

## PUBLIC RECORD

Dates: 27/05/2022 - 31/05/2022

Medical Practitioner's name: Dr Hossam METWALLY

GMC reference number: 4552336

Primary medical qualification: MB ChB 1986 University of Alexandria

Type of case	Outcome on facts	Outcome on impairment
New - Conviction / Caution	Facts relevant to impairment found proved	Impaired

## Summary of outcome

Erasure

## Immediate order imposed

## Tribunal:

Legally Qualified Chair	Mrs Oluremi Alabi
Lay Tribunal Member:	Mrs Debbie Hill
Medical Tribunal Member:	Dr Paul Nolan

Tribunal Clerk:	Mr John Poole
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## Attendance and Representation:

Medical Practitioner:	Not present and not represented
GMC Representative:	Mr Kevin Slack, 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 Facts and Impairment - 30/05/2022**

#### **Background**

1. Dr Metwally qualified in 1986 from Alexandria University, Egypt. He went on to specialise in anaesthesia and practiced for a while in Saudi Arabia before coming to the UK in 1999. At the time of the events that are the subject of this hearing, Dr Metwally was practising as a staff grade associate specialist in anaesthetics at the Diana Princess of Wales Hospital, Grimsby, and worked at a Private Pain Clinic in Grimsby.
2. The allegation that has led to Dr Metwally's hearing can be summarised as follows: it is alleged that, on 5 August 2021 at Sheffield Crown Court, Dr Metwally was found guilty after a full trial and was convicted of three counts of administering a poison or noxious substance with intent to endanger life/inflict grievous bodily harm, and of supplying controlled drugs of Class A, B and C, supplying a specified medicinal product in contravention of the Medicines Act 1968 and dishonestly making false representations. It was further alleged that, on 6 August 2021 at Sheffield Crown Court, Dr Metwally was convicted of two counts of recording a person doing a private act for the purpose of obtaining sexual gratification. On 20 September 2021, Dr Metwally was sentenced to 14 years and six months' imprisonment, ordered under Section 27 of the Misuse of Drugs Act 1971 to forfeit all the drugs and paraphernalia seized, ordered under S143 Powers of Criminal Courts (Sentencing) Act 2000 to forfeit all digital devices seized, and to sign the Sex Offenders Register for a period of seven years from the date of sentence.

#### **The Outcome of Applications Made during the Facts Stage**

3. The Tribunal determined that service of this hearing was effected in accordance with Rules 15 and 40 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'). The Tribunal also rejected an application made on Dr Metwally's behalf, for the hearing to be adjourned in accordance with Rule 29 of the Rules. The Tribunal then determined to proceed in the absence of Dr Metwally in accordance with Rule 31. The Tribunal's determination in relation to these preliminary matters is contained in Annex A.

## The Allegation and the Doctor's Response

4. The Allegation made against Dr Metwally is as follows:
  1. On 5 August 2021 at Sheffield Crown Court, you were convicted of:
    - a three counts of administering poison with intent to endanger life/inflict grievous bodily harm; **To be determined**
    - b supplying a controlled drug of Class A; **To be determined**
    - c supplying a controlled drug of Class C; **To be determined**
    - d supplying a controlled drug of Class B – Ketamine; **To be determined**
    - e supply of a specified medicinal product other than in accordance with a prescription in contravention of the Medicines Act 1968; **To be determined**
    - f possession with intent to supply a controlled drug of Class A; **To be determined**
    - g dishonestly making false representation to make gain for self/another or cause loss to another/expose other to risk. **To be determined**
  2. On 6 August 2021 at Sheffield Crown Court, you were convicted of two counts of recording a person doing a private act. **To be determined**
  3. On 20 September 2021 you were sentenced to:
    - a 14 years six months' imprisonment; **To be determined**
    - b an order under Section 27 of the Misuse of Drugs Act 1971;  
**To be determined**
    - c an order under section 143 Powers of Criminal Courts (Sentencing) Act 2000  
**To be Determined**
    - d sign the Sex Offenders Register for a period of seven years. **To be determined**

## The Facts to be Determined

5. As Dr Metwally was not present at the hearing to make any admissions, the Tribunal had to determine the entirety of the Allegation without any further submissions from the doctor or his representative.

## Documentary Evidence

6. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included:

- MG5 police report regarding poisoning, 7 August 2019
- MG5 police report regarding poisoning, undated
- MG5 police report regarding fraud/voyeurism, 7 October 2020
- Indictment – poisoning/fraud, undated
- Indictment – voyeurism, undated
- Prosecution opening – sentencing hearing, 20 September 2021
- Sentencing remarks, 20 September 2021
- Certificate of Conviction – poisoning/fraud, 5 November 2021
- Certificate of Conviction, voyeurism, 5 November 2021

### The Tribunal’s Approach

7. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the allegations. Dr Metwally does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e. whether it is more likely than not that the events occurred.

8. Given this case relates to a criminal conviction, the Tribunal was reminded of Rule 34(3) of the Rules, which sets out that:

‘Production of a certificate purporting to be under the hand of a competent officer of a Court in the United Kingdom or overseas that a person has been convicted of a criminal offence ... shall be conclusive evidence of the offence committed.’

