

Dates: 04/07/2016 – 08/07/2016

Medical Practitioner's name: Dr Kieran Desmond HEALY

GMC reference number: 4367129

Primary medical qualification: MB ChB 1996 University of Liverpool

Type of case

New - Misconduct

Outcome on impairment

Impaired

Summary of outcome

Suspension, 3 months.

Tribunal:

Medical Tribunal Member (Chair)	Dr Andrew Cohen
Lay Tribunal Member:	Mrs Susan Staveley
Medical Tribunal Member:	Dr Kate Thomas

Legal Assessor:	Ms Carey Johnston
Tribunal Clerk:	Ms Erin Brass

Attendance and Representation:

Medical Practitioner:	Present and not represented
GMC Representative:	Ms Bernadette Baxter, Counsel

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Allegation and Findings of Fact

“That being registered under the Medical Act 1983, as amended:

1. Between 3 March 2008 and 29 January 2015 you worked as a salaried General Practitioner with Cumbria Health on Call. **Admitted and found proved**
2. Between 6 October 2014 and a date on or around 26 January 2015 you worked as a salaried General Practitioner at the Grosvenor House Practice (‘the Practice’). **Admitted and found proved**
3. Between 30 September 2012 and 29 January 2015, you worked without professional indemnity insurance (‘insurance’). **Admitted and found proved**
4. Between October and December 2014 you informed Miss A that you held insurance. **Found not proved**
5. In December 2014 you informed Miss A that you had cancelled your insurance in August 2014. **Found proved**
6. The information you provided at paragraphs 4 and 5 above:
 - a. was untrue; **Found not proved in respect of paragraph 4**
Found proved in respect of paragraph 5
 - b. you knew to be untrue. **Found not proved in respect of paragraph 4**
Found proved in respect of paragraph 5
7. On 28 July 2015 you issued a prescription for your partner (‘Patient C’), using a prescription pad from the Practice when you no longer worked there. **Admitted and found proved**
8. Patient C was:
 - a. not your patient; **Admitted and found proved**
 - b. in a close personal relationship with you. **Admitted and found proved**

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9. Your conduct as set out at paragraphs 4, 5 and 7 was:
 - a. misleading; **Found not proved in respect of paragraph 4**
Found proved in respect of paragraph 5
Admitted and found proved in respect of paragraph 7
 - b. dishonest. **Found not proved in respect of paragraph 4**
Found not proved in respect of paragraph 5
Found not proved in respect of paragraph 7

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct.”

Attendance of Press / Public

The hearing was all heard in public.

Determination on Facts - 06/07/2016

1. You were present at the hearing and represented yourself. Ms Bernadette Baxter, Counsel, represented the General Medical Council (GMC).
2. At the outset of the proceedings you entered several admissions. As a result paragraphs 1, 2, 3, 7, 8a, 8b and 9a in respect of paragraph 7 were found proved.

Background

3. Between 3 March 2008 and 29 January 2015 you were working as a salaried General Practitioner with Cumbria Health on Call. Between 6 October 2014 and January 2015 you were also employed at the Grosvenor House Practice. You have admitted that within this period, namely 30 September 2012 to 29 January 2015 you worked without professional indemnity insurance.
4. On 28 July 2015, 6 months following your resignation from the Grosvenor Practice, you issued a prescription using a Grosvenor House Practice prescription pad, to a person who was not your patient and with whom you were in a close personal relationship.
5. It is alleged that you were misleading and dishonest in relation to your professional indemnity insurance.

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6. It is also alleged that you were misleading and dishonest in using a prescription pad from a practice where you no longer worked.

Evidence

7. In respect of the remaining paragraphs to be determined the tribunal has read the witness statements of Ms A, Practice Manager at Grosvenor House GP Practice, Mr B, Senior GP at Grosvenor House Practice and Mr C, Assistant Medical Director at NHS England, Cumbria and the North West. The tribunal has received and read further documentation submitted by the GMC and heard oral evidence from Ms A.

8. The tribunal has also heard oral evidence from you, read your testimonials and personal statements and chronology. It has also seen the CPD certificates you submitted.

