodge. When it was put to her there was no record of the prescription being issued at Chase Lodge, she changed her evidence. The contemporaneous medical records referred to Patient A being on Olanzapine but not Propranolol. They also refer to Patient A self-medicating and smoking cannabis at this time. The Tribunal concluded that there were inherent weaknesses and inconsistencies in Patient A’s evidence including as set out above such that it could not be relied upon to find Dr Lotzof prescribed Propranolol on the 9 April 2016.

72. The Tribunal determined that the evidence before it was of such an unsatisfactory character that taken at its highest, paragraph 3 of the Allegation was not capable of being proved. It therefore determined the Rule 17(2)(g) application upheld.

Paragraph 4

4. On 10 or 11 April 2016 you prescribed Olanzapine to Patient A and you failed to:

a. document the advice given to Patient A regarding the possible side effects of taking the medication;

Rule 17(2)(g) application upheld

73. There is no evidence before the Tribunal that there was any duty on Dr Lotzof to document the possible side effects of taking Olanzapine. The Tribunal noted Dr J, the expert called by the GMC, did not comment on the absence of side effects in medical notes in his report. None of the medical records before the Tribunal record any possible side effects that individual medicines could cause Patient A and the prescription for Olanzapine had been given on the advice of Dr K, a Consultant Psychiatrist.

74. The Tribunal determined that there was no evidence before it establishing any duty on Dr Lotzof to record the possible side effects of Olanzapine and as such there
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could be no failure on her part in not doing so. Paragraph 4a of the Allegation is not capable of being proved and the application under Rule 17(2)(g) is therefore upheld.

b. report this to Patient A’s GP.

**Rule 17(2)(g) application upheld**

75. Mr Garside on behalf of the GMC made no factual submissions in respect of paragraph 4b. He drew no evidence to the Tribunal’s attention said to support this head of charge. The Tribunal noted the evidence of Dr J, who in his oral evidence confirmed this is something he himself would not do and that the prescription had been recommended by Dr K the Consultant Psychiatrist. The GMC has not demonstrated that Dr Lotzof had a duty to report the prescription to Patient A’s GP. The Tribunal determined there was no satisfactory evidence upon which paragraph 4b could be proved and the application under Rule 17(2)(g) was therefore upheld.

**Paragraph 5**

5. On 14 April 2016 you made arrangements for Patient A to be detained under the Mental Health Act and you failed to report your involvement to Patient A’s GP. **Rule 17(2)(g) application upheld**

76. Mr Garside on behalf of the GMC made no factual submissions in respect of paragraph 5. Dr J was not critical of Dr Lotzof in this regard and noted the patient had immediately gone into the care of a specialist at the Nightingale Hospital. The Tribunal concluded there was no evidence before it establishing a duty on Dr Lotzof to notify Patient A’s GP of her involvement of Patient A’s detention under the Mental Health Act.

77. In the absence of any evidence supporting paragraph 5 of the Allegation, the Tribunal upheld the 17(2)(g) application.

**Paragraph 6 and 7**

6. On 25 November 2014 you made arrangements for Patient B to undergo a medical termination at the practice. **Rule 17(2)(g) application upheld**

7. On 25 September 2015 you made arrangements for Patient C to undergo a medical termination at the practice. **Rule 17(2)(g) application upheld**

78. The Tribunal considered the evidence before it in relation to paragraphs 6 and 7 of the Allegation together. It noted the legal position that a medical termination consists of taking both of the medications. Dr D in her evidence stated that she had made attempts for the procedure to take place at other sites, and in particular BMI Hendon, that she had prescribed the necessary drugs for the termination and that
Record of Determinations – Medical Practitioners Tribunal on leaving Chase Lodge on 25 September 2015 it was not clear if the drugs would be couriered to Chase Lodge or if the patient would go to Spire Bushey to take the medication there.

79. Whilst the HSA1 form requires the signature of two doctors confirming there are reasonable grounds for the termination, Dr Lotzof is a General Practitioner whilst Dr D is a Consultant Obstetrician and Gynaecologist. On Dr D’s evidence it was she who determined where the medication would be taken and thus where the termination occurred. Dr D in her evidence accepted that the second medication required for the termination was taken by the patients at their homes and therefore both drugs were not taken at Chase Lodge. There was no evidence before the Tribunal that the terminations were therefore undertaken at Chase Lodge, nor that Dr Lotzof had arranged for them to take place there. The application under Rule 17(2)(g) was therefore upheld in respect of both paragraph 6 and 7.