### The Tribunal’s Analysis of the Evidence and Findings

9. The Tribunal has considered each outstanding paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts.

#### Paragraph 1a-g – **Determined and found proved**

10. The Tribunal considered whether, on 5 August 2021 at Sheffield Crown Court, Dr Metwally was convicted of the offences outlined at paragraphs 1a-g of the Allegation.

11. The Tribunal had regard to the Certificates of Conviction, dated 5 November 2021 and signed by an officer of the Court, which recorded that Dr Metwally was, on 5 August 2021, convicted of all the offences as outlined at paragraphs 1a-g of the Allegation.

12. The Tribunal, therefore, having had regard to the signed Certificates of Conviction and Rule 34(3) of the Rules, found at paragraphs 1a-g of the Allegation proved.

### Paragraph 2 – Determined and found proved

13. The Tribunal considered whether, on 6 August 2021 at Sheffield Crown Court, Dr Metwally was convicted of two counts of recording a person doing a private act.

14. The Tribunal had regard to the Certificate of Conviction, dated 5 November 2021 and signed by an officer of the Court, which recorded that, on 6 August 2021, Dr Metwally was convicted of two counts of recording a person doing a private act.

15. The Tribunal, therefore, having had regard to the signed Certificate of Conviction and Rule 34(3) of the Rules, found paragraph 2 of the Allegation proved.

### Paragraph 3 – Determined and found proved

16. The Tribunal considered whether, on 20 September 2021, Dr Metwally was sentenced to 14 years and six months' imprisonment, an order under Section 27 of the Misuse of Drugs Acts 1971, an order under section 143 Powers of Criminal Courts (Sentencing) Act 2000 and to sign the Sex Offenders Register for a period of seven years.

17. Having had regard to the Certificates of Convictions, the Tribunal was satisfied that Dr Metwally was sentenced as outlined. Accordingly, the Tribunal found paragraph 3 of the Allegation proved.

### The Tribunal's Overall Determination on the Facts

18. The Tribunal has determined the facts as follows:

1. On 5 August 2021 at Sheffield Crown Court, you were convicted of:
  - a three counts of administering poison with intent to endanger life/inflict grievous bodily harm; **Determined and found proved**
  - b supplying a controlled drug of Class A; **Determined and found proved**
  - c supplying a controlled drug of Class C; **Determined and found proved**
  - d supplying a controlled drug of Class B – Ketamine; **Determined and found proved**
  - e supply of a specified medicinal product other than in accordance with a prescription in contravention of the Medicines Act 1968;  
**Determined and found proved**
  - f possession with intent to supply a controlled drug of Class A;  
**Determined and found proved**

- g dishonestly making false representation to make gain for self/another or cause loss to another/expose other to risk. **Determined and found proved**
- 2. On 6 August 2021 at Sheffield Crown Court you were convicted of two counts of recording a person doing a private act. **Determined and found proved**
- 3. On 20 September 2021 you were sentenced to:
  - a 14 years six months' imprisonment; **Determined and found proved**
  - b an order under Section 27 of the Misuse of Drugs Act 1971; **Determined and found proved**
  - c an order under section 143 Powers of Criminal Courts (Sentencing) Act 2000 **Determined and found proved**
  - d sign the Sex Offenders Register for a period of seven years. **Determined and found proved**

#### Determination on Impairment

19. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved, Dr Metwally's fitness to practise is impaired by reason of his conviction.
20. No further evidence was adduced at this stage.

#### Submissions

21. On behalf of the GMC, Mr Slack submitted that Dr Metwally's fitness to practise is impaired by reason of his conviction.
22. Mr Slack reminded the Tribunal of the relevant caselaw to consider in relation to the question of impairment. He then submitted that the circumstances of Dr Metwally's criminal conviction are such that public confidence in the medical profession would be undermined if Dr Metwally was not found to be currently impaired, and that his convictions have brought the profession into disrepute.
23. Mr Slack submitted that there is no doubt that the circumstances of Dr Metwally's convictions are extremely grave.
24. Mr Slack reminded the Tribunal of the sentencing remarks of the Judge at Sheffield Crown Court:

*'First, you are a disgrace to your profession... You used medical procedures in a wholly perverted manner.*

...

*Fourth, this case is both very serious and utterly bizarre. I have never presided over a case like it nor have I ever been involved in such a case as this when I was a barrister. In 41 years professional experience of the law, I have never experienced anything like this.*

...

