

PUBLIC RECORD**Dates:** 04/01/2021 - 05/01/2021

Medical Practitioner's name: Dr Adekunle OKUNUGA
GMC reference number: 5183277
Primary medical qualification: MB BS 1985 University of Ibadan

Type of caseRestoration following
disciplinary erasure**Summary of outcome**

Restoration application granted. Restore to Medical Register.

Tribunal:

Legally Qualified Chair	Ms Sharmistha Michaels
Lay Tribunal Member:	Ms Gail Mortimer
Medical Tribunal Member:	Dr Meenakshi Verma
Tribunal Clerk:	Mr Matthew Rowbotham

Attendance and Representation:

Medical Practitioner:	Present and not represented
GMC Representative:	Mr Alan Taylor , Counsel

Attendance of Press / Public

In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held in public.

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.

Determination on Restoration - 05/01/2021

1. Dr Okunuga has applied to the General Medical Council ('GMC') for the restoration of his name to the Medical Register following his erasure after his fitness to practise was found impaired by reason of his conviction in March 2015.
2. The Tribunal has considered Dr Okunuga's application in accordance with the provisions set out in Section 41 of the Medical Act 1983, as amended ('the Act'), and Rule 24 of The General Medical Council (Fitness to Practise) Rules 2004, as amended ('the Rules').
3. This is Dr Okunuga's first application to be restored to the Medical Register.

Background

4. The Tribunal has been apprised of the background to Dr Okunuga's case, which led to a hearing before a fitness to practise panel in March 2015 ("the 2015 Panel").

The 2015 Panel

5. Dr Okunuga gained his primary qualification in 1985 at the University of Ibadan, Nigeria.
6. On 5 June 2014, Dr Okunuga's wife attended Child A's (a 10-year-old boy) school because his tutor had concerns relating to his behaviour. Following this meeting, Dr Okunuga's wife drove Child A home and whilst in the car slapped him and continued to punish Child A at home. When Dr Okunuga returned home from work that evening, he resumed the punishment of Child A by forcing him to undertake squats and then to stand on one leg with his arms in the air. When Child A lost his balance, Dr Okunuga hit him with a floor brush and he fell over. Dr Okunuga kicked him twice to make him stand. Dr Okunuga fetched a hammer with which Dr Okunuga destroyed Child A's games consoles. Finally, Dr Okunuga struck Child A across his open palms with a walking stick. Dr Okunuga stopped these acts when he became aware that Child A had wounds on his hands that were

bleeding and needed to be dressed. Following Child A's teacher becoming aware of the injuries and reporting the matter to the Police and Social Services, Child A was placed in foster care as part of a Child Protection Plan put in place by Social Services. During this time Dr Okunuga was allowed to see Child A under supervision, on Tuesdays and Fridays at a family contact centre.

7. The offence took place at Dr Okunuga's home in Warwickshire on 5 June 2014. On 29 September 2014 at Leamington Magistrates Court Dr Okunuga was convicted of wilfully ill-treating Child A, a boy under the age of 16 years for whom he had responsibility, in a manner likely to cause him unnecessary suffering or injury to health, contrary to section 1(1) of the Children and Young Persons Act 1933. Dr Okunuga was sentenced to eight weeks imprisonment suspended for 12 months, with a 12-month supervision requirement and a requirement that he carry out 160 hours unpaid work within 12 months.
8. The Allegation Dr Okunuga faced before the 2015 Panel were as follows:
 1. On 29 September 2014 at Leamington Magistrates Court you were convicted of a charge alleging that on 5 June 2014, having responsibility for A, a child under the age of 16 years, you wilfully ill treated him in a manner likely to cause him unnecessary suffering or injury to health, contrary to section 1(1) of the Children and Young Persons Act 1933.
 2. On 29 September 2014 you were sentenced to eight weeks imprisonment suspended for 12 months, with a 12 month supervision requirement and a requirement that you carry out 160 hours unpaid work within 12 months.

Dr Okunuga admitted The Allegation in full.

9. The March 2015 Panel found Dr Okunuga's fitness to practice impaired. The Panel considered the offence Dr Okunuga committed, a sustained attack on Child A, was so serious that a finding that Dr Okunuga's fitness to practise was not impaired would undermine public confidence in the profession and bring the profession into disrepute. Despite this being a one-off offence and that the risk of repetition had been low, the Panel wanted to send a message to Dr Okunuga, the profession and the public that his behaviour was wholly intolerable.

