

PUBLIC RECORD

Dates: 01/03/2021 - 05/03/2021

Medical Practitioner's name: Dr Alok KHANNA

GMC reference number: 7365619

Primary medical qualification: Doctor - Medic 2012 Universitatea Ovidius

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Impaired

Summary of outcome

Suspension, 9 months.
Review hearing directed

Tribunal:

Legally Qualified Chair	Mr Angus Macpherson
Lay Tribunal Member:	Mr Martyn Green
Medical Tribunal Member:	Dr David Mabin
Tribunal Clerk:	Mr Michael Murphy

Attendance and Representation:

Medical Practitioner:	Not present and not represented
GMC Representative:	Mr Daniel Fugallo, 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.

Determination on Facts - 03/03/2021

Background

1. Dr Khanna qualified in 2012 with an MBBS from the Universitatea Ovidius in Romania. Prior to the events which are the subject of the hearing, Dr Khanna moved to the UK in 2014 and worked as a Senior House Officer in Trauma and Orthopaedics at various hospitals until 2019. At the time of the events in the Allegation, Dr Khanna was employed as a Locum Senior House Officer on the Orthopaedic ward of Craigavon Area Hospital ('the Hospital').
2. The Allegation that has led to Dr Khanna's hearing concerns an incident involving a Junior Ward Pharmacist, Miss A, and an email sent from her account to Dr Khanna's supervisor regarding his performance. It is alleged that Dr Khanna accessed Miss A's emails without her permission and drafted the email which provided good feedback for Dr Khanna's prescribing at the Hospital. It is alleged that Dr Khanna knew that the information contained in the email was untrue and that, in sending the email to his supervisor when he did not have permission to do so, his actions were dishonest.
3. The initial concerns were raised with the GMC on 11 June 2019 by Mr B, Consultant Orthopaedic Surgeon and Dr Khanna's clinical supervisor. He stated that prior to the incident, he was made aware that Dr Khanna had made errors on prescription charts and discharge summaries. Mr B stated that he had addressed these concerns in a meeting with Dr Khanna on 12 February 2019, although Dr Khanna denied that he was responsible for the majority of errors and said that junior colleagues were responsible for them. Mr B received the email providing good feedback for Dr Khanna from Miss A's account on 14 February 2019. Mr B stated that, following a meeting with Miss A, she informed him that Dr Khanna had manipulated her, opened her email program, composed the email and then pressured her to send it. She stated that when Dr Khanna had discovered that she had not sent it, he sent it from her account.
4. Dr Khanna accepted that he wrote the email but stated that he was under the impression that he had permission from Miss A to do so. He stated she agreed to send good feedback about him to Mr B but that she was unsure about what to write. Dr Khanna also accepted that he sent the email, but only after Miss A had read it and said that it was '*fine*' to send. Dr Khanna stated that if he was in any doubt about Miss A agreeing to his actions then he would have stopped, apologised and left the room. He denies that any of his actions

regarding the incident were dishonest and claims that he used words that Miss A had previously used to describe him, within the email.

The Outcome of Applications Made during the Facts Stage

5. The Tribunal granted the application made by the GMC, pursuant to Rules 15, 40 and 31 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that notice of the hearing had been properly served on Dr Khanna and to proceed in his absence. The Tribunal's full decision can be found at Annex A.

The Allegation and the Doctor's Response

6. The Allegation made against Dr Khanna is as follows:

1. On 14 February 2019 you:
 - a. accessed Miss A's email program without her permission;
To be determined
 - b. said 'I'm going to send an email to Mr B' or words to that effect when questioned by Miss A about what you were doing; **To be determined**
 - c. said 'I know but the feedback needs to come from you' or words to that effect when told by Miss A that you were on her email account; **To be determined**
 - d. did not reply when questioned by Miss A as to whether you were going to write the email yourself; **To be determined**
 - e. continued typing when questioned by Miss A as to whether you were going to write the email yourself; **To be determined**
 - f. typed the words in Schedule 1 into an email on Miss A's email account;
To be determined
 - g. asked Miss A what title she usually puts under her name or words to that effect. **To be determined**
2. At 14:59 on 14 February 2019 you sent the email referred to in paragraph 1f to Mr B purporting to be from Miss A. **To be determined**
3. You knew that Miss A had not drafted the email. **To be determined**

4. You knew that Miss A had not permitted you to send the email on her behalf.
To be determined

5. The email contained information which:

- a. was untrue; **To be determined**
- b. you knew to be untrue. **To be determined**

6. Your actions described at paragraph 2 were dishonest by reason of paragraphs 3, 4 and 5. **To be determined**

The Evidence

7. The Tribunal received oral evidence on behalf of the GMC from Miss A, a Pharmacist at Craigavon Area Hospital by telephone.

8. The Tribunal also received evidence on behalf of the GMC in the form of witness statements from the following witnesses who were not called to give oral evidence:

- Mr B, Consultant Orthopaedic Surgeon at the Hospital;
- Miss C, Senior Clinical Pharmacist in Trauma and Orthopaedics at the Hospital.

9. In addition, Dr Khanna provided his own witness statement, dated 17 December 2020.

Documentary Evidence

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

- Email correspondence sent to Mr B from Miss A's computer, dated 14 February 2019;
- Email correspondence from Mr B to the Head of Service for Trauma and Orthopaedics, dated between 19 and 25 February 2019;
- Minutes of Trust meetings relating to the incident, dated between 12 and 28 February 2019;
- Correspondence sent by Mr B to the GMC, dated between 11 June 2019 and 7 July 2019;
- Correspondence from Miss A regarding the incident, dated 18 and 19 February 2019.

The Tribunal's Approach

11. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Khanna does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e. whether it is more likely than not that the events occurred.

