PUBLIC RECORD

Dates: 05/09/2022 - 12/09/2022

Medical Practitioner's name:	Dr Ayman SWIDAN
GMC reference number:	4696922
Primary medical qualification:	MB ChB 1981 Alexandria University

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

Summary of outcome
Erasure
Immediate order imposed

Tribunal:

Legally Qualified Chair	Mrs Emma Boothroyd
Lay Tribunal Member:	Mr Stephen Downing
Medical Tribunal Member:	Dr Nagarajah Theva

Tribunal Clerk:	Ms Evelyn Kramer

Attendance and Representation:

Medical Practitioner:	Not present and not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Ms Kathryn Johnson, 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 - 09/09/2022

1. This determination will be handed down in private. However, as this case concerns Dr Swidan's alleged misconduct, a redacted version will be published at the close of the hearing.

Background

2. Dr Swidan qualified in 1981 from the University of Alexandria, Egypt. At the time of the events, Dr Swidan was practising as an Associate Specialist in Obstetrics and Gynaecology at Queen's Hospital in Burton ('Queen's Hospital'). Burton Hospitals merged with Derby Hospitals to form University Hospitals of Derby and Burton NHS Foundation Trust ('the Trust') in 2018.

3. The Allegation that has led to Dr Swidan's hearing can be summarised as that on one or more occasions between November 2019 and January 2020, while working at Queen's Hospital, Dr Swidan submitted a claim for payment of one or more shifts knowing that either he was already being paid to undertake the shifts or did not attend to undertake the shifts. It is alleged that Dr Swidan's actions were dishonest.

4. Dr Swidan was referred to NHS Counter Fraud in March 2020. The initial concerns were raised with the GMC on 28 August 2020 by Dr A, Medical Director for Quality and Safety at the Trust. In October 2020, Dr Swidan retired from clinical practice.

The Outcome of Applications Made during the Facts Stage

5. The Tribunal accepted the GMC's submissions, made pursuant to Rules 15 and 40 of the General Medical Council (Fitness to Practise) Rules 2004 as amended ('the Rules'), that notice of this hearing had properly been served on Dr Swidan, and granted its application, made pursuant to Rule 31 of the Rules, that this hearing should proceed in his absence. The Tribunal's full decision on these applications is included at Annex A.

6. The Tribunal granted the GMC's application, made pursuant to Rule 34 of the Rules, to adduce further documentary evidence. The Tribunal was provided with correspondence exchanged between the GMC and Dr Swidan in relation to this application to adduce the transcript of Dr B's Trust Interview. The GMC first emailed Dr Swidan on 5 September 2022 and sent a further email on 6 September. Both emails requested that Dr Swidan provide comments before the GMC made the application to the Tribunal. On 6 September 2022, Dr Swidan replied to say he had received the email. He provided no further comment.

7. The Tribunal considered that without Dr B's Trust Interview transcript, there was no direct evidence of what had taken place during Dr B's interview. Only a summary was available in the evidence before the Tribunal. The Tribunal determined that the evidence the GMC was applying to adduce was relevant and represented the best evidence of the interview. In respect of fairness, the Tribunal was satisfied that the GMC had made efforts to seek Dr Swidan's views on its application. In the absence of any objection from Dr Swidan, and given his knowledge of the application, the Tribunal determined it was fair to admit the additional evidence. The Tribunal could identify no unfairness to Dr Swidan in admitting this evidence. In all the circumstances, the Tribunal determined that it was fair and relevant to admit the Trust Interview of Dr B.

The Allegation and the Doctor's Response

8. The Allegation made against Dr Swidan is as follows:

That being registered under the Medical Act 1983 (as amended):

Job plan out of hours work

1. You submitted a claim for payment of one or more shifts you purportedly undertook at Queen's Hospital in Burton ('Queen's Hospital') as set out in Schedule 1.
   To be determined

2. You:

   a. were already being paid to undertake the shifts set out in Schedule 1, as part of your job plan with Queen's Hospital;
      To be determined

   b. knew that you were already being paid to undertake the shifts set out in Schedule 1 as part of your job plan with Queen's Hospital;
      To be determined

3. Your actions as set out at paragraph 1 were dishonest by reason of paragraph 2.
   To be determined

General claims for out of hours work

4. You submitted a claim for payment of one or more shifts you purportedly undertook at Queen's Hospital as set out in Schedule 2.
To be determined

5. You:

a. did not attend Queen's Hospital to undertake the shifts set out in Schedule 2;
To be determined

b. knew that you did not attend Queen's Hospital to undertake a shift on the dates set out in Schedule 2.
To be determined

6. Your actions as set out at paragraph 4 were dishonest by reason of paragraph 5.
To be determined

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

Factual Witness Evidence

9. The Tribunal received written and oral evidence on behalf of the GMC from the following witnesses:

- Ms C, General Manager for General Surgery and Urology at the Trust. Witness statement dated 23 February 2021;
- Ms D, Operational Manager and Deputy General Manager in the Maternity and Gynaecology Business Unit at the Trust. Witness statement dated 28 May 2021;
- Mr E, Director of Peoples' Services at the Trust. Witness Statement dated 24 January 2022;
- Dr F, Consultant Obstetrician and Gynaecologist at the Trust at the time of events. Witness statement dated 5 July 2021.

