

Public Minutes of the Investigation Committee

Date of hearing: 22 August 2019

Name of Doctor	Mr Abubakr Arif
Doctor's UID	5207823

Committee Members	Dr Andrew Leahy
	Dr Laleh Morgan
	Mr John Anderson

Legal Assessor	Miss Eleanor Platt QC
Panel Secretary	Ms Gemma Wolstenholme

Attendance and Representation

GMC Representative	Mr James Gelsthorpe
Doctor's representative	Mr Robert Dacre

Outcome	Warning
---------	---------

Determination

Dr Abubakr Arif,

- 1 At today's hearing the Investigation Committee carefully considered all the material before it including the submissions made by **Mr Robert Dacre** on your behalf, and those made on behalf of the GMC by **Mr James Gelsthorpe**. It has accepted the advice of the Legal Assessor.

Background

- 2 On 20 July 2018, the GMC received concerns from King's College Hospital NHS Trust (the Trust) that you had accessed a patient's medical records without their permission and when you were not involved in the care of the patient, in breach of the Trust's Information Governance and Records Access Policy.
- 3 The concern had been raised following a complaint sent into the Trust by the patient on 27 June 2018. The patient states that he was a cyclist knocked over by a car driven by you. He claimed that when you spoke with him later that day, you disclosed that you had viewed his x-rays and looked at his notes. You also disclosed to the patient that the Trust had given him a HIV test of which he was unaware.
- 4 On 11 September 2018, the Trust completed an investigation into your conduct and found, as you had admitted, that you did access the records of the patient without legitimate reason. You did this without seeking or obtaining the permission of the patient. This caused the patient distress and was in contravention of the NHS Confidentiality Policy. The report acknowledges a mitigating factor that you had not received Information Governance or Confidentiality training from either your employing organisations or the Trust. The Trust believed that your actions in accessing the patient's records did not have malicious motivation, and occurred at a time when you were *'psychologically upset and concerned for the wellbeing of the patient'*. You were deeply remorseful and recognised that it was inappropriate for you to access records in this way.
- 5 On 16 December 2018, you sent your comments to the GMC via email. In your comments you explained that the concerns are remediable and that you have been through a full investigation process by the Trust. You advise that the concerns have been *'fully addressed'* by the Trust, appropriate advice and instruction has been given to you and that this concern *'will not happen again'*. You also state that you are *'aware of and agree with the information provided as part of the internal investigation carried out by [the Trust]'*.
- 6 On 01 February 2019, your legal representatives from MDDUS provided the GMC with a Rule 4 response on your behalf. In this letter the MDDUS confirm *'[you were] concerned to read that [the Patient] had sustained a hairline fracture. At around 14:40pm, [you] accessed [the Patient's] notes and reviewed his x-rays and blood tests, which included routine HIV tests. [you] did not have permission from [the Patient] to access these notes.'* MDDUS also explained that *'[you] reflected on [your] actions later that day and recognised that it was inappropriate for [you] to access [the Patient's] records and confessed that [you] had done so and expressed remorse at this in conversation with [the Patient]. [You] also cooperated fully with the Trust's internal investigation into the incident.'*
- 7 On the 06 March 2019, the GMC informed you that they had completed their investigation and invited you, in accordance with Rule 7 and 11, to provide any

further comments on the allegations before making a decision on the outcome of the case. Based on the information available, they felt this is a case that should be concluded with a warning.

- 8 On 02 April 2019, you responded to the GMC via your legal representative at MDDUS that a warning in this case would be '*disproportionate and serve no purpose other than punish [you] for [your] past actions.*' They state that '*the fact [you] breached [the Patient's] confidentiality by looking at his medical records without consent is not disputed. It is also not disputed that this represented a significant departure from Good Medical Practice*' also that '*This was a one-off incident arising out of a very unique set of circumstances. It has not been repeated and the likelihood of a repeat is negligible.*'
- 9 On 02 July 2019 the GMC responded to acknowledge that you were not prepared to accept the warning, thereby exercising your right to an Investigation Committee hearing. The Case Examiners considered your comments and referred the matter to the Investigation Committee.

GMC Submissions

- 10 Mr James Gelsthorpe on behalf of the GMC, submitted that there has been a clear and specific breach of Good Medical Practice paragraphs 47, 50 and 65 'eroding the public's trust in the profession'. Furthermore, Mr Gelsthorpe submitted that your actions constituted a significant breach of paragraph 120 of the GMC's guidance on 'Confidentiality: good practice in handling patient information' as you did not have a legitimate reason to view the records. Mr Gelsthorpe submitted that whilst you had not received training on confidentiality at the Trust this was not a mitigating feature as confidentiality is a fundamental principle of a doctor's basic knowledge base.
- 11 Mr Gelsthorpe noted the reaction from the patient involved and that he was 'extremely concerned and confused.' Mr Gelsthorpe submits that the patient's trust had been undermined and this has the potential to undermine further the public's trust in the profession.
- 12 Mr Gelsthorpe submitted that were your conduct to be repeated it would likely result in a finding of impairment; and, that a Warning was required to confirm to the wider profession that this conduct is not acceptable.
- 13 Mr Gelsthorpe confirmed that the GMC accepts that there is significant mitigation present in this case; but, that the breach of confidentiality is so serious that the presence of this mitigation does not outweigh the 'clear and obvious intrusion' into the patient's confidential information.
- 14 Mr Gelsthorpe submitted that, in all of the circumstances of this case and notwithstanding the mitigation present, a warning was necessary and proportionate.

