

PUBLIC RECORD

Dates: 31/08/2022 - 02/09/2022

Medical Practitioner's name: Dr Essam ALY

GMC reference number: 4360476

Primary medical qualification: MB BCh 1985 University of Asyut

Type of caseRestoration following
disciplinary erasure**Summary of outcome**Restoration application refused.
No further applications allowed for 12 months from last application.**Tribunal:**

Legally Qualified Chair	Miss Samantha Gray
Lay Tribunal Member:	Mr David Raff
Medical Tribunal Member:	Dr Nigel Langford
Tribunal Clerk:	Miss Racheal Gill

Attendance and Representation:

Medical Practitioner:	Present and not represented
Medical Practitioner's Representative:	N/A
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 in public.

Overarching Objective

Throughout the decision making process the tribunal has borne in mind the statutory overarching objective as set out in s1 Medical Act 1983 (the 1983 Act) to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

Determination on Restoration- 02/09/2022

1. This determination will be handed down in private as it contains information that is confidential, XXX. This is in accordance with Rule 41 of the Rules. However, as this case concerns Dr Aly's application for restoration to the Medical Register, a redacted version will be published at the close of the hearing, XXX.

Background

2. Dr Aly's name was erased from the Medical Register for disciplinary reasons following a fitness to practise hearing which concluded 14 October 2016 ('the 2016 Panel'). This is Dr Aly's first restoration application.

The 2016 Panel

3. Dr Aly's case was first considered by a FTP hearing between 5 September 2016 to 14 October 2016. Dr Aly did not attend and was unrepresented. The matters which led to Dr Aly's erasure were identified in three distinct parts; assault, verbal abuse and probity issues within a domestic context, work related probity issues and clinical care.

Assault, Verbal Abuse and Probity Issues - XXX

4. The 2016 Panel found proved allegations of violent and controlling behaviour XXX. The 2016 Panel also found proved that Dr Aly submitted an email, purportedly from Ms B, during court proceedings. Ms B disputed that she had written this email and reported the issue both to the GMC and to the police. The 2016 Panel found Dr Aly's actions to be dishonest.

5. The 2016 Panel determined that any physical, mental and emotional assault, of the nature found proved during the 2016 hearing, perpetrated by one individual upon another, would amount to misconduct. Given the finding that Dr Aly, a registered practitioner, perpetrated a series of assaults over a period of seven years, the 2016 Panel determined that it was self-evident that this amounted to misconduct. Dr Aly also engaged in verbal abuse, made a threat to kill and falsified an email as part of his case to the XXX Court.

Clinical Care

6. At the time of the events that led to his 2016 hearing, Dr Aly was employed as a locum Consultant Anaesthetist at the Basildon and Thurrock University Hospital NHS Trust. The 2016 Panel had found proved that on 27 August 2014, Dr Aly had failed to provide good clinical care to Patient A, prior to the operation, during the operation and postoperatively.

Work Related Probity

7. During a period of employment with the Burton Trust, Dr Aly requested a career break under its Special Leave Policy. Dr Aly initially requested a period of six months, then subsequently requested an extension to 12 months, which was granted. The 2016 Panel found it proved that Dr Aly, whilst on his career break, had engaged in paid employment in Bahrain between September 2012 and October 2013, which was in breach of the Trust's Special Leave Policy. The 2016 Panel also found it proved that Dr Aly had falsified documents relating to that activity and made several denials of the truth to the Burton Trust both orally and in writing.

8. The 2016 Panel considered that Dr Aly brought the medical profession into disrepute in relation to the facts found proved in the paragraphs referring to XXX, matters of probity and matter of clinical concern. The 2016 Panel found that Dr Aly's conduct, when taken in the round, had, in the past, brought the medical profession into disrepute. In the absence of any mitigation and evidence of insight, remorse or remediation, the 2016 Panel considered that it was impossible to suggest that Dr Aly was not liable, in the future, to bring the medical profession into disrepute. The 2016 Panel found that Dr Aly's actions amounted to serious misconduct and concluded that his fitness to practice was impaired.