Paragraph 8

8. On a date between 30 September 2015 and 29 October 2015 you retrospectively amended Patient C’s Form HSA4 by adding an additional ground for termination (‘the amendment’).

Rule 17(2)(g) application upheld

80. The Tribunal considered the letter from the DoH, dated 21 October 2015, which was addressed to Dr D at Chase Lodge and which had enclosed with it the returned HSA4 form requesting the highlighted sections to be completed and in bold stating “WOULD YOU PLEASE AMEND THE FORM(S) AND RETURN TO: [The DoH]” The Tribunal noted that the request by the DoH was sent to Dr D who chose to leave it with the reception at Chase Lodge for them to deal with.

81. The Tribunal noted that the purpose of the form was for statistical analysis, Dr Lotzof as a GP would be unfamiliar with the form and that Dr D had left it to Dr Lotzof to deal with. The Tribunal had regard to a letter dated 29 October 2015 signed by Dr Lotzof explaining the reason for termination and acknowledging that Chase Lodge was not an official termination centre.

82. The Tribunal accepted the submissions of Mr Stern that any ground for termination added onto the HSA4 retrospectively had no impact on the termination itself as this had already taken place. Dr Lotzof had informed the DoH in her enclosed letter the reason for the termination and why if had been undertaken at a non-registered termination site. The Tribunal concluded that the amendments to the form came at the invitation of the DoH.

83. The Tribunal determined that there was insufficient evidence before it that paragraph 8 of the Allegation could be found proved and it therefore upheld the Rule 17(2)(g) application in this regard.
Paragraph 9

9. You failed to make it clear that you made the amendment as set out at paragraph 8 retrospectively. **Rule 17(2)(g) application upheld**

84. Paragraph 9 alleges a failure on the part of Dr Lotzof to identify that the amendment to the grounds of termination on the form had been made retrospectively. The Tribunal first considered the absence of evidence from the GMC as to the completion of the various forms relating to terminations and that Dr D, a Consultant Obstetrician and Gynaecologist, had stated in her evidence she was unaware of the HSA2 form. The amendments to the HSA4 form followed a request from the DoH that the form be amended and that all the information should be entered accurately on the form.

85. The Allegation relates solely to the addition of the further ground, not to any other changes on the form. The Tribunal noted that having ticked the additional ground on the form the comment “Please see attached letter” was added by way of explanation. A letter signed by Dr Lotzof was provided with the form setting out further details. The Tribunal concluded that the DoH were aware of the original form and had requested amendments to the form which were not limited to the clinic code, that in the absence of evidence that there was a duty to highlight the amendments on the form itself there was insufficient evidence upon which the Tribunal could conclude a failure on Dr Lotzof’s part.

86. Accordingly, the Tribunal determined that the evidence before it, taken at its highest, was insufficient for paragraph 9 of the Allegation to be found proved. It therefore upheld the Rule 17(2)(g) application in respect of paragraph 9.

Paragraph 10

10. On the following dates you told Dr D that the practice was registered with the Care Quality Commission to undertake terminations:

a. 26 November 2014; **Rule 17(2)(g) application upheld**

b. 25 September 2015. **Rule 17(2)(g) application upheld**

87. The Tribunal first considered Dr D’s witness statement with regard to Patient B on 26 November 2014, in which she stated: “I specifically remember asking her whether Chase Lodge was registered to carry out terminations and she said something like ‘yes we are because we’ve done it before’.”

88. In her oral evidence Dr D stated that it was an assumption she had made and impression she had that Chase Lodge was registered with the CQC to do terminations. When challenged in cross examination Dr D did not confirm what she had said in her witness statement. Dr D said she could not remember the exact
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wording but that the ‘gist’ was that no one was saying she could not proceed with
the termination and it was very much in her mind she could proceed with the
termination, rather than anyone specifically saying to her ‘yes you can’ do a
termination at Chase Lodge. The Tribunal considered that Dr D’s oral evidence was
vague and lacked clarity as to what had actually been said.