Defence Submissions

- 15 Mr Robert Dacre on your behalf acknowledged that your conduct did amount to a breach of Good Medical Practice. He submitted that your conduct did not fall 'just below' the threshold for impairment and that it was not a significant departure from Good Medical Practice. In support of this Mr Dacre noted the 'peculiar' facts of the case and confirmed that your intention had been to look after the welfare of the patient.
- 16 Mr Dacre noted that there is no definition for 'significant departure' in the GMC Guidance on Warnings.
- 17 Mr Dacre submitted that even were the Committee to determine that your conduct was a significant breach, the issuing of a Warning would be disproportionate in view of the extensive remediation present including your genuine apology, insight, remediation and testimonials. He submitted that you had demonstrated all of the examples of mitigation as contained within the GMC's Guidance on Warnings.
- 18 If a warning was to be given, Mr Dacre submitted that the current wording is unfair linking the Road Traffic Accident to your actions in accessing the patient's medical records. A warning should document your concern for the patient as the reasoning behind your actions.

Committee Determination

- 19 The Committee is aware that it must have in mind the GMC's role of protecting the public, which includes:
 - a. Protecting, promoting and maintaining the health, safety and well-being of the public
 - b. Promoting and maintaining public confidence in the medical professions, and
 - c. Promoting and maintaining proper professional standards and conduct for members of that profession
- 20 The Committee is satisfied that there has been a significant departure from Good Medical Practice; and, that your conduct falls just below the threshold for a finding of impairment. The Committee considers there to have been a clear and specific breach of GMC guidance; and, that you did not have a legitimate reason to access the patient's records. The Committee is concerned that you accessed the records for an individual for whom you bore no duty of care and whom you were not treating.
- 21 In deciding whether to issue a warning the Committee must apply the principle of proportionality, and balance the interests of the public with those of the practitioner.
- 22 The Committee has taken into account the many mitigating factors in this case. The Committee accepts that you have a previous good history, have demonstrated

genuine remorse and have sought to remediate your conduct. The Committee has accepted the testimonials submitted on your behalf which attest to your character; and, describe you as an honest and sensitive doctor. The Committee appreciates that you were shocked, concerned and visibly distressed following the accident and that your conduct was an isolated incident and out of character. The Committee is therefore satisfied that repetition of similar conduct is highly improbable. The Committee also considers that there was no malicious intent on your behalf.

- 23** The Committee also considers that there are aggravating factors, namely, a potential conflict of interest, no formal consent for accessing the individual's records, possible abuse of a position of trust and that your insight appeared to come only after the complaint. The Committee is also concerned that you inappropriately engaged in a conversation with the individual, relating to his medical investigations.
- 24** The Committee has carefully considered all the facts and has concluded that on balance the aggravating factors outweigh the mitigating factors. The Committee has considered whether in all the circumstances a Warning is proportionate; and, has determined that the nature of your conduct was so serious that a Warning is necessary to declare and uphold proper standards and highlight to the wider profession the standards to be expected of a doctor.
- 25** The Committee has taken into account submissions made by Mr Dacre on your behalf regarding the wording of the warning and has made the following amendment.

On 22 June 2018, whilst shocked and visibly distressed, you accessed the confidential medical records of a person with whom you had earlier had a road traffic accident, when you knew, or should have known, that this was inappropriate.

This conduct does not meet with the standards required of a doctor. It risks bringing the profession into disrepute and it must not be repeated. The required standards are set out in Good medical practice and associated guidance. In this case, paragraphs 47 and 50 of Good medical practice and paragraph 120 of Confidentiality: good practice in handling patient information are particularly relevant:

47. You must treat patients as individuals and respect their dignity and privacy.

50. You must treat information about patients as confidential...

120. You must not access a patient's personal information unless you have a legitimate reason to view it.

Whilst this failing in itself is not so serious as to require any restriction on your registration, it is necessary in response to issue this formal warning. This warning will be published on the List of Registered Medical Practitioners (LRMP) in line with

our publication and disclosure policy, which can be found at www.gmc-uk.org/disclosurepolicy.

You will be notified of this decision in writing within the next two working days.

That concludes the determination of the Investigation Committee in this case.