

**PUBLIC RECORD**

**Dates:** 14/02/2020

**Medical Practitioner's name:** Dr Dhiraj GUPTA

**GMC reference number:** 6091778

**Primary medical qualification:** MB BS 2000 Nagpur University

**Type of case**

Review - Misconduct

**Outcome on impairment**

Not Impaired

**Summary of outcome**

Suspension revoked

**Tribunal:**

Legally Qualified Chair	Mr Sean Ell
Lay Tribunal Member:	Mrs Carol Douglas
Medical Tribunal Member:	Dr Mojisola Gesinde
Tribunal Clerk:	Ms Chloe Ainsworth

**Attendance and Representation:**

Medical Practitioner:	Present and not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Mr Richard Holland, Counsel

**Attendance of Press / Public**

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

## **Record of Determinations – Medical Practitioners Tribunal**

### **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 Impairment - 14/02/2020**

#### **Background**

1. Dr Gupta's case was first considered in a hearing which took place in January 2019 ('The 2019 Tribunal'). Dr Gupta was not present or represented. The Tribunal does not intend to rehearse the full background of Dr Gupta's case, but has had regard to the determinations of the previous Tribunal.

#### The 2019 Tribunal

2. The 2019 Tribunal considered Dr Gupta's actions in the completion and submission of timesheets in relation to dates across May and June 2016. Regarding six of those dates, the 2019 Tribunal found that Dr Gupta completed and submitted timesheets containing untrue information, five of which he knew to be untrue. The 2019 Tribunal also found that Dr Gupta completed and submitted three performance based assessment ('PBA') forms and three learning agreement meeting ('LAM') forms. The forms all contained untrue information. The 2019 Tribunal found that Dr Gupta did not know the information on the PBA forms to be untrue, but found that Dr Gupta deliberately included untrue information on the LAM forms and that his actions were motivated by career progression. The 2019 Tribunal found Dr Gupta's actions to be dishonest in relation to the five timesheets and the LAM forms.

3. The 2019 Tribunal determined that Dr Gupta's dishonest actions in relation to the timesheets were a serious breach of the trust placed in him by his colleagues and that by deliberately completing the timesheets with hours he had not worked, Dr Gupta placed his own financial interests ahead of the effective running of Luton and Dunstable University Hospital NHS Foundation Trust ('the Trust'). In relation to the LAM forms, the 2019 Tribunal found that Dr Gupta was attempting to accelerate his own career progression by demonstrating false evidence of competency. The 2019 Tribunal was particularly concerned that Dr Gupta intended to use these forms

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to obtain his Certificate of Eligibility for Specialist Registration ('CESR'). In all the circumstances, the Tribunal found that Dr Gupta's actions amounted to misconduct.

4. Having found Dr Gupta's actions amounted to misconduct, the 2019 Tribunal considered if his fitness to practise was impaired. During the 2019 hearing, Dr Gupta stated that he would reflect and show insight into his errors. However, the 2019 Tribunal noted that Dr Gupta did not make any formal admissions or apologies for his actions. It concluded that it could not be confident that Dr Gupta had insight into the impact of his dishonest actions. The 2019 Tribunal accepted that Dr Gupta was a competent clinician, but determined that this did not mitigate or excuse his dishonesty. It determined that such actions could bring the medical profession into disrepute and that public confidence in the medical profession would be undermined if a finding of impairment were not made. Further, it determined that a finding of impairment was necessary to mark the seriousness of Dr Gupta's departures from the proper professional standards and conduct for the members of the profession. Accordingly, the 2019 Tribunal found Dr Gupta's fitness to practise was impaired by reason of misconduct.

5. The 2019 Tribunal determined to impose a 12-month period of suspension on Dr Gupta's registration. It took the view that although Dr Gupta's misconduct was serious, his behaviour ultimately fell short of being fundamentally incompatible with continued registration. It was satisfied that the public would not want to lose an otherwise competent and capable doctor.

6. The 2019 Tribunal determined to direct a review of Dr Gupta's case. It considered that a future tribunal may be assisted by Dr Gupta providing the following:

- Evidence that he has reflected on the Tribunal's findings and developed insight into his misconduct. This may take the form of a reflective diary, log or statement;
- Evidence of relevant continuing professional development ('CPD') activities, specifically courses on professional ethics or probity;
- Evidence that he has kept his medical knowledge and skills up to date;
- Testimonials and/or references which may be professional or personal and;
- Any other information that Dr Gupta considers will assist.

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### **Today's Review Hearing**

7. The Tribunal has to decide in accordance with Rule 22(1)(f) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules') whether Dr Gupta's fitness to practise is impaired by reason of misconduct.

### **The Evidence**

8. The Tribunal has taken into account all the evidence received, both oral and documentary.

9. The Tribunal heard oral evidence from Dr Dhiraj Gupta, in person.

10. The Tribunal received:

- Email and letter from the GMC to Dr Gupta, dated 22 March 2019;
- Email from the GMC to Dr Gupta, dated 18 October 2019;
- Letter from GMC to Dr Gupta, dated 23 October 2019;
- Email from Dr Gupta to GMC, dated 2 November 2019;
- Email from GMC to Dr Gupta, dated 4 November 2019;
- Email from Dr Gupta to GMC, dated 9 December 2019;
- Email from Dr Gupta to MPTS, dated 7 January 2020, with attached middle grade rota;
- Email from Dr Gupta to the GMC, dated 17 January 2020;
- Email from Dr Gupta to the GMC, dated 17 January 2020, attaching:
  - Reflective diary;
  - Evidence of CPD;
  - Courses and activities related to medical ethics and probity;
  - Colleague testimonials;
  - Patient/patient's family testimonials;
  - Other information and concluding submissions.
- Email from Dr Gupta to the GMC, dated 29 January 2020, attaching:
  - A letter from Mr A, dated 9 January 2020.
- Bundle of testimonials submitted by Dr Gupta.

