Date: 29/05/2019
Medical Practitioner’s name: Mr Alistair PACE
GMC reference number: 5208429
Primary medical qualification: MD 1999 University of Malta
Type of case Outcome on impairment
Review - Misconduct Not Impaired
Summary of outcome Conditions revoked

Tribunal:

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<tr>
<td>Legally Qualified Chair</td>
<td>Mr Tim Bradbury</td>
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<tr>
<td>Lay Tribunal Member:</td>
<td>Mrs Valerie Blessington</td>
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<td>Medical Tribunal Member:</td>
<td>Mr Ghulam Mufti</td>
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<td>Tribunal Clerk:</td>
<td>Mr David Salad</td>
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Attendance and Representation:

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<td>Present and not represented</td>
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<td>Medical Practitioner’s Representative:</td>
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<td>GMC Representative:</td>
<td>Ms Harriet Tighe, 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.

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
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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 Impairment - 29/05/2019

1. The Tribunal determined, in accordance with Rule 41(2) of the General Medical Council ('GMC') Fitness to Practise Rules 2004, that the hearing be heard in partly in private when considering matters relating to the health of relations of Mr Pace.

2. The Tribunal has to decide in accordance with Rule 22(1)(f) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules') whether Mr Pace’s fitness to practise is impaired by reason of misconduct.

Background

3. Mr Pace qualified in 1999 in Malta and was appointed as a Consultant Orthopaedic Surgeon in 2011. At the time of the events considered by the Tribunal at the November 2018 hearing ('the 2018 Tribunal') Mr Pace was practising as a Consultant Orthopaedic Surgeon at Scarborough Hospital ('the hospital'), part of York Hospital NHS Foundation Trust ('the Trust').

4. At Mr Pace’s hearing he admitted to all paragraphs of the Allegation. These admissions related to two prescription forms that he took from the Trust Outpatient Department and wrote for family members. In relation to the first incident he admitted that on or around 12 May 2016 he wrote a prescription for XXX for Child A, who is his daughter and asked a junior colleague, who was not involved in her care, to sign the prescription. In relation to the second prescription, Mr Pace admitted that on 10 October 2019 he wrote a prescription for XXX on a prescription pad from the Trust’s Orthopaedic outpatient department for his mother, who was not a patient at the Trust. Mr Pace admitted that he took the second prescription off site without the necessary authority to do so and asked XXX (Dr D), a doctor who was not employed by the Trust, to sign the second prescription. He admitted that he presented this prescription to the pharmacy at the hospital.

5. In relation to impairment the 2018 Tribunal noted that there were mitigating circumstances in relation to the May 2016 incident – that Mr Pace had genuine concern for the wellbeing of his new born daughter and his lack of sound judgement at the time led to this misconduct. However, the 2018 Tribunal determined that by repeating similar misconduct after being warned by the Trust on 27 July 2016 that ‘any further behaviour of this kind could result in disciplinary action’ he demonstrated a disregard for the Trust and Good Medical Practice 2013 ('GMP'). The Tribunal noted that although there was no intention of financial gain on Mr Pace’s behalf and his conduct was well intentioned,
it was wrong. The Tribunal determined that the second incident of prescribing to his mother constituted serious misconduct as there was a clear disregard for his earlier warning, for GMP and the Hospital’s guidance, and that he had involved others in his wrongdoing. The 2018 Tribunal found that Mr Pace’s conduct was remediable and that he had already remediated to some extent. However the 2018 Tribunal was concerned that his level of insight was incomplete and that he had only shown acceptance of his misconduct when faced with fitness to practise proceedings. The 2018 Tribunal was also concerned that Mr Pace had provided false documentation twice and sought to persuade two junior doctors to sign a prescription inappropriately. It found that the nature of Mr Pace’s conduct left it unable to be confident that there would be no repetition although its likelihood was ‘probably low’. The 2018 Tribunal found that Mr Pace’s misconduct brought the medical profession into disrepute and breached fundamental tenets of the profession. Further that public confidence in the profession and proper professional standards and conduct for members of that profession would be undermined if a finding of misconduct were not reached. It therefore determined that Mr Pace’s fitness to practise was impaired by reason of misconduct.