10. 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:

- Dr G, Consultant Obstetrician and Gynaecologist at Queen's Hospital. Witness statement dated 29 March 2021;
- Dr H, Consultant Obstetrician and Gynaecologist at Queen's Hospital. Witness statement dated 6 July 2021;

- Dr I, Consultant Obstetrician and Gynaecologist at Queen's Hospital at the time of events. Witness statement dated 18 August 2021;
- Dr J, Consultant Obstetrician and Gynaecologist at Queen's Hospital. Witness statement dated 26 August 2021.

11. Dr Swidan provided his own witness statement, dated 1 July 2022. In addition, on behalf of Dr Swidan, the Tribunal received oral evidence from Dr B, Consultant Obstetrician and Gynaecologist at Queen's Hospital at the time of events. Dr B also provided a witness statement dated 5 May 2022.

Documentary Evidence

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

- Dr Swidan's Job Plans, dated 2018 and 2019 respectively;
- Relevant Claim Forms submitted by Dr Swidan, various dates between November 2019 and January 2020;
- Dr Swidan's on-call rotas, dated January to December 2019 and January to December 2020;
- The Trust Investigation Report, dated 10 November 2020;
- The Trust Interviews with Ms D, Dr J and Dr Swidan, various September 2020 dates;
- Correspondence regarding the Trust's investigation sent to the GMC by various witnesses, various dates;
- Dr Swidan's Rule 7 response, dated 20 September 2021;
- XXX;
- A letter from Dr F provided by Dr Swidan, dated 19 January 2018.

The Tribunal's Approach

13. 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 Swidan 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.

14. In respect of the allegations that Dr Swidan acted dishonestly, the Tribunal applied the test laid down by the Supreme Court in *Ivey v Genting Casinos (UK) Ltd* [2017] UKSC 67 *('Ivey'*), namely that the Tribunal should first ascertain subjectively the actual state of Dr Swidan's knowledge or belief as to the facts. Whether the belief is reasonable may be a matter of evidence, but reasonableness is not an additional requirement when considering whether the belief was genuinely held. The Tribunal should then ascertain whether his conduct was dishonest applying the objective standards of ordinary decent people.

15. The Tribunal bore in mind Dr Swidan's previous good character and his lack of previous regulatory findings.

Drawing an Adverse Inference

16. The Tribunal was invited, by the GMC, to draw an adverse inference from Dr Swidan's non-attendance at this hearing. The Tribunal was referred to the MPTS *Guidance on drawing adverse inferences in Medical Practitioners Tribunal hearings* (2021) ('the Guidance') and provided with the letters sent to Dr Swidan warning him that an adverse inference could be drawn by the Tribunal in his absence.

17. Ms Johnson submitted that in the absence of recent evidence about XXX, Dr Swidan's explanation for not attending the hearing XXX carried less weight. She submitted that there had been no opportunity to test his evidence under cross-examination, and that his absence suggested that he had no substantive answer to the GMC's case.

18. The Tribunal had regard to the Guidance and accepted that Dr Swidan had been appropriately warned of the possibility that an adverse inference could be drawn given his non-attendance. However, the Tribunal determined that it was not required to consider whether or not to draw an adverse inference until it had first determined the Allegation. Only if the Tribunal could not reach a clear finding on any paragraph of the Allegation, would Dr Swidan's non-attendance at these proceedings become a possible factor to weigh in the balance.

The Tribunal's Analysis of the Evidence and Findings

19. 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.

Paragraph 1

20. The Tribunal was first required to consider whether Dr Swidan submitted a claim for payment for one or more shifts that he purportedly undertook at Queen's Hospital. There were five shifts identified as set out in Schedule 1.

21. The Tribunal had regard to the Claim Forms submitted by Dr Swidan and exhibited by the Consultants at the Trust who had signed them off for payment for the dates set out in Schedule 1.

22. The Tribunal determined that Dr Swidan did submit claims for payment for shifts he purported to have undertaken at Queen's Hospital.

23. Therefore, the Tribunal found paragraph 1 of the Allegation proved.

Paragraphs 2a

24. The Tribunal then considered whether Dr Swidan was already being paid to undertake the shifts set out in Schedule 1 as part of his job plan with Queen's Hospital.

25. All the shifts set out in Schedule 1 were weekend shifts or bank holidays. According to Dr Swidan's job plan (a formal agreement of a doctor's responsibilities), for both 2018-2019 and 2019-2020, he was required to work six weekends, totalling 26 hours per weekend. On his job plan from 2018-2019, this was termed *'Predictable emergency on-call work'*. On his job plan from 2019-2020, it was termed *'Bleep weekends'*.

26. The Tribunal received evidence that job plans were intended to be updated every April. It was Ms D's evidence that while job plans should have been updated each April, in reality, this was not always possible and as set out in her statement *'in some cases job plans carry through until a time when a new plan is agreed'*.

27. The Tribunal had regard to the 2019 on-call rota setting out Dr Swidan's on-call responsibilities. It noted that between April 2019 and December 2019, Dr Swidan appeared to have been scheduled to work his six weekend shifts. Those dates included some of the dates for which Dr Swidan had claimed additional payments.

28. It was the GMC's case that all the shifts set out in Schedule 1 had been claimed for by Dr Swidan despite them all representing the weekend shifts he was required to work as part of his job plan.