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### **Submissions**

#### GMC submissions

11. On behalf of the GMC, Mr Holland submitted that the GMC is neutral on the matter of impairment. He submitted that the Tribunal should bear in mind that some of the certificates and testimonials that Dr Gupta has submitted are dated from 2016 and that, therefore, they may be of limited weight. Mr Holland also outlined the Tribunal's considerations when deciding if Dr Gupta's fitness to practise remains impaired, namely his level of insight and that he has maintained his clinical ability.

#### Dr Gupta's submissions

12. Dr Gupta submitted that he has served his suspension and taken corrective measures to address the concerns of the 2019 Tribunal and to satisfy the GMC. He submitted that he had witnesses available to attend today's hearing and the GMC stated that it did not wish to cross-examine these witnesses. Dr Gupta submitted that the measures he has taken during his 12-month suspension will be with him throughout his future clinical practice.

### **The Relevant Legal Principles**

13. The Tribunal reminded itself that the decision of impairment is a matter for the Tribunal's judgement alone. As noted above, the previous Tribunal set out the matters that a future Tribunal may be assisted by. The Tribunal is aware that it is for the doctor to satisfy it that he would be safe to return to unrestricted practice.

14. The Tribunal must determine whether Dr Gupta'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

15. The Tribunal considered if Dr Gupta's fitness to practise remains impaired by reason of misconduct.

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16. The Tribunal considered Dr Gupta's level of insight into his actions, namely his dishonesty. In doing so, it had regard to Dr Gupta's reflective diary. It noted that Dr Gupta stated that he accepted the 2019 Tribunal's findings, but it also noted that a significant portion of his reflective diary appeared to challenge those findings. The Tribunal was mindful that Dr Gupta did not have to accept the 2019 Tribunal's findings in order to demonstrate insight into his actions.

17. During his oral evidence, Dr Gupta expanded upon his written reflections, he accepted fault for his actions and stated that he understood the 2019 Tribunal's findings and the reasons behind them. He gave a robust explanation of the impact of dishonesty on the trust of colleagues and on the public. The Tribunal noted in his evidence, Dr Gupta had sought to address all the issues identified by the 2019 Tribunal. He was able to explain to the Tribunal his understanding of why the 2019 Tribunal had identified the issues it had. In all the circumstances, the Tribunal determined that Dr Gupta has demonstrated sufficient insight into his misconduct.

18. The Tribunal considered that Dr Gupta has taken extensive measures to remediate, including attendance on an ethics course in the UK on 27 September 2019, despite living in India. The Tribunal was impressed by Dr Gupta's application of the learning from the ethics course. During his oral evidence, Dr Gupta outlined the importance of integrity, which he described as *'doing the right thing even when nobody is watching'*. Furthermore, Dr Gupta informed the Tribunal that whilst he was in the UK for the ethics course, he took the opportunity to apologise to the colleagues that had been impacted by his dishonest actions. Dr Gupta also attended and delivered ethics courses in India.

19. Dr Gupta informed the Tribunal of practical changes that he has made to his practice in order to prevent errors on any paperwork in the future. He stated that he now practises contemporaneous record keeping and is careful about keeping an up to date diary with accurate dates, time and notes on surgeries completed. Dr Gupta also explained how he would behave differently if faced with the same circumstances in the future.

20. The Tribunal noted that Dr Gupta had worked in India for a charity as a medical practitioner providing services to rural, disadvantaged communities. It was particularly impressed by Dr Gupta's evidence, that upon receiving payment for this work, he donated it back to the charity. Dr Gupta explained he had done this because he wanted to give back and to show he is not normally financially motivated. The Tribunal was of the view that this addressed the central concern of

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the 2019 Tribunal, that Dr Gupta was dishonest in order to obtain financial remuneration.

21. Taking the above into account and notwithstanding that dishonesty can be difficult to remediate, the Tribunal was satisfied that Dr Gupta has sufficiently remediated his misconduct.

22. The Tribunal noted that the 2019 Tribunal did not have any concerns regarding Dr Gupta's clinical competence. Dr Gupta has continued to work in India and there have been no concerns raised about his work. The Tribunal has been provided with evidence of attendance on workshops and testimonials attesting to his medical practice in India, demonstrating that Dr Gupta has maintained his clinical skills during the period of suspension.

23. In all the circumstances, the Tribunal determined that Dr Gupta is unlikely to repeat his misconduct in the future. Therefore, the Tribunal determined that Dr Gupta's fitness to practise is not impaired by reason of misconduct.

24. The substantive sanction of suspension currently imposed by the 2019 Tribunal remains in place up to and including 8 March 2020. This Tribunal considered whether to revoke the suspension with immediate effect. The Tribunal noted that the suspension imposed was to mark the seriousness of Dr Gupta's misconduct, to send a message to the profession, protect the public interest and serve to reassure the public and uphold the reputation of the profession. Furthermore, it would allow Dr Gupta to develop further insight into the concerns identified.

25. However, the Tribunal took the view that Dr Gupta has done all that has been expected of him to fully remediate his misconduct. The Tribunal has therefore determined to revoke the suspension with immediate effect. Whilst the Tribunal notes that this results in a shorter period of suspension the Tribunal is satisfied that there is a public interest in allowing a doctor who has fully remediated to return to work at the earliest opportunity.

26. That concludes this case.

**Confirmed**

**Date** 14 February 2020

Mr Sean Ell, Chair