

PUBLIC RECORD

Dates: 09/06/2023

Medical Practitioner's name: Dr Francis ZUBIER

GMC reference number: 3667220

Primary medical qualification: MB BCh 1992 Queens University of Belfast

Type of case

XXX

Review - Misconduct

Review - Conviction / Caution

Outcome on impairment

XXX

Not Impaired

Not Impaired

Summary of outcome

Conditions revoked

Tribunal:

| | |
|--------------------------|----------------------|
| Legally Qualified Chair | Mr Andrew Mcloughlin |
| Lay Tribunal Member: | Ms Giovanna Palmiero |
| Medical Tribunal Member: | Dr Ann Wolton |

| | |
|-----------------|-----------------|
| Tribunal Clerk: | Mr Larry Millea |
|-----------------|-----------------|

Attendance and Representation:

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|--|---|
| Medical Practitioner: | Present and represented |
| Medical Practitioner's Representative: | Mr Andrew Hockton, Counsel, instructed by Carson McDowell LLP |
| GMC Representative: | Mr Lewis Kennedy, 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 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 Impairment - 09/06/2023

1. At this review hearing the Tribunal now 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 Zubier's fitness to practise is impaired by reason of misconduct; XXX and a conviction or caution for a criminal offence.

The Outcome of Applications Made during the Impairment Stage

2. The Tribunal granted the GMC's application, made pursuant to Rule 41 of the Rules, that, this hearing be heard entirely in private. This submission was supported by Mr Hockton, counsel on behalf of Dr Zubier. The Tribunal was satisfied that the matters before it were so inextricably linked XXX that it would not be realistically possible to separate them into public and private components, and that the public interest in these matters being heard and proceedings concluded in a timely manner outweighed the public interest in the hearing be held partly in public.

3. The Tribunal also granted an application made by Mr Hockton, counsel on behalf of Dr Zubier, pursuant to rule 34(1) of the Rules, to submit further evidence. This application was supported by Mr Kennedy, on behalf of the GMC and related to an email from XXX and a testimonial provided by one of his colleagues.

4. This determination will be read in private. However, as this case concerns Dr Zubier's misconduct and convictions a redacted version will be published at the close of the hearing.

Background

5. Dr Zubier qualified at Queens University of Belfast in 1992. Prior to the events which are the subject of this hearing, Dr Zubier practiced as a consultant for Capita until January 2012. Dr Zubier then worked for Medigold from June 2012 to September 2012 before working for Blackwell Associates in October 2012 until 2016. At the time of the events Dr Zubier was practicing as a self-employed Occupational Health Consultant.

6. The facts found proved at Dr Zubier's hearing which took place in July 2021 can be summarised as follows:

- On 15 August 2019 at Northern Ireland ('NI') Magistrates' Court, Dr Zubier was convicted of contravening a non-molestation order and was found guilty of assaulting Mr A and damaging his glasses;
- On 15 August 2019 Dr Zubier was sentenced (for breaching the non-molestation order) to a community service order with the requirement to perform 80 hours of unpaid work within the next 12 months. A two-year restraining order in relation to Mr B was imposed. Dr Zubier received a conditional discharge for two years in respect of the convictions relating to Mr A;
- On 12 November 2019 at NI Magistrates' Court, Dr Zubier was convicted of driving a motor vehicle whilst unfit to drive through drink or drugs. Dr Zubier was sentenced to a fine in the sum of £150 and disqualified from driving for a period of one year, to be reduced by a period of three months on successful completion of a course by 12 June 2020, and;
- XXX

7. The background to these matters is that prior to the events, Dr Zubier was involved in XXX. In addition, Mr B obtained a non-molestation order against Dr Zubier, further adding to the difficulties XXX. On 30 August 2018, Mr A saw Dr Zubier in a vehicle parked opposite Mr B's residence. In Mr A's written statement to the GMC, and in his statement to the police, he said that Dr Zubier shouted abuse to Mr A and that he was very aggressive. Mr A then told Dr Zubier to 'shut up' before he came back to the house and closed the door. Mr A went back outside after ten minutes. When Dr Zubier saw Mr A, Dr Zubier got out of his vehicle and started to approach Mr A whilst screaming explicitly. Dr Zubier was being restrained by XXX