9. The 2016 Panel turned to the issue of sanction and considered that a period of suspension would be an insufficient sanction to protect the public and to transmit the necessary signal to the doctor, the medical profession, and the public that Dr Aly's wholly unacceptable pattern of behaviour was unbecoming a registered doctor. The 2016 Panel found that Dr Aly's refusal to operate responsibly, appropriately, and dutifully as an integrated

member of a team was a fundamental flaw evident throughout the history of events. The 2016 Panel determined that Dr Aly's actions in totality were symptomatic of that flaw. It The 2016 Panel concluded that erasure from the medical register was the only appropriate and proportionate sanction in this case.

Today's Restoration Hearing

10. This Tribunal has convened to consider Dr Aly's application for his name to be restored to the Medical Register in accordance with Section 41 of the Medical Act 1983 (as amended) and Rule 24 of the GMC (Fitness to Practise) Rules 2004 (as amended).

The Evidence

11. The GMC called no witnesses to give oral evidence and relied solely on the documentary evidence provided to the Tribunal.

12. Dr Aly provided a written personal statement of reflections, dated 30 August 2022, together with written closing submissions. He also gave evidence at the hearing. In addition, the Tribunal heard oral evidence in support of Dr Aly from Dr D, Consultant Anaesthetist and previous colleague of Dr Aly.

13. The Tribunal has taken into account all the documentary evidence provided by both parties. This evidence included, but was not limited to:

- Dr Aly's application for Restoration, dated 11 January 2022;
- The 2016 Panel's determination on facts, impairment, sanction and immediate order;
- Transcript of Dr Aly's 2016 Panel hearing;
- Dr Aly's CPD and Certificates. Dated 2017-2022;
- Data Flow reports, dated 2015 and 2017;
- Communications between Dr Aly and other individuals in relation to testimonial references.

Submissions

14. The submissions made by Mr Ciaran Rankin on behalf of the GMC and Dr Aly are a matter of record and the following paragraphs provide a non-exhaustive summary of those submissions.

Dr Aly's submissions

15. Dr Aly XX. He stated that he did not make any financial gains from these dishonest actions. XXX

16. Dr Aly submitted that the clinical case referred to in the 2016 Panel was the only clinical failure in his career up to that point, and was a consequence of XXX as well as implementing procedures not accepted in the UK. XXX. He further submitted that since that time he has been in a very good standing with no single complaint from patients or colleagues. He submitted that he has never received any criminal conviction not even a parking or speeding fine. He submitted that he had volunteered to return to the UK in 2020 to help with the Coronavirus pandemic, but the GMC had refused his registration at that point. He provided to the Tribunal evidence of ongoing CPD having instituted an international conference. He also submitted that he had certificates of Good Standing in Egypt and United Arab Emirates ('UAE') as well as performing medical work in Yemen.

17. Dr Aly submitted that he hoped the Tribunal would consider the personal mitigations XXX. He submitted that these actions were exceptional circumstances. He submitted that he has demonstrated genuine insight and remorse and had taken remediation steps. He concluded by stating that there was no realistic chance of repetition of the misconduct. For these reasons Dr Aly submitted he should be restored to the Medical Register.

On behalf of the GMC

18. Mr Rankin submitted that the GMC opposes Dr Aly's application for restoration. Mr Rankin reminded the Tribunal of the test to apply when considering Dr Aly's application and that regard must be had to the overarching objective. Namely, whether the doctor has any insight into the matters that led to erasure, what the doctor has done since, and the steps that he has taken to keep his medical knowledge up to date. He also reminded the Tribunal that the onus is on Dr Aly to demonstrate that he is fit to return to unrestricted practise.

19. Mr Rankin referred this Tribunal to the 2016 Tribunal's determination that Dr Aly's actions were deplorable, leading it to the inevitable conclusion and given the facts found that erasure was the appropriate sanction. He submitted that the GMC does not accept Dr Aly's analysis that his misconduct was only over a short period, when in truth, it persisted over some 12 years.

