

PUBLIC RECORD**Dates:** 05/08/2024 - 06/08/2024

Medical Practitioner's name: Dr Hlaing WIN
GMC reference number: 6054123
Primary medical qualification: MB BS 2000 Institute of Medicine II

Type of case

Restoration following disciplinary erasure

Summary of outcome

Restoration application refused.
No further applications allowed for 12 months from last application.

Tribunal:

Legally Qualified Chair	Mrs Fiona Barnett
Lay Tribunal Member:	Miss Susan Hurds
Medical Tribunal Member:	Dr Richard Vautrey

Tribunal Clerk:	Mrs Jennifer Ireland
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Attendance and Representation:

Medical Practitioner:	Present, not represented
GMC Representative:	Mr Charles Garside, KC

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 Following Disciplinary Erasure - 06/08/2024

1. The Tribunal has convened to consider Dr Win's application for his name to be restored to the Medical Register following his erasure for disciplinary reasons in 2012.
2. The Tribunal has considered the application in accordance with Section 41 of the Medical Act 1983, as amended ('the Act') and Rule 24 of the GMC (Fitness to Practise) Rules 2004, as amended ('the Rules').
3. This is Dr Win's first application to be restored to the Medical Register.

Background

4. Dr Win qualified in 2002 from the Institute of Medicine II in Myanmar. He joined the UK Medical Register in 2005.
5. The circumstances that led to Dr Win's erasure were considered at a hearing before a GMC Fitness to Practise Panel (FTPP) which concluded on 9 December 2011 ('the 2011 Panel')
6. At the 2011 Panel hearing, Dr Win admitted that on 11 May 2010, he had sat the Membership of the Royal College of Physicians ('MRCP') (UK) Part 1 examination and had looked at another candidate's work, and that this action was dishonest.
7. The 2011 Panel was asked to consider whether Dr Win had copied some of the answers of the other candidate, and whether this action was also dishonest. The 2011 Panel was informed that Dr Win had been observed by an exam invigilator looking to the left on three occasions. The 2011 Panel also had regard to the statistical evidence provided showing 100 identical answers between Dr Win's examination and the other candidates and was informed that the *'statistical probability of this pattern of answers happening purely by chance was equivalent to tossing a coin 18 times and getting heads every time'*. On consideration of all of the evidence, the 2011 Panel was satisfied that Dr Win had repeatedly looked at another candidate's work and copied answers and that his actions in this regard were dishonest.

8. The 2011 Panel then considered whether Dr Win's actions amounted to serious misconduct, and then whether his fitness to practise was impaired by reason of his misconduct.
9. In his submissions on impairment, Dr Win admitted that he had lied under oath to the 2011 Panel as he was concerned about his career and could not justify his conduct.
10. The 2011 Panel considered that dishonesty, by its very nature, was serious and was likely to constitute misconduct. The 2011 Panel found that Dr Win's conduct clearly breached the principles and values set out in Good Medical Practice (2006) and amounted to serious misconduct.
11. Turning to impairment, the 2011 Panel found that Dr Win's dishonest conduct, in cheating in a professional membership examination in an attempt to gain qualifications which he had not earned, had the potential to put patients at unwarranted risk of harm. It considered that this brought the medical profession into disrepute and breached a fundamental tenet of the profession, namely probity.
12. It was clear to the 2011 Panel, based on the evidence before it, that Dr Win had not remedied his dishonesty. The 2011 Panel noted Dr Win's admission to lying under oath during his evidence and viewed it as extremely serious. It was of the view that in the 18 months since his original misconduct, Dr Win still did not appear to appreciate the seriousness with which dishonesty in a member of the medical profession was viewed. The 2011 Panel was not satisfied that Dr Win would not act dishonestly in the future and stated that his dishonesty in his evidence indicated a propensity to be dishonest when it suited him.
13. The 2011 Panel concluded that Dr Win's fitness to practise was impaired by reason of his misconduct and went on to consider what sanction to impose.
14. The 2011 Panel was of the view that Dr Win, at that stage, appreciated the seriousness of his misconduct. However, it considered that his insight had developed at a late stage in the process and was perhaps only as a result of his realisation of the repercussions he faced. The 2011 Panel also considered that Dr Win's dishonesty during proceedings was an aggravating feature of his case.