10. The Panel considered the appropriate sanction was to erase Dr Okunuga from the medical register. The Panel was of the view that Dr Okunuga had breached fundamental tenets of Good Medical Practice, 2013, with behaviour unbecoming a medical practitioner. It found that the harm Dr Okunuga caused followed a sustained attack, only stopped when Dr Okunuga noticed Child A's blood on the floor. The Panel was of the opinion that Dr Okunuga had shown some insight in relation to the seriousness of his conduct as a parent and understood that what he had done was wrong. However, it considered that Dr Okunuga had shown no insight in relation to how his behaviour impacted on public confidence in the medical profession and the need to maintain and uphold proper standards of behaviour. The Tribunal concluded that it would be failing in its duty to act in the public interest if it did not erase Dr Okunuga's name from the medical register. An immediate order was implemented by the Panel to protect public confidence in the profession.

Today's restoration hearing

11. On 11 September 2020, Dr Okunuga submitted to the GMC an application for restoration to the medical register.
12. Today the Tribunal has considered Dr Okunuga's application to be restored to the medical register, in accordance with the provisions set out in section 41 of the Act, as amended, and Rule 24 of the Rules after being erased by the 2015 Panel by reason of his conviction. Dr Okunuga appeared before the Tribunal unrepresented.
13. The Panel are aware that since the removal of Dr Okunuga's name from the medical register he has been working as a Consultant Anaesthetist in Nigeria. From November 2019 to the date of today's restoration hearing, Dr Okunuga has been working at the National Orthopaedic Hospital in Lagos, Nigeria as a Consultant Anaesthetist.

Documentary Evidence

14. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included but was not limited to:

- MPTS Record of determination, dated 31/03/2015;
- Invoice of Anaesthesia and Respiratory training, dated 09/06/2018;

- Certificates of Good Standing dated 21/08/2020 and 27/08/2020, together with an email dated 02/09/2020;
- Dr Okunuga’s restoration application dated 11/09/2020, together with email dated 25/08/2020;
- Annual practising license, 01/01/2020 to 31/12/2021;
- Certificates of courses completed, various dates;
- CPD activity records, 2017 to 2018;
- Thank you letters from Dr Okunuga’s patients and colleagues, various dates;
- Reflective piece from Dr Okunuga;
- Character references from Dr Okunuga’s family.

Submissions

On behalf of the GMC

15. Mr Taylor submitted that the GMC were neutral on the matter of whether Dr Okunuga’s name should be restored to the medical register. He submitted that this was ultimately a decision for the Tribunal as to whether they consider that the test is satisfied. He submitted that the Tribunal should consider the extent of Dr Okunuga’s remediation and insight and balance its conclusions against the overarching objective.
16. To assist the Tribunal, Mr Taylor drew the Tribunal’s attention to ‘*Guidance for Medical Practitioners Tribunals on restoration following disciplinary erasure*’ (‘the guidance’), specifically paragraphs B1 and B2, which state that the Tribunal should bear in mind the overarching objective when making its decision and that the onus is on Dr Okunuga to prove in this hearing that he is able to return to unrestricted practice.
17. Mr Taylor submitted that the Tribunal should also be mindful of paragraphs B38, B43 and B47 of the guidance, which state:

B38 The doctor’s response to their erasure and the levels of insight, remorse and remediation they have demonstrated will be important to the tribunal’s assessment of future risk.

B43 Tribunals should ask themselves whether an ordinary, well informed member of the public who is aware of all the relevant facts would be concerned to learn the doctor had been allowed to return to practice. They should also have regard to the

fact that maintaining public confidence in the profession as a whole is more important than the interests of an individual doctor.

B47 Where there has been a very serious and/or persistent departure from the published standards resulting in erasure, it may not be consistent with the third element of the overarching objective to allow the doctor to practise again.

18. In addition, Mr Taylor asked the Tribunal to have regard to the test for restoration set out in *GMC v Chandra [2018] EWCA Civ 1898*, which states:

'...having considered the circumstances which led to erasure and the extent of remediation and insight, is the doctor now fit to practise having regard to each of the three elements of the overarching objective?'