89. The Tribunal also considered that Dr D had been trying to get Patient C an
appointment at BMI Hendon for a termination, which was also not registered to
carry out terminations and but which Dr D had assumed was registered with the
CQC. There were other areas of Dr D’s evidence which gave the Tribunal cause for
concern in particular the uncertainty as to where Patient C would take the first
medication and her lack of
knowledge of the legal position in respect of the second
medication needing to be taken at an approved place at that time.

90. The Tribunal considered whether, taking Dr D’s evidence at its highest,
paragraph 10 a and b could be proved. It considered Dr D’s clear and certain
assertion in her witness statement that Dr Lotzof confirmed to her that Chase Lodge
was registered for terminations with the CQC, to be in stark contrast with her oral
evidence. Dr D’s evidence was inconsistent and her evidence before the Tribunal
was vague. No Tribunal properly directed could be clear as to what was actually said
and whether or not she had merely made assumptions based on her perceived
impressions. It noted that Dr D’s evidence was the same in respect of both Patients

91. The Tribunal considered that paragraph 10 is specific in its wording based on
the witness statement of Dr D. Given the Tribunal’s view that Dr D’s evidence was
inconsistent and vague even taking her evidence as a whole, the evidence available
to the Tribunal is of such unsatisfactory character that taken at its highest,
paragraphs 10a and b of the Allegation are not capable of being proved.

92. The Tribunal upheld the Rule 17(2)(g) application in respect of paragraph 10.

Paragraph 11

11. When you:

a. created the note as set out at paragraph 2 you knew the
telephone call had not taken place;

Rule 17(2)(g) application upheld

93. Given the Tribunal’s view of Patient A’s evidence in relation to its finding at
paragraph 2, the evidence available to the Tribunal taken at its highest is insufficient
for paragraph 11a of the Allegation to be proved. It therefore upheld the Rule
17(2)(g) application in respect of paragraph 11a.

b. made the amendment as set out at paragraph 8 you knew:
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i. you were making the amendment retrospectively;
   **Rule 17(2)(g) application upheld**

94. Having found there to be insufficient evidence for paragraph 8 of the
    Allegation to be proven, it follows that 11bi must also fall. The application in respect
    of paragraph 11bi under Rule 17(2)(g) is therefore upheld.

ii. the additional ground was not a valid ground at the time
    of the termination; **Rule 17(2)(g) application upheld**

95. The Tribunal noted that Dr D signed the HSA4 form with the reason for
    termination being option ‘C’, which states: “the pregnancy has NOT exceeded its 24th
    week and that the continuance of the pregnancy would involve, greater risk than if
    the pregnancy were terminated, of injury to the physical or mental health of the
    pregnant woman:”

96. On the Abortion Notification form following Patient C’s appointment with Dr D,
    she had stated the reason for the termination as depression. In evidence she stated
    that this is what she was taught to do when there are social circumstances for the
    termination. Dr D confirmed to the Tribunal that the form is usually completed by
    the gynaecologist and that the GP would not see it.

97. In her letter to the DoH dated 29 October 2015, Dr Lotzof indicated that there
    was a threat to the life of the pregnant woman. Dr D accepted there were social
    circumstances underlying the patients request for a termination and that this patient
    needed assistance but that to her knowledge there were not life threatening
    circumstances. Dr D said she could not assess the seriousness of the social grounds
    as she did not know the family.

98. The Tribunal considered that Dr Lotzof was unfamiliar with the HSA4 form
    and it is unclear whether she would have known if one or more grounds for
    termination could be indicated. It considered that whatever Dr Lotzof subsequently
    put as a reason for termination this was not valid as a ground as the termination had
    already taken place.

99. The Tribunal noted the GMC had presented no evidence or guidelines as to
    what could be considered an emergency. Dr D stated in her evidence that she
    considered an emergency in her role to be a ‘medical emergency’. Mr Stern
    suggested that the situation Patient C found herself to be in could be construed as
    an emergency. The Tribunal considered the submission of Mr Stern who suggested
    that as Dr D attended an emergency appointment for Patient C, she too must have
    considered it an emergency. The Tribunal also considered that it had before it no
    expert evidence to state that a General Practitioner should know what amounts to an
    emergency in this regard or how the forms should be completed.
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100. Dr D stated in her oral evidence that she did not know what a HSA2 form was (confirming a termination was immediately necessary on an emergency basis). The Tribunal was of the view that a properly directed Tribunal could not find that Dr Lotzof should have knowledge of the form or how to complete it.