Ms A

9. Ms A was the practice manager at Grosvenor House Practice. It was her responsibility to ensure that your personnel file was correct, this included evidence of adequate indemnity insurance. The tribunal found Ms A to be an honest and credible witness, who did her best to assist the tribunal.

Your evidence

10. The tribunal found you to be, generally, a credible witness, who gave a largely consistent account. The tribunal was impressed with how you presented yourself in a calm and appropriate manner.

Tribunal Findings

Paragraph 4

Between October and December 2014 you informed Miss A that you held insurance **Found not proved**

11. In the written statement given by Ms A she stated that *'he informed me that he was currently insured with the MDU and would check when it expired as to whether he had to pay a sum to get out.'* However, in oral evidence Ms A, when asked to clarify that she had asked you whether you were insured, she stated *'I can't recall he said that he was insured.....'* In your evidence you consistently denied stating outright to Ms A or to any other that you were insured. You stated that you knew that you did not have insurance but that *'if she had asked outright....I would not lie....never blatantly, pro-actively tell anyone a bare-faced lie.'* You stated that the first time anyone asked you directly whether you had insurance was in January

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2015, at a meeting held two days after you handed in your resignation at the practice, at which time you answered honestly.

12. You further denied stating to Ms A that you referred to having to pay a sum to get out (of any insurance) and your evidence was that you would not have known that there might be any financial penalty in cancelling your insurance policy.

13. During your evidence you explained why you cancelled your policy. At that time, in 2012, you noticed that a payment to the MDU had not left your account for two months and thought this to be an administrative error. You did not know that payments for the year are made over 10 months with a two month payment break.

14. The tribunal finds that it is more likely than not that you would not have been aware of any financial penalty should you cancel the policy early. The circumstances described by Ms A are very similar to a situation she had with another GP, after you had left but before she had made her statement. Her statement was made November 2015, approximately 12 months after these events. The tribunal cannot be sure, having heard both Ms A's oral evidence and your oral evidence that she has not confused you with this other doctor. The tribunal therefore found this paragraph not proved.

Paragraph 5

In December 2014 you informed Miss A that you had cancelled your insurance in August 2014 **Found proved**

15. Ms A, in her written statement, states that when she asked you when you had cancelled your MDU cover and for you to confirm your MDU number: *'he then told me that he had cancelled his MDU cover in August as it was expensive.'* She did not in this statement refer to 2014 or any other year. In her oral evidence she stated you told her your insurance had expired in August.

16. Furthermore, Ms A, in her written statement, referred to a meeting in which she states you gave Mr C a different date for cancelling your insurance.

17. The tribunal heard your oral evidence in which you confirmed that you had told Ms A that you had cancelled your insurance, but that you did not recall mentioning any particular date as to when it was cancelled.

18. The tribunal finds that, on a balance of probabilities, it was more likely than not that you did mention a date to Ms A. Her evidence on this point is consistent and she is clear that she recalls you giving her one date and Mr B another. The tribunal accepts her evidence and, having found you did say 'August' has inferred that, as this conversation took place in December 2014, the implication would be that Ms A would understand that to mean August 2014.

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Paragraph 6

The information you provided at paragraphs 4 and 5 above:

- a. was untrue; **Found not proved in respect of paragraph 4**
Found proved in respect of paragraph 5

19. In respect of paragraph 4, as it was found not proved, this related sub-paragraph cannot be proved.

20. In respect of paragraph 5 the tribunal has found that you told Ms A that you had cancelled your insurance in August and has inferred that this was August 2014. You informed the tribunal that you cancelled your insurance in 2012, therefore the tribunal found that the information you gave to Ms A was untrue. You accepted the suggestion put to you in evidence that had you said August, it would be reasonable for Ms A to infer this to be August 2014.