*You met [Miss A] in 2013 when she was a nurse at the hospital in Grimsby. She had medical problems and sought your advice. You eventually engaged her as a nurse at your private practice. This led to a romantic relationship which you represented to some people was a marriage...*

*It is clear that between 2015 and 2019 you persuaded she was possessed by evil spirits. This was born of your religious fanaticism.*

*I have no doubt the relationship between and yourself was abusive in that you overwhelmed her – in fact it was a form of brainwashing. You utilised your power and professional training as a doctor to commit very serious crimes.*

*You perverted one of the central tenets of the medical profession by using medical procedures to execute criminal acts. You carried out those medical procedures in very dangerous circumstances and with little regard to the safety of the woman you professed to love. This was all done under the guise of a religious practice. It was entirely bogus. What you did had nothing whatever to do with legitimate Islamic religious ritual. I much prefer – as plainly did the jury – the compelling evidence of the Imam who made it clear that what you did bore no resemblance to legitimate religious ceremonies...'*

25. In relation to the poisoning and drugs offences, Mr Slack noted the following comments of the Judge:

*'By reason of your religious fanaticism you believed that Miss A was possessed by spirits. You gave them bizarre names. You persuaded Miss A due to her enfeebled character, that she needed to undergo a form of exorcism. What you performed upon her on repeated occasions from 2015 through to 2019 was unquestionably a series of criminal acts.*

*You administered noxious substances in the form of anaesthesia or sedative drugs which you had purloined from the Diana, Princess of Wales Hospital in Grimsby. The photographs reveal these to have been left around your home. You had no licence to keep any drugs at your home nor to prescribe them or administer them outside a hospital setting.*

*Almost everything was recorded on a CCTV system installed in your home. When you took Miss A to a hotel or another location, the events were partially captured by way of mobile telephone video recording. It is very clear you regularly administered potentially lethal controlled drugs to Miss A. This included Fentanyl, Propofol, Ketamine and Diazemuls. It was all done as part of a sham religious ritual. It was extremely dangerous to use these drugs outside a hospital or clinical setting. Many of these drugs are for use in an operating theatre or intensive care unit where there is resuscitation equipment and trained medical staff. You administered these drugs via an intravenous canula into the body of Miss A in locations as bizarre as a bed at home, a bath, and a hotel bedroom. Other unknown individuals all dressed in black were also present on some occasions. It was bizarre and dangerous in equal measure.*

*As a means of camouflaging the truth of the situation Miss A was taken to London to see a leading specialist. In the middle of 2019 Miss A was admitted to hospital as a result, I have no doubt, of one of your botched sham religious ceremonies. The hospital doctors were baffled by the situation – primarily because they were not told the truth.*

*Eventually the matter came to a head on 3rd and 4th July 2019. Miss A was deeply sedated by your criminal acts. You very nearly killed her. You took no action to seek medical assistance when she plainly needed it. She was eventually admitted to hospital. But again the medical staff were not told the truth.*

*A police investigation ensued and the truth emerged.'*

26. Mr Slack submitted that by Dr Metwally's criminal actions nearly killed Miss A and the judges' comments that:

*'Her life was repeatedly endangered by your criminal acts and she very nearly died in early July 2019 when you poisoned her in the botched medical procedure carried out under the guise of a religious ritual. It was a sham religious ritual. The account you gave the jury about what happened was comprehensively absurd...*

*It may be the case that in some perverted way you believed you were assisting the woman you profess to love, but you went about that in a bizarre way by botched medical procedures and the administration of potent drugs which regularly endangered her life and on at least one occasion, nearly killed her...*

*There is no guideline for the crime of administering a poison or noxious substance which endangered the life of another. I must consider the harm caused and your culpability. In respect of both, the case falls in the highest level. Your conduct was deliberate, persistent and repeated. It was extremely dangerous to do as you did. You were a doctor at the time and misusing your medical skills, such as they were, in a perverted and illegitimate manner. Furthermore, you were in an abusive relationship with a vulnerable woman who was infatuated with you. You exploited her vulnerability and exposed her to great physical danger. Indeed, in early July 2019 you very nearly killed her and never sought any form of*

*legitimate medical assistance until others became involved. You also tried to cover up what you had done and never told the doctors at the hospital what really occurred. The execution of your criminality is aggravated by the fact you used restraints upon Miss A on several occasions. It was all planned and carefully orchestrated with others participating in the sham religious acts on occasion...*

*I am entirely satisfied you are a dangerous offender within the statutory definition. The facts of this case, taken as a whole, reveal that to me. This is a case where I am able to reach that conclusion without the need for any input from the probation service or any other form of report. You repeatedly visited acutely dangerous acts upon Miss A which placed her in hospital twice and nearly killed her on 4th July 2019. I have every reason to believe you harbour ingrained and perverted attitudes which would lead you to act in exactly the same way as you behaved towards Miss A. This would expose others to a high level of risk of serious injury in the future. History could easily repeat itself if you are given the chance to do as you did in this case in the future.'*

27. Mr Slack then referred the Tribunal to the judge's comments in relation to the fraud offences:

*'you wrote many prescriptions for individuals who were either fictitious or were real people who did not receive the drugs prescribed for them. You admit this in part. You admit that you wrote out a prescription for [Redacted] – who was not a real person – but deny the others.*

*I have seen and heard all the evidence about this aspect of the case during the trial. I have not a shred of doubt that you are guilty of the fraud in respect of all the prescriptions as alleged by the prosecution. Furthermore, during the evidence you advanced entirely bogus accounts about several of the witnesses – particularly about family members of Miss A. That was despicable...*

