

PUBLIC RECORD

Dates: 25/11/2019 - 29/11/2019

Medical Practitioner's name: Dr Amina RAFI
GMC reference number: 7454881
Primary medical qualification: MB ChB 2014 University of Leeds
Type of case
New - Misconduct
Outcome on impairment
Impaired

Summary of Outcome

Suspension, 9 months.
Review hearing directed
Immediate order imposed

Tribunal:

Legally Qualified Chair	Mrs Kim Parsons
Medical Tribunal Members:	Dr Aine McGeary, Dr Helen McCormack
Tribunal Clerk:	Mr Andrew Ormsby

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Andrew Kennedy, Counsel, instructed by RadcliffesLeBrasseur
GMC Representative:	Mr Ciaran Rankin, 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.

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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 and Impairment - 28/11/2019

1. This determination will be read in private XXX. A redacted version will be published at the close of the hearing XXX.

Background

2. Dr Rafi qualified at the University of Leeds in 2014. At the time of these events Dr Rafi was practising as a junior doctor at Broadmoor Hospital, where she was employed from February 2018 to July 2018. She was a CT2 doctor training in psychiatry, under Thames Valley Deanery. Before commencing her psychiatry training in August 2017, she had completed Year 1 and Year 2 Foundation training.

3. The allegation that has led to this hearing relates to Dr Rafi deliberately misleading colleagues by providing inaccurate and false information on her experience and qualifications. Further, Dr Rafi gave her clinical supervisor false information about her own physical health.

4. Dr Rafi commenced her training in psychiatry in August 2016 and started her post at Broadmoor Hospital, a maximum security psychiatric hospital, in February 2018. It is alleged that Dr Rafi led both her peers and clinical supervisor at Broadmoor to believe that she had past experience of working as a medical registrar and that she also had membership of the Royal College of Physicians. Furthermore, she is alleged to have stated to her clinical supervisor, Dr A, that she needed treatment for breast cancer.

5. Dr A arranged a meeting with Dr Rafi to explore concerns she had after undertaking background checks. The meeting was held on 7 June 2018, and they were joined by the Clinical Lead, Dr B.

6. When given the opportunity to explain the inconsistencies in her level of experience and qualifications, it is alleged that Dr Rafi lied about her date of birth and date of full registration with the GMC. Her explanation was that the GMC had made an error in its record of the date of her registration and that they had been in communication to rectify this.

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7. Dr Rafi is said to have confidently maintained the misleading position about her level of experience until later in the meeting when presented with evidence to the contrary by her clinical supervisor.

8. Following an internal investigation by West London NHS Trust, a referral was made to the GMC on 23 August 2018.

Amendment

9. At the outset of these proceedings, Mr Rankin, Counsel on behalf of the General Medical Council (GMC), made an application under Rule 17 (6) to amend paragraph 1 of the allegation.

10. Mr Kennedy, Counsel on behalf of Dr Rafi, did not oppose the amendment. The Tribunal determined that the proposed amendment could be made without any injustice to Dr Rafi and therefore allowed the application. After amendment paragraph 1 reads:

'On one or more occasion between February 2018 and June 2018, whilst employed at Broadmoor Hospital, you advised Dr A that you needed to have treatments for breast cancer or words to that effect.'

The Allegation and the Doctor's Response

11. Following this amendment, Mr Kennedy, on behalf of Dr Rafi, admitted all the paragraphs of the Allegation, as set out below, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved:

1. On one or more occasion between February 2018 and June 2018, whilst employed at Broadmoor Hospital, you advised Dr A that you needed to have treatments for breast cancer ~~had breast cancer and that you were receiving treatment~~ or words to that effect. **Amended under Rule 17(6). Admitted and Found Proved**
2. The statements you made to Dr A as set out at paragraph 1 were untrue. **Admitted and Found Proved**
3. You knew that the statements you made as set out at paragraph 1 were untrue. **Admitted and Found Proved**
4. Your actions, as described at paragraph 1 were dishonest, by reason of paragraphs 2 and 3. **Admitted and Found Proved**

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5. On 7 June 2018, during a meeting with Dr A and Dr B, you advised that:
 - a. you were born in 1985 and 1986, or words to that effect; **Admitted and Found Proved**
 - b. you held a Membership of the Royal Colleges of Physicians qualification, or words to that effect; **Admitted and Found Proved**
 - c. you previously worked as a medical registrar ST6 level in geriatric medicine, prior to starting as a Psychiatry trainee, or words to that effect; **Admitted and Found Proved**
 - d. the General Medical Council had made an error on your registration by recording 2014, as the date of your registration, or words to that effect; **Admitted and Found Proved**
 - e. you carried out medical registrar locum work, or words to that effect. **Admitted and Found Proved**
6. Your statements, as set out at paragraphs 5 a. to 5 e., were untrue. **Admitted and Found Proved**
7. You knew that the statements as set out at paragraphs 5 a. to 5 e. were untrue. **Admitted and Found Proved**
8. Your actions, as described at paragraph 5 were dishonest by reason of paragraphs 6 and 7.' **Admitted and Found Proved**

Witness Evidence

12. The Tribunal received evidence on behalf of the GMC from the following witness:

- Dr A, Consultant Psychiatrist at Broadmoor Hospital, who gave evidence in person.

