

Meeting of the s40A Panel to consider the case of Dr Stephen MACSHANE

Held on 19 June 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
Kate Takes, Senior Legal Adviser
Jennifer Richardson, 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.

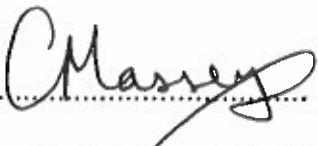
The relevant decision

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

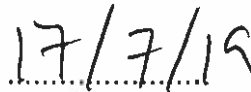
Consideration

- 3 The Panel considered the record of the MPT's determination and the legal advice in detail.

- 4 There is a proven finding of dishonesty in this case, and as such a clear departure from good medical practice, which was of concern to the Panel.
- 5 The Panel noted, however, that Dr Macshane acknowledged the dishonesty early in the process, expressed shame and had apologised to the Trust. Moreover, his initial motivation appeared to be borne out of concern for his patient's widow, and that he made no apparent personal gain.
- 6 The Panel was concerned about the lack of engagement with the MPT process, as it meant that the MPT could not explore the level of insight but in conclusion felt that the sanction, a four month suspension, was reasonable.
- 7 In addition, the Panel noted that the MPT has directed a review to occur at the end of the suspension, which will be an opportunity to assess Dr Macshane's insight and reflection, along with the risk of repetition.
- 8 Accordingly, the Panel decided not to appeal.



Charlie Massey (Chair)



Dated

Background

- 9 This case concerns the determination of an MPT, which concluded on Thursday 23 May 2019, considering the matter under Part 4 of the General Medical Council (Fitness to Practise) Rules 2004 ('the Rules').
- 10 The allegation considered by the MPT was one of misconduct. The circumstances of which were as follows:
 - 10.1 On 19 June 2017, Dr Macshane, an Associate Specialist in Emergency Medicine at Chesterfield Royal Hospital NHS Foundation Trust ('the Trust'), was on duty in the Trust's Emergency Department ('ED'). Patient A was brought into the ED having suffered a cardio-respiratory arrest. Resuscitation attempts were not successful and Patient A passed away. Patient A's body was taken from the ED to the mortuary. When Patient A's wife attended the hospital, Dr Macshane spoke to her and identification of the body was discussed: it is understood that Patient A's

wife told Dr Macshane that she felt too distressed to make any formal identification of the body.

- 10.2** Details about Patient A's death were sent to the Coroner. Due to there being an inconsistency within the information regarding Patient A's date of birth, the Coroner made an enquiry with the Trust to ensure the deceased patient had been correctly identified.
- 10.3** The Matron of the ED, 'Nurse B', made enquiries with the relevant nursing staff and subsequently Dr Macshane in relation to the identification of the body. In a telephone conversation with Nurse B on 20 June 2017, Dr Macshane told her that 'he had done the viewing'. In a meeting with Nurse B and the consultant in charge of the ED, 'Dr C', later the same day, Dr Macshane reiterated this position saying that he taken Patient A's wife to the mortuary (and he gave some further details to 'prove' that he had been to the mortuary, including that a hospital porter had been present).
- 10.4** Dr Macshane was asked to provide a written statement in relation to this matter which he provided on 20 June 2017. Dr Macshane confirmed that he had attended the mortuary with Patient A's wife and she had viewed and identified Patient A in Dr Macshane's presence.
- 10.5** During the Trust's preliminary investigation of the matter, review of CCTV confirmed that there was no evidence of anyone entering the mortuary during the relevant timeframe to review a body. In addition, on 21 June 2017, the Coroner's Office also informed the Trust's Service Manager that Patient A's wife had confirmed that she had not identified her husband's body: it was noted that Patient A's wife had told the Coroner that she was asked if she wanted to see her husband's body but she had said no, as it would be too distressing for her. The letter from the Coroner also detailed that Patient A's wife had confirmed to identifying her husband's possessions.
- 10.6** In a meeting on 23 June 2017, Dr Macshane initially maintained his position that Patient A had been identified in person, that he had attended the mortuary with Patient A's wife and that he was comfortable with his written account. However, as the meeting progressed, and Dr Macshane was questioned further he noted that he was not sure and that he was 'not 100%' happy with his written statement. After a short adjournment, Dr Macshane admitted that the identification had not taken place after all because Patient A's wife had said it would be too distressing for her. Dr Macshane acknowledged that he did not go to the mortuary and that the identification was done in the ED by reference to the 'distinguishing marks' on Patient A's body. At this point of the meeting, Dr Macshane recognised that the matter was one of 'dishonesty and probity.'
- 10.7** Patient A's wife attended the hospital and undertook a formal identification of her husband on 23 June 2017.

- 10.8** It is understood that Dr Macshane apologised to people at the Trust for his actions.

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

- 11** 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.
- 12** 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").
- 13** 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").
- 14** 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:
- 14.1** 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?
- 14.2** 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.
- 14.3** If the answer is yes, then the GMC may exercise its power of appeal
- 14.4** 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).