15. The 2011 Panel was concerned that Dr Win had a tendency to say what he thought he needed to when he was in a difficult situation. There was no evidence before the 2011 Panel to contradict this or to reassure it as to how Dr Win would address his misconduct in the future. It was satisfied that the public interest in Dr Win's case required that it be made clear that his behaviour was unacceptable in a member of the medical profession.

16. Having considered all the evidence before it, including Dr Win's conduct in attempting to subvert regulatory proceedings with further dishonesty, the 2011 Panel determined suspension was not sufficient. It therefore determined to erase Dr Win's name from the Medical Register. It also imposed an immediate order of suspension.

The Current Restoration Hearing

17. This Tribunal convened to consider Dr Win'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 Rules.

The Evidence

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

19. Dr Win provided his own written reflection and also gave oral evidence at the hearing.

20. The Tribunal also received documentary evidence provided by the parties. This evidence included:

- The determinations of the 2011 Panel; and
- Dr Win's application for restoration.

Dr Win's evidence

21. Dr Win gave evidence to the Tribunal on his own behalf. He was cross-examined and also answered questions from the Tribunal.

22. Dr Win told the Tribunal that he felt a lot of shame for what he had done. He stated that after he was erased it had taken a long time for him to accept what had happened and why the GMC had taken the measures it had. He told the Tribunal that he had been working outside the medical field for the last 12 years as he had been too ashamed to apply for restoration after five years had passed. Dr Win stated that he had done some Continuing

Professional Development ('CPD') courses in 2012, but had not specifically attended any courses on dishonesty.

23. Dr Win told the Tribunal that he had undertaken a period of clinical observation from July 2023 and had been attending clinics on an ad-hoc basis until December 2023. He stated that he had been doing the tasks that junior doctors would normally do, such as taking histories, taking blood, performing clinical examinations, and preparing, albeit not signing, prescriptions. He told the Tribunal that this had helped him re-gain confidence in himself again.

24. In response to questions, Dr Win told the Tribunal that he had told Professor A (his clinical supervisor during his observership), about his erasure approximately two months before this hearing. He stated that friends had helped him to obtain the clinical observer role, and that he thought that his friends had told Professor A that he had been erased. Dr Win was asked further questions and stated that he could not recall the questions on the form he had filled in prior to the observation period.

Submissions

On behalf of the GMC

25. Mr Garside KC, submitted that the GMC opposed Dr Win's application for restoration to the Medical Register. He referred the Tribunal to the MPTS Guidance for medical practitioners tribunals on restoration following disciplinary erasure ('the Guidance') throughout his submissions.

26. Mr Garside reminded the Tribunal that it had no power to restore Dr Win with conditions or any other restrictions. He stated there is insufficient evidence that indicates that Dr Win is, at present, fit to practise, given that there is very limited evidence from the last 12 years to demonstrate that he has kept his knowledge and skills up to date. Mr Garside acknowledged that Dr Win had undertaken a two-month clinical observer role, however, he submitted that there is no evidence before the Tribunal about what he did, what he saw, and what steps he took afterwards to brush up his skills. Further, he submitted that this was the only evidence provided by Dr Win from the last 12 years, which is a lengthy period of time to be out of practice.

27. Mr Garside submitted that Dr Win has been working outside the medical field for the last five years, which was not an issue, but does not support his claim to have kept his

knowledge and skills up to date. He reminded the Tribunal that the burden of proof in this matter was on Dr Win.

28. Mr Garside referred the Tribunal to Dr Win's reflective statement, and submitted that it does not provide the Tribunal with the necessary information about the maintenance of skills over this prolonged period. He stated that no other evidence has been provided to the GMC by Dr Win, such as certificates from online courses, to demonstrate the acquisition and maintenance of knowledge and skills.

29. Mr Garside submitted that, in light of the information presented as a whole, there is insufficient evidence for the Tribunal to be satisfied that Dr Win is fit to practise unrestricted.