*The fraud aspect of the case is different – and it was perpetrated by a doctor. It was an abuse of trust reposed in him by his profession and others to do as he did...'*

28. Mr Slack then addressed the Tribunal in relation to the voyeurism offences. He referred the Tribunal to various parts of the prosecutions opening as well as the following comments from the judge in his sentencing remarks:

*'The two complainants in this part of the case have protection by way of anonymity for life. Both have been badly affected by what you did to them. It was a grotesque breach of trust by you as a doctor.*

*Put shortly the facts of the voyeurism are these: two women patients attended your clinic between 2013 and 2014. You deliberately filmed them in a state of undress. You edited the shots to make them even more indecent and erotic. It appears you became*

*infatuated with these women. I forbear to set out the details in these sentencing remarks. I have read the full summaries of what is depicted.*

*The consequences have been serious. One of the women has become extremely anxious and her confidence has markedly diminished. Her relationship has been affected and she describes the consequences as having “broken” her. The other woman has been deeply shocked by the betrayal of trust.’*

29. Mr Slack noted the aggravating features of the voyeurism aspect of Dr Metwally’s case as identified by the prosecution at the trial, namely, the significant degree of planning, the recording of images and the abuse of trust, the location of the offence and period of time over which each victim was observed. Mr Slack also noted the judge’s observation:

*‘It occurs to me that the serious aspect of this case, quite apart from those you have identified, is the fact that the defendant was a doctor.*

*...And the two victims were patients in whom they reposed great trust as people do when they go to see the doctor or any medical practitioner, and the consequences for these two women that you have set out is and remains quite serious.’*

30. Mr Slack submitted that the nature and seriousness of all these offences mean that public confidence in the profession would be gravely harmed if a finding of current impaired fitness to practise were not made.

31. In addition, Mr Slack submitted that given the very long sentence that was imposed by the judge, Dr Metwally remains a serving prisoner and will remain so for a considerable time to come. He submitted that the fact of his imprisonment alone, quite apart from the circumstances of the conviction to which it relates, clearly currently impairs Dr Metwally’s fitness to practise.

32. Mr Slack also submitted that Dr Metwally is currently subject to the terms of the Sex Offenders Register and will remain on the register for a period of 7 years. He noted paragraph 154 of the Sanctions Guidance which states that *...‘no doctor registered as a sex offender should have unrestricted registration.’* He submitted that the fact Dr Metwally is currently registered as a sex offender, is a further ground for finding current impairment in this case.

33. Mr Slack submitted that in all those circumstances, bearing in mind the extremely serious nature of the offence, the fact that Dr Metwally abused his position of trust as a doctor, to behave in the way he did, bearing in mind the length of the sentence to which he is subject and given he is a registered sex offender, Dr Metwally’s fitness to practise is currently impaired.

## The Relevant Legal Principles

34. The Tribunal reminded itself that at this stage of the proceedings, there is no burden or standard of proof and the decision of impairment is a matter for the Tribunal's judgement alone.

35. The Tribunal must determine whether Dr Metwally's fitness to practise is currently impaired by reason of his conviction, taking into account his conduct at the time of the events and any other relevant factors such as any development of insight, whether the matters are remediable or have been remedied and the likelihood of repetition.

36. The Tribunal also has to have regard to the public interest and the need to declare and uphold proper standards of behaviour so that confidence in the profession is maintained.

37. Whilst there is no statutory definition of impairment, the Tribunal was assisted by the guidance provided by Dame Janet Smith in the *Fifth Shipman Report*, as adopted by the High Court in the case of *Council for Healthcare Regulatory Excellence v NMC and Grant* [2011] EWHC 927. In particular, the Tribunal considered whether its findings of fact show that Dr Metwally's fitness to practise is impaired in the sense that he:

- a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or
- b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or
- c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or
- d. has in the past acted dishonestly and/or liable to act dishonestly in the future.

## The Tribunal's Determination on Impairment

### Conviction

38. The Tribunal considered whether Dr Metwally's fitness to practise is impaired by reason of his conviction.

39. The Tribunal considered that Dr Metwally has seriously undermined public confidence in the profession through his convictions. He continues to serve a significant custodial sentence and is a registered sex offender.

40. The Tribunal considered that a fundamental aspect of a doctor's role is to be trustworthy and act with integrity and within the law, and Dr Metwally has significantly

departed from this. His actions have caused serious harm to Miss A and the two victims of his voyeurism. He has brought the reputation of the profession into disrepute and has breached a fundamental tenet of the profession. Moreover, there is no evidence that Dr Metwally has any insight into his actions; there has been no apology and no expression of remorse.

41. Given the serious nature of Dr Metwally's conviction, that he is currently serving a significant custodial sentence and is on the Sex Offender Register, the Tribunal determined that a finding of impairment was necessary to uphold the Tribunal's overarching objectives.

42. Accordingly, the Tribunal determined that Dr Metwally's fitness to practice is currently impaired by reason of his convictions. It determined that a finding of impairment is necessary to protect and promote the health, safety and wellbeing of the public, promote and maintain public confidence in the medical profession, promote and maintain proper professional standards and conduct for the members of the profession.

