

Dates: 25/07/2019 - 29/07/2019

Medical Practitioner's name: Dr Abdul AL SAYED

GMC reference number: 4290151

Primary medical qualification: MB BCh 1978 Cairo

Type of case
New - Misconduct

Outcome on impairment
Consideration of impairment not reached

Summary of outcome

Voluntary erasure

Tribunal:

Legally Qualified Chair	Mr David Urpeth
Lay Tribunal Member:	Mrs Carrie Ryan-Palmer
Medical Tribunal Member:	Dr Pavan Rao
Tribunal Clerk:	Miss Emma Saunders

Attendance and Representation:

Medical Practitioner:	Not present and represented
Medical Practitioner's Representative:	Mr Simon Walters, Counsel, instructed by Bindmans LLP
GMC Representative:	Ms Jennie Ferrario, Counsel

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.

Overarching Objective

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 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.

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Determination on Application for Voluntary Erasure - 29/07/2019

Hearing in Private

1. The Tribunal agreed, in accordance with Rule 41XXX of the General Medical Council (GMC) (Fitness to Practise) Rules 2004 , as amended ('the Rules'), that parts of this hearing should be heard in private where the matters under consideration are confidential, XXX. As such, this determination will be read in private but a redacted version will be published following the conclusion of this hearing, with those matters relating to Dr Al Sayed's XXX removed.

Application for Voluntary Erasure

2. At the commencement of the hearing, Ms Ferrario, Counsel on behalf of the General Medical Council (GMC), informed the Tribunal that Dr Al Sayed had made an application for voluntary erasure of his name from the Medical Register. She stated that information had been awaited from other sources before a decision could be made, which explained why the application had not been considered prior to that day (25 July 2019). Ms Ferrario confirmed that the application was being considered by GMC Case Examiners that morning and that a decision would be reached shortly.

3. The Tribunal determined to adjourn to await the outcome of the application. Upon resumption of the hearing later that day, Ms Ferrario told the Tribunal that the GMC Case Examiners' decision was to refuse Dr Al Sayed's application for voluntary erasure. The written reasons were provided to the Tribunal.

4. On 26 July 2019 Mr Walters, Counsel on behalf of Dr Al Sayed, made an application to the Tribunal for it to consider a renewed voluntary erasure application.

Allegation and Documentary Evidence

5. The allegations that have led to Dr Al Sayed's hearing relate to his conduct towards Ms A. Ms A had been working with Dr Al Sayed at Brimpton House Surgery ('the Practice') as a locum nurse from 25 July 2016 until she left on 31 October 2016. It is alleged by the GMC that Dr Al Sayed's conduct towards Ms A included a hug, a kiss, asking her to go out with him and putting his arm around her waist. It is alleged by the GMC that Dr Al Sayed's conduct was sexually motivated.

6. At this stage, the Tribunal had regard to the documentary evidence provided by the parties. This evidence included: Ms A's initial account and grievance letter dated 28 September 2016; Ms A's statement covering events between 20 September 2016 and 22 November 2016 dated 22 November 2016; Ms A's police statement dated 13 October 2016; Dr Al Sayed's police statement dated 27 October 2016; Ms A's undated employment tribunal statement; Letter from Dr Al Sayed to Ms A dated 4 October 2016; Text messages between Ms A and Ms B, Practice Manager,

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dated 26 to 28 September 2016; Police statement of Ms A's partner dated 4 February 2017; Ms B's police statement dated 30 October 2016; Copy of the Practice Harassment policy dated 31 October 2015; Text message from Ms B to Ms A on 26 September 2016; Appraisal dated 2 February 2017; XXX.

Submissions on Dr Al Sayed's behalf

7. Mr Walters stated that the allegations were first made by Ms A against Dr Al Sayed in October 2016 and Ms A made a complaint to the GMC in November 2016. Mr Walters stated that Dr Al Sayed completed GP training in 1996. He ran the Practice single handedly from 2003 and has been in medical practice for 34 years. Mr Walters submitted that Dr Al Sayed has not been the subject of any other allegation in relation to his fitness to practise.

8. Mr Walters explained that Ms A's allegations had been investigated by Essex Police, when she made a complaint to them, and a criminal trial took place in October 2017 in respect of one count of sexual assault relating to an alleged incident on 20 September 2016 (the same allegations that were reported to the GMC in November 2016). Mr Walters stated that Dr Al Sayed was acquitted.