Dr Win's submissions

30. Dr Win submitted that he had reflected on his past actions and what he needed to change from his '*biggest mistakes*'. He stated that he had had doubts in the past about his competence since he was erased, but after the period of clinical observation, he had regained his confidence. He told the Tribunal that he was very much willing to return to practise.

31. Dr Win submitted that the clinical observer role had allowed him to rebuild his confidence and to reconnect with his medical knowledge. He stated that it had also helped him identify what he had missed whilst he was out of practice. He submitted that he still needed to catch up his knowledge and skills but felt that he had taken a step in the right direction. Dr Win submitted that he was ready to go back to practise with supervision.

The Tribunal's Approach

32. The Tribunal reminded itself that its power to restore a practitioner to the Medical Register in accordance with Section 41 of the Act is a discretionary power. This power is to be exercised in the context of the Tribunal's primary responsibility to act in accordance with the statutory overarching objective to protect the public, as set out later in this determination.

33. While the Tribunal has borne in mind the submissions made by the parties, the decision as to whether to restore Dr Win's name to the Medical Register is a matter for this Tribunal exercising its own judgment. The Tribunal reminded itself that, if it directs that Dr Win's name should be restored to the Medical Register, it can do so only without restrictions on his practice.

34. Throughout its consideration of Dr Win's application for restoration, the Tribunal was guided by the approach laid out in the Guidance.

35. The Tribunal reminded itself that the onus is on Dr Win to satisfy it that he is fit to return to unrestricted practice and that the Tribunal should not seek to go behind the original Panel's findings on facts, impairment and sanction.

36. The guidance sets out at B2 that the test for the Tribunal to apply when considering restoration is:

'B2 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?'

37. The Tribunal reminded itself that, in making its decision, it should consider the following five factors set out within paragraphs B4-B34 of the guidance which address:

- a) the circumstances which led to the erasure;
- b) whether Dr Win 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;
- c) what Dr Win has done since his name was erased from the register;
- d) the steps Dr Win has taken to keep his skills and knowledge up to date; and
- e) the lapse of time since erasure;

and then go on to determine whether restoration will meet the overarching objective.

The Tribunal's Decision

The circumstances that led to disciplinary erasure

38. The Tribunal fully considered the determinations of the 2011 Panel which are summarised above. The Tribunal reminded itself that it should not seek to go behind any of the findings made by the 2011 Panel.

39. The Tribunal noted that the 2011 Panel had found that Dr Win's dishonest actions that had led his erasure were serious and had the potential to put patients at unwarranted risk of harm.

40. The Tribunal also considered Dr Win's admission to the 2011 Panel that he had lied under oath when giving evidence to that Panel. The 2011 Panel found this to be an aggravating factor. It stated:

'You have admitted to the Panel that you lied under oath when giving your evidence. The Panel views this extremely seriously. It is now 18 months after your original misconduct occurred and it appears that you still do not appreciate the seriousness with which dishonesty in a member of the medical profession is viewed. The Panel is not satisfied that you will not act dishonestly in the future. Indeed, the evidence you gave before this Panel indicates that you have a propensity to be dishonest when it suits you.'

Insight and remorse

41. The Tribunal considered Dr Win's level of insight into the issues which led to his erasure. The Tribunal had regard to all relevant paragraphs of the Guidance, in particular paragraph B10 of the Guidance:

'B10 *Factors that can be relevant to a doctor demonstrating genuine insight include, but are not limited to, evidence they have:*

a considered the concern, understood what went wrong and accepted they should have acted differently

b demonstrated that they fully understand the impact or potential impact of their performance or conduct, for example by showing remorse (see below)

c demonstrated empathy for any individual involved, for example by apologising fully (see below)

d taken steps to remediate and to identify how they will act differently in the future to avoid similar issues arising (see below)'

42. In assessing Dr Win's insight, the Tribunal had regard to his oral evidence, and the written reflection he had provided, which was sent to the MPTS on 17 July 2024.

43. The written reflection was brief, and limited in its scope. Dr Win had not reflected in any detail about the matters which had led to his erasure. He had not addressed why he had cheated in his MRCP exam and why he had lied on oath in his fitness to practise hearing. He had said nothing about the impact of his cheating on patient safety and very little about its impact on public confidence in the profession. He had also not set out details of any strategy he had adopted to ensure that going forward, he will not repeat misconduct of a similar nature.