#### **Determination on Sanction - 31/05/2022**

1. Having determined that Dr Metwally's fitness to practise is impaired by reason of his conviction, the Tribunal now has to decide in accordance with Rule 17(2)(n) of the General Medical Council (Fitness to Practise) Rules 2004 as amended on the appropriate sanction, if any, to impose.

#### **The Evidence**

2. The Tribunal has taken into account evidence received during the earlier stages of the hearing where relevant, to reach a decision on sanction. No further evidence was produced by Dr Metwally or by his legal representative at this stage of the hearing.

#### **Submissions**

3. On behalf of the GMC, Mr Slack submitted that the appropriate and proportionate sanction was one of erasure.

4. Throughout his submissions, Mr Slack referred the Tribunal to the Sanction Guidance (2020 version) ('SG').

5. Mr Slack reminded the Tribunal that the main reason for imposing sanctions is to uphold the overarching objective, which is to protect and promote the health, safety and wellbeing of the public, promote and maintain public confidence in the medical profession and promote and maintain proper professional standards and conduct for the members of the profession. Mr Slack also reminded the Tribunal that it should consider each sanction, starting with the least restrictive, and have regard to the principle of proportionality, weighing the interests of the public against those of Dr Metwally.

6. Mr Slack referred the Tribunal to the guidance contained in the SG pertaining to conviction cases, in particular, paragraph 116:

*116 The purpose of the hearing is not to punish the doctor a second time for the offences they were found guilty of. The purpose is to consider whether the doctor's fitness to practise is impaired as a result. If so, the tribunal then needs to consider whether to restrict the doctor's registration to protect the public (who might come to the doctor as patients) and to maintain the high standards and good reputation of the profession. The tribunal should take account of paragraphs 65–67 of Good medical practice regarding the need to be honest and trustworthy, and to act with integrity.*

Mr Slack submitted that paragraph 65 of Good medical practice ('GMP') was particularly relevant in this case:

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

7. Mr Slack also drew the Tribunal's attention to paragraph 47 of GMP, which he submitted was relevant in the context of the voyeurism offences:

*'47 You must treat patients as individuals and respect their dignity and privacy'*

8. In addition, Mr Slack drew the Tribunal's attention to paragraph 54 of GMP, in the context of what he submitted was the appalling treatment provided to Miss A:

*'54 You must not express your personal beliefs (including political, religious and moral beliefs) to patients in ways that exploit their vulnerability or are likely to cause them distress'*

9. Mr Slack highlighted the general principles in the SG that where a doctor has been convicted of a serious criminal offence or offences, they should not be permitted to resume unrestricted practice until they have completed their sentence, and no doctor registered as a sex offender should have unrestricted registration.

10. Mr Slack drew the Tribunal's attention to paragraphs of the SG which deal with sexual misconduct. In particular, he emphasised paragraph 150 in respect of the voyeurism offences:

*'150 Sexual misconduct seriously undermines public trust in the profession. The misconduct is particularly serious where there is an abuse of the special position of trust a doctor occupies, or where a doctor has been required to register as a sex offender. More serious action, such as erasure, is likely to be appropriate in such cases.'*

11. As for the fraud offence, Mr Slack submitted that paragraph 128 of the SG was relevant:

*'128 Dishonesty, if persistent and/or covered up, is likely to result in erasure'*

12. Mr Slack submitted that as serious as the fraud offence was, it is of a lesser order of magnitude compared to the hugely serious offending against Miss A, and also Ms B and Ms C.

13. Mr Slack then addressed the Tribunal in relation to each available sanction.

14. Mr Slack submitted that taking no action is only appropriate in cases where there are exceptional circumstances, and such cases are rare. He submitted that the serious nature of Dr Metwally's criminal convictions are self-evident and reflected by the very substantial prison sentence imposed. He submitted that the sentencing remarks of the judge spell out the grave nature of the offending and the fact that Miss A almost died as a result of Dr Metwally's illegal administration of drugs to her. He submitted that this was not a case where no order is appropriate.

15. Mr Slack submitted that this was not a case where conditions are appropriate. Moreover, it is not apparent what conditions could be devised to satisfy the need to maintain public confidence. He submitted that given the extremely serious nature of the convictions, a more severe sanction is required to maintain public confidence and trust in the profession.

16. Mr Slack referred the Tribunal to the paragraphs of the SG which advise when suspension may be appropriate. In particular, he noted paragraph 93 of the SG which advises that suspension may be appropriate where there may have been an acknowledgement of fault and where the Tribunal is satisfied that the behaviour or incident is unlikely to be repeated. He submitted that neither of these features apply. He noted that notwithstanding Dr Metwally's convictions, Dr Metwally has not accepted his wrongdoing and indeed appears to have instructed solicitors to investigate whether there are grounds to appeal.