- b. you knew to be untrue **Found not proved in respect of paragraph 4**
Found proved in respect of paragraph 5

21. In respect of paragraph 4, as it was found not proved, this related sub-paragraph is not proved.

22. In respect of paragraph 5 the tribunal has found that you told Ms A that you had cancelled your insurance in August, and has inferred that this referred to August 2014. You have admitted in the course of the proceedings that you were acutely aware that you did not have insurance at the time. The tribunal finds that in telling Ms A your insurance was cancelled in August, in order to answer her question you effectively plucked a random date which you must have known was untrue. You did this at a time when you were in the middle of a busy GP clinic, under a great deal of pressure and anxious about your insurance which you told the tribunal you tried to avoid talking about. The tribunal therefore found this paragraph proved.

Paragraph 9

Your conduct as set out at paragraphs 4, 5 and 7 was:

- a. misleading **Found not proved in respect of paragraph 4**
Found proved in respect of paragraph 5
Admitted and found proved in respect of paragraph 7

23. In respect of paragraph 4, as it was found not proved, this related sub-paragraph is not proved.

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24. In respect of paragraph 5 the tribunal found that in telling Ms A you had cancelled your insurance in August this was misleading because Ms A would have assumed you meant August 2014, which was untrue.

25. In respect of paragraph 7, this was admitted by you at the outset of the proceedings.

b. dishonest **Found not proved in respect of paragraph 4**
Found not proved in respect of paragraph 5
Found not proved in respect of paragraph 7

26. In respect of paragraph 4, as it was found not proved, this related sub-paragraph is not proved.

27. In respect of paragraph 5 and 7 the tribunal applied the two stage test when determining the issue of dishonesty.

28. It considered firstly whether a reasonable honest person would find your actions to be dishonest. The tribunal finds that a reasonable honest person would consider that knowingly telling an untruth in these circumstances would be dishonest. The tribunal then considered the second stage of the test by considering your state of mind and the circumstances in which you found yourself at the time when you made this particular statement. Having heard your evidence the tribunal finds that you were under a great deal of pressure, struggling to cope in a busy GP practice. This conversation with Ms A occurred in the middle of your working day at a busy time for you and would have been a very brief encounter. You have submitted that you were struggling financially. The tribunal finds that, at the material time, you were disorganised, chaotic and likely in a state of panic and reacted to a stressful situation. For these reasons, the tribunal finds that you gave no conscious thought as to whether your response to Ms A would have been perceived by another as dishonest. You did not consider at the time whether your actions would be seen as dishonest. Therefore, the tribunal does not find that you acted dishonestly.

29. In respect of paragraph 7 the tribunal considered firstly whether a reasonable honest person would find your actions to be dishonest. The tribunal finds that by using the prescription pad you held yourself out to be a doctor of the Grosvenor House Practice who was entitled to issue prescriptions when you knew this not to be the case. The tribunal finds that a reasonable and honest person would find this action to be dishonest. The tribunal then considered your state of mind and the circumstances in which you found yourself at the time of issuing the prescription. You stated in your evidence that you were responding to an urgent situation to provide medication for your partner. You had made enquires as to how long it would take using an alternative method and were told two days. You received a text message from your partner stating *'did u call for my prescription? Can I collect it*

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now? My chest is really bad x'. You explained that his prescription is a regular medication for your partner and is normally on a repeat prescription. However, your partner had run out of medication and urgently required his repeat prescription. The tribunal finds that you were trying to act in the best interest of your partner, given his deteriorating medical condition. You felt you were under pressure to obtain the prescription sooner rather than later and acted without really thinking through the consequences. You stated that your thought process at the time was that the practice would not mind you using the prescription pad. You stated that you never thought this action would be considered dishonest. The tribunal has accepted your evidence on this point. It also considered that you did not realise at that time that your action would be considered dishonest by the standard of reasonable and honest people. Therefore, the tribunal finds this not proved.

Determination on Impairment - 07/07/2016

1. Having announced its findings of fact, the tribunal has now considered whether, on the basis of the facts found proved, your fitness to practise is impaired by reason of misconduct.

Submissions

2. Ms Baxter submitted that your conduct in respect of all of the paragraphs of the allegation found proved amounted to serious misconduct.