44. Dr Win had also not addressed the impact of his misconduct on anyone who may have been affected by it, such as the Royal College of Physicians, and the person whose answers he had copied.

45. Dr Win made reference in his written reflection to the GMC as being the *'regulating organization to protect public confidence in medical professionals'*, but did not appear to have appreciated the role of the GMC in protecting the public, which was a matter of concern for the Tribunal.

46. During Dr Win's oral evidence, he added little to the matters set out in his written reflection. He was questioned by GMC Counsel, and by the Tribunal, about the consequences of cheating in an exam. Dr Win repeatedly referred in his responses to the impact on public confidence, but did not seem to have appreciated the link between cheating in an exam designed to test a doctors level of knowledge and the impact this could have on patient safety. After a number of questions on this issue, he did eventually say that if a person was not truly qualified, it *'may'* put patients at risk. The Tribunal found his response on this issue to be somewhat hesitant, and found it concerning that Dr Win's understanding and appreciation of the possible risks to patient safety was so poor, particularly when this was an issue which had been addressed in the original decision.

47. The Tribunal found that Dr Win did have some insight into his misconduct. He had some understanding of how the public would perceive a doctor who had behaved dishonestly. He recognised that what he had done was wrong, and was remorseful for cheating in his exam, however, the Tribunal found that his regret and remorse were largely because of the consequences for him.

48. Dr Win told the Tribunal in his oral evidence about a clinical observership he had undertaken from 21 August 2023 to 31 October 2023. He explained that some friends, who

were Doctors, had assisted him in securing this position and that he thought they would have told his supervisor, Professor A, that he had been erased. Dr Win said that he had filled in a form to apply for the position, but accepted that he did not inform Professor A that his name had been erased from the Medical Register until only two months ago. The Tribunal found this to be a matter of significant concern. The fact that Dr Win is a doctor whose name has been erased from the Medical Register may have been relevant to his clinical observership, yet Dr Win had not disclosed it. In the Tribunal's view, it was incumbent on him to disclose such a significant matter, and not doing so was indicative of his failure to understand that as a member of the medical profession, he has a duty to act with honesty, integrity and candour at all times. Dr Win told the Tribunal when answering questions, that he had read Good Medical Practice, and that it states that doctors must be honest. It was evident to the Tribunal however, that he had not applied this in practice.

49. Overall, the Tribunal concluded that Dr Win's insight into his misconduct was poor and had not developed since his initial fitness to practise hearing.

Remediation and risk of repetition

50. The Tribunal asked itself whether Dr Win's misconduct was remediable. Dishonesty is behavioural and attitudinal in nature and so is difficult to remediate, however, it is possible to remediate it. This could be achieved, for example, with well-developed insight, and by undertaking, and learning from, courses on subjects such as probity and ethics.

51. Dr Win had provided no evidence of steps taken to remedy his misconduct, other than the written reflection referred to above. He has not undertaken any learning or courses on the issues which gave rise to his misconduct. Dr Win could also, for example, have provided testimonials/references from persons who could attest to his conduct and behaviour, but he did not do so.

52. The Tribunal then considered whether Dr Win's dishonesty was likely to be repeated. It found that the circumstances of his dishonesty, (cheating in a professional exam, and lying during the 2011 hearing), were unlikely to occur with any frequency during his professional life. His insight, though poor, was sufficient to persuade the Tribunal that he was unlikely to cheat in an exam again should he take such an exam, not least because of the consequences for him.

53. However, Dr Win's poor insight, lack of remediation, and his evidence to the Tribunal, led the Tribunal to conclude that he had limited understanding of the ramifications of dishonest conduct, and failed to appreciate that honesty and integrity are core principles of the medical profession which he must apply at all times. He had an opportunity to demonstrate honesty and candour (in disclosing the fact of his erasure) when applying for his clinical observership, but he did not take that opportunity. The Tribunal therefore concluded that whilst he may not cheat in an exam again, there is a risk that he cannot be relied upon to act with honesty and integrity at all times in the future.

What Dr Win has done since his name was erased from the Register, steps taken to keep his medical knowledge and skills up to date and the lapse of time since his erasure.