17. Mr Slack noted that the Tribunal found at paragraph 40 of its determination on facts and impairment, that *'there is no evidence that Dr Metwally has any insight into his actions; there has been no apology and no expression of remorse.'* As for the risk of repetition of the subject matter of the convictions, Mr Slack submitted that the evidence that it is unlikely to be repeated, is wholly lacking. He then noted the trial judge's comments:

*'...You repeatedly visited acutely dangerous acts upon Miss A which placed her in hospital twice and nearly killed her on 4th July 2019. I have every reason to believe you harbour ingrained and perverted attitudes which would lead you to act in exactly the same way as you behaved towards Miss A. This would expose others to a high level of risk of serious injury in the future. History could easily repeat itself if you are given the chance to do as you did in this case in the future.'*

18. Mr Slack pointed to each of the factors outlined at paragraph 97a-g of the SG which, if present, may indicate that suspension is appropriate. He submitted that none of the applicable factors were present in this case.

19. Ms Slack submitted that given the seriousness of the circumstances of the convictions, erasure is the only appropriate sanction. In so doing, he referred the Tribunal to the list of factors outlined at paragraph 109 of the SG. He submitted that the follow factors apply in this case:

*109 Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).*

*a A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor.*

*b A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety.*

*c Doing serious harm to others (patients or otherwise).....*

*d Abuse of position/trust*

*e Violation of a patient's rights/exploiting vulnerable people*

*f Offences of a sexual nature...*

*...*

*h Dishonesty, especially where persistent and/or covered up*

*...*

*j Persistent lack of insight into the seriousness of their actions or the consequences.*

20. In regard to 109a, Mr Slack highlighted the judge's remarks in relation to the administration of drugs to Miss A:

*'You perverted one of the central tenets of the medical profession by using medical procedures to execute criminal acts. You carried out those medical procedures in very dangerous circumstances and with little regard to the safety of the woman you professed to love...'*

21. In regard to 109b, Mr Slack submitted that Dr Metwally's actions in administering unprescribed specified medication to Miss A with no medicinal purpose and in dangerous circumstances on a number of occasions, and then failing to call for medical assistance when she was gravely unwell, shows a plain disregard for patient safety.
22. In regard to 109c, Mr Slack reminded the Tribunal that Miss A almost died on one occasion, and that led to her admission to hospital. He added that there has also been psychological trauma to Ms C, and in particular to Ms B.
23. In respect of 109d, Mr Slack submitted that there has been a plain abuse of trust, exemplified by Dr Metwally's behaviour towards all three of the victims.
24. In relation to 109e, Mr Slack noted that the judge identified Miss A as being vulnerable and that Dr Metwally exploited her vulnerability. Mr Slack submitted that Ms B and Ms C plainly had their rights violated by their secret indecent filming.
25. In relation to 109f, Mr Slack noted the voyeurism offences have led to Dr Metwally being placed on the Sex Offender Register for seven years.
26. In respect of paragraph 109h and j, Mr Slack noted Dr Metwally's dishonesty and submitted that there has been a persistent lack of insight. He stated that Dr Metwally fought the majority of the allegations all the way to a contested trial and even now appears to be challenging his convictions.
27. In those circumstances, Mr Slack submitted that erasure is the only appropriate sanction and that any sanction less than erasure would be damaging to the public's trust and confidence in the medical profession

### **The Relevant Legal Principles**

28. The decision as to the appropriate sanction, if any, to impose in this case is a matter for the Tribunal exercising its own judgment. In reaching its decision, the Tribunal has taken into account the SG and borne in mind the overarching objective.
29. The Tribunal reminded itself that the main reason for imposing any sanction is to protect the public and that sanctions are not imposed to punish or discipline doctors, although they may have a punitive effect.
29. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Metwally's interests with the public interest.

### **The Tribunal's Determination on Sanction**

#### Aggravating and Mitigating Factors

30. The Tribunal first identified the aggravating and mitigating factors in this case.

31. The Tribunal identified the following aggravating factors:

- The nature and circumstances of Dr Metwally's convictions and that he is serving a lengthy custodial sentence and is on the Sex Offenders Register.
- The significant harm caused to Miss A; She almost died as a result of Dr Metwally's actions. Moreover, she was vulnerable and Dr Metwally exploited this fact.
- The emotional harm caused to Ms B and Ms C.
- Dr Metwally's abuse of his professional position and the trust placed in him.
- Dr Metwally's dishonesty.
- The absence of any statement of regret or remorse.
- Dr Metwally's lack of insight and remediation.

32. The Tribunal could not identify any mitigating factors beyond the fact that there was no evidence to suggest that Dr Metwally was not of previous good character or that there were any previous fitness to practise findings made against him. The Tribunal took no adverse inference from Dr Metwally's non-attendance at this hearing. It considered that even if Dr Metwally had attended and expressed remorse for his actions; the aggravating factors are so serious in this case, that any mitigation would not shift the balance which leans firmly towards the aggravating factors.

### **No action**

33. The Tribunal first considered whether to conclude the case by taking no action. The Tribunal was mindful that taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances.

34. The Tribunal determined that there were no exceptional circumstances to justify taking no action in this case. It considered that taking no action would neither be appropriate, proportionate nor in the public interest bearing in mind the circumstances and seriousness of Dr Metwally's convictions.