13. The Tribunal also received evidence on behalf of the GMC in the form of a witness statement from the following witness who was not called to give evidence in person:

- Dr B, Consultant in Forensic Psychiatry and Clinical Lead for Personality Disorder at Broadmoor Hospital.

14. Dr Rafi provided her own witness statement, reflective statements and also gave evidence in person at the hearing.

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Documentary Evidence

15. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included, but was not limited to, witness statements of the above and the exhibits to their witness statements, which included contemporaneous emails.

XXX

Dr A's evidence

17. In addition to her written evidence, Dr A told the Tribunal that she first met Dr Rafi at her induction training in February 2018. When Dr Rafi started work, Dr A said she was on leave but had made arrangements for clinical support and cover to be provided. She said she had communicated this to Dr Rafi at her induction training.

18. Dr A said Dr Rafi told her that whilst working at Broadmoor she was also undertaking work as a medical locum outside of her training post.

19. Dr A also said that she and Dr Rafi were due to have weekly clinical supervision meetings. Whilst it was not always possible to have these meetings on a weekly basis, she said Dr Rafi knew she was available for advice at any time.

20. Dr A told the Tribunal about a longstanding patient at the Hospital who had sadly passed away whilst Dr Rafi was working there. Following standard procedure, a review of the circumstances of the patient's death took place. It was found that the patient died from cardiovascular disease and it was not connected to a recent change in medication. Dr A said no blame had been attached to Dr Rafi's clinical care.

21. Dr A was also made aware that Dr Rafi had been distressed in supporting a member of staff who had collapsed in the hospital car park.

22. Dr A said she had not noticed any specific issues with Dr Rafi's ability to undertake her clinical duties or in relation to her health and wellbeing.

XXX

Doctor's Evidence

29. Dr Rafi, in her written and oral evidence, told the Tribunal that the incorrect assertion she had worked as a medical registrar to ST6 level had arisen from comments made informally by psychiatry colleagues, who were impressed by her medical assessments. Further she stated this in meetings with her clinical supervisor on a

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number of occasions. She admitted that her peers sought advice from her in relation to patients who had medical problems, although she stated that she always caveated her advice by signposting her colleagues to the appropriate medical teams at the general hospital. When it became apparent to her that both colleagues and her clinical supervisor had been misled in relation to her medical experience, she did not take any opportunity to tell the truth.

30. Dr Rafi admitted, during her meeting on 7 June 2018 with Dr A and Dr B, that she claimed to be a member of the Royal College of Physicians and had worked as a medical registrar to ST6 level. She also admitted to lying about her date of birth and initially maintained this dishonest position when confronted by her clinical supervisor. Towards the end of the meeting she conceded that the information that she had given them was incorrect. Later that day Dr Rafi telephoned Dr A and apologised for her conduct.

31. Dr Rafi admitted that on more than one occasion she told her clinical supervisor that she needed treatment for breast cancer and that she had been advised by her educational supervisor to disclose this. In her evidence she accepted this was dishonest because she did not have breast cancer. She explained to the Tribunal that she had anxiety about breast cancer because she had a strong family history, XXX. Although she was not under the care of a specialist, she said in oral evidence she had held a genuine belief she had breast cancer at the time.

XXX

33. Dr Rafi, in her evidence to the Tribunal, stated that looking back on her time at Broadmoor Hospital, it was the '*worst time*' in her professional life XXX. She cited two particular episodes which she found very stressful, namely the death of a longstanding patient and the collapse of a member of staff in the car park. She felt distressed by these incidents and felt unsupported and personally blamed for the death of the patient. She also told the Tribunal that she was unable to attend the weekly Balint support groups along with her peers as they clashed with her attendance at the Royal College of Psychiatry membership course in Oxford. She stated that she found previous attendance at these professional groups helpful and supportive. She stated that she did not feel that the level of clinical supervision she had received at Broadmoor was the same as she was accustomed to in previous roles. At the time she was also taking professional examinations.