12. The Legally Qualified Chair referred the Tribunal to the Supreme Court judgment in the case of *Ivey v Genting Casinos (UK) Limited [2017] UKSC 67*, in which Lord Hughes set out the correct test for dishonesty, which was as follows:

‘When dishonesty is in question the fact-finding Tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.’

The Tribunal’s Analysis of the Evidence and Findings

13. When considering the paragraphs of the Allegation relating to the facts, the Tribunal recognised that they all relate to an encounter which took place between Dr Khanna and Miss A in the afternoon of 14 February 2019 in the pharmacist’s office in Craigavon Hospital. Although others may have entered that office whilst Dr Khanna and Miss A were there, they did not stay long and took no part in what happened in the office. Miss A set out her account in two witness statements dated 26 September 2019 and 24 February 2020 and she also gave oral evidence. Dr Khanna did not attend the hearing but has submitted a witness statement dated 17 December 2020. Their accounts are contradictory. The Tribunal was concerned to see if there was any evidence that Miss A was prejudiced against Dr Khanna. It noted that he did not allege such a mindset in his witness statement, and it could find no such evidence from any of the material which it has considered.

14. Further, the Tribunal noted the evidence of Miss A that she determined to speak to Miss C, the senior pharmacist on 15 February 2019, the day after the incident concerning the email. She did not know Mr B personally and, although she wanted to tell him that the email was not in fact from her, she did not feel able to go directly to him. He was a consultant orthopaedic surgeon. Miss C arranged for Miss A to see Mr B later that day. The Tribunal noted that both Miss C and Mr B stated in their evidence that when Miss A was giving her account to them, she was upset.

15. As Dr Khanna did not attend the hearing his account was not susceptible to challenge by way of cross examination and/or Tribunal questions. In these circumstances, Mr Fugallo

for the GMC invited the Tribunal to draw adverse inferences against Dr Khanna wherever there was a conflict of evidence, and in particular concerning the decision which he made to press the send button on Miss A's computer to send the email which he had composed in her presence on the issue as to whether he did so without her consent. The Tribunal considered whether it would be fair to draw adverse inferences against Dr Khanna in these circumstances. It noted that the GMC did present a plausible case against him through in particular the evidence of Miss A but also the written evidence of Mr B and Miss C. Dr Khanna was given appropriate notice of the fact that if he did not attend an adverse inference could be drawn against him by a letter dated 19th January 2021 sent to his legal representative Miss Victoria Rees of Richard Nelson LLP. He may also have been sent an earlier letter. Dr Khanna did have an opportunity to attend the hearing and/or to argue that it would not be appropriate for the Tribunal to draw adverse inferences from his absence. The Tribunal did not consider that there was any reasonable explanation for Dr Khanna's non-attendance. It may be correct that he had been XXX in December 2020/January 2021, but there was no suggestion that he was XXX for the hearing, and in any event his decision not to attend the hearing was disclosed in the telephone conferences dated 12 October and 21 December 2020. The Tribunal knew of no other circumstances specific to the case which would make it unfair to draw adverse inferences from the primary facts. It therefore determined that it could do so and that if it did so, that will form part of the overall evidential picture.

16. The Tribunal determined to take all these matters into account when reaching its decisions on the facts.

17. The Tribunal has considered each outstanding paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts. It noted that Dr Khanna admitted certain aspects of the Allegation in his witness statement but concurred with the GMC that further deliberation would be required to find these paragraphs of the Allegation proven.

Paragraph 1(a)

18. The Tribunal accepted Mr Fugallo's submission that this was a matter which should be determined on an objective basis. The issue was whether objectively Miss A had given Dr Khanna permission to access her email program on 14 February 2019.

19. Miss A's account was that she had not. She had permitted Dr Khanna to sit at her desk in the pharmacist's office to correct a prescription which he had drafted, following the arrangement which they had made when they had met earlier in the day. That in itself was not an unusual method of correcting a prescription, the alternative being that she would reject it and the doctor would need to draft a fresh prescription. She explained that when he had finished amending the prescription, Dr Khanna clicked on the bar which was on the screen on the bottom of the computer and opened her email account. She had not given him permission to do so. Once opened, Dr Khanna set about composing the email as if it had come from her, starting the body of the email with the words '*My name is [Miss A]*'.

20. Dr Khanna's account in his witness statement was that he believed he had Miss A's permission. He stated that he only sat in front of the computer and accessed her email program after she logged into her emails and stepped away from the computer. He took this to be her giving him permission to access her email program. He did accept that he accessed her email program without her *'express permission.'*

21. The Tribunal accepted Miss A's evidence. It found her to be an honest and credible witness who gave a coherent, convincing and consistent account of what had happened. It accepted that Dr Khanna was already seated at Miss A's computer and that he clicked open her email account without asking her. It rejected his evidence that she stepped away from the computer – he was already there. It concluded that he accessed her email program without reference to her and that this came as a total surprise to Miss A, a surprise compounded by the fact that his opening line was *'My name is [Miss A]'*.

22. The Tribunal therefore found paragraph 1(a) of the Allegation proved.

Paragraph 1(b)

23. Dr Khanna accepted that he did say the words set out in paragraph 1(b), but stated that he only did so as Miss A asked him to write the email as she said she was uncertain what to write and she found him to be a quick typist. He said that he believed he had said something like:

'I can help with the feedback email to Mr B but my condition is that you will have to stand next to me to see what I am writing so that it is sent only if you are satisfied'.

24. Although Dr Khanna's statement constitutes an admission, the Tribunal considered the circumstances in which he says the statement was made. It noted that Miss A rejected Dr Khanna's account. She said that she did not ask him to write the email. He did not ask her to stand next to him while he was writing it. She said that the room was so small, she was effectively obliged to stand next to him. She did not acknowledge him to be a quicker typist than she. She said she was a quick typist. She said that she did not know Mr B, to whom the email was directed, nor his email address. She did not find the email address for Dr Khanna; he found it by interrogating the intranet.