3. In relation to your failure to have adequate indemnity insurance she submitted that this was done knowingly and over a considerable period of time of more than two years. Ms Baxter referred the tribunal to Good Medical Practice 2013 (GMP). She submitted that paragraphs 63 and 65 were relevant.

63 You must make sure you have adequate insurance or indemnity cover so that your patients will not be disadvantaged if they make a claim about the clinical care you have provided in the UK.

65 You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.

4. Ms Baxter submitted that you had breached both of these tenets, firstly by failing to have the necessary insurance and further by misleading the practice manager by providing misinformation to her.

5. In respect of the prescription, Ms Baxter submitted that you had attempted to mislead the pharmacist into believing you had the necessary status to issue the prescription and that by attempting to prescribe for a person whom you were in a close relationship with was a further breach of GMP paragraph 16(g):

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16 In providing clinical care you must:

- g. wherever possible, avoid providing medical care to yourself or anyone with whom you have a close personal relationship

6. Ms Baxter submitted that you placed patients at risk by failing to have insurance, that you have brought the profession into disrepute and have breached fundamental tenets of GMP.

7. Ms Baxter submitted that in your case the misconduct was so serious that a finding of impairment was necessary to protect the public and the public interest, to maintain public confidence in the profession and to uphold proper standards within the profession.

8. You provided a number of further testimonials to the tribunal for its consideration.

9. In your submission you accepted that your actions did amount to misconduct and you now recognise the enormity of the situation and feel ashamed and embarrassed.

10. You submitted that you are a good, honest, trustworthy person who at the time was under a great deal of stress due to adverse personal circumstances.

11. You told the tribunal that previously you had thought that not having insurance was only a personal risk, but you now also recognise the potential impact on the public and your patients. You now recognise the trust that the public place in you as a doctor, and also the responsibility that you have to patients and the public.

12. You submitted that this has been a life changing event for you and that you have learnt from your mistakes. You stated that you felt privileged and proud to be a doctor and that your medical career is everything to you.

13. You submitted that you were sorry for your actions and would never repeat this behaviour or behave in a way not befitting a doctor.

Tribunal decision

14. The tribunal has already given a very detailed determination in respect of its findings of fact, and it has taken those findings into account during its deliberations on impairment.

Misconduct

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15. In determining whether your fitness to practise is impaired by reason of misconduct, the tribunal adopted a two-step approach. It first considered whether the facts found proved constitute misconduct. Misconduct occurs when there has been a departure from the expected standards of conduct and behaviour, be that departure professional or moral.

16. The tribunal finds that by failing to have adequate indemnity insurance you placed your patients at risk over a prolonged period of time and this amounts to misconduct. Furthermore, by providing information in relation to cancelling your insurance which you knew to be untrue and misleading, you have breached the trust placed in you as a doctor. The tribunal finds that this too constitutes misconduct. The tribunal finds that these actions serve to undermine public confidence in the profession.

17. The tribunal has found that your actions in issuing a prescription on a prescription pad which you were not entitled to use, misled the pharmacist and breaches the trust placed in you. The tribunal finds that this constitutes misconduct.

18. The tribunal finds that you have breached fundamental tenets of GMP in that you have breached the trust placed in you. You have acted with disregard for patients by not having insurance, thereby placing them at risk, and you have misled another on two separate occasions; firstly in respect of the indemnity insurance and then into dispensing medication with a prescription pad you were not permitted to have or use.

19. In respect of prescribing for a person with whom you have a close personal relationship, the tribunal accepts your evidence that the medication was required urgently and therefore your departure from good medical practice in this regard did not in itself constitute misconduct.

20. The tribunal finds that all your actions admitted and found proved and those found proved amount to serious misconduct.

Impairment

21. In deciding whether your fitness to practise is currently impaired, the tribunal bore in mind its statutory overarching objective, which includes the following:

- Protecting, promoting and maintaining the health, safety and wellbeing of the public;

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- Promoting and maintaining public confidence in the medical profession;
- Promoting and maintaining proper professional standards and conduct for members of the profession.

22. In determining whether your fitness to practice is impaired by reason of misconduct the tribunal has considered any insight you have displayed and any remedial steps taken by you.