34. Dr Rafi told the Tribunal that she is not currently working XXX.

Determination on Impairment

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

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The Evidence

36. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included reflections received from Dr Rafi.

Submissions

GMC Counsel's Submissions

37. Mr Rankin submitted that Dr Rafi is impaired by reason of misconduct. He submitted that Dr Rafi's persistent dishonesty amounts to serious misconduct.

38. Mr Rankin contended that Dr Rafi persisted in her lies over a prolonged period of time to bolster her own position. He also submitted that if that was not bad enough, she then lied about needing treatment for breast cancer. He further submitted, however, that at the meeting on 7 June 2018 she seemed to have come to her senses and Dr Rafi does now acknowledge that such conduct is unacceptable.

39. Mr Rankin submitted that Dr Rafi's conduct was a serious breach and could undermine the public's trust in the profession. He also submitted that Dr Rafi's conduct breached the fundamental tenets of the profession, including her integrity. He said it engaged all three limbs of the GMC's overarching objective and breached Good Medical Practice (2013) ('GMP 2013').

40. Mr Rankin further submitted that efforts of remediation carried less significance in a non-clinical case such as this, and that dishonesty requires that a message be sent to the public and profession that such conduct is not acceptable.

41. Mr Rankin noted that Dr Rafi showed remorse for her conduct, XXX.

Doctor's Counsel's Submissions

42. Mr Kennedy, on behalf of Dr Rafi, submitted that there were two issues – misconduct and impairment – one is effectively the gateway to the other. He submitted that misconduct is conduct that falls far below what is expected of a registered practitioner. He submitted that Dr Rafi's conduct, applying *Calhaem v GMC [2007] EWHC 2606 (Admin)*, would constitute misconduct. He stated that the Tribunal should look backwards to find whether there is misconduct and look forwards to see if it is impaired.

43. Mr Kennedy further submitted that remediation is not confined to clinical cases but that there was, however, a residual category of case – where whether the conduct, has been repeated or not, the practitioner could still be impaired for reasons of maintaining public confidence. He accepted that dishonesty falls into that

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category and that it was open to the Tribunal to find impairment by reason of dishonesty, as to do otherwise would risk damaging public confidence.

44. Mr Kennedy submitted that although Dr Rafi's dishonesty did take place over a period of time, she still had ultimately admitted all charges of dishonesty and should be given some credit for this. He submitted that Dr Rafi had identified in her written reflections how her misconduct offends the principles of Good Medical Practice. He invited the Tribunal to view the reflections and documents she provided as a demonstration of an intention to try and learn from her past errors. XXX

45. Mr Kennedy submitted that although the admitted allegations relate to dishonesty it was important to remember Dr Rafi did admit the charges and did admit the truth and that there was good evidence that she was otherwise a competent practitioner. He stated that in this case there were ultimately features of a doctor who was trying to make good past misconduct.

The Relevant Legal Principles

46. The Tribunal reminded itself of the statutory overarching objectives of the General Medical Council which involves the pursuit of the following objectives as set out in the s1 (1A) Medical Act 1983 (the 1983 Act) as amended:

- 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 the profession

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

48. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted in relation to misconduct: first whether the facts as found proved amounted to misconduct which was serious and then, if so, whether as a result, Dr Rafi's fitness to practise is impaired.

49. The Tribunal must determine whether Dr Rafi's fitness to practise is impaired today, taking into account Dr Rafi's 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.

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The Tribunal's Determination on Impairment

50. The Tribunal first considered whether the facts admitted and found proven in respect of paragraphs 1-8 of the Allegation amounted to misconduct. In determining whether Dr Rafi's conduct amounted to misconduct and whether it was serious the Tribunal had full regard to GMP.

51. The Tribunal heard evidence from Dr Rafi regarding the circumstances that led to her dishonesty. The Tribunal found that Dr Rafi's dishonesty, in claiming to have worked as a ST6 and to have been a member of the Royal College of Physicians, had the potential to put patient safety at Broadmoor at risk. Colleagues may have treated her medical opinion as carrying more weight, believing she had more experience than she had. Also, colleagues had shared with her how they did not feel confident in dealing with physical health issues. The Tribunal found that this risk was exacerbated at Broadmoor as there was limited access to specialist medical treatment. Patients with acute medical care needs had to be transferred to a local hospital and this was more challenging because of the nature of the secure Broadmoor environment. Although Dr Rafi said she had always caveated her advice, the Tribunal found that her actions had the potential to put patients at risk.

52. Whilst not initially recognising the risk to patient safety by her lies, following the meeting of 7 June 2018 Dr Rafi recognised she was potentially putting patient safety at risk by her actions.