25. The Tribunal concluded that Dr Khanna's account was false. It did so on the basis that Miss A was completely taken by surprise by what Dr Khanna was doing – she had not anticipated him sitting down at her desk or that he would write an email on her email account to a person she did not properly know.

26. The Tribunal therefore found paragraph 1(b) of the Allegation proved.

Paragraph 1(c)

27. Dr Khanna admitted that he said the words *'I know but the feedback needs to come from you'* in his witness statement.

28. The Tribunal therefore found paragraph 1(c) of the Allegation proved.

Paragraph 1(d)

29. Miss A stated in evidence that she did ask Dr Khanna whether he was going to write the email himself and that he did not reply.

30. Dr Khanna's case in relation to this paragraph is that he did not hear Miss A ask him whether he was going to write the email himself. He therefore accepted that he did not reply. He assured the Tribunal that, had he heard this question, he would have stopped writing the email because it would have been clear to him that Miss A was not happy and felt uncomfortable and pressured by him. He would have deleted whatever he had written and would have apologised to her. He did not deny that Miss A had asked the question.

31. Dr Khanna stated that while he was writing the email, Miss A stood next to him and she was friendly and calm. She was concerned about him due to the complaint that he had received from Dr B and found it strange to see him in a stressed mood. He acknowledged that he may have misunderstood the situation and paid better attention to Miss A's demeanour and words and not assumed *'that because she had asked him to write the email, she was happy for me to write and send it'*.

32. On behalf of the GMC, Mr Fugallo argued that Dr Khanna's stance in relation to this paragraph of the Allegation demonstrates that he knew that what he was doing was wrong. He contended that Dr Khanna must have heard Miss A ask the question; they were standing side by side. He had heard Miss A say to him that he was on her email account as alleged in paragraph 1(c) of the Allegation. He argued that Dr Khanna was deliberately ignoring what Miss A said.

33. The Tribunal accepted Miss A's account. It accepted that she asked the question because she was concerned at what he was doing sending an email as if from her on her computer without her permission. It found no reason why Dr Khanna would not have heard her ask the question. It found that he ignored her question as he was intent on writing the email then and there regardless of her stance.

34. The Tribunal therefore found paragraph 1(d) of the Allegation proved.

Paragraph 1(e)

35. This paragraph of the Allegation is a continuation of paragraph 1(d). Miss A gave evidence that Dr Khanna continued typing when she put the question as set out in the paragraph. Dr Khanna's explanation is that he did not specifically hear her ask the question as they were chatting about various different topics including his wedding plans and how he was

finding working in Northern Ireland compared to London. Miss A rejected this explanation. She said she didn't know about his getting married and that there was no small talk.

36. The Tribunal rejected Dr Khanna's account and preferred that of Miss A. It found that there was no small talk as this was not a situation in which small talk took place. Miss A was extremely concerned about Dr Khanna taking over and using her computer to draft an email in her name to someone she did not really know.

37. The Tribunal therefore found paragraph 1(e) of the Allegation proved.

Paragraph 1(f)

38. Dr Khanna admitted that he typed the words in the email on Miss A's email account, stating that he only did so as he understood that she had given her permission for him to do so on the basis that of the agreement to which paragraph 1(b) of the Allegation refers. The Tribunal has already rejected that explanation. It rejected Dr Khanna's explanation that he understood that he had Miss A's permission to act as he did.

39. The Tribunal therefore found paragraph 1(f) of the Allegation proved.

Paragraph 1(g)

40. Miss A explained in evidence that Dr Khanna asked her what title she should put after her name and whether she usually put senior pharmacist. She said that was the only time he spoke to her. He denied this.

41. The Tribunal considered that on the balance of probabilities Dr Khanna did ask Miss A this question. He did not know her well and having drafted the email as if it had come from her, would have had to have signed it off in some way.

42. The Tribunal therefore found paragraph 1(g) of the Allegation proved.

Paragraph 2

43. Dr Khanna admitted, in his witness statement, that he sent the email to Mr B purporting to be from Miss A.

44. The Tribunal therefore found paragraph 2 of the Allegation proved.

Paragraph 3

45. In his witness statement, Dr Khanna accepted that Miss A had not drafted the email and that he had.

46. The Tribunal therefore found paragraph 3 of the Allegation proved.

Paragraph 4

47. Dr Khanna contended that he only pressed the send button after he had asked Miss A to read through the email, while he got up and moved away to help a nurse who had arrived in the office. He stated that Miss A informed her that the email was fine although she asked him to change the sign off. He then gave her a further opportunity to read through the draft and she responded: *‘Yes, that is fine now that you have changed the ending’*. She said she was happy to send it.

48. Miss A stated that when Dr Khanna got up to help the nurse, she *‘sneakily managed’* to get back onto the computer and took hold of the mouse. Dr Khanna came back and saw she was on the computer. She changed the *‘sign off’* of the email from *‘sincerely’* to *‘many thanks’* but that is the only thing she had time to change before Dr Khanna asked if she was going to send the email then. He then asked her again and she didn’t reply. Dr Khanna then reached over, took the mouse and clicked the send button. She cannot remember if her hand was still on the mouse at this point or not. Then he just left the room.

49. Mr Fugallo argued that if the Tribunal finds that Dr Khanna’s sending the email was as Miss A had stated, it reveals that he did not believe Miss A was happy to send the email or that she would have done by herself.

50. The Tribunal again accepted Miss A’s account. It accepted that she had never supported the drafting or the sending of the email and that Dr Khanna had determined to send the email regardless of her position. Further it accepted Mr Fugallo’s argument that Dr Khanna knew that Miss A had not permitted the email to be sent on her behalf.