101. The Tribunal determined that the evidence before it, taken at its highest, with regards to paragraph 11bii of the Allegation was not capable of being proved. It therefore determined the Rule 17(2)g application upheld.

c. made the comments as set out at paragraph 10 you knew the practice was not registered with the Care Quality Commission to undertake terminations. Rule 17(2)(g) application upheld

102. Having found the comments as set out in paragraph 10 were not made, it follows there is no evidence before the Tribunal upon which paragraph 11c can be found proved. It therefore upheld the Rule 17(2)(g) application in respect of paragraph 11c.

Paragraph 12

12. Your behaviour as described at paragraphs 2 and 8-10 were dishonest by reason of paragraph 11. Rule 17(2)(g) application upheld

103. The Tribunal noted that as the Rule 17(2)(g) application was upheld in relation to paragraphs 2 and 8 to 10 of the allegation, paragraph 12 falls away in respect of these paragraphs.

104. It therefore determined the Rule 17(2)(g) application upheld in respect of paragraph 12.

Outcome of hearing

105. The Tribunal determined to uphold the Rule 17(2)(g) application in relation to the Allegation in its entirety. The case will proceed no further.

Confirmed
Date 22 August 2019

Mr Sean Ell, Chair
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ANNEX A – 13/08/2019

Application to amend Allegation

1. At the outset of the hearing Mr Charles Garside QC, on behalf of the General Medical Council (GMC), made an application to amend the Allegation pursuant to Rule 17(6) of the GMC (Fitness to Practise) Rules 2004 ('the Rules').

Submissions on behalf of the GMC

2. Mr Garside proposed the following amendment to paragraph 1 of the Allegation:

1. On an occasion in June 2015 whilst you remained her registered GP at Chase Lodge Practice ('the practice') you breached Patient A’s confidentiality in that you discussed her confidential medical information 

2. Mr Garside submitted the amendment was necessary to better reflect the evidence of Mr E, as set out in his witness statement. The GMC were not seeking to take an unfair advantage through the proposed amendment as Dr Lotzof had been aware of the evidence relied upon by the GMC for a “long time”. The proposed amendment was not due to any change in the evidence but merely to better reflect Mr E’s evidence.

3. There is a risk that if the Tribunal refused the proposed amendment that Dr Lotzof may avoid the substantive basis of the paragraph on a technicality. The proposed amendment was a factual change that could be made without any injustice to the doctor.

Submissions on behalf of Dr Lotzof

5. Mr Ian Stern QC, on behalf of Dr Lotzof, opposed the application. He submitted that throughout the case management procedure clarification of the meaning of paragraph 1 had been sought. The GMC had informed Dr Lotzof on 2 May 2019 that it was not possible to particularise paragraph 1 further as the conversation had been a private one.

6. During the pre-hearing meeting on 10 May 2019 the Case Manager noted:

“CS observed that paragraph 1 is a broad allegation about breaching confidentiality within a wide time period and has previously requested that the GMC particularise this charge. CS further explained that it is difficult to discern what evidence the GMC relies upon in support of this allegation.
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On review of paragraph 1, I observed that it is not clear to me whether the GMC’s case is that there have been a single or multiple discussions within the time period, and suggested that the tribunal is likely to be assisted by this allegation being further clarified.”

7. Following the pre-hearing meeting, the Allegation was amended by the GMC to cover one occasion in June 2015. The paragraph had previously been drafted with a broad set of dates, “2014 to April 2016”.

8. Mr Stern explained further correspondence about paragraph 1 had been exchanged with the GMC. The GMC identified the parts of Mr E’s evidence it relied upon to support paragraph 1 of the Allegation. Having been notified of this, Dr Lotzof’s solicitors had written to the GMC pointing out that there was no reference in Mr E’s evidence to Patient A’s “mental health”. Mr Stern submitted it was only at this point that the GMC decided paragraph 1 would need to be further amended.

9. Mr Stern submitted the later an application to amend was made the more likely it was to result in an injustice. The proposed amendment entirely flies in the face of the management rules and that the purpose of the pre-management hearing is for the doctor to know the case to be met before the hearing.

10. Mr Stern submitted the GMC’s application was one to amend the substance of the Allegation He submitted that both the point and principle of Rule 17(6) are not met, it would therefore be unjust to permit the amendment.