53. Dr Rafi accepted she had persisted in lying about her qualifications and experience from within two weeks of arrival at Broadmoor until 7 June 2018, when she was challenged about this at the meeting with her clinical supervisor and Dr B. The Tribunal noted that throughout this period she maintained the lies on a number of occasions and with a range of colleagues. On none of these occasions did she take the opportunity to set the record straight.

54. The Tribunal also noted that when Dr Rafi attended the meeting on 7 June 2018 she initially lied again, including giving an incorrect date of birth and blaming inadequate GMC records for the discrepancies in her particulars.

55. The Tribunal noted that at the first meeting with her clinical supervisor, Dr A, Dr Rafi volunteered a separate and distinct lie. She explained that she needed treatment for breast cancer. This was in contrast to going along with the rumour about her qualifications and experience, that had reached her clinical supervisor by the time of the first meeting.

56. The Tribunal also had regard to the 11 July 2018 witness statement taken by Dr J and signed by Dr Rafi 20 July 2018 which states:

"Dr Rafi also stated that she had lied when she told colleagues about having previously had breast cancer. She said that she had told her clinical

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supervisor in her previous CT1 role and her current clinical supervisor, [Dr A] and her education supervisor, Dr L that she had had a diagnosis of breast cancer for which she had received treatment in the past. Specifically she said that she had told them that she had received surgery, chemotherapy and radiotherapy for breast cancer on two or three occasions and that this was not true.”

Dr Rafi said in her evidence she had not received a diagnosis, nor had she undergone these treatments. She explained that she signed the statement at a time when she was off work XXX. She said that she had been having trouble reading documents and that she was confused and meant to say she may need treatment, rather than she had received treatment. The Tribunal found it difficult to accept this explanation.

XXX

59. The Tribunal did take into account, however, Dr Rafi’s assertion that she was indeed anxious of breast cancer as XXX there was a strong history of breast cancer in her family.

60. The Tribunal found Dr Rafi had breached the following paragraphs of GMP, namely:

‘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.

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.

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

66. You must always be honest about your experience, qualifications and current role.

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.’

61. The Tribunal was satisfied that Dr Rafi’s conduct was a clear breach of the principles set out in GMP.

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62. On Dr Rafi's own admission she had not been honest and trustworthy. The Tribunal found there had also been a breach of paragraph 1 of GMP.

63. Dr Rafi departed from paragraphs 36, 37, 65 and 66 because she told untruths to her colleagues at the Broadmoor Hospital which would lower the public's trust in the medical profession.

64. Dr Rafi departed from paragraph 68 because she was not honest and trustworthy in her dealings with Dr A and Dr B. She knew that the information she gave Dr A and Dr B was dishonest.

65. The Tribunal also considered, given Dr Rafi's persistent dishonest conduct, that all three limbs of the statutory overarching objectives of the GMC which were engaged, namely the need:

- 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 the profession

66. The Tribunal was also mindful of Dame Janet Smith's guidance in the Fifth Report to the Shipman Inquiry adopted by the High Court in the case of *CHRE v NMC & Paula Grant* [2011] EWHC 927 [Admin]. The case law requires that as part of the process of determining whether a doctor is fit to practise today, a Tribunal must take account of past actions or failures to act.

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 considered that Dr Rafi's dishonest conduct had indeed engaged all four of the limbs set out above.

67. The Tribunal determined that Dr Rafi's conduct in persistently lying to her colleagues was not only misconduct, but serious misconduct. Such behaviour would

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undoubtedly undermine the public's trust in the medical profession, who expect doctors to be honest.

68. Fellow medical professionals would regard Dr Rafi's conduct as deplorable.

Impairment by reason of misconduct

69. The Tribunal, having found that the facts proven amounted to misconduct and it was serious, went on to consider, as a separate and discrete exercise, whether Dr Rafi's fitness to practise is currently impaired as a result of that misconduct. The Tribunal noted that Dr Rafi, through her Counsel, Mr Kennedy, accepts that her fitness to practise may require a finding of impairment to maintain public confidence in the profession.

XXX

71. The Tribunal noted that Dr Rafi had admitted her failings at the meeting on 7 June 2018, apologised to Dr A and fully admitted the allegation before this Tribunal.

72. The Tribunal was also mindful that despite Dr Rafi's serious misconduct there were no concerns regarding her clinical performance.

XXX

74. The Tribunal considered matters of insight, remorse, remediation and likelihood of repetition. In regard to these matters the Tribunal noted that Dr Rafi has reflected greatly and XXX.