29. It was Dr Swidan's evidence in his statement that he claimed for every weekend he worked because, from 2017 onwards, his job plan did not require him to work on-call on any weekend day as he had instead been assigned an additional clinic. The Tribunal received no evidence to support this assertion. Ms D's evidence was that she would have had to be aware of any additional clinics worked by Dr Swidan in her role as Operations Manager. She said no record of any additional clinics undertaken by Dr Swidan in exchange for him not being required to work weekends existed.

30. The Tribunal was of the view that Dr Swidan's job plans for both 2018 and 2019 were clear that he was required to undertake six weekend shifts per year.

31. The Tribunal had regard to Dr Swidan's job plans and on-call rota for 2019. It concluded that Dr Swidan had been assigned six weekend shifts as required by his job plan. However, Dr Swidan had claimed payment for all of the shifts set out in Schedule 1. The Tribunal was satisfied that according to the terms of Dr Swidan's job plan, his weekend shifts had been paid for as part of his standard salary. Therefore, he should not have claimed additional payment for any of the shifts set out in Schedule 1.

32. Accordingly, the Tribunal found paragraph 2a of the Allegation proved.

Paragraph 2b

33. The Tribunal went on to consider whether Dr Swidan knew that he was already being paid to undertake the shifts set out in Schedule 1 as part of his job plan.

34. The Tribunal heard evidence from Ms D that Dr Swidan had travelled to Derby Hospital to engage the support of a colleague to update and sign his 2019 job plan. Therefore, the Tribunal could not accept that he did not know and understand its terms.

35. The Tribunal accepted that there was evidence that Dr Swidan had been in discussions with Dr F, Dr B and Ms D about changing the terms of job plan. There was evidence that he was dissatisfied with continuing to be required to work any weekends on-call. It was Ms D's evidence that Dr Swidan had wanted to maintain the same level of payment without being required to work weekends. Ms D said that it had been made clear to Dr Swidan that this would not be possible as his salary was calculated based on his job plan which included six weekend shifts on-call per year. Ms D stated that without the on-call weekends there was no additional duties that would fit in to the working week and allow Dr Swidan to be paid the same amount.

36. There was no evidence before the Tribunal that any agreement had been reached to alter the terms of Dr Swidan's job plan to remove his requirement to work weekends on-call. Dr B had told the Tribunal that she had intended to have a meeting with Dr Swidan about the terms of his job plan around March 2020 but due to the Covid-19 pandemic, such a meeting never took place. The Tribunal considered that Dr B's evidence corroborated, rather than contradicted the evidence of the GMC witnesses, Ms C and Ms D.

37. While Dr Swidan stated during Trust Interviews that he was not required to work weekend on-call shifts, there was no evidence to support this claim. In light of the other evidence, particularly, the ongoing conversations about Dr Swidan's job plan with his senior colleagues, the Tribunal did not accept that Dr Swidan could have genuinely believed that he was not required to work on-call weekend shifts as part of his job plan and could therefore claim payments for them.

38. The Tribunal was satisfied that Dr Swidan knew that no changes had been made to his job plan at the time he claimed payment for weekend shifts. Therefore, it concluded that he knew he was claiming payment for shifts for which he had already been paid given the terms of his job plan at the time.

39. The Tribunal found paragraph 2b of the Allegation proved.

Paragraph 3

40. The Tribunal considered whether Dr Swidan had acted dishonestly by knowingly claiming payment for shifts for which he had already been paid.

41. The Tribunal first applied the subjective test as set out in *Ivey*. It concluded that Dr Swidan was knowingly claiming payment for shifts for which he had already been paid due to the terms of his job plan. His belief that he could claim payment was not genuinely held as he knew the terms of his job plan had not changed and that he was required to work six on-call weekend shifts a year. In such circumstances, Dr Swidan must have known that it was dishonest to claim payment for the weekend shifts he had already been contracted for and therefore paid to work.

42. In any event, considering the second objective test as set out in *Ivey*, the Tribunal was satisfied that ordinary decent people would consider that Dr Swidan had acted dishonestly on five occasions by claiming payment for shifts that he knew he had already been paid for given the terms of his job plan which he had written, understood and signed.

43. The Tribunal found paragraph 3 of the Allegation proved.

Paragraph 4

44. The Tribunal considered whether Dr Swidan has submitted claims for payment for one or more shifts he purportedly undertook at Queen's Hospital. There were ten shifts identified and set out in Schedule 2.

45. The Tribunal had regard to the Claim Forms submitted by Dr Swidan and exhibited by the Consultants at the Trust who had signed them off for payment for the dates set out in Schedule 2.

46. The Tribunal determined that Dr Swidan did submit claims for payment for shifts he purported to have undertaken at Queen's Hospital.

47. Therefore, the Tribunal found paragraph 4 of the Allegation proved.

Paragraph 5a

48. The Tribunal considered whether Dr Swidan had not attended Queen's Hospital to undertake the shifts set out in Schedule 2.

49. The Tribunal had regard to the swipe card data and the evidence provided by Ms C.

50. Swipe card data had been used during the Trust investigation to ascertain whether Dr Swidan had attended the Queen's Hospital on the days he had purported to have worked and claimed payment for working.