6. The 2018 Tribunal determined that Mr Pace had demonstrated ‘a clear willingness to fully develop insight and remediate his misconduct’. Further that he had made progress in meeting with mentors which had benefited him and that these meetings should continue. The 2018 Tribunal considered that continued mentorship was appropriate as this would provide a ‘collaborative and supportive context in which to reflect on his conduct’. The 2018 determined to impose conditions on Mr Pace’s registration for a period of six months, including conditions relating to his prescribing privileges and that he must attend a course in prescribing medication. The 2018 directed that a future Tribunal would be assisted by the following:

- evidence of attendance at a course on prescribing medication;
- completion of medical ethics and professional boundaries course as recommended by his responsible officer;
- evidence of ongoing meetings and work with mentors;
- further reflective statement to include evidence of his understanding of medical ethics and professional boundaries;
- evidence of no further adverse findings; and
- any other information including testimonial evidence that might assist the reviewing Tribunal.

7. This is the first review of Mr Pace’s case.

The Evidence

8. The Tribunal has considered all the evidence provided by the GMC and Mr Pace which includes:

- a Record of Determinations of the MPT hearing dated 15 November 2019;
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• correspondence between the GMC and Mr Pace and the MPTS and Mr Pace;
• correspondence from Mr Pace’s mentor Professor A including a testimonial letter dated April 2019 and enclosed documents;
• correspondence from the Trust;
• certificates of attendance at a course in Professional Boundaries, Medical Ethics and Prescribing dated 20 December 2018;
• confirmation from the Medical Council Malta that there are no proceedings in regard to Mr Pace’s professional activity in Malta;
• correspondence from his employers in Malta;
• reflective statement from Mr Pace;
• evidence of Continued Professional Development (‘CPD’).

9. In his correspondence with the GMC Mr Pace stated that he had taken a sabbatical from his post in the Trust. This was confirmed in a letter dated 10 January 2019 from the Medical Director of the Trust in which he stated that Mr Pace is currently on sabbatical until the end of November 2019 and that upon his return an appraisal will be scheduled. Mr Pace wrote to the GMC on 15 February 2019 informing it that he had been accepted to practise in Malta. Later, he informed the GMC that he had been practising in three hospitals in Malta.

10. The Tribunal also noted the communications from Professor A, Mr Pace’s mentor, in particular the correspondence from him forwarded to the GMC in April 2019. In his correspondence Professor A stated that he and Mr Pace had met on three separate occasions and that:

‘There is no doubt that he (Mr Pace) is contrite and deeply regrets his earlier actions. I would consider the possibility of further misconduct negligible.

I have had numerous discussions with Mr Pace on various aspects of medical and surgical practice (see appraisal review attached). I have encountered no comments, attitudes or opinions that, in my judgement, render Mr Pace in any way infit [sic] to practice.’

11. Professor A attached a review of the meetings that he had had with Mr Pace. This document outlined the topics Professor A and Mr Pace discussed at each meeting including discussion of this case and coping strategies, Mr Pace’s concerns about bullying in the workplace and how to deal with conflict in professional practice.

12. The Tribunal noted the letter dated 18 April 2019 from Da Vinci Health Hospital in Birkirkara, Malta. In this letter it is confirmed that Mr Pace is employed on a freelance basis and:
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‘We have always found Mr Pace to be approachable and professional and I have received favourable feedback from both patients and clinical staff.’