75. Turning to remediation, the Tribunal noted that it can be difficult to demonstrate remediation following a finding of dishonesty as it is an attitudinal failing. It often requires the need to demonstrate that the conduct and behaviour is firmly in the past and is highly unlikely to be repeated. XXX

76. The Tribunal heard that Dr Rafi's dishonest behaviour was likely to have been triggered by difficult situations such as exam pressure, a difficult family situation and pressure of work. The Tribunal considered that there were continuing issues to work through in this regard, in order to minimise the risk of such repeated behaviour in the future when Dr Rafi may be subject to similar possible pressures. Dr Rafi still has to take further professional examinations in psychiatry, she is not currently in work XXX.

XXX

79. Overall, the Tribunal considered there was a risk of repetition of misconduct XXX.

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80. The Tribunal concluded that a finding of impairment is necessary to promote and maintain the reputation of the profession and to declare and uphold proper standards of conduct and behaviour. The Tribunal has therefore concluded that Dr Rafi's fitness to practise is impaired by reason of misconduct.

Determination on Sanction - 29/11/2019

1. This determination will be read in private XXX. A redacted version will be published at the close of the hearing XXX.
2. Having determined that Dr Rafi'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.
3. The Tribunal granted the application made under Rule 34(13) of General Medical Council Fitness to Practise (Rules 2004) to hear evidence from two testimonial witnesses by telephone. The Tribunal considered that it would be in the interests of justice to do so. Both witnesses were doctors with limited availability and their evidence went to Dr Rafi's character only.

The Evidence

4. The Tribunal has taken into account evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction.
5. The Tribunal received further evidence on behalf of Dr Rafi including:
 - Written testimonial and witness evidence from Dr G, MRCPsych, Consultant Psychiatrist, by telephone link, who stated that he did not have concerns with Dr Rafi in terms of clinical conduct. Furthermore, he told the Tribunal that he had not been concerned with Dr Rafi's conduct XXX;
 - Written testimonial and witness evidence from Dr K, MBChB, BMedSc, MRCPsych, ST5 Psychiatry Specialist Registrar, by telephone link, who provided testimonial evidence and told the Tribunal that he had no concerns, either personally or professionally with Dr Rafi's conduct and stated that he found her to be a competent colleague;
 - Written testimonials in support of Dr Rafi from Ms H and Mrs I.

Submissions

GMC Counsel's Submissions

6. Mr Rankin submitted that the appropriate sanction in this case would be one of suspension.

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7. Mr Rankin referred the Tribunal to the Sanctions Guidance (2019) ('SG') paragraph 20. He submitted that when deciding sanction the Tribunal should consider the sanctions available, starting with the least restrictive.
8. He took the Tribunal to paragraph 45 of the SG in relation to the doctor's insight. He submitted that the Tribunal had found that Dr Rafi had demonstrated insight, she had greatly reflected on her behaviour, admitted the charges of dishonesty and acknowledged her breaches of GMP in her reflective statements. He added that the Tribunal also found that there had been a breach of GMP paragraph 1.
9. Mr Rankin next referred the Tribunal to paragraph 120 of the SG. He submitted that Dr Rafi's initial lie had escalated and that the most egregious part of her dishonesty related to the early portion of the meeting of the 7 June 2018. At that meeting, she not only maintained her lie, but developed it with other lies to bolster her position. However, ultimately Dr Rafi accepted that she had lied. There was also a separate lie about her treatment for breast cancer. Overall, this course of conduct could be described as persistent dishonesty.
10. Mr Rankin referred the Tribunal to paragraph 128 of the SG regarding persistent dishonesty. He said this was for reference only. Because of Dr Rafi's insight, he submitted the appropriate and proportionate sanction was one of suspension.
11. Mr Rankin drew the Tribunal's attention to the efforts that Dr Rafi had made towards remediation and insight. He referred to the suspension section of the SG from paragraph 91 onwards. In relation to paragraph 93, Mr Rankin said that Dr Rafi had acknowledged fault, taken steps to mitigate her actions and it was unlikely her misconduct would be repeated, although there was potential for repetition. He considered paragraph 93 to be highly relevant in this case.
12. Mr Rankin reminded the Tribunal of its power to order a review under paragraph 95 of the SG.
13. Mr Rankin referenced the non-exhaustive list in paragraph 97 of factors which may indicate suspension may be appropriate. He said some of these were engaged in Dr Rafi's case, including this being a serious breach of GMC, there being no evidence of repetition and that she has shown insight. Mr Rankin referred the Tribunal to the table in the SG which may assist in determining the appropriate length of suspension. He reminded the Tribunal that its decision on sanction was for its independent judgment looking at all the circumstances of the case. He submitted in the GMC's view the most appropriate sanction was one of suspension.