Mr E before he broke free and swung a punch which connected to Mr A's head. Mr A added that his glasses were knocked to the ground and damaged as a result. In Dr Zubier's written statement he said that he drove to Mr B's residence to XXX Mr E. Dr Zubier wanted to give Mr E his bank card. XXX Thereafter, Dr Zubier saw Mr A and he said that Mr A mocked and teased him. This was when Dr Zubier got angry, got out of the car and approached Mr A. Dr Zubier said that he swung a punch at Mr A, but it did not make any contact. Dr Zubier said that XXX had to restrain him.

8. Consequently, Dr Zubier handed himself to the police and was arrested. XXX He was convicted and sentenced for contravening a non- molestation order, unlawful assault and criminal damage as a result of these events, as set out above.

9. With regard to the conviction and sentence for driving under the influence of drink or drugs, Dr Zubier had recently been convicted of the offences set out above, and was, in his words, devastated by the verdict. On the day of the incident, he had been given a XXX tablet by XXX which made him drowsy. His intention was to move his car from the street to his driveway. Dr Zubier said that he cannot recall getting into the car, but he attempted to drive the car into the driveway, however, he had crashed into the neighbours car in doing so. Dr Zubier's neighbour called the police, he was breathalysed and passed the breathalyser test. The police officer attending stated that Dr Zubier was unsteady on his feet and slow to react, and that he fell over a fence between his property and his neighbours. As a result, Dr Zubier was arrested and a blood sample taken at the police station, which showed the presence of drugs and which subsequently led to his guilty plea and sentence for driving whilst unfit through drink or drugs.

10. XXX.

11. XXX.

The 2021 Tribunal

12. Dr Zubier's case was first considered by a Medical Practitioner's Tribunal in July 2021 ('the 2021 Tribunal'). At the outset of the 2021 Tribunal, Dr Zubier made admissions to the entirety of the Allegation.

13. The 2021 Tribunal determined that Dr Zubier's actions in relation to him being convicted of unlawfully assaulting Mr A and damaging Mr A's glasses without lawful excuse,

for which he was sentenced to a conditional discharge for two years, amounted to misconduct which was serious. The 2021 Tribunal noted that the assault matter took place on the driveway of Mr B, who had a non-molestation order preventing Dr Zubier from attending his home. By acting in the way he did, Dr Zubier breached that court order. The 2021 Tribunal was of the view that whether a punch connected to Mr A's head or not, the offending was an aggressive confrontation initiated by Dr Zubier and breached multiple paragraphs Good Medical Practice (2013 edition) ('GMP'). The fact that Dr Zubier swung at Mr A and had to be restrained by XXX Mr E, led the 2021 Tribunal to conclude that both the public and members of the medical profession would find Dr Zubier's behaviour unacceptable and deplorable.

14. In considering whether Dr Zubier's fitness to practise was impaired by reason of his misconduct, the 2021 Tribunal was mindful that Dr Zubier, at the outset of proceedings, admitted all the facts in the Allegation. The 2021 Tribunal took account of the particular circumstances prevailing at the time of the incident XXX.

15. XXX. The 2021 Tribunal found Dr Zubier to be a truthful, candid witness who had shown genuine remorse and fully acknowledged his wrongdoing. It concluded that he had demonstrated an understanding that his actions fell below the standards expected of a registered doctor, that he understood the impact of his actions on the reputation of the profession and the implications of his actions XXX. The 2021 Tribunal concluded that Dr Zubier had shown insight into his misconduct, taking account of his evidence that XXX.

16. The 2021 Tribunal concluded that the particular circumstances associated with this misconduct were unlikely to be repeated but considered that the misconduct which it had already determined brought the medical profession into disrepute and breached a fundamental tenet of the profession, was sufficiently serious to require a firm declaration of professional standards so as to promote public confidence. It considered that if a finding of impairment were not made, the need to uphold proper professional standards and public confidence in the profession would be undermined.