51. On all the dates set out in Schedule 2, there was an absence of swipe card entries. It was submitted that this absence of swipe card data could only be explained by Dr Swidan not working or not being on the premises. The Tribunal heard evidence that the security of the Obstetrics and Gynaecology Unit meant that a swipe card was always required for access. In

contrast to the days where he was not believed to be present, Ms C's statement set out that on the days where Dr Swidan was present, there were as many as 86 entries for Dr Swidan's swipe card.

52. The Tribunal concluded that the swipe card data used to determine whether or not Dr Swidan had been present on a given day for which he had claimed payment was persuasive. It considered that an absence of any swipe card entries, particularly as compared to the high volume of swipe card entries for other days where Dr Swidan's presence at Queen's Hospital was not in doubt, suggested that for the ten shifts identified, he had not been at work.

53. The Tribunal therefore found paragraph 5a of the Allegation proved.

Paragraph 5b

54. The Tribunal moved on to consider whether Dr Swidan knew he had not attended Queen's Hospital to undertake the shifts set out in Schedule 2.

55. The Tribunal had regard to Dr Swidan's Trust Interviews. Dr Swidan accepted that he knew he had not worked the shifts he had claimed payment for on dates set out in Schedule 2. Dr Swidan's explanation was that he had planned to *'pay back'* the shifts at a later point when after working that shift, he would not claim further payment for it. In his Trust Interviews, Dr Swidan had accepted that his actions were *'awful'* and that he knew he should not have claimed payment for shifts he had not worked.

56. The Tribunal accepted that Dr Swidan had made it clear that he knew he had not attended Queen's Hospital for the shifts set out in Schedule 2 despite claiming payment for them.

57. The Tribunal found paragraph 5b of the Allegation proved.

Paragraph 6

58. The Tribunal went on to consider whether Dr Swidan's actions in claiming payment for shifts he knew he had not undertaken was dishonest.

59. The Tribunal first applied the subjective test as set out in *Ivey*. It concluded that Dr Swidan had knowingly claimed payment for shifts for which he knew he had not worked.

60. The Tribunal did not accept that Dr Swidan's stated belief that he had every intention of *'paying back'* the shifts he had been paid for months later, was genuinely held. It did not accept this on the basis that there was no evidence that this practice was known to or engaged in by any other member of staff within Dr Swidan's department at the Trust. None of the witnesses called by the GMC had ever heard of this practice, though all agreed that some swapping of shifts was commonplace. Dr B's evidence, though more supportive of Dr Swidan's claim that the rotas were often chaotic, and swaps were common, did not suggest

that any shifts claimed to have been worked would not have been *'paid back'* by the end of the same week. Whereas Dr Swidan's evidence was that he claimed payments for shifts in the winter months and planned to *'pay back'* the shifts for which he had been paid over the following Easter period. Further, the Tribunal was mindful that as rota co-ordinator, Dr Swidan had more opportunity to manipulate the on-call rotas to suit his desire not to work certain shifts.

61. Dr Swidan had not provided any evidence to demonstrate how he documented, tracked and notified those who were involved in the shifts that he had claimed payment for but not worked. The Tribunal was not persuaded that there was any systematic approach to Dr Swidan's claimed plan to *'pay back'* shifts he had already claimed payment for. The Tribunal did not accept that Dr Swidan's belief that it was appropriate to claim payment for shifts which he knew he hadn't worked, on the basis that he would work the shifts in the future, could be genuinely held. Further, in the Trust Interviews, he accepted the wrongdoing in his actions. It concluded that Dr Swidan knew that his actions were dishonest.

62. The Tribunal considered the second objective test as set out in *Ivey*, the Tribunal was satisfied that ordinary decent people would consider that Dr Swidan had acted dishonestly on ten occasions by claiming payment for shifts that he knew had not worked.

63. The Tribunal found paragraph 6 of the Allegation proved.

Conclusion

64. Having found the entirety of the Allegation proved, the Tribunal determined that there was no requirement for it to consider whether any adverse inference was required.

65. Further, whilst the Tribunal had taken Dr Swidan's previous good character into account, it was of limited assistance given the Tribunal's conclusions. The Tribunal determined that the GMC had proved its case and that Dr Swidan's explanations lacked any credibility and were contradicted by other witnesses' evidence, including evidence of conversations Dr Swidan had with them at the time of events.

The Tribunal's Overall Determination on the Facts

66. The Tribunal has determined the facts as follows:

Job plan out of hours work

1. You submitted a claim for payment of one or more shifts you purportedly undertook at Queen's Hospital in Burton ('Queen's Hospital') as set out in Schedule 1.
   Determined and found proved

2. You:

a. were already being paid to undertake the shifts set out in Schedule 1, as part of your job plan with Queen's Hospital;
Determined and found proved

b. knew that you were already being paid to undertake the shifts set out in Schedule 1 as part of your job plan with Queen's Hospital;
Determined and found proved

3. Your actions as set out at paragraph 1 were dishonest by reason of paragraph 2.
Determined and found proved

General claims for out of hours work

4. You submitted a claim for payment of one or more shifts you purportedly undertook at Queen's Hospital as set out in Schedule 2.
Determined and found proved

5. You:

a. did not attend Queen's Hospital to undertake the shifts set out in Schedule 2;
Determined and found proved

b. knew that you did not attend Queen's Hospital to undertake a shift on the dates set out in Schedule 2.
Determined and found proved

6. Your actions as set out at paragraph 4 were dishonest by reason of paragraph 5.
Determined and found proved

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

Determination on Impairment - 12/09/2022

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 Swidan'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. No further evidence was adduced at this stage of the proceedings.