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Doctor’s Counsel’s Submissions

14. Mr Kennedy submitted on behalf of Dr Rafi that when determining the question of sanction the Tribunal must have regard to the overarching objective and consider the full range of sanctions available, starting with the least restrictive. He submitted that the Tribunal, when considering the third limb of the overriding objective should have regard to the sanction being imposed being no more than is required to achieve the public interest objective.

15. Mr Kennedy referred the Tribunal to paragraph 16 of the SG where it is said sanctions are not imposed to punish, but may have a punitive effect. He also reminded the Tribunal of the testimonial evidence it had heard, which he said showed the doctor’s dishonesty was out of character and that Dr Rafi was otherwise an honest and reliable doctor.

16. Mr Kennedy reminded the Tribunal this case was confined to dishonesty and that there were no clinical concerns. He said Dr Rafi should be regarded otherwise as a useful member of the profession.

17. Mr Kennedy made reference to testimonial evidence from Dr Rafi’s former clinical supervisor, Dr G, who was not aware of any difficulties personally or with colleagues XXX.

XXX

19. Mr Kennedy referred the Tribunal to the section of the SG dealing with mitigating factors starting at paragraph 24. He said Dr Rafi understood the problem, had shown insight and she was of good character. With regards to paragraph 25(a) he said she had admitted what she had done wrong, albeit belatedly at the meeting on 7 June 2018 and in her reflections. Regarding paragraph 25(b) of the SG he stated there were no previous Fitness to Practise findings and that she had adhered to GMP; she was competent and when she made mistakes she had taken the actions that she should have taken. Regarding paragraph 25(c) taken in conjunction with 25(d) he reminded the Tribunal of the context of the doctor’s actions XXX.

20. He made reference to paragraph 26 and the fact that the Tribunal had concluded it could not exclude the risk of repetition. He pointed out that Dr Rafi had taken steps to address and remediate her misconduct by:

- XXX;
- apologising to Dr A;
- co-operating and being open and honest with Trust enquiries; and
- being a competent doctor.

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21. Mr Kennedy referred to paragraph 45 of the SG in relation to insight, highlighting that each point of paragraph 46 is met and that Dr Rafi demonstrated some insight very shortly after the 7 June 2018, in her first reflective statement. He said she showed a timely development of insight XXX. She appreciated that she could not remediate this with a one-off apology and she would need to commit to take action over a longer term.

Mr Kennedy took the Tribunal to the section of the SG which deals with aggravating factors from paragraph 50 onwards. He said that none of the factors from paragraphs 51 to 56 applied.

22. In relation to paragraph 128 of the SG he accepted this was serious dishonesty for the purpose of imposing sanction, but the guidance did not say the only appropriate sanction was one of erasure.

23. Mr Kennedy submitted that when looking at the range of sanctions it was accepted that no further action and conditions were not appropriate in this case. He considered suspension to be a proportionate sanction in the circumstances, having regard to:

- Paragraph 91 - the deterrent effect and the signal it would send to the doctor, to the profession and the public to achieve the overriding objective;
- Paragraph 92 - an appropriate response to misconduct that was so serious that action must be taken to protect the public and maintain public confidence;
- Paragraph 93 – the doctor had acknowledged fault and that the misconduct was unlikely to be repeated. Mr Kennedy recognised the Tribunal’s determination – that whilst XXX there is a risk of repetition. XXX

24. Mr Kennedy submitted that if the Tribunal was minded to make an order of suspension, it would be prudent to order a review, XXX.

25. In relation to paragraph 97(a) he said that, although this was a serious breach of GMP, her conduct was not fundamentally incompatible with continued registration. XXX With regards to 97(e), (f) and (g), Mr Kennedy submitted that the doctor had shown insight, there was no evidence of repetition and that the doctor had taken steps to remediate her actions.

26. Mr Kennedy submitted that in order to direct erasure the Tribunal would have to disregard as insignificant the issues it has heard about XXX. It would also need to be satisfied that erasure was the only way to maintain public confidence in the profession. He concluded that the informed member of the public would be satisfied that suspension would be sufficient and appropriate in the circumstances, taking into account her relative youth, inexperience and the challenging circumstances she had been working in.

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27. Mr Kennedy submitted that given XXX the appropriate period of suspension in this case was no greater than six months.

The Tribunal's Determination on Sanction

28. The decision as to the appropriate sanction to impose, if any, in this case is a matter for this Tribunal exercising its own judgement. The Tribunal has taken into account its findings of fact, its determination that Dr Rafi's fitness to practise is impaired, as well as the submissions made by Mr Rankin on behalf of the GMC and those by Mr Kennedy on behalf of Dr Rafi.

