

Meeting of the s40A Panel to consider the case of Mr Serban Ioan Gheorghiu

Held on 28 January 2019.

Panel members present

Charlie Massey, Chief Executive (in the Chair)
Colin Melville, Medical Director and Director of Education and Standards
Anthony Omo, General Counsel and Director of Fitness to Practise

In attendance

Jim Percival, Principal Legal Adviser and Deputy General Counsel
Jacqui Eden, Senior Legal Adviser
Mark Swindells, Assistant Director, Corporate Directorate (Panel Secretary)

Purpose of this note

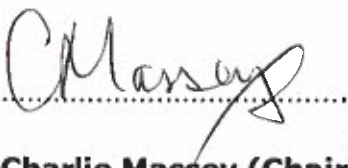
- 1 This meeting note records a summary of the Members' consideration of the relevant decision of the Medical Practitioners Tribunal ('MPT') which considered the Doctor's case ("the decision"), and the Panel's decision on behalf of the General Medical Council as to whether or not to exercise the power to appeal the decision pursuant to section 40A Medical Act 1983.

The relevant decision

- 2 The Principal Legal Adviser confirmed that the decision was a relevant decision for the purposes of s.40A.

Consideration

- 3 Colin Melville declared that he had worked in hospitals close to those Mr Gheorghiu did, but confirmed that he had never worked with Mr Gheorghiu, and that he was not known to him.
- 4 The Panel considered the record of the MPT's determination and the legal advice in detail.
- 5 The Panel discussed the sufficiency of the nine month sanction which the MPT applied to Mr Gheorghiu, in detail. Mr Gheorghiu's behaviour was deeply troubling, and his lack of engagement with the MPT limits the ability to analyse the extent of any insight and remediation.
- 6 The Panel acknowledged the evidence that Mr Gheorghiu has started to develop insight. In addition they noted that Mr Gheorghiu's behaviour, whilst unacceptable, is remediable. The Panel considered that there was nothing obviously flawed in the MPT's consideration of this case, and that the MPT's decision was within a reasonable range of sanctions.
- 7 The Panel was concerned about protecting patient safety at such point that Mr Gheorghiu might return to practise, but noted that the MPT has directed for a review hearing to take place at the end of Mr Gheorghiu's period of suspension. Because this tribunal will be able to assess Mr Gheorghiu's readiness to return to practise, the Panel was assured, on balance, that the MPT's determination is within the range of reasonable decisions which were open to it. The Panel therefore concluded that the GMC should not exercise its power to appeal the MPT's determination in this case.



Charlie Massey (Chair)

20/2/19

Dated

Background

- 8 The Principal Legal Adviser referred to Panel to the details of the case as set out in the MPT's Record of Determination and summarised in the written submission document. The key points to note were as follows:

- 8.1** This case concerns the determination of a Medical Practitioners Tribunal, which concluded on 9 January 2019, considering the matter under Part 4 of the 2004 Rules. At the time of the allegations Mr Gheorghiu was practising as a Consultant in General and Colorectal surgery.
- 8.2** Between October 2015 and August 2017, Mr Gheorghiu engaged in inappropriate communication with colleagues, including in front of patients. That conduct included referring to his colleagues by using expletives and generally using expletives in front of colleagues and patients, making comments about colleagues' physical appearances, seeking to discuss and discussing sexual behaviour with colleagues, discussed a nurse's medical history with a colleague and physically rubbed and pressed himself against two separate nurse colleagues.
- 8.3** Mr Gheorghiu had previously been given two final written warnings by the Trust where he was employed for inappropriate behaviour and had also been issued with a warning by the General Medical Council in November 2016 for inappropriate comments made to staff and patients.
- 8.4** Mr Gheorghiu was not present or represented at the hearing. The MPT found all of the facts proven. At stage two of the hearing, the MPT had regard to the fact that Mr Gheorghiu had been given two final written warnings from his employing Trust for inappropriate behaviour and the warning issued by the GMC.
- 8.5** The MPT found that Mr Gheorghiu's behaviour breached a number of paragraphs of Good Medical Practice observing that he had undermined the dignity of patients undergoing procedures in his care and showed little respect for those patients. Mr Gheorghiu's comments to staff were described as 'wholly unacceptable and inappropriate' and that 'His continued bad language, comments and behaviour showed no respect or consideration for others'.
- 8.6** The MPT found that the Mr Gheorghiu's misconduct was serious and in finding his fitness to practise impaired, the MPT observed that Mr Gheorghiu had breached more than one of the fundamental tenets of the profession.
- 9** The MPT were of the view that having shown a degree of insight in accepting the GMC warning:
- 9.1** Mr Gheorghiu's insight was undermined by representations to the Case Examiners that he had '...used what might be perceived as "inappropriate" jocularities in a misguided attempt to put people at ease, make them laugh, or in order to minimise the inhibiting boundaries that can exist between patients/other staff..'
- 10** Mr Gheorghiu had also repeated his conduct despite being aware of the consequences and engaged in the behaviour regardless, which the MPT found was 'demonstrative of his minimal insight';