20. Turning to the issue of insight and remediation, Mr Rankin submitted that the GMC had concerns that Dr Aly does not have full insight particularly when the way he has dealt with obtaining testimonials for this hearing was considered. The GMC also made reference to differing reasons provided by Dr Aly for his non-appearance at the 2016 Panel. The GMC

referred the Tribunal to the evidence which suggested that the referees providing testimonials on behalf of Dr Aly in support of this restoration application were not fully aware of the circumstances of Dr Aly's erasure or, indeed, that their references would be used for the purpose of this restoration case. Overall, Mr Rankin submitted that Dr Aly's probity issues were continuing and taking into the overarching objective, it was not appropriate to restore Dr Aly to unrestricted practice.

The Tribunal's Approach

21. Throughout its consideration of Dr Aly's application for restoration, the Tribunal was guided by the approach laid out in the MPTS Guidance document: *Guidance for medical practitioners tribunals on restoration following disciplinary erasure* (October 2019) ('the Guidance').

22. It reminded itself that the onus is on Dr Aly to satisfy the Tribunal that he is fit to return to unrestricted practice. The Tribunal should not seek to go behind the findings on facts, impairment and sanction made by the original FTP Tribunal.

23. The test to be applied by Tribunals when considering if a doctor should be restored is that set out in *GMC v Chandra* [2018] EWCA Civ 1898, namely: '*having considered the circumstances which led to erasure and the extent of remediation and insight, is the doctor now fit to practise having regard to each of the three elements of the overarching objective.*'

24. The Tribunal reminded itself that, in making its decision, it should consider the following factors:

- the circumstances that led to disciplinary erasure;
- whether the doctor has demonstrated insight into the matters that led to erasure, taken responsibility for their actions, and actively addressed the findings about their behaviour and skills including consideration of:
 - insight and remorse;
 - remediation and risk of repetition;
 - remediability of previous/new concerns about the doctor's behaviour;
 - whether findings about the doctor's behaviour have been remedied;
 - likelihood of repetition of the previous findings about the doctor's behaviour;
- what the doctor has done since their name was erased from the Register including consideration of:
 - overseas practice;
- steps the doctor has taken to keep their skills and knowledge up to date; and

- the lapse of time since erasure.

25. After considering these factors, the Tribunal reminded itself it should step back and balance its findings against whether restoration meets the overarching objective, carefully considering each of the three elements and acting in a way which:

- protects, promotes and maintains the health, safety, and well-being of the public;
- promotes and maintains public confidence in the profession; and
- promotes and maintains proper professional standards and conduct for members of the profession.

26. The Tribunal took account of all the evidence before it, both oral and documentary. It has also considered the submissions made by Mr Ciaran Rankin on behalf of the GMC and those made by Dr Aly.

The Tribunal's Decision

The circumstances that led to Dr Aly's disciplinary erasure

27. The Tribunal took the determinations of the 2016 Panel fully into account. The Tribunal noted that it should not seek to go behind any of the findings made by the previous Panel. As outlined above, the 2016 Panel determined that Dr Aly's fitness to practise was impaired by reason of his misconduct. The current Tribunal noted the nature and high level of seriousness of all of Dr Aly's actions which led to a sanction of erasure. It noted the seriousness with which the 2016 Panel, considered Dr Aly's *"complete absence of any expressions of remorse, insight or appreciation of the gravity of his conduct"* with regard to every aspect of the events which have been found against him. The Tribunal was referred to the paragraphs 39 and 40 of the 2016 Panel's impairment determination by Mr Rankin during submissions.

"39. When challenged with regard to his conduct, which breached fundamental tenets of the medical profession, Dr Aly showed no remorse, limited insight and a persistent defence of his acts and omissions. This led the tribunal to conclude that it was impossible to reject the likelihood that Dr Aly would, in the future, breach one of the fundamental tenets of the medical profession.