19. Mr Taylor said the case of *Chandra* also includes being mindful of the principle of proportionality. The Tribunal should balance the interests of Dr Okunuga against the public interest. In *Bolton v Law Society [1994] 1 WLR 512*, the court held that:

'the reputation of the profession is more important than the fortunes of any one individual member. Membership of a profession brings many benefits, but that is a part of the price'

Dr Okunuga

20. Dr Okunuga submitted that he wished to rely on the written evidence that had been provided and his reflective statement. He went on to say that his actions towards Child A were excessive and uncalled for, and that he had caused harm to Child A.
21. Dr Okunuga submitted that his actions embarrassed the medical profession and brought it into disrepute. He submitted that as a member of the medical community, he should have been a role model. He apologised sincerely to the GMC and the wider public. Dr Okunuga said that he accepted the decision of the 2015 Panel and understood that his actions had been incompatible with continued medical practice. He said that as a member of the medical profession he was aware that he had brought his profession into disrepute by his actions.

22. XXX

23. Dr Okunuga said that, in terms of remediation for his actions, he has attended courses in child protection, and highlighted the certificates he had obtained. XXX He stated that his behaviour was borne out of his cultural upbringing, that he should have known better and took full responsibility for his actions.
24. Dr Okunuga submitted that if he were to witness a similar occurrence by one of his colleagues, he would be the first to speak up and take action, reporting it to the appropriate authorities.
25. Dr Okunuga said that he has worked abroad following his erasure in the United Kingdom. He said that he had always given full disclosure of his sanction and what had transpired to all employers and the relevant medical authorities.
26. Dr Okunuga submitted that he has attended courses in order to maintain his professional development and to be clinically ready to resume practice in the United Kingdom. He said he could be of tremendous support to the medical community in the United Kingdom, as he has been in Nigeria.

The Tribunal's Approach

27. Throughout its consideration of Dr Okunuga's application for restoration, the Tribunal bore in mind the relevant paragraphs in the Guidance. The Tribunal took account of all of the evidence before it, both oral and documentary. It also considered the submissions made by Mr Taylor, on behalf of the GMC, and the submissions made by Dr Okunuga in support of his application.
28. The Tribunal reminded itself that the onus is on Dr Okunuga to satisfy it that he is fit to return to unrestricted practice. The Tribunal should not seek to go behind the findings on facts, impairment and sanction made by the 2015 Panel.
29. The test to be applied by Tribunals when considering if a doctor should be restored is that set out in *Chandra* as outlined in Mr Taylor's submissions.
30. In determining the application, the only options were to allow or refuse the application. The Tribunal noted that if it were to grant Dr Okunuga's return to practice, it could not impose any restrictions on his registration. The Tribunal reminded itself that, in making its decision, it should consider the following factors:

- The circumstances that led to disciplinary erasure;
- Insight and remorse;
- Remediation and risk of repetition
- What the doctor has done since their name was erased from the Register;
- Steps the doctor has taken to keep their skills and knowledge up to date;
- The lapse of time since erasure;
- Whether restoration would satisfy the three limbs of the overarching objective.

The Tribunal's Decision

31. The Tribunal had regard to the background of the case, including the determination of the 2015 Panel.
32. The Tribunal considered Dr Okunuga's response to the incident, and the wider circumstances surrounding it. It noted that the 2015 Panel found that Dr Okunuga had complied with all relevant authorities, including *'the obligations of the court order, completed your [Dr Okunuga's] unpaid work and engaged openly in supervision sessions'*. It also noted that Child A was returned to Dr Okunuga four months after the incident, and that the child protection order placed on Dr Okunuga was removed three months after this in January 2015. The Tribunal were mindful that this was an isolated incident and noted that the 2015 Panel found that the risk of Dr Okunuga repeating his actions was very low. This Tribunal found that there has been no evidence of any repetition in the six-and-a-half years since the incident.
33. The Tribunal were satisfied that Dr Okunuga had reflected on his actions and developed significant insight into their impact since the hearing in 2015. In terms of insight, the Tribunal considered that Dr Okunuga had been open and honest about his actions and apologised fully and sincerely. The Tribunal noted Dr Okunuga's statement in his reflective piece, where he understood the 2015 Panel had been 'fair and just in its decision'. Dr Okunuga also stated that it was naïve of him to think that the incident was a 'private matter' that had no bearing on his professional conduct. It considered that Dr Okunuga had now developed sufficient insight into how his actions had impacted on the public's confidence in the medical profession and the need to maintain and uphold proper standards of behaviour.