51. Dr Khanna provided further reflection on his actions in his witness statement but maintained that the email was drafted and sent to Mr B with Miss A’s approval. The Tribunal will take those further reflections into account when considering one or other of the later stages of this inquiry.

52. The Tribunal therefore found paragraph 4 of the Allegation proved.

Paragraph 5(a)

53. The Tribunal noted the following passage in Miss A’s second witness statement:

‘Referring to the content of the email that Dr Khanna sent on 14 February 2019, which appears with my earlier witness statement..., I don’t believe that most of what Dr Khanna had written was true.

Whilst it is true that my name is [Miss A], and I am a pharmacist working on the orthopaedic ward, I don’t agree that patient Kardex’s were being dealt with ‘well’ on the orthopaedic ward, or that Dr Khanna was ‘working with us to ensure that minimal

patient Kardex errors occur and proper discharge summaries/TTOs are done’.

These statements are untrue because in the lead up to Dr Khanna’s meeting with Mr B, and also after the meeting, I was constantly going running to Dr Khanna with a lot of queries that needed to be raised in relation to patient Kardex’s and discharge summaries. The orthopaedic ward is a busy ward, and these were simple errors that Dr Khanna was making like missing pre-admission medication from discharge letters. I was always having to go and find Dr Khanna as I’m only a band six junior pharmacist so I could not fix things myself like he or the band seven pharmacists could.

Whilst Dr Khanna did seem more receptive to me when I was asking him to make changes to things following his meeting with Mr B, he was still sometimes blasé about whatever I was coming to him with, acting like it didn’t matter. I’d sometimes need to ask Dr Khanna to check things with someone more senior, but he’d just say he had done yet there would be reasons to make me think that he couldn’t have.

I remember when I read the part about ‘TTOs’ it took me a while to work out what this was as I would never use this term, I would have just said discharge, and I wouldn’t have said ‘discharge summaries’ either, I would usually just say ‘discharges’.

I think that the next statement ‘he also discusses patient’s regular medications with us to ensure that no harm or no wrong medication is given’, is also untrue. To begin with, Dr Khanna could only reduce errors or harm to patients, he couldn’t ensure that there was ‘no harm or no wrong medication given’, but also, it was primarily me going to discuss regular medications with him, not the other way around. Dr Khanna had been asking if things were ok and if I had any questions about the discharge letters, whereas before I was having to go and find him, but it was mostly me initiating the discussions to try sort Dr Khanna’s mistakes.

I think the part that says, ‘we appreciate this teamwork’ is somewhat true, because pharmacists do appreciate everyone working together, but I would say it’s untrue that this teamwork ‘has shown a great improvement in patient care and discharge’. Dr Khanna had only been approached about the complaint made against him that week and I couldn’t judge ‘great improvement’ based on a week; Dr Khanna seemed to have been paying more attention to his work, which I suppose was him trying to work with us more, but it was definitely no great improvement. Errors in Dr Khanna’s work were still present and I’m not sure if it was even less than before his meeting with Mr B.’

54. Miss A reiterated in her oral evidence that she had had face to face meetings with Dr Khanna more than once between 12 and 14 February 2019.

55. In her witness statement Miss C stated:

‘Dr Khanna was not working with the pharmacists ‘to ensure that minimal patient Kardex errors occur’, or that that ‘proper discharge summaries/TTOs are done’, and he

certainly was not discussing patient's regular medications with pharmacists to ensure that no harm or no wrong medication was given. It was the pharmacists spotting Dr Khanna's mistakes then in my case having to rectify them, or in the junior pharmacists' case, having to get Dr Khanna to rectify them, often taking a lot of effort to get him to do so. Mr B's conversation with Dr Khanna may well have had a positive impact on him, and I can't remember any specific encounters with Dr Khanna between 12 and 14 February 2019, but patient care and discharge had definitely not 'shown great improvement'.

56. The Tribunal has reached the following conclusions in relation to the veracity of the email:

- a. The first paragraph of the email is not true in that:
 - i. It was not written by Miss A;
 - ii. Miss A did not wish to give feedback on how well kardexes were being dealt with in [] ward;
- b. The second paragraph contained matters which were not accurate in that it suggests that Dr Khanna was being proactive to ensure that minimal patient Kardex errors occur and proper discharge summaries/TTOs are done when the truth was that the pharmacists were going to him to sort out the errors which he had made;
- c. The third paragraph contained matters which were not accurate in that although Dr Khanna did discuss patients' regular medication with the pharmacists, that was only because they were going to him to discuss medication issues which arose from his work;
- d. The fourth paragraph of the email is not true in that following the meeting with Dr B:
 - i. There was no new teamwork
 - ii. There was no improvement in patient care and discharge.

57. The Tribunal therefore found paragraph 5(a) of the Allegation proved.

Paragraph 5(b)

58. The Tribunal find this paragraph proved as Dr Khanna will have known on 14 February 2019 that the situation which had provoked his meeting with Mr B on 12 February 2019 had not been addressed in the short period of time which has elapsed before he wrote the email to Mr B purporting to come from Miss A on 14 February 2019 and that the matters which are set out above to which Miss A and Miss C refer had not been remedied.

59. The Tribunal therefore found paragraph 5(b) of the Allegation proved.

Paragraph 6

60. The Tribunal has already found that Dr Khanna knew the matters set out in paragraphs 3, 4 and 5. In those circumstances it has already ascertained the actual state of Dr Khanna's knowledge or belief as to the facts. It finds that his conduct in drafting and sending the email in those circumstances would offend the standards of ordinary decent people.

61. The Tribunal therefore found that Dr Khanna's actions at paragraph 2 were dishonest by reason of the facts it had found proved in paragraphs 3, 4 and 5.