### **Conditions**

35. The Tribunal next considered whether it would be appropriate to impose conditions on Dr Metwally's registration.

36. The Tribunal was mindful that any conditions imposed would need to be appropriate, proportionate, workable, and measurable.

37. The Tribunal considered that given the nature and gravity of Dr Metwally's convictions, conditions would be entirely inappropriate and would not meet the public interest.

### Suspension

38. The Tribunal then went on to consider whether suspending Dr Metwally's registration would be an appropriate and proportionate sanction in this case.

39. The Tribunal bore in mind that suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbecoming a registered doctor. It was also mindful that a period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration.

40. The Tribunal had regard to the factors outlined in the SG which, being present, indicate suspension may be appropriate. This includes where the doctor's misconduct is not fundamentally incompatible with continued registration, where there is no evidence that demonstrates remediation is unlikely to be successful, and where the doctor has insight and does not pose a risk of repeating his behaviour. The Tribunal considered that none of these factors had been engaged by Dr Metwally.

41. The Tribunal considered that Dr Metwally's convictions are so serious that it is fundamentally incompatible with continued registration. There is no evidence to demonstrate that remediation would be successful and there is no evidence of insight. Moreover, as noted by the judge, there is a risk '*history could repeat itself*' if Dr Metwally is given the chance to do as he did in this case.

42. The Tribunal therefore determined that suspension would not be appropriate and would fail to uphold the overarching objective.

### Erasure

43. Having considered all the sanctions available starting from the least restrictive, the Tribunal has determined that erasure is the only appropriate sanction and is necessary to fulfil the overarching objective.

44. The Tribunal agreed with Mr Slack's submission that paragraphs 109a, b, c, d, e, f, h and j are engaged in this case.

45. The Tribunal was satisfied that Dr Metwally's behaviour is fundamentally incompatible with continued registration. He nearly killed Miss A and has caused serious emotional harm to Ms B and Ms C. He is serving a significant custodial sentence and is on the Sex Offenders Register. He has abused his professional position and seriously undermined public confidence in the profession through his convictions. He has acted dishonestly in

relation to the fraud offences and displayed predatory sexually motivated behaviour in relation to the voyeurism offences. There is no evidence of insight or remediation that mitigates the risk of him repeating his misconduct in the future.

46. The Tribunal determined that erasure was the only necessary and proportionate sanction. It concluded that this was necessary in terms of the overarching objective: to protect the public, maintain public confidence in the medical profession; and uphold proper professional standards and conduct for members of the profession. The Tribunal therefore directs that Dr Metwally's name be erased from the Medical Register.

#### Determination on Immediate Order - 31/05/2022

1. Having determined to direct that Dr Metwally's name be erased from the medical register, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Metwally's registration should be subject to an immediate order.

#### Submissions

2. On behalf of the GMC, Mr Slack submitted that an immediate order is necessary for the protection of the public and is in the public interest. He referred the Tribunal to paragraphs 172 and 173 of the SG:

*172 The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor...*

*173 An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety. For example, where they have provided poor clinical care or abused a doctor's special position of trust, or where immediate action must be taken to protect public confidence in the medical profession.*

3. Mr Slack submitted that Dr Metwally is a serving prisoner and is subject to the Sex Offenders Register. He submitted that Dr Metwally has been identified as posing a risk to patients and submitted that public confidence would be damaged if no immediate order was made.

2. Mr Slack invited the Tribunal to impose an immediate order of suspension and to revoke the existing interim order.

### The Tribunal's Determination

5. In reaching its decision, the Tribunal has exercised its own judgement and has taken account of the principle of proportionality.

6. The Tribunal determined that in light of its rationale for imposing an order of erasure, and in the particular circumstances of this case, an immediate order of suspension was necessary to protect members of the public and is otherwise in the public interest. In making an immediate order of suspension, the Tribunal also determined to revoke the current interim order.

7. This means that Dr Metwally's registration will be suspended from the date on which notification of this decision is deemed to have been served upon him. The substantive direction of erasure will take effect 28 days from that date, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.

8. That concludes this case.

## ANNEX A – 27/05/2022

### Preliminary applications: Service, adjournment application and an application to proceed in Dr Metwally's absence

#### Service

3. Dr Metwally is neither present nor represented at this Medical Practitioners Tribunal ('MPT'). The Tribunal therefore considered whether notice of this hearing has been properly served in accordance with Rules 15 and 40 of the General Medical Council (GMC) (Fitness to Practise) Rules 2004 ('the Rules') and paragraph 8 of the Schedule 4 to the Medical Act 1983.

4. The Tribunal was provided with a copy of a service bundle.

3. Mr Slack, Counsel, on behalf of the GMC, directed the Tribunal to a letter from RadcliffesLeBrassuer (RLB), dated 17 July 2019, in which they advised the GMC:

*'At this moment in time it is believed that correspondence with Dr Metwally whilst in prison is difficult and therefore please copy all subsequent correspondence to ourselves.'*

4. Mr Slack submitted that the GMC and MPTS has therefore since been corresponding with RLB. He pointed out that at an IOT hearing in 2019, the GMC emailed RLB to confirm if they would accept service whilst Dr Metwally was in custody and RLB responded *'we are happy to accept service on behalf of Dr Metwally'*.