40. The tribunal found that Dr Aly, in pursuit of his own interests, had acted

dishonestly in the past. On each and every occasion in which he had falsified emails, been economical and/or manipulative with the truth and failed to be honest, open and reliable, Dr Aly had failed the test of probity. It was of particular concern to the tribunal that Dr Aly convinced a junior doctor to impersonate an official and to send a formal and blatantly untrue document to his employing Trust, during his career break, in order to further his own ends. The tribunal was of the view that Dr Aly's stark dishonesty and disregard for the principles of integrity, appropriate role modelling and departure from all sense of acceptable practice was, by all standards, deplorable."

Whether Dr Aly has demonstrated insight into the matters that led to erasure, taken responsibility for his actions, and actively addressed the findings about his behaviour or skills

Insight and Remorse

28. The 2016 Panel said that in every aspect of the events which had been found against Dr Aly, he *"exhibited a remarkable lack of insight and remorse"*. Since the time of his erasure, Dr Aly has had 6 years to reflect on his actions and understand why they occurred, what he could have done differently and how they would act now should the same situation occur.

29. The Tribunal first considered the level and scope that Dr Aly's insight has developed since the 2016 Panel. Dr Aly gave oral evidence at this hearing and apologised and expressed remorse for his previous actions in every aspect of his wrongdoings. He stated that he fully acknowledged and accepted all the findings of the 2016 Panel.

30. Dr Aly stated in his personal statement that *"on XXX the violence issues, I have attended "Anger management course" in June 2017. The course has online group as well where attendees raise issue that they've been involved at the start of the workshop and repeat the same at the end of the course to find out the impact of the course on behaviour. XXX."* Dr Aly continued in his oral evidence that he was deeply ashamed and remorseful of his past behaviour. Dr Aly had offered explanations to the reasons for his past behaviour and stated that XXX. In the absence of any contradictory evidence, the Tribunal determined to take Dr Aly's submissions at face-value and accepted that he had gained insight and remediated appropriately in this regard.

31. In respect to the issues of clinical care, the Tribunal noted that Dr Aly had also acknowledged the impact his actions had on patient safety and public confidence in the profession. He stated that he holds his patients and profession in the highest regard. Dr Aly has, since the erasure undertaken a number of courses both relating to clinical procedures and medical ethics and practices. He had continued to practise medicine in overseas

jurisdictions and had been involved in determining new procedures and methods of good practice. The Tribunal concluded that Dr Aly had shown a good degree of insight and understanding into his clinical failings and has undertaken the appropriate actions required to ensure safe clinical practice.

32. The Tribunal acknowledged that Dr Aly expressed regret, shame, and remorse in respect to the issues of his probity. It noted that the probity issues covered domestic, clinical and legal areas. The Tribunal accepted that Dr Aly genuinely regrets his actions and has made a concerted effort to demonstrate insight. However, it noted that his actions focused on himself XXX. Furthermore, rather than accepting the previous findings of the 2016 Panel, he has offered explanations as to why he considered the behaviours had occurred rather than addressing remediation. Whilst the Tribunal determined that Dr Aly has demonstrated some insight, it was not persuaded that he has made significant progress in remediation in relation to why he acted dishonestly.

33. In respect of the GMC's submissions regarding differing explanations of Dr Aly's non-attendance at the 2016 Panel the Tribunal was satisfied that Dr Aly had not intended to mislead the Tribunal in this regard. However, the Tribunal questioned the amount of disclosure that Dr Aly had made to those who had provided testimonials for the Tribunal. Dr Aly indicated that he had not informed all those who had provided testimonials for him the full findings of the previous 2016 Panel. The Tribunal considered that Dr Aly's conduct in failing to inform a number of referees of his erasure and the reasons for that erasure when requesting testimonials from them and failing to inform them of the purpose of the testimonials amounted to less than full and frank behaviour on his part. The Tribunal found that this to be a continued pattern of unsatisfactory conduct in respect of his probity.