29. Throughout its deliberations the Tribunal was mindful that the purpose of sanctions is not to punish, but to protect the public. However, sanctions may have a punitive effect. In particular the Tribunal took into account paragraph 17 of the Sanctions Guidance (SG), which states:

"17. Patients must be able to trust doctors with their lives and health, so doctors must make sure that their conduct justifies their patients' trust in them and the public's trust in the profession (see paragraph 65 of Good medical practice). Although the tribunal should make sure the sanction it imposes is appropriate and proportionate, the reputation of the profession as a whole is more important than the interest of any individual doctor."

30. In reaching its decision, the Tribunal had regard to the principle of proportionality, weighing Dr Rafi's interests with those of the public. The public interest is reflected in the overarching objective which includes:

- protecting and promoting the health, safety and wellbeing of the public
- promoting and maintaining public confidence in the medical profession
- promoting and maintaining proper professional standards and conduct for members of that profession.

31. The Tribunal first considered the aggravating and mitigating factors in this case and then moved on to consider each sanction in ascending order of severity, starting with the least restrictive.

Aggravating and Mitigating Factors

32. The Tribunal first considered the mitigating factors in this case regarding the events at Broadmoor Hospital:

- Dr Rafi fully engaged with the Trust investigation and made full admissions to the Allegation at her MPT hearing;
- Dr Rafi was of previous good character and there have been no previous Fitness to Practise findings made against her;

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- Dr Rafi has shown insight in her reflective statements;
- She has apologised to her colleagues at Broadmoor Hospital;
- XXX;
- XXX;
- XXX;
- The period during which the events in question took place was a particularly stressful time in Dr Rafi's personal and professional life, with XXX exam pressures and the challenging environment at Broadmoor Hospital;
- The Tribunal took into account the testimonial evidence provided by two of her colleagues. The Tribunal did note, however, that neither of the doctors had worked with her for a particularly long time or since February 2018;
- The Tribunal also noted that Dr G had not observed any issues in Dr Rafi's dealings with senior colleagues.

33. The Tribunal then considered the aggravating factors in this case regarding the events at Broadmoor Hospital:

- Over a period of months Dr Rafi maintained her dishonesty and at the 7 June 2018 meeting she built on her initial lies to try and hide the truth;
- Dr Rafi told separate, distinct lies on more than one occasion and to a range of colleagues;
- Dr Rafi failed to work collaboratively with her colleagues by lying to them about her experience and qualifications when they had confided in her about their own lack of experience. This had potentially put patient safety at risk.

34. In deciding what sanction, if any, to impose the Tribunal considered each of the options available to it, whilst taking into account paragraph 20 of the SG and starting with the least restrictive:

"20. In deciding what sanction, if any, to impose the tribunal should consider the sanctions available, starting with the least restrictive. It should also have regard to the principle of proportionality, weighing the interests of the public against those of the doctor (this will usually be an impact on the doctor's career, eg a short suspension for a doctor in training may significantly disrupt the progression of their career due to the nature of training contracts)."

No Action

35. The Tribunal first considered whether to conclude the case by taking no action.

36. The Tribunal determined that to take no action would be inappropriate given the seriousness of the facts admitted and found proved and the fact there were no exceptional circumstances.

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Conditions

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

38. When considering the sanction of conditions the Tribunal was mindful of the SG. In particular the Tribunal considered the workability of any conditions having regard to the SG. The Tribunal determined that conditions would not usually be appropriate to address a finding of dishonesty and concluded that, in the circumstances of this case, conditions would be very difficult to formulate and would not adequately address the nature of Dr Rafi's misconduct. In particular, the Tribunal determined that conditions would neither satisfy the public interest nor uphold professional standards sufficiently.

Suspension

39. The Tribunal next considered whether imposing a period of suspension on Dr Rafi's registration would be the appropriate and proportionate sanction in this case.

40. When approaching its determination, the Tribunal found that the following sections of paragraph 97 of the SG were engaged in this case:

41. "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."

The Tribunal found there had been serious breaches of GMP, such that any sanction lower than suspension would not be sufficient to protect the public or maintain public confidence in doctors. Dr Rafi had lied over a period of five months, to a range of colleagues, including to her clinical supervisor, senior colleagues and her peers. She lied about two distinct matters. Firstly, about her qualifications and experience and secondly the treatment she needed for breast cancer, a medical condition she did not have. She did not take the opportunity to set the record straight concerning either of these matters until she was challenged in a meeting about this on the 7 June 2018. Initially she continued to lie at this meeting, telling more untruths. She did then eventually concede she had been lying. Her lies about her qualifications and experience had the potential to put patient safety at risk for the reasons previously given by this Tribunal.