17. In considering whether Dr Zubier's fitness to practise was impaired by reason of conviction, the 2021 Tribunal was of the view that Dr Zubier's conviction with regard to the non-molestation order was a serious and direct breach of a Court order. The 2021 Tribunal also noted that the two-year restraining order on Dr Zubier was still in place. With regard to the conviction for driving a motor vehicle whilst unfit to drive through drink or drugs, the 2021 Tribunal recognised that whilst Dr Zubier was trying to move his car from the pavement to a driveway, and therefore he only drove a short distance, he crashed the car. The 2021

Tribunal concluded there was a potential risk to the public and his actions resulted in damage of someone's property. The convictions were some months apart from each other and the 2021 Tribunal found both matters brought the profession into disrepute.

18. The 2021 Tribunal considered that Dr Zubier had shown significant insight into his convictions, and that his remorse was genuine. XXX. The 2021 Tribunal found that Dr Zubier had taken steps to remediate his convictions XXX. Both convictions, although dissimilar, were rooted in the circumstances of Dr Zubier's XXX and the resulting criminal proceedings. There had not been a repeat of either type of offending behaviour since and the 2021 Tribunal was therefore satisfied that Dr Zubier was unlikely to repeat the conduct that led to these particular convictions.

19. Notwithstanding the 2021 Tribunal's conclusion that the conduct leading to the convictions was unlikely to be repeated, it concluded that the convictions themselves were serious and damaging to the reputation of the profession and that public confidence in the profession would be undermined if a finding of impairment were not made in relation to both convictions.

20. XXX.

21. XXX. The 2021 Tribunal acknowledged that the particular triggers or stress factors which led to XXX in the past and his past misconduct and convictions had since diminished. The 2021 Tribunal took account of the very positive testimonials and feedback from patients, demonstrating a high standard of professionalism and also of XXX

22. XXX.

23. In summary, the 2021 Tribunal found Dr Zubier's fitness to practise was impaired by reason of misconduct, conviction XXX.

24. In considering sanction, the 2021 Tribunal was mindful of the Sanctions Guidance (November 2020 edition) ('the SG'). It determined that there were significant mitigating factors present and that XXX was intrinsically linked to both his misconduct and conviction. It considered that Dr Zubier had demonstrated significant insight into his XXX issues and continued to address those issues through accessing and cooperating with professional help. The 2021 Tribunal found that because of the insight shown into XXX issues, his misconduct and convictions, Dr Zubier was highly unlikely to repeat the behaviour which led to those

convictions, especially in light of the passing of time, and those particular stressors in his life having now ceased to operate.

25. Further, the 2021 Tribunal accepted Dr Zubier's evidence that he would fully comply if it decided to impose conditions on his medical registration. In addition, Dr Zubier had a history of compliance with the Interim Order of Conditions which had been in place prior to the 2021 Tribunal. As part of its deliberations as to whether conditions were the appropriate sanction, the 2021 Tribunal considered carefully whether this might be a case where a sanction of suspension should be imposed. However, having regard to the SG the 2021 Tribunal determined that a sanction lower than suspension was sufficient to protect the public and maintain confidence in doctors, when the significant mitigating factors identified in this particular case were given appropriate weight.

26. The 2021 Tribunal balanced Dr Zubier's interest with the public interest, finding that a suspension was not necessary to send out a signal of deterrence to the doctor, in circumstances where he has full insight and is co-operating XXX. It considered that a suspension would be purely punitive, would halt Dr Zubier's progress and would not assist Dr Zubier to safely practice. It therefore determined to impose a period of conditions on Dr Zubier's registration.

27. In considering the length of the conditions imposed on Dr Zubier's registration, the 2021 Tribunal considered XXX concluding that it would be appropriate and proportionate to impose conditions on Dr Zubier's registration for a period of 24 months.

28. The 2021 Tribunal determined to direct a review of Dr Zubier's case and suggested that it may assist the reviewing Tribunal if Dr Zubier were to provide:

- Evidence that he has kept his knowledge and skills up to date, which could include, but not be limited to, evidence of Continuing Professional Development (CPD);
- Evidence of ongoing appraisal;
- Feedback from clients, patients, employers or contracting bodies as appropriate;
- XXX
- XXX, and;
- any other information that he considers will assist.