Tribunal’s Decision

11. The Tribunal noted the wording of paragraph 1 of the Allegation had been raised in the pre-hearing management meetings on more than one occasion. The GMC was invited by the Case Manager to better particularise paragraph 1 having observed that the Tribunal would likely be assisted by further clarification of the charge.

12. The GMC drafted the Allegation and was well aware of the evidence it was relying upon. Having previously amended paragraph 1 the Tribunal considered that this application by the GMC to further amend came at a very late stage.

13. Dr Lotzof is entitled to know what charges she faces before the hearing commences and the evidential basis for the charges. The Tribunal considered that it was unjust at this stage for the GMC to amend the Allegation particularly where a previous amendment had been made so as to avoid difficulties in the GMC’s case. It determined that the proposed amendment was one of substance and it would be unjust to Dr Lotzof in the circumstances and at this late stage.
14. The Tribunal therefore determined to reject the application to amend the Allegation.
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ANNEX B – 22/08/2019

Application on the admissibility of evidence

1. On day 2 of the hearing Mr Stern made an application on the admissibility of evidence pursuant to Rule 34(1) of the GMC (Fitness to Practise) Rules 2004 ("the Rules").

Submissions on behalf of Dr Lotzof

2. Mr Stern referred the Tribunal to paragraph 38 of Mr E’s witness statement which he read out:

"XXX In June 2015 I recall that I had a couple of conversations with Dr Lotzof regarding R, XXX, I mentioned this to Dr Lotzof but she started shouting and screaming "your daughter is taking drugs", Dr Lotzof said that it's even in [Patient A] medical records that she has been using "weed" or "dope".

3. Mr Stern submitted that this paragraph was only relevant, if at all, to the head of charge 1. He submitted that the oral evidence of Patient A suggested there was a conversation about drug taking or something to that effect with Dr Lotzof. He submitted that on any view it does not relate to mental health, as the GMC had indicated by its earlier application to amend the Allegation. He reminded the Tribunal that it had determined there was a difference in substance between mental health and confidential medical information.

4. Mr Stern invited the Tribunal to consider whether the GMC had recognised there was no case to answer with regard to a conversation about mental health and had therefore made the application to amend the Allegation. Mr Stern submitted that Patient A’s mental health was not a matter of concern in June 2015 and that it is not appropriate to seek to bend the language to fit the evidence. If paragraph 38 of Mr E’s witness statement is not capable of being about a mental health discussion in June 2015 then it is not relevant.

Submissions on behalf of the GMC

5. Mr Garside submitted that the GMC does not concede that the un-amended Allegation is not capable of being proven on the evidence and further that paragraph 38 of the Mr E’s witness statement is relevant. He submitted that this evidence along with the oral evidence of Patient A demonstrates the conversation was relevant to mental health.

6. Mr Garside submitted that the discussion alleged, included content in relation to that of the medical notes and that the issue of drug use is very much about
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Patient A’s mental health. He submitted that the background of this case is all about mental health and that those medical notes related to mental and not physical concerns. Mr Garside submitted that it is wrong at this stage to exclude something which might be relevant to the Tribunal.

Tribunal’s Decision

7. The Tribunal considered Rule 34(1) of the Rules, which states:

“The Committee or a Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law.”

8. Both parties agreed the evidence, if relevant, would only be so in respect of head of charge 1 of the Allegation. The Tribunal previously determined that there was a difference in substance between head of charge 1 and the proposed amendment put forward by the GMC, which the Tribunal had rejected.

9. Paragraph 38 of Mr E’s witness statement refers to an alleged conversation about drug use by Patient A. The Tribunal noted that at the time of the conversation Patient A’s mental health was not of concern; rather it was her physical health following her sinus surgery. The Tribunal concluded that in some cases a discussion about drug taking may relate to a patient’s mental health. However, taking into account what Patient A said in her evidence and the lack of any concern at this time about Patient A’s mental health, it would require the Tribunal to give too broad an interpretation to the evidence for it to conclude that the evidence related to Patient A’s mental health. The evidence concerned an alleged conversation about drug misuse not Patient A’s mental health. The Tribunal therefore conclude the evidence was not relevant.

10. The Tribunal acceded to Mr Stern’s application and determined paragraph 38 of Mr E’s witness statement inadmissible as evidence in this case.