The Tribunal's Overall Determination on the Facts

62. The Tribunal has determined the facts as follows:

1. On 14 February 2019 you:
 - a. accessed Miss A's email program without her permission; **Determined and found proved**
 - b. said 'I'm going to send an email to Mr B' or words to that effect when questioned by Miss A about what you were doing; **Determined and found proved**
 - c. said 'I know but the feedback needs to come from you' or words to that effect when told by Miss A that you were on her email account; **Determined and found proved**
 - d. did not reply when questioned by Miss A as to whether you were going to write the email yourself; **Determined and found proved**
 - e. continued typing when questioned by Miss A as to whether you were going to write the email yourself; **Determined and found proved**
 - f. typed the words in Schedule 1 into an email on Miss A's email account; **Determined and found proved**
 - g. asked Miss A what title she usually puts under her name or words to that effect. **Determined and found proved**
2. At 14:59 on 14 February 2019 you sent the email referred to in paragraph 1f to Mr B purporting to be from Miss A. **Determined and found proved**

3. You knew that Miss A had not drafted the email. **Determined and found proved**
4. You knew that Miss A had not permitted you to send the email on her behalf. **Determined and found proved**
5. The email contained information which:
 - a. was untrue; **Determined and found proved**
 - b. you knew to be untrue. **Determined and found proved**
6. Your actions described at paragraph 2 were dishonest by reason of paragraphs 3, 4 and 5. **Determined and found proved**

Determination on Impairment - 04/03/2021

1. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved as set out before, Dr Khanna's fitness to practise is impaired by reason of misconduct.

The Evidence

2. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary. In addition, the Tribunal received further evidence as follows.

- A letter from Richard Nelson LLP, dated 7 April 2020;
- Testimonials from Dr Khanna's work colleagues.

Submissions

3. On behalf of the GMC, Mr Fugallo submitted that the facts found proved in this case amount to serious professional misconduct. He reminded the Tribunal that these findings include a finding of dishonesty. Mr Fugallo drew the Tribunal's attention to the importance of honesty and referred it to paragraphs 1, 68 and 71 of Good Medical Practice (2013) (GMP) which state:

'1. Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law.'

68. You must be honest and trustworthy in all your communication with patients and colleagues. This means you must make clear the limits of your knowledge and make reasonable checks to make sure any information you give is accurate.

71. You must be honest and trustworthy when writing reports, and when completing or signing forms, reports and other documents. You must make sure that any documents you write or sign are not false or misleading.

a. You must take reasonable steps to check the information is correct.

b. You must not deliberately leave out relevant information.'

4. Mr Fugallo submitted that in sending the email, Dr Khanna was making false representations to Mr B as to his clinical abilities.

5. Mr Fugallo acknowledged that the remediation of dishonesty is difficult and that the matters detailed in the Allegation seem to have been a one-off occurrence. He also conceded that Dr Khanna has demonstrated remorse up to a point and had provided positive testimonials. However, he submitted that he has not provided any evidence of insight or remediation into the principal finding in the case, namely dishonesty, as he has not acknowledged or accepted his dishonesty.

6. In addition, Mr Fugallo stated that Dr Khanna's status was a relevant factor in the case as he exploited his position so that he could draft and send the email to Mr B as if it had come from Miss A.

7. In conclusion, Mr Fugallo submitted that public confidence in the medical profession and the maintenance of proper professional standards would be undermined if a finding of impairment were not made in this case.

The Relevant Legal Principles

8. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision of impairment is a matter for the Tribunal's judgement alone.

9. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved amounted to misconduct and then whether the finding of that misconduct could lead to a finding of impairment.

10. The Tribunal must determine whether Dr Khanna's fitness to practise is impaired today, taking into account his conduct at the time of the events and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.

11. In its deliberations, the Tribunal had regard to the questions posed by Dame Janet Smith in the Fifth Shipman Report, as referred to in the case of *CHRE v NMC and Grant [2011] EWHC 927 (Admin)*, as follows:

‘Do our findings of fact in respect of the doctor’s misconduct... show that his/her fitness to practise is impaired in the sense that s/he:

- a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession*
- d. has in the past acted dishonestly and/or is liable to act dishonestly in the future.’*

The Tribunal’s Determination on Impairment

Misconduct

12. The Tribunal considered the circumstances in which Dr Khanna came to draft the email on Miss A’s computer in her office in the pharmaceutical department on 14 February 2019. He was disappointed by the meeting which he had had with Mr B on 12 February 2019 which concerned mistakes which junior doctors were making on kardexes and discharge summaries. He considered that he was being held responsible for too many of them, and felt that this was unfair. He knew Miss A as he had regularly encountered her on the orthopaedic ward in the Hospital and had had occasion to correct his mistakes and possibly those of other junior doctors at her request from time to time. He had met her on the morning of 14 February 2019 and had been asked to correct a further mistake in a prescription. An arrangement had been made whereby he would attend her office for this purpose in the afternoon. He had found her to be a friendly presence on the ward.

13. The Tribunal was satisfied that Dr Khanna had decided to follow the course of action of getting Miss A as a pharmacist to write an email essentially of reassurance to Mr B that all issues were being properly addressed. It considered that this was his purpose and that he was not too concerned how it was to be achieved. Whilst he might not have been able to pursue that purpose if Miss C had been the pharmacist he met in the ward, he considered that Miss A would not constitute much of an obstacle in his way. Accordingly, he set about the drafting and sending of the email to Mr B regardless of her objections. When he had finished, he left her office. He did not show any immediate recognition that he had behaved in an oppressive manner to a junior member of staff. Indeed, when he met her shortly thereafter he enquired of her whether Mr B had responded to the email.