54. Dr Win's name was erased from the Medical Register in January 2012 following the 2011 Panel, which concluded in December 2011.

55. Dr Win has worked in an industry unrelated to medicine for some of the time since he was erased. He has now been erased for more than 12 years.

56. As stated above, Dr Win completed an observership in acute medicine for just over two months in 2023. He told the Tribunal that he still attends clinics in that hospital as an observer on an ad hoc basis. He did not however, produce any objective evidence from an independent person/supervisor to attest to his knowledge and skills, nor has he completed any form of reflective diary, setting out what he has learnt during his observership, and any reflections on his learning.

57. Dr Win told the Tribunal that he had taken some courses in 2012, but he produced no evidence to support this. He also said in his oral evidence that he has done some reading as part of his clinical observer role, which was related to the clinical cases observed, but he provided no evidence to support this. He told the Tribunal that he felt confident in endocrinology at the end of his observership, but that he needed supervision in other areas of practice.

58. Overall, the Tribunal concluded that the steps Dr Win has taken to keep his knowledge and skills up to date were limited, and unsupported by evidence.

Whether restoration will meet the statutory overarching objective?

59. The Tribunal considered the Guidance in relation to the application of the overarching objective which states at B35:

'B35 *Having considered the different factors above, the tribunal must make findings in relation to whether the doctor is fit to practise. The tribunal should then step back and balance its findings against whether restoration will meet our overarching objective. This balancing exercise will involve careful consideration of each of the elements.*

B36 *The overarching objective reflects the purpose of the professional regulation of doctors which is to protect the public. Tribunals must act in a way that:*

a protects, promotes and maintains the health, safety and well-being of the public

b promotes and maintains public confidence in the profession, and

c promotes and maintains proper professional standards and conduct for members of the profession.'

60. Having considered the specific concerns that led to Dr Win's erasure and the factors set out above, the Tribunal went on to determine whether he is fit to practise and be restored to the Medical Register. The Tribunal carefully balanced its findings against whether restoring Dr Win to the Medical Register will meet the overarching objective, considering each of the three limbs.

61. In respect of the first limb, the Tribunal had regard to Dr Win's limited insight, his lack of remediation and its assessment of the ongoing risk of repetition of dishonest behaviour. It noted that his dishonesty was connected to his practice and had the potential to put patients at unwarranted risk of harm. Further, the Tribunal was not satisfied that Dr Win had adequately demonstrated that his knowledge and skills are up to date. Given these findings, the Tribunal concluded that restoration would not protect, promote and maintain the health, safety and well-being of the public. On that basis, restoration to the Medical Register would undermine the first limb of the overarching objective.

62. Having regard to the second limb, the Tribunal reminded itself that Dr Win had been found to have cheated in an exam, and lied on oath to the 2011 Panel. It also considered his poor insight, the risk of repetition identified, and the absence of steps taken by Dr Win to demonstrate remediation and to keep his knowledge and skills up to date. It was of the view that an ordinary, well-informed member of the public, aware of all the relevant facts of Dr Win's case, would be concerned to learn that he had been allowed to return to practise in such circumstances. The Tribunal therefore found that restoration to the Medical Register would undermine the second limb of the overarching objective.

63. When considering the third limb, the Tribunal considered that it has seen no supporting evidence to demonstrate that Dr Win has maintained his knowledge during the period since he was erased. It noted that Dr Win has been out of practice for more than 12 years and has provided no evidence of CPD courses, either clinical or relating to matters of probity, no evidence of any learning he has done, and no evidence from his clinical observation to support his application for restoration. Without this evidence, the Tribunal found that restoration to the Medical Register would undermine the third limb of the overarching objective.

64. The Tribunal was of the view, having considered the documentary evidence before it, and having seen Dr Win give evidence, that he has significantly underestimated the high threshold he would need to meet to satisfy a Tribunal that he is fit to resume unrestricted practice.

65. Having carefully considered the evidence and specific circumstances, the Tribunal was not satisfied that Dr Win has demonstrated that he is fit to return to unrestricted UK practice at this time. Accordingly, it refused Dr Win's application to be restored to the Medical Register.

66. That concludes this case.