13. A letter was also provided by Saint James Hospital, Sliema, Malta dated 18 April 2019 which stated that Mr Pace:

‘... has been serving as Consultant Orthopaedic Specialist within Saint James Hospital Group in Malta covering out-patient and trauma departments with satisfactory outcomes’

14. The Tribunal also received reflective statements from Mr Pace in which he stated that since the last hearing he has taken some time off work to allow him to ‘recharge his batteries’ and spend time with family. He said that he has put in place strong coping mechanisms and that he has:

‘...noticed this in my private work in Malta that I am more relaxed, calm and able to think through things in a much clearer and broader way....

I have also enjoyed the challenge of working privately in Malta. It allows me to continue to use the skills I have acquired over years of training...Combining this with the lessons learnt from my one to one Professional Standards and Prescribing Course I am able to approach situations in a much more logical fashion. By asking the questions to myself ‘What would my colleagues do’ and by setting clear boundaries. I can see now how important they are and how it avoids me getting into any difficult or morally dubious situations.

...I am confident that I can handle stressful situations with a fresh approach. This means that I will not make the same mistakes I have done in the past. I truly regret my actions and understand the reasons why the GMC guidance is in place regarding prescribing for friends and family.’

Later in his Reflection document he stated:
‘When I prescribed medication to my daughter and mother I was making a decision with my heart rather than with my head as a professional and this put me in a difficult situation. The decisions I took were ethically and morally dubious. The decisions were selfless not for personal gain but not ethically correct. Moreover by asking XXX and colleague to sign the prescriptions I was breaching professional practical boundaries by coercing them to do something that was beyond their expertise and for a patient they did not know well. I was not doing something illegal but breaching professional boundaries in the grey zone. I was making a moral decision in these circumstances particularly because my daughter and mother were living with us at home unlike treating a patient in hospital.

The situations were present and the decisions were made on emotion.'
In those instances I have learnt I should have stopped to reflect and think how my colleagues would have reacted and what the correct way of action would have been not to put myself and my daughter and mother at risk. This is based on the code of medical ethics and conduct- What should I do in this situation and how I should behave. This would involve coming up with a list of safeguards. This could have been going to A&E, asking the GP to post a prescription, reflecting and self-examine (is this right?, will other colleagues do this ? weigh consequences etc.) and seek help from my line manager or colleagues or my mentor before acting.

To prevent similar situations arising in the future it would also involve setting practical boundaries with family and friends- a statement saying "I am happy to advise but you need to make an appointment to see your gp who will refer you to the relevant professional” particularly in the context of treatment and prescribing. Practical boundaries set the battle lines from the word go so that awkward , unfair and difficult future situations are avoided. This helps to keep both myself and the patient safe and so that nobody will come to any harm. They also prevent potential allegations and misinterpretations.

These must be clear and set with family members and friends so that I am not placed in situations which may place me in a vulnerable situation...

During the course we discussed the GMC guidelines regarding prescribing in detail and why it is wrong and unsafe to prescribe to family members and friends including a)ones lack of up to date knowledge of the specialization and medications as may have been the case with the prescription of XXX and XXX in my case, b)the emotional and urge to over treat family members and friends with medications they do not need, may be harmful, interact with their other medications or are expensive c) Furthermore one may not be fully aware of the person’s past medical history, allergies, other drugs and interactions etc. d) There is also the issue of potential allegations and favouritism from family members if the prescriptions are not done through the correct channels.'

15. Mr Pace also provided a letter detailing the work he has been undertaking in private practice in Malta where he has a regular outpatient clinic dealing with general, upper limb orthopaedics and trauma cases. He outlined that he has privately operated on a number of upper limb cases and taught some sessions at the Musculoskeletal Department of the University of Malta. He has also taken part in phone in radio programmes and television programs in Malta, and published articles in local journals and magazines. In relation to his ongoing personal development and CPD he stated that he has regularly read relevant medical journal articles, has submitted an article which is awaiting peer review for the journal Synapse.