34. The Tribunal was presented with evidence that Dr Aly had messaged Dr E through Whatsapp with the request *"Good evening Dr E. I would like to ask for a reference from you. As we did not work together, reference should concentrate on conference meetings, organizational skills, personal characters and ethics..."*. The testimonial reference from Dr E, dated 11 July 2022, stated that he had no probity issues to his knowledge. Dr Aly confirmed to the Tribunal that he had not disclosed to Dr E and others what the references were to be used for. The Tribunal considered that the evidence presented to it demonstrated that Dr Aly has not acted in an open and frank manner in regard to obtaining the testimonial evidence for the current proceedings. By Dr Aly's own admission, he stated that he had only told four other clinicians (and not the majority of those who had provided testimonials) the full background of the circumstances of his erasure. Dr Aly's lack of candour in this respect demonstrated to the Tribunal that his insight into his failings was incomplete and lack of probity remained a feature.

35. Furthermore, the witness evidence of Dr D, on behalf of Dr Aly, suggested to the Tribunal that Dr D was not fully aware of the previous probity findings against Dr Aly. In particular, Dr D accepted that Dr Aly had not informed him that he had previously sent emails to the County Court purporting to be another party in the proceedings and thus misleading the Court.

Remediation and risk of repetition

36. The Tribunal had regard to the 2016 Panel's consideration of Dr Aly's "*complete absence of any evidence of remediation*", it further determined that "*Dr Aly's repetition of aspects of his misconduct, despite discovery and/or admission, demonstrates a notable lack of capacity to change. It also highlights an arrogant resistance to learning from his mistakes.*" The 2016 Panel concluded that in the absence of insight and remediation, it was possible Dr Aly could in the future, present an unwarranted risk to patients, or bring the medical reputation into disrepute.

37. The Tribunal gave careful consideration regarding whether the matters that led to Dr Aly's erasure could be successfully remediated. The Tribunal noted that there were no new concerns raised by the GMC about Dr Aly's behaviour regarding any assault, verbal abuse XXX or clinical care. There was no evidence of any reoccurrence of such behaviour since 2016 XXX.

38. The Tribunal accepted that it is more difficult to demonstrate sufficient remediation in cases involving serious behaviour such as dishonesty, even where a registrant has demonstrated an understanding of the gravity of his misconduct. It referred itself to the 2016 Panel's determination that "*Dr Aly's dishonesty was persistent, premeditated, and protracted.*" The Tribunal determined that it would be possible for Dr Aly to demonstrate remediation through attendance at appropriate courses, reflection and evidence to demonstrate that he has addressed his dishonest behaviour and to be able to understand how and why it occurred. The Tribunal concluded that his insight into issues around dishonesty and probity had developed since 2016 but could not be considered to be complete and presently remains inadequate.

39. The Tribunal moved to consider if Dr Aly's behaviour is likely to be repeated. The Tribunal determined that in light of his limited insight and lack of remediation in regard to probity it could not be satisfied that Dr Aly's behaviour is unlikely to be repeated again in the future. Namely, choosing to withhold information when it suits him. The Tribunal was therefore concerned about a risk of repetition in this case.

What Dr Aly has done since his name was erased from the Register

40. The Tribunal noted that the onus is on Dr Aly to demonstrate that his medical knowledge and skills are up to date. The Tribunal was mindful that it has to be satisfied that Dr Aly can return to unrestricted practice as it does not have the power to impose conditions upon him.

41. The Tribunal noted that since his erasure, Dr Aly has worked overseas as a consultant in Egypt and the United Arab Emirates. The Tribunal considered the certificates of good standing it received from the United Arab Emirates, dated 15 March 2021 on Dr Aly's behalf. It also noted in Dr Aly's personal statement, he said that he organises international conferences with joint collaboration between Guy's and St Thomas's Hospital and Sohag University in Egypt. He stated that this was a regular conference since 2014 and it was a major event to spread the knowledge and the western experience to Africa.

42. The Tribunal was satisfied with the evidence available to it, namely Dr Aly's time working overseas in the Middle East and the CPD material as evidenced through certificates that Dr Aly has provided, he has made good effort to ensure his medical knowledge and skills are up to date.