Submissions

3. On behalf of the GMC, Ms Johnson submitted that the facts found proved amounted to serious misconduct and that consequently, Dr Swidan's fitness to practise is impaired by reason of his misconduct. Ms Johnson submitted that Dr Swidan's dishonest conduct was particularly serious as he misled his colleagues and created unreliable sources of information about how and who the department would be staffed by on 15 occasions. She submitted that Dr Swidan's actions risked harming patients. Ms Johnson referred to the principles set out in Good Medical Practice (2013) (GMP). She submitted that paragraphs 65, 68 and 71 (set out below) had been breached by Dr Swidan. Ms Johnson submitted that Dr Swidan's actions had been in pursuit of financial gain and demonstrated a course of repeated dishonest conduct. She submitted that his actions clearly amounted to serious misconduct.

4. Ms Johnson submitted a finding of impairment usually follows a finding of dishonesty and that there were no exceptional circumstances in this case to alter that principle. Ms Johnson acknowledged that Dr Swidan paid £10,000 to the Trust in 2021 and had apologised for claiming payment for shifts he did not work. However, she reminded the Tribunal that Dr Swidan had denied acting dishonestly throughout. Further, he had maintained that he was entitled to claim payment for the weekend shifts because they had been removed from his job plan. However, the Tribunal had found this was not the case. Ms Johnson submitted that Dr Swidan had demonstrated no insight, that he had made no attempts at remediation and that in such circumstances, the Tribunal could not be satisfied that there was no risk of repetition. Accordingly, Ms Johnson invited the Tribunal to find that Dr Swidan's fitness to practise was currently impaired by reason of misconduct. She submitted that a finding of impairment was required to uphold all three limbs of the overarching objective.

The Relevant Legal Principles

5. 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.

6. 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 that the misconduct was serious. Second, whether the finding of that serious misconduct could lead to a finding of impairment.

7. The Tribunal must determine whether Dr Swidan'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.

The Tribunal's Determination on Impairment

Misconduct

8. The Tribunal had regard to its factual findings. It had concluded that Dr Swidan had knowingly acted dishonestly on 15 occasions over the course of his working practice for a period of three months. He had misled his colleagues, seeking their signature on documents that contained misleading information, in the full knowledge that he had either, already been paid for the shift given the terms of his job plan, or had not been present to work the shift at all. Dr Swidan had been motivated by personal and financial gain, and had developed a dishonest scheme to claim payment, almost weekly, for shifts he was not entitled to be paid for. Moreover, in so doing, Dr Swidan had inappropriately diverted funds away from the Trust.

9. The Tribunal considered that Dr Swidan had clearly breached paragraphs 65, 68 and 71 of GMP:

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

10. Given the seriousness of its findings that Dr Swidan had engaged in a dishonest scheme, that engaged many consultants and took place over a number of months for personal financial gain the Tribunal was in no doubt that this amounted to serious misconduct. Such actions amounted to Dr Swidan having fallen so far short of the standards of conduct reasonably to be expected of a doctor as to warrant a finding of misconduct that was serious.

Impairment

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

12. In considering whether Dr Swidan's fitness to practise is currently impaired, the Tribunal applied the test as set out by Dame Janet Smith in the Fifth Shipman Report as adopted by the High Court in *CHRE v NMC and Grant* [2011] EWHC 927 (Admin) ('*Grant*'):

> *Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination 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.*

13. In considering *Grant*, the Tribunal first considered whether Dr Swidan had put patients at unwarranted risk of harm. The Tribunal accepted that in creating incorrect records and diverting resources from the Trust, Dr Swidan had potentially put patients at risk of harm. However, it had not been provided with evidence of any direct harm caused to patients. Dr Swidan had subsequently reached out to the Trust in February 2021 and paid £10,000 as an apology for his actions in claiming money for shifts he had not *'paid back'* before he retired. The Tribunal was mindful that no concerns about Dr Swidan's clinical skills had been raised. Rather, it was concerned with his conduct, which it considered had brought the profession into disrepute, had breached fundamental tenets of the profession and had plainly been dishonest.

14. The Tribunal accepted that Dr Swidan had paid the Trust £10,000 and apologised for some of his actions. Whilst there had been a limited admission of wrongdoing by Dr Swidan during his Trust Interviews, having not attend these proceedings, and having not produced any reflections on his actions, the Tribunal had no opportunity to explore the sincerity of his apology or the depth of his understanding about his admitted wrongdoing. The Tribunal had not been reassured that Dr Swidan appreciated the gravity of his misconduct, and the impact of his actions, particularly on the colleagues whom he had misled in order to claim payments for shifts when he was not entitled to. The Tribunal concluded that, at its highest, Dr Swidan's insight was minimal.

15. The Tribunal acknowledged that it is difficult to demonstrate remediation in cases of dishonesty. Usually, this is because dishonesty amounts to an attitudinal failing that cannot be easily addressed. However, the Tribunal considered that remediation for dishonesty such as Dr Swidan's, is possible. The Tribunal accepted that paying the Trust £10,000 could be considered an attempt to remedy his misconduct. However, such payment did not demonstrate that Dr Swidan had taken any steps to remediate the attitudinal element of his dishonesty. There was no evidence before the Tribunal that could reassure it that Dr Swidan had addressed any of the concerns raised by the Trust or by this Tribunal about his probity, honesty and integrity. The Tribunal found that there was no meaningful evidence of remediation before it.