34. The Tribunal found Dr Okunuga’s expressions of remorse to be genuine and was satisfied that he demonstrated a robust understanding of the wider implications of his behaviour.
35. The Tribunal considered that Dr Okunuga has shown evidence of remediating his actions. This has included attending courses relating to safeguarding children and child protection. The Tribunal was satisfied that the courses that he had completed were relevant and targeted. The Tribunal determined that Dr Okunuga’s actions since his erasure have sought to address the original conduct by attending relevant courses, reflecting on his actions and by demonstrating integrity within his professional life.
36. The Tribunal also noted the testimonial of Child A and Dr Okunuga’s wife XXX
37. The Tribunal considered that an ordinary member of the public, aware of all the facts of this case, would consider that Dr Okunuga has demonstrated sufficient insight and remediation. In addition, it considered that, the lapse of time since he was erased from the medical register, had allowed him a significant period of time to develop his insight and remediate his actions. It noted he had been employed throughout this time in a similar medical capacity in Nigeria.
38. Having considered the specific concerns about Dr Okunuga’s erasure and the factors set out above, the Tribunal went on to determine whether Dr Okunuga is fit to practise and be restored to the medical register. The Tribunal carefully balanced its findings against whether restoring Dr Okunuga to the medical register will meet the overarching objective. It noted paragraphs B35 to B50 of the Guidance and in particular B35 and B36:

B35 Having considered the different factors above, the tribunal must make findings in relation to whether the doctor is fit to practise. The tribunal should then step back and balance its findings against whether restoration will meet our overarching objective. This balancing exercise will involve careful consideration of each of the elements.

B36 The overarching objective reflects the purpose of the professional regulation of doctors which is to protect the public. Tribunals must act in a way that:

a protects, promotes and maintains the health, safety and well-being of the public

b promotes and maintains public confidence in the profession, and

c promotes and maintains proper professional standards and conduct for members of the profession.

- 39.** The Tribunal was satisfied that there were no public safety concerns in relation to Dr Okunuga and that this had never been raised by the GMC. It therefore noted it was primarily limbs two and three of the overarching objective that were engaged in this case. The Tribunal was mindful that if it determined to restore Dr Okunuga's name to the medical register, he would be immediately be able to commence unrestricted practice. The Tribunal found that Dr Okunuga was a doctor of previous good character, with over 30 years of medical experience. The Tribunal had regard to the determination of the March 2015 Panel, where it found that *'It gives the Panel no satisfaction to remove an otherwise good doctor from the register'*. It noted that Dr Okunuga has continued to work as a Consultant Anaesthetist in Nigeria, producing a recent Certificate of Good Standing from The Medical and Dental Council of Nigeria, dated 27 August 2020. In addition, the Tribunal considered that Dr Okunuga has demonstrated consistent professional development, regularly attending courses between July 2016 and March 2020. This included being a special guest speaker at a CME/CPD event in Lagos on 25 August 2017. The Tribunal considered that Dr Okunuga would be fit to return to unrestricted practice in the United Kingdom given his current medical skills.
- 40.** In considering limbs two and three of the overarching objective and for all the reasons given above in relation to remediation and insight, the Tribunal has therefore been persuaded that Dr Okunuga has taken sufficient steps to restore public confidence in him and the medical profession as a whole. It noted that following his erasure by the 2015 panel it had not been an easy journey for Dr Okunuga to obtain re-entry onto the medical register and that he has demonstrated significant evidence of remediation and reflection.
- 41.** The Tribunal were satisfied with the progress Dr Okunuga had made since his erasure and further satisfied that he would maintain proper professional standards.
- 42.** In all of the circumstances, as set out above, the Tribunal was satisfied that an ordinary, well informed member of the public who was aware of all of the facts would not be concerned to learn that Dr Okunuga had been allowed to return to practice.

**Record of Determinations –
Medical Practitioners Tribunal**

43. The Tribunal therefore determined that restoring Dr Okunuga’s name to the medical register demonstrated that it was acting in a way that promotes and maintains public confidence in the profession and maintains professional standards and conduct for members of the profession.

44. In conclusion, the Tribunal was satisfied that Dr Okunuga is currently fit to practise and accordingly granted Dr Okunuga’s application to be restored to the Medical Register.

Confirmed

Date 05 January 2021

Ms Sharmistha Michaels, Chair