- 11** Mr Gheorghiu had maintained the accusations had been borne out of malice, further demonstrating minimal insight.
- 12** The MPT concluded that there 'remains an ongoing risk of repetition given [Mr Gheorghiu's] lack of insight and remediation' and noted that despite having attended a communication skills course he had gone on to continue his behaviour.
- 13** The GMC's sanction submission was for erasure. At the sanction stage the MPT were provided with testimonials from colleagues dated November 2016 and a statement from Mr Gheorghiu's Responsible Officer ('RO') from a hospital where he worked from October 2017 to November 2018. The MPT considered having had regard to the further evidence that Mr Gheorghiu's level of insight and remediation was 'developing rather than complete'. The MPT had particular regard to the RO statement who confirmed that the Mr Gheorghiu had been candid about what had occurred, performed well, engaged in CPD and had positive feedback from colleagues. The MPT gave 'substantial weight' to the evidence.
- 14** In light of the RO statement, the MPT considered that his conduct is remediable and that the evidence was positive about his recent behaviour indicating some remediation had taken place. The MPT noted there had not been any complaints concerning his clinical skills.
- 15** The MPT imposed a sanction of suspension (without an immediate order) for a period of nine months and directed a review. They noted it was a finely balanced decision given Mr Gheorghiu's lack of engagement made it difficult to assess his current progress, but that the behaviour could be remediated, there had been no repetition in his subsequent role and was now developing some insight. They observed that a sanction of suspension was a sufficient sanction without depriving the public of a clinically competent doctor.
- 16** In considering an immediate order the MPT noted that Mr Gheorghiu had not at any time put patient safety at risk and had been working for 13 months without any repetition of the behaviour, such that the length of suspension was sufficient to mark the public confidence of the case.

The General Medical Council's power to appeal pursuant to s.40A.

- 17** With effect from 31 December 2015, the General Medical Council acquired the power to appeal to the High Court (or equivalent courts in Scotland and Northern Ireland where relevant) against relevant decisions of a Medical Practitioners Tribunal ("MPT") if it considers that the decision is not sufficient (whether as to a finding or a penalty or both) for the protection of the public.

- 18** The basis upon which the GMC will consider whether or not to exercise this power to appeal is described in "Appeals by the GMC pursuant to s.40A of the Medical Act 1983 ("s.40A appeals") – Guidance for Decision-makers" ("the Guidance").
- 19** Decisions concerning the exercise of the s40A power to appeal were originally delegated by the Council to the Registrar. However, following recommendations from Sir Norman Williams' Review Council agreed that decision-making in prospective appeals involving decisions of Medical Practitioners Tribunals be delegated to a three person Executive Panel comprising: the Chief Executive and Registrar as Chair; the Medical Director and Director of Education and Standards; and the Director of Fitness to Practise (or their nominated Deputies if not available) ("the Panel").
- 20** As the Guidance makes clear, when considering whether to bring a s.40A appeal in a particular case, it will be necessary to consider the following questions:
- 20.1** Based on their assessment of all of the information held, and in the particular circumstances of the case, and having regard to the factors set out in the Guidance, does the Panel consider that the MPT's decision is not sufficient to protect the public?
- 20.2** If the Panel is of the view, on its assessment of all the information held, in the particular circumstances of the case, that there are grounds to consider that the MPT's decision is not sufficient, it will consider whether exercising the power of appeal would further, rather than undermine, the achievement of the over-arching objective.
- 20.3** If the answer is yes, then the GMC may exercise its power of appeal
- 20.4** In considering that question the Panel will be required to consider and weigh a number of competing factors (including its assessment of the prospects of success of the appeal, and the nature and importance of the issues which would be aired).