16. Dr Swidan had not demonstrated that he had understood and appropriately remediated for a dishonest scheme involving multiple consultants that continued over several months. In such circumstances, the Tribunal could not be satisfied that the risk of repetition had been addressed. Although the Tribunal noted that Dr Swidan had now retired it could not discount the possibility that he may seek to return to work as a doctor in the future.

17. The Tribunal considered the overarching objective. It determined that such serious dishonesty required a finding of impairment 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. The Tribunal could identify no exceptional circumstances, and it considered that a finding of impairment was necessary in this case involving repeated dishonesty linked to Dr Swidan's working practice.

18. Accordingly, the Tribunal has determined that Dr Swidan's fitness to practise is impaired by reason of misconduct.

Determination on Sanction - 12/09/2022

1. This determination will be handed down in private. However, as this case concerns Dr Swidan's misconduct, a redacted version will be published at the close of the hearing.

2. Having determined that Dr Swidan'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

3. The Tribunal has taken into account evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction. No further evidence was adduced at this stage of proceedings.

Submissions

4. On behalf of the GMC, Ms Johnson identified aggravating and mitigating factors for the Tribunal to consider. She took the Tribunal through the sanctions available in ascending order of severity. She submitted that it would be inappropriate to take no action and that no undertakings had been agreed. Ms Johnson submitted that an order of conditions would only be appropriate if Dr Swidan had demonstrated sufficient insight into his misconduct. She reminded the Tribunal of its finding that his insight was minimal. Turning to suspension, Ms Johnson submitted that where a doctor has insight and does not pose a risk of repeating their misconduct, suspension can be appropriate. However, she submitted that in view of the seriousness of Dr Swidan's persistent dishonest misconduct, his behaviour was fundamentally incompatible with continued registration. Ms Johnson submitted that erasure was the only appropriate sanction in this case and that only erasure would uphold the overarching objective.

The Tribunal's Determination on Sanction

5. The decision as to the appropriate sanction, if any, to impose in this case is a matter for the Tribunal exercising its own judgement. In reaching its decision, the Tribunal has taken the Sanctions Guidance (2020) ('the SG') into account and borne in mind the overarching objective.

6. The Tribunal reminded itself that the main reason for imposing any sanction is to protect the public and that sanctions are not imposed to punish or discipline doctors, even though they may have a punitive effect. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Swidan's interests with the public interest.

Aggravating and Mitigating Factors

7. The Tribunal has already set out its decision on the facts and impairment which it took into account during its deliberations on sanction. Before considering what action, if any, to take in respect of Dr Swidan's registration, the Tribunal considered and balanced the aggravating and mitigating factors in this case.

8. The Tribunal identified the following aggravating factors:

- Dr Swidan's actions demonstrated a pattern of dishonest misconduct spanning a period of three months, involving 15 claims for payment to which Dr Swidan was not entitled;
- Dr Swidan's dishonest scheme involved a significant number of his consultant colleagues, he abused the trust they had placed in him to be open and honest;

- Dr Swidan's actions left the Trust with inaccurate records as to which doctors had worked the shifts in issue;

9. The Tribunal identified the mitigating factors to be:

- Dr Swidan had no previous regulatory findings against him and it could be said that his dishonest conduct was out of character;
- Up to his retirement, Dr Swidan had been a good and competent clinician of whom his colleagues and seniors spoke highly;
- Dr Swidan had proactively contacted the Trust in 2021 and paid £10,000 as an acknowledgment of the shifts he had claimed payment for, but had not worked or yet *'paid back'*.

10. In considering Dr Swidan's insight and remediation, the Tribunal acknowledged that Dr Swidan had considered his actions in relation to the shifts for which he claimed payment but had not worked were *'awful'*. However, there was no demonstration of any insight beyond this limited acknowledgement of wrongdoing. Dr Swidan had sought to pay the sum of £10,000 to the Trust to cover the costs of the shifts he had not completed by the time of his retirement which the Tribunal accepted as mitigation. Further, the Tribunal acknowledged that since his retirement, Dr Swidan had XXX which may have impacted on his ability to remediate for his misconduct. However, the conduct had taken place between November 2019 and January 2020. The Tribunal was of the view that Dr Swidan had a significant period of time both before and after his XXX and retirement to begin to reflect and remediate for his misconduct. His limited engagement in this hearing had not included any reflections on his misconduct, nor did he appear to have grappled with the gravity and impact of his behaviour on others within the Trust. Taking these factors together, the Tribunal remained of the view that Dr Swidan's insight was minimal and he had not fully remediated the attitudinal aspects of his misconduct.

11. The Tribunal balanced the aggravating and mitigating factors identified in this case in assessing the overall seriousness of the case. The Tribunal considered both the aggravating and mitigating factors throughout its deliberations when determining what, if any, the appropriate and proportionate sanction to impose would be.

12. The Tribunal considered each sanction in ascending order of severity, starting with the least restrictive.

No action

13. The Tribunal first considered whether to conclude the case by taking no action. It noted that taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances. The Tribunal determined that there are no exceptional circumstances in this case and that, given the seriousness of its findings, it would not be sufficient, proportionate, nor in the public interest to conclude this case by taking no action.