23. The tribunal must consider whether your fitness to practice is impaired as of today, but can consider your past behaviour in reaching a determination.

24. The tribunal has had regard to the testimonials and other documents you have submitted from your colleagues and patients. It was apparent from these that you are considered to be a competent clinician who is well liked and respected by all those you come into contact with at work.

25. The tribunal notes that you have shown remorse for your actions. You have reflected on your short comings over the last 18 months and have taken some remedial steps by undertaking CPD in relation to ethics. The tribunal took the view that you have developing insight, although this is not yet complete and so considers that it cannot yet exclude the risk of repetition. The tribunal has concerns that whilst you say you have accepted full responsibility for your misconduct, you have not in fact fully done so. You appear to still attribute your shortcomings to factors outside your control. The tribunal does not consider this to be the case.

26. The tribunal finds that your conduct has fallen well below the standard expected of a medical professional. It finds that you have breached fundamental tenets of the profession and undermined public confidence, and in so doing have brought the profession in to disrepute.

27. The tribunal is of the view that, if it were not to make a finding of impairment in these particular circumstances, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour would be significantly undermined.

28. In reaching this conclusion the tribunal took account of paragraph 74 of the judgement of Cox J in the case of Council for Healthcare Regulatory Excellence v Nursing and Midwifery Council, Paula Grant [2011] EWHC 927 (Admin) 2011 WL 1151061 which stated:

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public

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in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

29. The tribunal has found that your fitness to practise is currently impaired by reason of your misconduct.

Determination on Sanction - 08/07/2016

1. Having determined that your fitness to practise is impaired by reason of your misconduct, the tribunal must now determine what action, if any, to take in relation to your registration. In so doing, it has considered all of the evidence adduced, together with the submissions of Ms Baxter, on behalf of the GMC, and the submissions made by you.

Submissions

2. Ms Baxter submitted that the appropriate and proportionate sanction was one of suspension. She referred the tribunal to Sanctions Guidance March 2016 (SG). This, she submitted, would reflect the seriousness of the findings, maintain public confidence in the profession, and promote and maintain proper standards of conduct and behaviour.

3. She submitted that taking no action would not be appropriate because of the serious nature of the findings and because there are no exceptional circumstances in this case. She went on to submit that conditions would be inappropriate and unworkable given the tribunal's findings. She submitted that the breaches found by the tribunal were not necessarily incompatible with continued registration, thereby requiring erasure, but that a clear message must be sent to the profession, to maintain standards, and to the public to maintain confidence in the profession.

4. You submitted that there was no excuse for your actions and you fully accepted the tribunal's findings.

5. You told the tribunal that if you were allowed to continue to practice there were courses available to you which would bring your skills up to date and that you were intending to explore a potential employment opportunity with your former employer. You told the tribunal you were prepared to undertake any work necessary which would allow you to return to practice.

6. You told the tribunal that your finances were now manageable. You also indicated that if you experienced difficulties in the future you would be more open with others in seeking support and less inclined to try to deal with everything on

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your own. Your partner is now fully aware of your financial situation and is supportive.

Tribunal considerations

7. Whilst the tribunal has borne in mind the submissions made, the issue of sanction is one for it to determine exercising its own judgement.
8. In reaching its decision, the tribunal has taken account of the March 2016 edition of the Sanctions Guidance.
9. Throughout its deliberations, the tribunal has been mindful of the overarching objective to protect the public as set out in the Medical Act 1983 (as amended). That is:
 - a. to protect, promote and maintain the health, safety and wellbeing of the public
 - b. to maintain public confidence in the profession
 - c. to promote and maintain proper professional standards and conduct for members of that profession.
10. The tribunal has applied the principle of proportionality, weighing the public interest against your own interests. The tribunal recognises that the purpose of sanctions is not to be punitive, although they may have a punitive effect, but to protect patients and the wider public interest.