Today's Hearing

The Evidence

29. The Tribunal has taken into account all the evidence received, both oral and documentary.
30. Dr Zubier provided his own written reflections, dated 19 April 2023.
31. The Tribunal received a GMC Hearing Bundle, and Defence Bundle provided on behalf of Dr Zubier, which included but was not limited to:
- Record of determinations of the July 2021 Tribunal;
 - XXX;
 - XXX;
 - XXX;
 - XXX;
 - Dr Zubier appraisal forms, dated 19 April 2022 and 4 March 2023;
 - Customer Satisfaction and Patient Feedback forms, dated August 2021 to March 2023;
 - Dr Zubier's current CV, undated;
 - A number of CPD (Continuous Professional Development) Certificates, various dates October 2021 to March 2023;
 - XXX;
 - GMC Assistant Registrar decision on early review, dated 17 March 2023;
 - Email from Dr F to the GMC, dated 7 June 2023;
 - A testimonial provided by Dr Zubier's colleague, undated (confirmed 29 May 2023).

Submissions

On behalf of the GMC

32. On behalf of the GMC, Mr Kennedy, counsel, submitted that the evidence XXX was that Dr Zubier is now fit to practise and that there are no current concerns XXX. He submitted that XXX the decision was made by a GMC Assistant Registrar to refer the case for an early review on this basis. In his submissions, Mr Kennedy drew the Tribunal's attention to XXX the hearing bundle. He also referred the Tribunal to Dr Zubier's most recent written reflections where he states that he XXX has adhered to all his GMC conditions and that he feels that he has paid his debt to society. Mr Kennedy submitted that the evidence provided XXXs is

suitably comprehensive, and could be considered to meet with the requirements requested by the 2021 Tribunal.

33. Mr Kennedy submitted that on the basis of all the current evidence, the GMC position is that Dr Zubier's fitness to practise is no longer impaired by reason of XXX.

34. Mr Kennedy submitted that the GMC was neutral in regard to the misconduct and conviction, and that it is a matter for the Tribunal as to whether Dr Zubier's fitness to practise remains impaired in this respect.

On behalf of Dr Zubier

35. On behalf of Dr Zubier, Mr Andrew Hockton, counsel, submitted that XXX there has been no breach of the conditions in place for the last two years XXX. He submitted that the XXX evidence is unanimously conclusive that Dr Zubier is now fit to practise generally/unrestricted and it is for that reason that the Assistant Registrar referred this case for a slightly earlier review than would otherwise have been. He submitted that a helpful starting point is the decision made by the Assistant Registrar that an early review was appropriate as the GMC has received three separate opinions that Dr Zubier is no longer impaired XXX. That decision states that *"It is clear from the findings of the last tribunal that the conditions imposed were done so largely to help the doctor remediate XXX. This has now been achieved."* He submitted that in addition to the evidence that Dr Zubier is now fit to practise unrestricted, the Tribunal has been provided evidence XXX reducing the risk of any future repetition should any similar stressors occur.

36. In respect of Dr Zubier's misconduct and convictions, Mr Hockton reminded the Tribunal of the finding of the 2021 Tribunal that these were inextricably linked with Dr Zubier's XXX issues and that Dr Zubier had insight into these at the time, had expressed genuine remorse and that the risk of repetition was low. He submitted the findings of impairment owing to misconduct and convictions made by the 2021 Tribunal were to mark the seriousness of these actions and that this requirement has been fulfilled.

37. Mr Hockton submitted that Dr Zubier has apologised and taken responsibility for his actions and fully understands the importance of the reputation of the profession and recognizes that action such as this bring the profession into disrepute, providing assurances that he will never repeat these actions. He submitted that on the basis that Dr Zubier's misconduct and convictions were linked to, and triggered by, his XXX personal circumstances,

he is no longer impaired in this regard. In addition to the findings of insight, remorse and low risk of repetition identified by the 2021 Tribunal, Dr Zubier has now addressed the XXX concerns and personal stressors in his life, and so the risk of repetition of his misconduct and convictions are even lower than at that time.