9. Mr Walters told the Tribunal that Dr Al Sayed does not accept that he behaved inappropriately towards Ms A. He submitted that Dr Al Sayed's response to the allegations has been consistent throughout and referred to the two statements made by Dr Al Sayed in 2016. Mr Walters submitted that, whilst it is acknowledged that there is a higher standard of proof in the Crown Court, Dr Al Sayed's position is vindicated by the acquittal.

10. XXX.

11. XXX.

12. Mr Walters submitted that, where there are concerns (of whatever strength) about a doctor's fitness to practise, the principal aim of public protection can be said to be satisfied when the doctor is erased from the register, whether voluntarily or otherwise.

13. Mr Walters referred to various paragraphs of the GMC *Guidance on making decisions on voluntary erasure applications* (published April 2014) ('the Guidance'), including paragraph 16 that there are more likely arguments in favour of refusing the application if the allegations are primarily about misconduct, a conviction or a determination concerning the doctor's conduct. In such circumstances, the Guidance says that "*voluntary erasure is only likely to be appropriate in exceptional circumstances*". Mr Walters submitted that that this was a case in which such exceptional circumstances applied.

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14. XXX

15. Mr Walters stated that Dr Al Sayed saw his last patient on 29 April 2019 and formally retired on 1 June 2019. He stated that it had been confirmed with Ms B that the severance of Dr Al Sayed's financial ties were being finalised. He submitted that Dr Al Sayed wants to move on to another stage of his life and avoid situations where there is the potential for any other allegations to be raised. Mr Walters submitted XXX that Dr Al Sayed had made it clear that he did not want to practise anymore. XXX.

16. Mr Walters submitted that the prospect of Dr Al Sayed choosing to apply for restoration to the Medical Register was remote, if not non-existent, due to XXX, the stage of his career and his genuine desire to retire from medical practice. He stated that there was coherent evidence that supports Dr Al Sayed's intention to permanently retire. Mr Walters submitted that the GMC had no evidence to cast doubt on Dr Al Sayed's sincerity and credibility when he says that he no longer wishes to practise medicine, given that he has always been held in the highest regard and has given the GMC no cause for concern before the current case.

17. XXX

18. In terms of the public interest, Mr Walters submitted that this could be served by satisfying the public protection aims and by reducing the use of valuable resources necessary for a full hearing. He stated that the public interest should also be weighed against Dr Al Sayed's interest given that he has over 30 years' experience, is of previous unblemished record, and voluntarily seeks removal from the Medical Register.

19. Mr Walters submitted that the GMC Case Examiners erred in their decision and the Tribunal is invited to revisit the application and to grant it for all of the reasons that have been set out. He submitted that the public interest can be served in this case in a multitude of ways and that Dr Al Sayed's acquittal at the Crown Court, his good character, XXX, and the procedural safeguard of a restoration application are all factors that support the granting of this application for voluntary erasure.

GMC Submissions

20. Ms Ferrario asked the Tribunal to take account of the reasoning set out by the Case Examiners and highlighted a number of matters of importance.

21. Ms Ferrario urged the Tribunal to have serious regard to the Guidance and stated that this was very clear as to how the Tribunal should be guided when making its decision. Ms Ferrario referred to the overarching objective that is there to protect the public and to promote and maintain public confidence in the profession.

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She submitted that the public interest is paramount and that the Tribunal should carefully consider what impact its decision will have. Ms Ferrario submitted that there would be a negative impact on the public interest if this application was granted due to seriousness of the allegations.

22. Ms Ferrario submitted that there ought to be exceptional circumstances for the Tribunal to grant the application. She stated that this was a very subjective assessment and suggested that the Tribunal should bear in mind the words 'rare' and 'extraordinary'. Ms Ferrario submitted that she did not agree that there were exceptional circumstances in this case. XXX. She submitted that, as such, the GMC could not see any evidence of exceptional circumstances to deviate from the guidance.

23. Ms Ferrario stated that the Tribunal has heard that Dr Al Sayed does not wish to return to work. She submitted that the only evidence was Dr Al Sayed's resignation on 1 June 2019, having last seen a patient on 29 April 2019. Ms Ferrario suggested that this was very recent and submitted that there was nothing to allow the Tribunal to confirm that this would remain the position. She submitted that it was an entirely reasonable suggestion that Dr Al Sayed will want to apply to return to work. Ms Ferrario stated that these unresolved allegations would still be there but the passage of time would make things more difficult at that time.

24. Ms Ferrario stated that Dr Al Sayed's application for voluntary erasure was made quite late in the day given that the alleged events date back to 2016. Whilst it does appear that the GMC proceedings have had a negative effect on Dr Al Sayed, Ms Ferrario stated that the application was only submitted last month and asked the Tribunal to consider how genuine this was. She suggested that it was a little convenient that the application was made so close to these proceedings.