14. The Tribunal considered that Dr Khanna was not concerned with how accurate the matters set out in the email were. After all, it was ostensibly being sent by the pharmacist not himself. He was not at all concerned to make it clear that he was the author, nor was he concerned to express any sentiments which the pharmacist may have had about his work and the work which he had done since the meeting with Mr B. In short, he seized an opportunity which presented itself to respond to Mr B and was prepared to set things down in the email which were not true, and which he knew not to be true. He was behaving in an unacceptable fashion. He rode roughshod over the sensibilities of Miss A and then, when she hesitated to accept the opportunity to send the email which he had drafted, he pressed the send button with something of a smirk. He had got his way. He knew he would get his way.

15. The Tribunal found that the facts recited above amounted to dishonesty and, in addition, an abuse of his position as a doctor. The latter aspect is reflected in the paragraphs of the allegation. He accessed Miss A's email without her permission; he told her that he was going to send the email when she asked what he was doing on her email account. He did not answer her questions; he continued typing notwithstanding her questions. He sent the email as if she was sending it and when he knew she had not drafted it, nor permitted it to be sent.

16. The Tribunal considered that a member of the public would be extremely perturbed by this behaviour. Not only was there dishonesty, but there was an exploitation by a doctor of his position face to face with a junior pharmacist. This was not something which was simply unattractive, it amounted to misconduct which was serious. Dr Khanna was in breach of the paragraphs 1, 68 and 71 of GMP recited above. In addition he was in breach of the following paragraphs of GMP:

'35. You must work collaboratively with colleagues, respecting their skills and contributions.

36. You must treat colleagues fairly and with respect.

37. You must be aware of how your behaviour may influence others within and outside the team.'

17. The Tribunal therefore concluded that Dr Khanna's conduct fell so far short of the standards of conduct reasonably to be expected of a doctor that it amounted to misconduct.

Impairment

18. The Tribunal, having found that the facts found proved amounted to misconduct, went on to consider whether, as a result of that misconduct, Dr Khanna's fitness to practise is currently impaired.

19. The Tribunal noted that Dr Khanna did express considerable remorse for his actions. He stated in his witness statement the following:

'It was not until a week later, when I received a call from the Surgical Directorate, and attended a meeting, with the Surgical Directorate Mr S, Mr B and other members of

the Trust, that I became aware that Miss A had felt pressured and uncomfortable. When I realised how I had made Miss A feel and the position I had put her in, I felt nothing but disgust in myself and continuously expressed this during the meeting. I wanted to apologise to Miss A and tried to explain that it was never my intention to put her into such a predicament. I specifically asked that I be allowed to apologise to her, but was told not to have any contact with her due to the ongoing investigation.

Still today I feel ashamed and extremely remorseful for my actions as I feel like I let down someone whom I greatly respect and who helped me a lot during our Ortho-Pharmacy ward rounds. I cannot apologise enough for how I made her feel, due to my actions.

Having spent considerable time reflecting on this incident and my behaviour, I acknowledge that in approaching Miss A directly for feedback, specifically asking her to write an email to Mr B, particularly so soon after my meeting with Mr B, when I was clearly feeling upset and anxious, was wholly inappropriate. I accept that I should not have done this, but would like to stress that, at the time, I honestly believed that I had Miss A's permission and agreement to write and send the email.

I understand that it was absolutely wrong for me to draft and send an email from someone else's email account, on their behalf, as this is misleading. I realise that I should have taken more time to process and consider my meeting with Mr B and then, if I had felt that feedback from Miss A was beneficial, I should have just asked her to write such an email herself, at a time convenient to her, and if she did not provide such an email, then accept that as her choice and leave it there.

I understand that as a doctor the public have a right to expect that I act with honesty and integrity at all times and I recognise the importance of maintaining trust in myself and the profession. I am deeply ashamed that my behaviour in relation to this incident has caused concern about my honesty and that this could adversely affect the reputation of the profession I hold in the highest regard and the public's confidence in it.'

20. However, Dr Khanna's expressions of remorse are based on his own version of the facts and not on that of Miss A, whose version the Tribunal has found to be accurate. Moreover, Dr Khanna did not admit dishonesty, so his sentiments cannot demonstrate that he has achieved any insight into his misconduct in that regard. In any event dishonesty is a difficult matter to remediate. Finally, Dr Khanna did not attend the hearing, so that he has not availed himself of any opportunity to show that he has understood the Tribunal's determinations as to the facts, the perspective of Miss A, how he behaved towards her, how he was attempting to deceive Mr B and how he has been dishonest.

21. The Tribunal has considered the several testimonials which Dr Khanna has submitted. They are from junior doctors, nurses and one from a pharmacist. They speak very highly of him and generally assert that he is a credit to the profession. They do not speak to anything

which Dr Khanna has learnt from this process. The Tribunal is, however, prepared to conclude, on the basis of these testimonials, that the matters which have caused Dr Khanna to be brought before the MPTS are isolated, that he is generally a well-respected and conscientious junior doctor.

22. The Tribunal first considered the matters identified in *Grant* and reached the following conclusions:

- a. Although Dr Khanna's mistakes in prescribing were a nuisance, particularly to the pharmacists on the orthopaedic ward, they did not represent a clinical matter which would have put patients at unwarranted risk of harm;
- b. His behaviour towards a junior member of staff as found proved and acting dishonestly will have brought the profession into disrepute and breached fundamental tenets of the medical profession;
- c. He has behaved dishonestly.

23. The Tribunal did not consider there was a risk of repetition in the light of the character which it found Dr Khanna has as a junior doctor. It did not therefore consider that it should make a finding of impairment on the basis of the need to protect the public.

24. The Tribunal then turned to consider the wider public interest, namely the need to declare and uphold proper standards of conduct and behaviour so as to maintain confidence in the profession. It determined that it should make a finding of impairment on this basis. An informed member of the public would not be impressed if a Tribunal did not find impairment on these wider public interest grounds. This was a serious violation on the part of Dr Khanna of the standards to be expected of a junior doctor.