The Relevant Legal Principles

38. The Tribunal reminded itself that the decision of impairment is a matter for the Tribunal's judgement alone. As noted above, the 2021 Tribunal set out the matters that a future Tribunal may be assisted by. This Tribunal is aware that it is for the doctor to satisfy it that he would be safe to return to unrestricted practice.

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

The Tribunal's Determination on Impairment

XXX

40. XXX.

41. XXX.

42. XXX.

43. XXX.

44. XXX.

45. XXX.

46. XXX.

47. XXX.

48. XXX.

Misconduct, Conviction or Caution

49. Having determined that Dr Zubier's fitness to practise is no longer impaired by reason of XXX, the Tribunal went on to consider whether his fitness to practise remains impaired by reason of conviction or caution, or misconduct. As the misconduct in this case relates to the convictions, the Tribunal considered both these matters together.

50. In reaching its decision, the Tribunal noted that Dr Zubier has completed satisfactorily the requirements contained in the sentences imposed upon him following his convictions, with no reoffending since these events.

51. The Tribunal considered, as determined by the 2021 Tribunal, that Dr Zubier's actions in relation to his misconduct and convictions were catalysed by XXX the contextual background and events in his life at the time XXX. It noted that Dr Zubier does not seek to dismiss his responsibility for his actions XXX but he acknowledged that they were inextricably linked.

52. The Tribunal concluded that Dr Zubier's behaviour XXX was remediable. It considered that as the issues XXX have been satisfactorily addressed and remedied, and in light of his genuine remorse, insight and reflections, the likelihood of any repetition of his misconduct was low.

53. In regard to public confidence, the Tribunal was of the opinion that this is a clear example of a case where a doctor accepted and admitted their wrongdoing from the outset. At the 2021 Tribunal, Dr Zubier was willing to comply with any conditions imposed upon him, and subsequently has adhered to the conditions directed by the 2021 Tribunal for nearly two years, with no issues.

54. The Tribunal bore in mind the finding of the 2021 Tribunal that whilst Dr Zubier's misconduct and his convictions were unlikely to be repeated, the need to uphold proper professional standards and public confidence in the profession would be undermined were a finding of impairment were not made in respect of these.

55. The Tribunal considered that the way in which Dr Zubier has opened himself up for scrutiny has been impressive and that any member of the public looking at the case would

consider that the GMC have taken the matters sufficiently seriously and that concerns have been addressed. Further, Dr Zubier has provided thorough reflections demonstrating his insight and continues to acknowledge his own role in his misconduct. Therefore, public confidence and the maintenance of standards in the profession have been upheld and a finding of current impairment in respect of his misconduct and convictions would not be required.

56. The Tribunal was therefore satisfied that the original findings of impairment and the imposition of conditional registration, when considered XXX had been sufficient to address these concerns and suitably uphold the overarching objective.

57. The Tribunal concluded that the public interest would not be served by a further finding impairment, noting that there had never been any patient safety concerns in this case. Accordingly, it determined that Dr Zubier's fitness to practise is no longer impaired by reason of his convictions or his misconduct.

58. This Tribunal has therefore determined that Dr Zubier's fitness to practise is not impaired by reason of XXX misconduct; or conviction or caution for a criminal offence.

Revocation

59. The Tribunal received submissions on whether to revoke the conditions currently imposed on Dr Zubier's registration, which were due to remain in place until 2 September 2023, or leave them to expire at the end of this period.

60. On behalf of Dr Zubier, Mr Hockton submitted that the purpose of the early review date was so that an unnecessary restriction, in the form of these conditions, could be removed. He submitted that the conditions should therefore be revoked with immediate effect.

61. On behalf of the GMC, Mr Kennedy indicated that the GMC was neutral on revocation of the order. He submitted that he would simply observe that this has been a lengthy period of conditions and that it might be thought that the purpose and convening of this review hearing was to address the matter of revocation.

62. The Tribunal determined that in light of the overwhelming evidence before it and its finding that Dr Zubier's current fitness to practise is no longer impaired, there would be no

public interest in keeping his registration subject to conditions. It was satisfied that the purpose of the conditions had been fulfilled and that Dr Zubier should now be allowed to return to unrestricted practice.

63. Accordingly, the Tribunal determined to revoke the current order of conditions with immediate effect.

64. That concludes this case.