25. Ms Ferrario submitted that the overarching objective balances in the favour of the public interest in hearing these allegations. She urged the Tribunal to follow the guidance and oppose the application.

Tribunal's Decision

26. The Tribunal had regard to the Guidance, and accompanying GMC (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004 as well as all limbs of the overarching objective. It was mindful that the application was a matter for the Tribunal's own independent judgement and that such an application can be made at any stage of the hearing.

27. The Tribunal noted that the original application for voluntary erasure was submitted to the GMC. Dr Al Sayed's legal representatives subsequently applied to postpone this hearing to allow the GMC Case Examiners to consider the application but this was refused by the MPTS Case Manager. The GMC Case Examiners were

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asked to consider the application as this hearing had not yet started and a decision to refuse the application was made on 25 July 2019 - the first day of this hearing. The Tribunal has carefully considered their reasons for refusal.

28. The Tribunal had regard to paragraph 6 of the Guidance that it would have to be satisfied that it was right in all the circumstances to agree voluntary erasure before any application is granted. This was divided into:

- The public interest, incorporating three elements:
 - The protection of patients and the public generally from doctors whose fitness to practise is impaired.
 - The maintenance and promotion of public confidence in the medical profession.
 - The maintenance and promotion of public confidence in the GMC's performance of its statutory functions.
- The XXX and likelihood of return to practise.

29. The Tribunal had regard to the need to ensure the protection of patients and the public generally from doctors whose fitness to practise is impaired. It noted that this application was being considered before the facts stage of the hearing therefore no finding of impairment has been made. The Tribunal recognised that the allegations did not relate to a patient but to a member of staff. It reminded itself of paragraph 36 of the current edition of *Good Medical Practice* (2013) that: "*You must treat colleagues fairly and with respect*".

30. The Tribunal referred to paragraph 8 of the Guidance, in respect of the public interest:

"The first of these elements may appear to favour agreeing to voluntary erasure as the GMC's primary (although not sole) task is to protect the public from future harm at the hands of a doctor whose fitness to practise may be impaired. Voluntary erasure would appear to give the public the most immediate and the most effective form of protection at the GMC's disposal. Erasure fully satisfies the need for public protection, as the doctor will not be entitled to practise at all."

The Tribunal was conscious that voluntary erasure is not necessarily permanent. Similarly erasure at a full Medical Practitioners Tribunal hearing is also not necessarily a permanent erasure in that the practitioner can apply for restoration after a five year period.

31. The Tribunal considered what evidence it had that Dr Al Sayed does not intend to return to practise. It had regard to XXX Dr Al Sayed's recent retirement from Practice. The Tribunal noted that Dr Al Sayed has not seen a patient since 29 April 2019 and officially retired on 1 June 2019. The Tribunal has heard that the

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practice manager has confirmed that Dr Al Sayed is in the process of finalising the disentangling of his financial affairs from the Practice.

32. XXX. The Tribunal noted that the GMC would still have the opportunity to reopen the allegations should Dr Al Sayed apply for restoration, in accordance with paragraph 9 of the Guidance:

"...the Voluntary Erasure Regulations provide a safeguard in that such applications for restoration would not be granted automatically. Such an application would be referred once again for the case examiners to consider where any unresolved complaints would be taken into consideration."

The Tribunal was keenly aware of the need to maintain public confidence in the medical profession and in the GMC's performance of its statutory functions.

33. The Tribunal has borne in mind the allegations that Dr Al Sayed faces and balanced this throughout its considerations. It reminded itself of the nature of the allegations, as stated by the GMC Case Examiners:

"At the hearing at Chelmsford Crown Court which took place on 16 and 17 October 2017, Dr Al Sayed faced a single charge of sexual assault relating to an incident on 20 September 2016 when it was alleged that he took hold of Ms A's face, turned it towards him and kissed her on the lips. He pleaded not guilty and was acquitted by a jury after a full hearing of the evidence".