25. The Tribunal has therefore determined that Dr Khanna's fitness to practise is impaired by reason of misconduct.

Determination on Sanction - 05/03/2021

1. Having determined that Dr Khanna's fitness to practise is impaired by reason of misconduct, the Tribunal now has to decide in accordance with Rule 17(2)(n) of the Rules on the appropriate sanction, if any, to impose.

The Evidence

2. The Tribunal has taken into account evidence received during the earlier stages of the hearing, where relevant, in reaching a decision on sanction.

Submissions

3. On behalf of the GMC, Mr Fugallo reminded the Tribunal that this case involves serious dishonesty. In doing so, he referred to paragraphs 120, 125 and 128 of the Sanctions Guidance (2020) (SG) which state:

‘120. Good medical practice states that registered doctors must be honest and trustworthy, and must make sure that their conduct justifies their patients’ trust in them and the public’s trust in the profession.

125. Examples of dishonesty in professional practice could include:

- a. defrauding an employer*
- b. falsifying or improperly amending patient records*
- c. submitting or providing false references*
- d. inaccurate or misleading information on a CV*
- e. failing to take reasonable steps to make sure that statements made in formal documents are accurate.*

128. Dishonesty, if persistent and/or covered up, is likely to result in erasure’

4. Mr Fugallo submitted that imposing conditions on Dr Khanna’s registration would not be appropriate in this case as it involves serious dishonesty.

5. Mr Fugallo went on to submit that anything lower than a sanction of suspension would not be appropriate to address the issues in this case and would adversely impact upon public confidence in the medical profession. He referred the Tribunal to the relevant paragraphs of the SG including:

‘91. 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. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention.

93. Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions.

97. Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.

- a. A serious breach of Good medical practice, but where the doctor’s misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any*

sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.

f. No evidence of repetition of similar behaviour since incident.

g. The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.'

6. Mr Fugallo also submitted that it was the fact that Dr Khanna's dishonesty was neither persistent nor covered up that led the GMC to conclude that a suspension order would be a more appropriate sanction in this case than erasure.

The Tribunal's Determination on Sanction

7. The decision as to the appropriate sanction to impose, if any, is a matter for this Tribunal exercising its own judgement.

8. In reaching its decision, the Tribunal has taken account of the SG and GMP. It has borne in mind that the purpose of a sanction is not to be punitive, but to protect patients and the wider public interest, although it may have a punitive effect.

9. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing the public interest with that of Dr Khanna, and taking into account the gravity of the misconduct found. It has also taken account of the overarching objective and its previous determinations.

10. The Tribunal accepted Mr Fugallo's submission that Dr Khanna's dishonesty was a serious matter, and that it was compounded by the fact that he exploited his position as a doctor in his dealings with Miss A. Although he has demonstrated a degree of insight and remorse, this did not extend to the dishonesty aspect of the case. It accepted Dr Khanna's statement that he has not been able to express his remorse to Miss A personally. It accepted that the dishonesty and abuse of position represented an isolated event, and that he has not sought to cover it up. It has already found that there is little risk of repetition.

11. The Tribunal considered Dr Khanna's circumstances at the time of the event in question. It noted that he was a locum doctor who complained that he felt marginalised by his colleagues and that he lacked peer support. Moreover, it also appears that he had not been supervised for a period of time; indeed, he had not personally met Mr B, his supervisor, before the interview on 12 February 2019. It is also right to note that he felt that he should not have been identified as the only doctor who was making the prescribing and other errors. Clearly taking matters into his own hands by drafting and sending the email as if from Miss A, as the Tribunal has found, was not the correct way to challenge any injustice which he may have felt. However, the Tribunal recognised that it can be difficult for a junior doctor in a locum position, who will require references, to mount an official challenge to a perceived grievance. In any event, the Tribunal noted that, in fact, Dr Khanna was responsible for a number of errors. Miss A had got to know him on the ward because of his errors and Miss C

had felt it necessary to complain about his work to Mr B. It was the correction of an error of his which drew him to Miss A's office on 14 February 2021. The Tribunal also considered that it was naïve of Dr Khanna to think, as he did, that sending the email just two days after the interview with Mr B would resolve matters.

No Action

12. In reaching its decision as to the appropriate sanction, if any, to impose in this case, the Tribunal first considered whether to conclude by taking no action. It considered that an informed member of the public would not be satisfied if it imposed no sanction following the finding of impairment on the wider public interest grounds. This was a serious matter which should be marked by a sanction.

Conditions

13. The Tribunal next considered whether it would be appropriate to impose conditions on Dr Khanna's registration. It bore in mind that any conditions imposed should be appropriate, proportionate, workable and measurable.

14. The Tribunal did not consider that imposing conditions would be appropriate in this case. This was misconduct which essentially did not concern clinical matters. The Tribunal did not consider that it could formulate conditions which were workable, practicable and measurable and which would address the misconduct identified.

15. The Tribunal therefore concluded that conditions are insufficient to meet the public interest and to maintain proper professional standards of conduct for the members of the profession.

Suspension

16. The Tribunal then went on to consider whether imposing a period of suspension on Dr Khanna's registration would be appropriate and proportionate. It noted that such an order is appropriate if the conduct of the doctor is not fundamentally incompatible with continued registration.

17. The Tribunal was impressed by the references and testimonials which Dr Khanna submitted. It has referred to these in its impairment determination. Dr Khanna has not been the subject of any other fitness to practise proceedings. It has accepted that this was an isolated incident and that there is no reason to believe it characterised Dr Khanna's normal behaviour. As mentioned, he has shown remorse and some insight albeit not directed at his dishonesty.