Conditions

14. The Tribunal next considered whether to impose conditions on Dr Swidan's registration. The Tribunal acknowledged that conditions are appropriate and workable in certain circumstances including where a doctor has been open and honest and has shown insight. The Tribunal was mindful that the SG provides that in cases of dishonesty, it is difficult to identify any conditions that could be appropriate, proportionate, workable, and measurable. The Tribunal had found that Dr Swidan's dishonesty amounted to an attitudinal issue that was more difficult to remediate. In light of Dr Swidan's dishonest conduct and the lack of any concerns about his clinical practice, the Tribunal determined that it would be difficult to formulate appropriate, proportionate, workable and measurable conditions. Further, the Tribunal was of the view that imposing conditions on Dr Swidan's registration would not sufficiently mark the seriousness of his dishonest conduct.

Suspension

15. The Tribunal went on to consider whether to impose a period of suspension on Dr Swidan's registration. It had regard to paragraphs 91 to 98 of the SG. The Tribunal also had regard to the specific paragraphs of the SG relating to dishonesty. It considered paragraphs 124 and 128:

> *'**124** Although it may not result in direct harm to patients, dishonesty related to matters outside the doctor's clinical responsibility (eg providing false statements or fraudulent claims for monies) is particularly serious. This is because it can undermine the trust the public place in the medical profession. Health authorities should be able to trust the integrity of doctors, and where a doctor undermines that trust there is a risk to public confidence in the profession. Evidence of clinical competence cannot mitigate serious and/or persistent dishonesty.*
>
> ***128** Dishonesty, if persistent and/or covered up, is likely to result in erasure…'*

16. The Tribunal accepted that suspension does have a deterrent effect and could be used to send a signal to Dr Swidan, the profession, and the public about what is regarded as behaviour unbefitting a registered doctor. The Tribunal had regard to the SG which provides that suspension may be appropriate where there is an acknowledgement of fault, and it is satisfied the conduct will not be repeated. In light of its findings in relation to the seriousness of Dr Swidan's dishonest conduct, the aggravating factors identified, his minimal insight, limited evidence of remediation, and the ongoing risk of repetition, the Tribunal determined that Dr Swidan's behaviour was fundamentally incompatible with continued registration. As such, a period of suspension would not be appropriate or proportionate as it would not sufficiently protect the public interest, nor would it maintain public confidence or uphold proper professional standards.

Erasure

17. The Tribunal went on to consider erasure. The Tribunal reminded itself of the aggravating factors it had identified in this case along with Dr Swidan's breaches of GMP. The Tribunal identified the following paragraphs of the SG to be relevant to its deliberations:

> *'108 Erasure may be appropriate even where the doctor does not present a risk to patient safety, but where this action is necessary to maintain public confidence in the profession. For example, if a doctor has shown a blatant disregard for the safeguards designed to protect members of the public and maintain high standards within the profession that is incompatible with continued registration as a doctor.*
>
> *109 Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).*
>
> > *a A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor.*
> >
> > *b A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety…*
> >
> > *h Dishonesty, especially where persistent and/or covered up (see guidance below at paragraphs 120–128)…*
> >
> > *j Persistent lack of insight into the seriousness of their actions or the consequences.'*

18. The Tribunal concluded that Dr Swidan's dishonesty had been repeated over an extended period, it impacted upon his colleagues and diverted resources from the Trust. Dr Swidan had pursued his own interests which clearly breached the principles of GMP and the fundamental tenets of the profession to act with honesty and integrity. Dr Swidan had failed to demonstrate sufficient insight into his misconduct and had not fully remediated. The Tribunal could not be satisfied that Dr Swidan would not repeat his dishonest conduct if a similar situation arose. In all the circumstances, the Tribunal determined that erasure was the only appropriate and proportionate sanction.

19. The Tribunal concluded that erasure was the only sanction that would ensure the overarching objective was upheld. It considered that any sanction less severe would fail to promote and maintain public confidence in the medical profession, and to uphold proper professional standards and conduct for members of the profession.

20. The Tribunal therefore determined that Dr Swidan's name be erased from the Medical Register.

Determination on Immediate Order - 12/09/2022

1. Having determined to erase Dr Swidan's name from the Medical Register, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether his registration should be subject to an immediate order.

Submissions

2. Ms Johnson submitted that the GMC was not seeking an immediate order in this case.

The Tribunal's Determination

3. The Tribunal has taken account of the relevant paragraphs of the SG, in particular paragraph 172 which states:

> 172 *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…*

4. The Tribunal accepted that Dr Swidan did not pose a risk to patients. However, the Tribunal determined that, given the seriousness with which it viewed Dr Swidan's misconduct, its findings on impairment including the ongoing risk of repetition and the sanction it has imposed, it was in the public interest to suspend his registration with immediate effect.

5. The substantive order of erasure to be imposed on Dr Swidan's registration will take effect 28 days from when notice is deemed to have been served upon him, unless he lodges an appeal in the interim. If Dr Swidan lodges an appeal, the immediate order for suspension will remain in place until such time as the outcome of any appeal is determined.

6. There is no interim order to revoke.

7. That concludes the case.

ANNEX A – 09/09/2022

1. This determination will be handed down in private. However, as this case concerns Dr Swidan's alleged misconduct, a redacted version will be published at the close of the hearing.