Lapse of time since erasure

43. Dr Aly's name was erased from the Medical Register in October 2016. Although this is a significant period of over 6 years, Dr Aly's clinical work in the Middle East has allowed Dr Aly to keep his skills and knowledge up to date. Dr Aly stated that he has since developed his behaviour and practice. The Tribunal was of the view that this overseas clinical practice sufficiently mitigated any concerns about the length of time Dr Aly has been out of clinical practice in UK and not registered with the GMC.

Will restoration meet the overarching objective?

44. Having considered the specific concerns about Dr Aly's erasure and the factors set out above, the Tribunal went on to determine whether Dr Aly is fit to practise and be restored to the Medical Register. The Tribunal carefully balanced its findings against whether restoring Dr Aly to the Medical Register will meet the overarching objective:

- To protect, promote, and maintain the health, safety, and well-being of the public;
- To promote and maintain public confidence in the medical profession;
- To promote and maintain proper professional standards and conduct

for members of the profession.

45. The Tribunal was mindful of the serious findings that led to Dr Aly's erasure in 2016. For the reasons it has already set out, the Tribunal concluded that Dr Aly has provided sufficient evidence that he has maintained his medical knowledge and skills. The Tribunal determined that there would be low risk to patient safety and members of the public if Dr Aly were permitted to return to the register unrestricted.

46. In relation to the second limb of the overarching objective the Tribunal took the view that public confidence in the profession would be seriously undermined by the restoration of Dr Aly into unrestricted practice at this time. In reaching this conclusion the Tribunal took into account the continuing lack of full insight and remediation, within the context of failing to be open and honest with the testimonials that he provided to the Tribunal. The Tribunal took the view that a well-informed member of the public would be concerned to learn that a doctor had continued to show a lack of insight in relation to a previous finding of dishonest behaviour and has failed to demonstrate the full and frank conduct expected of a practitioner.

47. With regard to the maintenance of professional standards and conduct for members of the profession, the Tribunal was satisfied, for the reasons given above including Dr Aly's insufficient insight and inadequate remediation of his probity concerns, that restoring him to the Register would be inconsistent with promoting and maintaining professional standards of conduct in the profession.

48. In all the circumstances, as set out above, the Tribunal was ultimately not satisfied that an ordinary, well-informed member of the public who is aware of all the relevant facts would not be concerned to learn that Dr Aly had been allowed to return to practice.

Conclusion

49. In conclusion, the Tribunal was not satisfied that Dr Aly is currently fit to practise and accordingly refused Dr Aly's application to be restored to the Medical Register.

ANNEX A – 02/09/2022

Tribunal determination in relation to representations of Dr Aly regarding Documents and Information.

50. Dr Aly has made representations and expressed concerns that the misinformation put by Counsel for the GMC to a witness in relation to Dr Aly being paid by the NHS whilst on sabbatical may have had a negative effect on the minds of Tribunal Members.

51. During the course of the hearing, the Tribunal was informed by Counsel for the GMC that he had provided the Panel with incorrect information during the hearing. The Tribunal, as a professional tribunal noted this error at the relevant time and noted to strike it from its memory. Accordingly, it has not taken this misinformation into account at any time during its deliberations or in reaching its determination.

52. The Tribunal considered that Dr D was a reliable and credible witness.

53. Taking into account all of the above, the Tribunal does not consider that Dr Aly's application to be restored to the Medical Register to be prejudiced in anyway.

54. Dr Aly has also raised concerns regarding whether the Tribunal has had sight and the opportunity to consider all documentation provided by him to the GMC during the course of this hearing.

55. The Tribunal has noted all documents to which Dr Aly has referred, in particular communications with Dr E and medical reports.

56. The Tribunal was satisfied that it has seen each of these documents within proceedings, each being given a document reference number, these being D1 – D7.

57. Again, on the basis that the Tribunal has seen all documents provided by Dr Aly and has had the opportunity to consider them in the course of the hearing the Tribunal does not consider the Doctor's application to be prejudiced in any way.