The Tribunal was mindful that there has been a court case and that Dr Al Sayed has been acquitted. This was the only complaint that has been raised with the GMC regarding Dr Al Sayed's behaviour during his career and the Tribunal had regard to the views of those who worked with him. The Tribunal had regard to the positive testimonials from a number of colleagues and patients, including:

- Statement dated 9 October 2017 from Ms C, Deputy Practice Manager:
"Dr Al Sayed has been extremely kind to me and my family. He is supportive and sensitive to people's needs. I work very closely with him, I have never had any concerns about him or his behaviour towards women, he always acts in a professional way to staff and patients."
- Statement dated 12 October 2017 from Ms D, Retired Practice Sister and Midwife:
"Dr Al Sayed was never inappropriate, always professional, if he was seeing a female patient and had to do an examination, he would always have a chaperon. He would even ask if they wanted one if this was not strictly necessary. We never had any problems with the patients in terms of complaints about inappropriate behaviour. He has a very loyal patient base."
- Statement dated 7 November 2017 from Mr E, patient of Dr Al Sayed:

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"I have never had any concerns about Dr Al Sayed at all. I am more than happy for my wife to see him and to meet regularly as I know he is utterly professional... He is also incredibly professional with his advice and always correct... I really cannot believe the allegations that have been made against him as this just is not the character that I know. He used to be a smiling happy man and he has been absolutely destroyed by these allegations. You can see, he has almost become smaller, he looks like he is carrying the world on his shoulders... He is the kindest most hardworking, diligent and caring GP one could ever ask for."

- Statement dated 23 August 2017 from Ms F, Previous Practice Nurse:
"Dr Al Sayed has always been utterly professional towards me. I have never had any concerns about him or his behaviour. The surgery is very important to him and he cares a lot about it. Dr Al Sayed is a considerate and kind employer. If members of staff were having difficulties in work or elsewhere, he would ask after their wellbeing and be caring and understanding and assist where he could. He never stepped over the mark and was aware of his boundaries."

34. Having considered all the factors in relation to public confidence, the Tribunal determined that, in light of Dr Al Sayed's retirement and application for voluntary erasure, to refuse that application runs a serious risk of it being viewed by the public as purely punitive given the specific and exceptional circumstances of this case.

35. The Tribunal noted that the allegations do not relate to patient harm and, whilst they are concerning allegations, for all of the above reasons the Tribunal determined that public confidence would be maintained if the application for voluntary erasure was granted.

36. The Tribunal had regard to the likelihood of Dr Al Sayed returning to practise. XXX. The Tribunal concluded that it was unlikely that Dr Al Sayed will seek a return.

37. The Tribunal noted that the GMC stressed that Dr Al Sayed's retirement was only recent; however the Tribunal felt that this was outweighed by the clear evidence of his intention to retire, as previously discussed. The Tribunal had regard to paragraph 26 of the Guidance in relation to the stage of the doctor:

"Where a doctor applies for voluntary erasure during the later stages of their career and can provide evidence to support their intention to permanently retire from the profession this is generally a strong indicator that they are unlikely to seek restoration in the future. However, caution should be applied where the doctor is at an early or mid-career point, where the prospect of return to work is significantly higher."

38. The Tribunal considered that, with reference to paragraph 16 of the Guidance, there are more likely arguments in favour of refusing the application if the

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allegations are primarily about misconduct, a conviction or a determination concerning the doctor's conduct. The Tribunal recognised that it had to be satisfied that there were exceptional circumstances such to justify a decision to grant the application. It was satisfied that those exceptional circumstances were present in this case. XXX.

39. The Tribunal then considered the likelihood of Dr Al Sayed seeking restoration to the Medical Register. It was of the view that such an application is unlikely given the stage of Dr Al Sayed's career, his clearly stated intention, the evidence of him retiring from the Practice XXX.

40. The Tribunal also noted the stage of Dr Al Sayed's career and paragraph 25 of the Guidance that:

"One of the most significant factors in considering the likelihood of a doctor seeking restoration to the register is whether the doctor is at an early or later stage of their career."

41. The Tribunal also considered the length of time since Dr Al Sayed last practised, which it noted was relatively recent. XXX, the Tribunal was satisfied of the genuineness of his desire to cease to be registered. The Tribunal has no reason to doubt Dr Al Sayed's genuineness or sincerity in his declaration that he does not intend to return to practise in the future. In its assessment, the Tribunal gave due weight to XXX confirming this position, his otherwise unblemished career and positive testimonials.

42. The Tribunal was of the opinion that, given Dr Al Sayed's clear dedication and many decades of practice, a decision to apply for voluntary erasure would not have been made lightly. The Tribunal was not critical of either party with regard to the timing of this application.

43. In all the circumstances and for the reasons above, the Tribunal determined to grant the application for voluntary erasure of Dr Al Sayed's name from the Medical Register. It concluded that it was appropriate, fair and proportionate to do so in the interests of justice.

44. That concludes this case.

Confirmed
Date 29 July 2019

Mr David Urpeth, Chair