5. Mr Slack submitted that the MPTS emailed RLB on 5 April 2022 attaching the Notice of Hearing which included the date of today's hearing, and that it would proceed virtually. He noted the MPTS chased up RLB to confirm receipt of the correspondence on 7 April 2022, but that in the meantime the GMC had sent a full draft hearing bundle to RLB and they had suggested redactions to it. RLB acknowledged receipt of the MPTS Notice of Hearing letter on 23 May 2022 but Mr Slack submitted that there is no doubt that by the time they formally acknowledged the Notice, Dr Metwally was already aware of the hearing because he had instructed his legal representative to seek a postponement of the hearing.

6. Mr Slack reminded the Tribunal of the provisions within the Medical Act that notice may be sent to an address provided by a doctor for the purpose of fitness to practise hearings. Mr Slack submitted that Dr Metwally provided his representative's email address as the service address and that they have been content to accept service due the difficulties for Dr Metwally receiving correspondence in prison.

7. In the circumstances, the Tribunal was satisfied that all reasonable steps had been made to serve the notice of this hearing in accordance with Rules 15 and 40.

### Application to adjourn hearing

8. Following the Tribunal finding service to have been effected in accordance with the Rules, Mr Slack drew the Tribunal's attention to a letter from RLB dated 25 May 2022. In this RLB stated that their only instructions in respect of the hearing are:

*'to make a preliminary application for these proceedings to be adjourned pending the outcome of any potential Appeal by Dr Metwally against conviction and sentence.'*

9. RLB explained that the application to adjourn the hearing was made on the same basis as a postponement application they made on 12 May 2022. The Tribunal was provided with a copy of the postponement application letter dated 12 May 2022 and noted the grounds on which the application was made:

*'I am instructed by Dr Metwally that he has instructed another firm of Solicitors to explore the potential for an Appeal in this case.*

*I understand that his new firm of Solicitors will not be able to apply for Legal Aid to consider the papers for the purposes of any Appeal until after 18 May 2022.*

*In those circumstances they will not be in a position to provide any reasonable advice on the merits and prospects of an Appeal in advance of the commencement of the MPT Hearing on 27 May 2022.*

*In those circumstances and given that the MPT Hearing is based solely on his Crown Court convictions and sentence given that he is considering an Appeal I am instructed to request a postponement of the MPT Hearing scheduled to begin on 27 May until such time as the position with regard to his prospects and merits of an Appeal against those very same convictions and sentence becomes clearer.'*

10. Mr Slack submitted that the GMC opposes the application to adjourn the hearing.
11. Mr Slack submitted that allegations before the Tribunal are very serious, and have resulted in Dr Metwally being sentenced to prison for 14 and a half years, and on the Sex Offender Register for seven years.
12. Mr Slack submitted that there is no appeal currently before the Court of Appeal and there may never be such an appeal. He also observed that the 28 day period for lodging an appeal against a conviction has already lapsed and so Dr Metwally would have to grant leave to make an application out of time. He submitted that it is an open ended adjournment application against which there is a public interest in hearing the matter now. He submitted that public confidence risks being undermined if the hearing is adjourned now based on Dr Metwally only instructing solicitors to explore whether he has any grounds to an appeal.
13. Mr Slack submitted that the application should be refused. He added that there would be no prejudice to Dr Metwally if the conviction was overturned, there would be a means to remedy any order the Tribunal may make.
14. The Tribunal carefully considered the application to adjourn the hearing. It noted that there has been no new information since the postponement application was made on 12 May 2022.
15. The Tribunal considered that it was not in the public interest to adjourn the hearing today. Given the serious nature of the Allegation and that Dr Metwally is currently serving a lengthy custodial sentence and on the Sex Offenders Register, the Tribunal considered that public confidence would be undermined if an adjournment application was granted on the basis that Dr Metwally may appeal his criminal conviction.

### **Proceeding in Absence**

16. Mr Slack then made an application to proceed in Dr Metwally's absence. In so doing, he reminded the Tribunal of the principles in *R v Jones (2001) EWCA Crim 168* and *Adeogba (2016) EWCA Civ 162*.
17. Mr Slack submitted that Dr Metwally is fully aware of today's hearing and has decided not to attend virtually and has only given his representatives instructions to apply for an adjournment and play no other part. Mr Slack submitted that Dr Metwally has waived his right to attend and that there is no suggestion that a short adjournment would secure his attendance at a later date.

18. Mr Slack submitted that there was a strong public interest in cases taking place in a reasonable timeframe to the dates they relate. He submitted that the conviction was last year and the subject matters date back to 2019 and earlier. He reminded the Tribunal that the principle of fairness is of prime importance and also extends to the GMC.

19. The Tribunal was satisfied that Dr Metwally has voluntarily absented himself from this hearing. Having regard to the public interest, the Tribunal decided that it was fair and in the interests of justice to proceed with this hearing in the absence of Dr Metwally. It therefore determined to proceed in Dr Metwally's absence in accordance with Rule 31.