Mitigating factors

11. In mitigation the tribunal had regard to the following factors:
 - The pressure you were under professionally at the time, in returning to day time GP work
 - The adverse personal circumstances you were experiencing at the time, which were largely financial
 - Your acceptance that you exposed patients to risk by practicing without insurance
 - That you are sincerely sorry and remorseful
 - That in the past 18 months you have reflected daily on your shortcomings
 - The positive steps you have taken to remediate your personal circumstances
 - Your acceptance of the tribunal's findings and your developing insight.

Aggravating Factors

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12. The tribunal balanced those mitigating factors against what it considered to be the aggravating factors in this case:

- The length of time you continued to practice without indemnity insurance
- Your failure to rectify the issue of the insurance when the matter was first raised by the practice manager

No Action

13. In coming to its decision as to the appropriate sanction, if any, to impose in your case, the tribunal first considered whether to conclude the case by taking no action.

14. The tribunal determined that, in view of the serious nature of its findings on impairment, taking no action would not be sufficient to uphold the overarching objective. It found that there were no exceptional circumstances to justify taking no action in your case.

Conditions

15. The tribunal next considered whether it would be sufficient to impose conditions on your registration. Any conditions imposed would need to be appropriate, proportionate, workable and measurable.

16. The tribunal has determined that a period of conditional registration would not reflect the serious nature of your misconduct, nor does it find that any conditions could be formulated to adequately address the nature of the breaches. You are not currently employed as a doctor and so conditions could not be enforced.

Suspension

17. The tribunal next considered whether it would be sufficient to suspend your registration. In so doing, the tribunal has noted paragraph 85 of the Sanctions Guidance, which states that:

“Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbecoming a registered doctor.”

18. It has also noted paragraph 86 which states that:

“Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be

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appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration”.

19. Throughout its deliberations, the tribunal has borne in mind the factors advanced in mitigation. The tribunal has balanced the mitigating factors in your case with the aggravating factors.

20. The tribunal has determined that your misconduct is such that it is necessary to send a message to you, to the profession and to the public. It has determined that a period of suspension is a proportionate sanction.

21. The tribunal therefore determined that your registration should be suspended for a period of 3 months. The tribunal considered that a suspension of this length would give you adequate time to further reflect on your misconduct and send the appropriate message to the profession and to the public that conduct such as this would not be tolerated.

Erasure

22. The tribunal is satisfied that your misconduct is not fundamentally incompatible with continued registration as a doctor. Erasure from the register would therefore not be proportionate.

Review

23. The tribunal considers that it is not necessary for a review hearing. It has determined that there are no clinical concerns in this case and the purpose of the suspension is to send the appropriate message to you, the profession and the public. The tribunal has noted your assurances that you have a well thought out and manageable clinical route to return yourself back to full clinical practice. The tribunal accepts your assurances in relation to this matter.

24. The effect of this direction is that, unless you exercise your right of appeal, your name will be suspended from the Medical Register 28 days from when written notice of this determination has been served upon you. A note explaining your right of appeal will be sent to you.

Determination on Immediate Order - 08/07/2016

1. Having determined to suspend your registration for a period of 3 months, the tribunal has now considered whether to impose an immediate order of suspension on your registration.

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2. In reaching its decision, the tribunal referred to the relevant paragraphs of the 'Sanctions Guidance'. It exercised its own judgement and had regard to the principle of proportionality.
3. Ms Baxter submitted that an immediate order of suspension is not necessary in your case. She submitted that you are not currently working and acknowledged the tribunal's determination that it accepted your assurances regarding your future practice.
4. You did not make any submissions.
5. Having considered its findings and the submissions made, the tribunal was satisfied that you do not pose a risk to patient safety. The tribunal also took the view that the seriousness of your misconduct and the public interest has been clearly marked by its substantive sanction of suspension for a period of 3 months. The tribunal concluded that in this case the imposition of an immediate order would be disproportionate. The tribunal therefore determined that it is not in the public interest to impose an immediate order of suspension to protect public confidence in the profession.
6. The substantive sanction of suspension as already announced will take effect 28 days from when written notice is deemed to have been served upon you, unless an appeal is lodged in the interim.
7. That concludes this case.

Confirmed
Date 08 July 2016

Dr Andrew Cohen, Chair