42. "97. *f. No evidence of repetition of similar behaviour since incident."*

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Although there is no evidence of repetition of dishonesty since the meeting of 7 June 2018, Dr Rafi did maintain or build upon her lies over a five month period.

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

The Tribunal considered that Dr Rafi has made considerable efforts to reflect on her behaviour and the impact that this has had on her relationship with others. She has reflected on the impact her misconduct would have had on public confidence in the profession. The Tribunal notes that she began reflecting very soon after the meeting on June 2018, and has demonstrated over time that she continues to build and develop insight.

44. In terms of Dr Rafi posing a significant risk of repeating the behaviour, the Tribunal is satisfied that providing XXX she receives appropriate support and supervision in the workplace, the risk of repetition is capable of being mitigated. Additionally, Dr Rafi would need to XXX develop a further understanding in relation to the issues that triggered her misconduct.

45. The Tribunal has had regard to paragraph 91 of the SG, the fact that suspension can have a deterrent effect and can be used to send out a signal to the doctor, the professions and the public about inappropriate behaviour. Also at paragraph 92 of the SG, suspension will only be appropriate for conduct that is serious but falls short of conduct that will be incompatible with continued registration.

46. The Tribunal has had regard to paragraph 128 of the SG. It notes that dishonesty if persistent or covered up is likely to result in erasure. In Dr Rafi's case, the Tribunal considers that a period of suspension is a proportionate outcome given her personal mitigation, XXX and the particularly stressful circumstances she was facing at the time of these events. XXX

47. The Tribunal determined to suspend Dr Rafi's registration for a period of nine months. The Tribunal concluded that this period of time was necessary and proportionate given the seriousness of the misconduct to ensure public confidence in the profession could be maintained. The Tribunal had regard to the table at page 30 of the SG when determining the length of suspension and noted that many of the factors set out in the 'seriousness of the findings' section were engaged in this case. The Tribunal also determined that this would allow sufficient time for Dr Rafi to undergo further treatment and therapy to mitigate the risk of repetition and to address the triggers that had led to her misconduct.

48. The Tribunal determined to direct a review of Dr Rafi's case. A review hearing will be convened shortly before the end of the period of suspension, unless an early review

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is sought. The onus will be on Dr Rafi to demonstrate how she has addressed the risk of repetition of further dishonesty. The reviewing Tribunal may therefore be assisted by Dr Rafi providing:

- Further reflective statement(s) on the misconduct found, the steps taken and any treatment she has received to reduce the risk of repetition;
- Evidence of continuing professional development; and
- Evidence that she has maintained her medical knowledge and skills.

Dr Rafi may provide any other information that she considers will assist a reviewing Tribunal.

Determination on Immediate Order - 29/11/2019

1. Having determined to impose a period of suspension for nine months on Dr Rafi's registration, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Rafi's registration should be subject to an immediate order.

Submissions

2. Mr Rankin made an application for the imposition of an immediate order on public interest grounds. Mr Rankin also informed the Tribunal that an Interim Order was currently imposed on Dr Rafi's registration. He invited the Tribunal not to revoke the current Interim Order.

3. On behalf of Dr Rafi, Mr Kennedy submitted that in relation to a separate matter Dr Rafi is currently suspended by reason of an Interim Order until September 2020. This is next due to be reviewed on 10 December 2019. Theoretically this suspension could be lifted at that time.

4. Mr Kennedy submitted that in the circumstances there was no need to make an interim order of suspension. He therefore opposed the GMC's application.

5. The LQC advised the Tribunal that there were three circumstances under section 38 of Medical Act 1983 under which an Immediate Order for suspension could be made.

These were that it is:

- necessary for the protection of members of the public;
- otherwise in the public interest;
- in the best interests of Dr Rafi.

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The Tribunal's Determination

6. The Tribunal determined that it was in Dr Rafi's best interests for an immediate order of suspension to be made given that she was already suspended from practise.
7. The Tribunal also took the view that it was otherwise in the public interest for an immediate order of suspension to be made given the potential patient safety issues and the fact that on 10 December 2019 the existing interim order of suspension on a separate matter could be revoked.
8. The Tribunal did not consider the circumstances of the existing interim order given that there was already a hearing arranged on 10 December 2019 to consider this and it was not given any details upon which to make a decision.
9. The substantive direction for the imposition of suspension as already announced, will take effect 28 days from the date when written notice is deemed to have been served on Dr Rafi. The order of immediate imposition of suspension will take effect from today. If Dr Rafi lodges an appeal, the immediate order for the imposition of suspension on her register will remain in force until the appeal is determined.
10. That concludes this hearing.

Confirmed

Date 29 November 2019

Mrs Kim Parsons, Chair