18. The Tribunal therefore determined that a period of suspension would be an appropriate and proportionate sanction which would protect public confidence in the profession and promote and maintain proper standards of conduct and behaviour.

19. In considering the appropriate period of suspension, the Tribunal was aware that the maximum period of suspension is 12 months. The Tribunal determined that a 9-month suspension would be sufficient for Dr Khanna to be able to develop full insight and understanding into his behaviour if he has the opportunity.

20. The Tribunal determined to direct a review of Dr Khanna's case. A review hearing will convene shortly before the end of the period of suspension unless an early review is sought. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Khanna to demonstrate how he has developed insight into his dishonesty. It therefore may assist the reviewing Tribunal if Dr Khanna provided:

- A written statement prepared by Dr Khanna:
 - reflecting on the conduct which has led to these Fitness to Practise proceedings, and how he has addressed or is addressing the aspects of his behaviour which have been identified as misconduct;
 - setting out his current work position;
- References and/or testimonials from work colleagues relating to his practice in the preceding 12 months;
- His attendance at the review either in person or remotely;
- A schedule of the continuing professional development courses which he has undertaken;
- Any other information that he considers will assist the reviewing Tribunal.

Determination on Immediate Order - 05/03/2021

1. Having determined to suspend Dr Khanna's registration, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Khanna's registration should be subject to an immediate order.

Submissions

2. On behalf of the GMC, Mr Fugallo submitted that an immediate order is not necessary in this case as Dr Khanna's misconduct was an isolated incident and unlikely to be repeated. He informed the Tribunal that an order to protect the public was not required in this case.

The Tribunal's Determination

3. In its deliberations, the Tribunal had regard to paragraph 172 of the SG which states:

'The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. The interests of the doctor include avoiding putting them in a position where they may come under pressure from patients, and/or may repeat the

misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.'

4. The Tribunal noted that no public protection issues have arisen in this case and was satisfied that the substantive direction, as already announced, was sufficient to mark the seriousness of Dr Khanna's dishonesty.
5. The Tribunal therefore determined not to impose an immediate order.
6. This means that Dr Khanna's registration will be suspended from the Medical Register 28 days from when notice of this decision is deemed to have been served upon him, unless he lodges an appeal. If Dr Khanna does lodge an appeal he will remain free to practise unrestricted until the outcome of any appeal is known.
7. There is no interim order to revoke.
8. That concludes the case.

Confirmed

Date 05 March 2021

Mr Angus Macpherson, Chair

ANNEX A – 01/03/2021

Application on service and proceeding in the doctor's absence

1. Dr Khanna is neither present nor represented at these proceedings. The Tribunal has considered whether notice of this hearing has been properly served upon Dr Khanna in accordance with Rules 15 and 40 of the General Medical Council (Fitness to Practise) Rules 2004 (as amended)(the Rules) and Schedule 4, Paragraph 8 of the Medical Act 1983 (as amended). In so doing, the Tribunal has taken into account all the information placed before it, together with Mr Fugallo's submissions on behalf of the General Medical Council (GMC).
2. The Tribunal has been provided with a service bundle, containing a copy of the Notice of Allegation, which was sent to Dr Khanna's legal representatives, Richard Nelson LLP, via email on 19 January 2021. Dr Khanna's representatives responded to this email on 22 January 2021 to confirm receipt. The Tribunal was also provided with a copy of the Notice of Hearing, dated 26 January 2021, which was sent to Dr Khanna's registered email address. Dr Khanna responded to this email on 27 January 2021 confirming that he received the Notice and that he would not be attending the hearing.
3. Having considered all the information, the Tribunal is satisfied that notice of this hearing had been properly served upon Dr Khanna.
4. The Tribunal went on to consider whether to proceed with the case in Dr Khanna's absence in accordance with Rule 31 of the Rules. In doing so, it bore in mind the judgment in the case of *R v Jones [2003] 1AC1*. The Tribunal noted that it had a discretion to proceed with the case in the doctor's absence, though this discretion is to be exercised with caution with the overall fairness of the proceedings in mind. The Tribunal should have regard to all the circumstances including the following:
 - The nature and circumstances of the doctor's behaviour in absenting himself, in particular, whether the behaviour was voluntary and therefore waived the right to be present.
 - Whether an adjournment would resolve the matter.
 - The likely length of any such adjournment.
 - Whether the doctor, although absent, wished to be represented or whether he had waived his right to be represented.
 - Whether the doctor's representatives were able to receive instructions from him and the extent to which they could present a defence.
 - The extent of any disadvantage to the doctor in not being able to present his account of events.

- The public interest that a hearing should take place within a reasonable time.
- The effect of any delay on the memories of witnesses.

5. The Tribunal bore in mind that its discretion to proceed in the practitioner's absence must be exercised with caution and with regard to the overall fairness of the proceedings. The Tribunal has balanced the interests of the practitioner, including fairness to him, against the public interest, including the need to protect patients.

6. On the basis of the information provided the Tribunal is satisfied that Dr Khanna has voluntarily waived his right to be present and represented at this hearing and that he is aware that the hearing can proceed in his absence. The Tribunal considers that were it to adjourn today, it is very unlikely that Dr Khanna would attend a future hearing. The Tribunal has therefore determined that it is in the public interest and Dr Khanna's own interests to exercise its discretion and proceed with the case in his absence.

SCHEDULE 1

Dear Mr B,

My name is [Miss A]. I am one the pharmacists working in [name of ward] ward. I would like give a feedback on how well patients kardexes are being dealt with in [name of ward] ward. Alok is working with us to ensure that minimal patient kardex errors occur and proper discharge summaries / TTOs are done.

He also discusses patients regular medications with us to ensure that no harm or no wrong medication is given.

We appreciate this team work and it has shown great improvement in patient care and discharge.

Many Thanks

[Miss A]

[Name of ward] ward Pharmacist