Service of Notice of the Hearing

2. Dr Swidan is neither present nor represented at this hearing.

3. Ms Johnson, Counsel, on behalf of the GMC, provided the Tribunal with documents regarding service of these proceedings on Dr Swidan. This included a copy of the GMC Notice of Allegation letter sent to Dr Swidan's email address, dated 28 July 2022. A second email was sent by the GMC on 28 July 2022 to Dr Swidan to include the second part of the draft hearing bundle. Dr Swidan replied to this email on 1 August 2022. Dr Swidan provided the GMC with attachments and his statement to support his case. He also requested the attendance of three witnesses for cross-examination saying *'they were the managers and clinical lead during the period of the allegations and they can confirm lots of points in my statement'*. Dr Swidan sent a further email on 1 August 2022 and included further attachments to be added to the hearing bundle. The Tribunal was also provided with further correspondence between the GMC and Dr Swidan about the witnesses he wished to attend the hearing. Dr Swidan also confirmed receipt to the GMC of its intended sanction submission on 14 August 2022.

4. The Tribunal was given a copy of the Medical Practitioners Tribunal Service (MPTS) Notice of Hearing letter, dated 2 August 2022, which was emailed to Dr Swidan on the same day. On 3 August 2022, Dr Swidan confirmed he received the email enclosing the Notice of Hearing. Dr Swidan provided a further reply to this email on 31 August 2022. He wrote *'Unfortunately due XXX, I will not be able to attend the hearing on 5th of September. I already send emails back on July with that effect'*.

5. The Tribunal had regard to the case of *General Medical Council v Adeogba; General Medical Council v Visvardis* [2016] EWCA Civ 162. The Tribunal was satisfied that all reasonable efforts had been made to serve notice of the hearing on Dr Swidan. The Tribunal had regard to the service bundle provided by the GMC, as well as Ms Johnson's submissions. Having considered all of the evidence before it, particularly noting Dr Swidan's own replies to the GMC and MPTS confirming that he would not be attending, the Tribunal was satisfied that notice of the hearing had been served in accordance with Rules 15 and 40 of the General Medical Council (Fitness to Practise) Rules 2004 (as amended) ('the Rules') and paragraph 8 of Schedule 4 to the Medical Act 1983 (as amended).

Proceeding in Dr Swidan's absence

6. The Tribunal went on to consider whether it would be appropriate to proceed with this hearing in Dr Swidan's absence pursuant to Rule 31 of the Rules. The Tribunal was conscious that the discretion to proceed in the absence of a doctor should be exercised with

appropriate care and caution, balancing the interests of the doctor with the wider public interest.

7. Ms Johnson invited the Tribunal to proceed in Dr Swidan's absence. She submitted that Dr Swidan is aware of these proceedings and has made clear on multiple occasions, most recently on 31 August 2022, that he would not be attending the hearing due to his XXX. Ms Johnson referred the Tribunal to the documentation provided by Dr Swidan regarding his XXX. She submitted that it had been agreed that this hearing would proceed remotely to give Dr Swidan the best chance of being able to attend. Ms Johnson submitted that Dr Swidan has always been clear that he did not intend to attend these proceedings, that he had not made any application to adjourn and that he was aware that the hearing could continue in his absence. In those circumstances, Ms Johnson submitted that the Tribunal could conclude that Dr Swidan had voluntarily absented himself from these proceedings. Further, she submitted that the situation was unlikely to change if the hearing was adjourned as this stage. Ms Johnson submitted that it was in the public interest to proceed with the hearing today.

8. The Tribunal considered Dr Swidan's email responses, including his most recent confirmation that he would not be attending due to his XXX from 31 August 2022. The Tribunal was satisfied that Dr Swidan was aware of the investigation process and had been engaging with the GMC by email. The Tribunal considered whether to adjourn the proceedings and had regard to the evidence provided by Dr Swidan in respect of his XXX. It concluded that his XXX and that a short adjournment was unlikely to allow Dr Swidan time to XXX and engage more fully in these proceedings. Dr Swidan had engaged with both the GMC and the MPTS by email, providing evidence to support his case, and had not requested an adjournment at any stage. It considered that an adjournment would serve no useful purpose in such circumstances. An adjournment would also risk the further deterioration of the memories of the witnesses called to give evidence, one of whom was attending in support of Dr Swidan's case.

9. Taking all of the evidence into account, the Tribunal concluded that Dr Swidan had voluntarily absented himself from these proceedings. The Tribunal considered the public interest. In all the circumstances, it determined that it was in public interest to proceed with this hearing today.

10. Therefore, in accordance with Rule 31, the Tribunal has determined to proceed in Dr Swidan's absence.

Schedule 1

Date	Time
17 November 2019	8:30-21:30
24 November 2019	8:30-21:30
26 December 2019	8:30-21:30
12 January 2020	8:30-21:30
26 January 2020	8:30-21:30

Schedule 2

Date	Time
2 November 2019	8:30-21:30
16 November 2019	8:30-21:30
23 November 2019	8:30-21:30
30 November 2019	8:30-21:30
1 December 2019	8:30-21:30
7 December 2019	8:30-21:30
28 December 2019	8:30-21:30
29 December 2019	8:30-21:30
11 January 2020	8:30-21:30
25 January 2020	8:30-21:30