16. Mr Pace gave oral evidence at the hearing. He stated that the work he had completed in the last six months, including the mentoring sessions with Professor A and the Professional Boundaries, Medical Ethics and Prescribing course, had been
inspiring for him. He said that he had taken steps to overcome XXX that was previously present in his life and had contributed to his actions. He confirmed that since October 2018 he has not prescribed for, or been involved in, the prescription of medications for family or friends. Mr Pace said that he was sorry and that he had fully reflected on his actions such that he understands why he acted as he did and would not repeat them.

Submissions

17. On behalf of the GMC, Ms Tighe submitted that the GMC was neutral on the matter of impairment.

18. Mr Pace requested that the Tribunal revoke the conditions imposed on his registration. He told the Tribunal that members of his family had asked him for prescriptions but he had said that he could not do so, instead telling them to see a GP to be referred appropriately. He said that although he was aware that the temptation to prescribe to those close to him remained, he was able to and had resisted such temptation. He had covered all the matters set out by the 2018 Tribunal, gained insight, and would never act in the manner that led to the impairment of his fitness to practise again.

The Relevant Legal Principles

19. The Tribunal reminded itself that the decision of impairment is a matter for the Tribunal’s judgement alone. As noted above, the 2018 Tribunal set out the matters that a future Tribunal may be assisted by. This Tribunal is aware that it is for Mr Pace to satisfy it that he is safe to return to unrestricted practice.

20. This Tribunal must determine whether Mr Pace’s fitness to practise is impaired today, taking into account Mr Pace’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.

The Tribunal’s Determination on Impairment

21. In reaching its decision on impairment, the Tribunal first considered whether Mr Pace has fully complied with the requests of the 2018 Tribunal. It noted that Mr Pace has attended a relevant course as requested by the 2018 Tribunal and it was of the view that there is ample evidence to demonstrate that he has engaged with his mentor to assist with his insight and reflection. Having had regard to the communications from Professor A, alongside the record of meetings, the Tribunal was impressed by the in-depth and thorough discussions and the structured approach to the relevant issues addressed through the mentorship.
22. The Tribunal next considered Mr Pace’s reflective statement and his oral evidence. The Tribunal was of the view that Mr Pace’s approach demonstrated a high level of self-awareness. It considered that he has addressed and understands the reasons for his misconduct and has put measures in place to ensure that he prevents such behaviour from reoccurring. It found to Mr Pace’s credit that he was candid in his submissions, informing the Tribunal that temptation to prescribe to those close to him remains as family members have asked him to do so in the last six months. Such transparency, when considered alongside Mr Pace’s affirmation that he had resisted the temptation to prescribe, instead acting appropriately by signposting these family members to their GP, reassured the Tribunal that Mr Pace has good insight and it was of the view that he would not repeat his actions.

23. The Tribunal noted that there has been no evidence of any adverse finding or complaint against Mr Pace and in fact all the feedback received has been positive.

24. The Tribunal found that Mr Pace has kept up to date with his speciality as demonstrated by his private work in Malta and the positive feedback he received from this. He has undertaken courses and read journal articles relating to his speciality and submitted a research article for publication. The Tribunal was of the view that he has undertaken a wide range of activities to ensure that he has kept up to date with this.

25. Having regard to its statutory overarching objective, the Tribunal was satisfied that Mr Pace now has good insight into his actions and their impact on the reputation of the profession. The Tribunal was of the view that Mr Pace has been very proactive in addressing the issues raised by the 2018 Tribunal. On the basis of the evidence placed before it the Tribunal has concluded that he has sufficiently addressed all the concerns raised in the previous findings of impairment.

26. The Tribunal was satisfied that the period of six months of conditional registration served to mark the seriousness of Mr Pace’s behaviour, but considered that the public interest is now best served by allowing a skilled and competent doctor to return to unrestricted practice.

27. Bearing all of the above in mind, the Tribunal determined that Mr Pace’s fitness to practise is no longer impaired by reason of his misconduct.

28. Having reached this decision, the Tribunal determined to revoke the order of conditions in place on his registration with immediate effect.

29. That concludes Mr Pace’s case.