

PUBLIC RECORD

Date: 25/11/2022

Medical Practitioner's name:	Dr Jitendra NAYAR
GMC reference number:	4740924
Primary medical qualification:	MB BS 1985 University of Delhi
Type of case	Outcome on impairment
Review - Conviction	Not Impaired

Summary of outcome

Suspension to expire

Tribunal:

Legally Qualified Chair	Ms Ijeoma Omambala
Lay Tribunal Member:	Mrs Debbie Hill
Medical Tribunal Member:	Dr Harriet Leyland
Tribunal Clerk:	Mrs Anne Bhatti

Attendance and Representation:

Medical Practitioner:	Present and not represented
GMC Representative:	Ms Natalia Cornwall, Counsel

Attendance of Press / Public

In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held partly in public and partly 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 - 25/11/2022

1. This determination will be read in private. However, as this case concerns Dr Nayar's conviction a redacted version will be published at the close of the hearing.
2. 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 Nayar's fitness to practise is impaired by reason of a conviction and whether the practitioner has failed to comply with any requirement imposed upon him as a condition of registration.

Background

The August 2022 Tribunal '2022 Tribunal'

3. Dr Nayar qualified as a doctor in 1985. At the time of the index events Dr Nayar was practising as a Consultant Psychiatrist at the East London Foundation Trust in Bedford.
4. The background to the conviction was that on 31 December 2021 at approximately 20.00 hrs a member of the public contacted the police due to Dr Nayar's erratic driving and his manner once he had exited his car. The member of the public believed Dr Nayar to be drink-driving. The police attended and reported that Dr Nayar smelt of intoxicating liquor, was unsteady on his feet and his speech was slurred. Dr Nayar provided a positive breath sample and was arrested. At the police station Dr Nayar provided a positive breath test with a reading of 138 microgrammes of alcohol in 100 millilitres of breath. He was detained overnight.
5. On 1 January 2022 Dr Nayar was interviewed by the police in the presence of a solicitor. Dr Nayar's initial account to the police was that at around 18.00hrs he drove to a local shop to buy some wine and a sandwich. He said as it was New Years' Eve there was limited parking outside his house, so he decided to leave his car parked outside the shop

which was very close to his house. Later he was at home when some friends arrived who had brought wine with them, so he drank some wine. His friends invited him to go to the pub with them, but he declined. When they left to go to the pub, there was wine remaining which he drank. Dr Nayar told the police that around 20.20hrs he thought he had experienced a '*brain fade*' and he decided to return to the shop to purchase more wine, but the lady in the shop refused to serve him as she thought he was over the limit. He said that there was also another male customer in the shop who wanted to take his car keys from him and said that he should not be driving. Dr Nayar said that he assured them he would not be driving and that he would walk home. He said he started to walk home but realised that he had left his cap in the car, so he got into the car to get it. He said that the shopkeeper and the customer were standing outside and again told him not to drive and tried to take his keys from him. The customer then telephoned the police.

6. Dr Nayar's account of when he arrived at the shop differed from that of the customer and shop keeper. When the police told Dr Nayar that the customer had seen him driving his car around 20.20hrs and they would look at CCTV, he accepted the account of the customer. Dr Nayar was subsequently charged and bailed to appear at Luton Magistrates' Court.
7. On 10 February 2022 at Luton Magistrates' Court, Dr Nayar pleaded guilty and was therefore convicted of driving a motor vehicle on a road on 31 December 2021 after consuming so much alcohol that the proportion of it in his breath, namely 138 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limit, contrary to Section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 of the Road Traffic Offenders Act 1988. He was sentenced to eight weeks' imprisonment, suspended for 12 months, unpaid work for 100 hours during the 12 months and disqualification from holding or obtaining a driving licence for 33 months.
8. Dr Nayar admitted and the 2022 Tribunal found proved that Dr Nayar was convicted and sentenced as described above.
9. The 2022 Tribunal noted the gravity of Dr Nayar's offence, driving whilst under the influence of alcohol and being approximately four times over the legal limit.
10. The 2022 Tribunal was concerned that Dr Nayar knew that he had taken medication which should not be mixed with alcohol but then proceeded to drink wine. The 2022 Tribunal noted that Dr Nayar then chose to drive to the local shop, which was by his own account approximately a 3-to-4-minute walk from his house. The 2022 Tribunal were particularly alarmed that Dr Nayar could not even remember driving the car. The 2022

Tribunal noted that members of the public were so concerned that they telephoned the police. The 2022 Tribunal considered that Dr Nayar’s recklessness, in driving a car whilst under the influence of alcohol, could have had serious consequences resulting in an accident involving injury to himself or to members of the public.

11. The 2022 Tribunal noted that this is Dr Nayar’s second conviction for drink driving. His first offence occurred in August 2011 and as a result Dr Nayar was disqualified for 32 months and sentenced to a community order of 250 hours of unpaid work. It also noted that Dr Nayar’s first conviction resulted in a GMC warning being imposed on his registration for a period of five years, which expired on 9 February 2017.
12. The 2022 Tribunal took account of XXX and considered that there was a medium risk of repetition in the long term.
13. The 2022 Tribunal considered that Dr Nayar failed to address himself to the gravity of his offence and the impact on the public and public confidence in the medical profession. The 2022 Tribunal considered that Dr Nayar’s insight was developing, and as such his remediation is not complete so that there remained a risk of repetition.
14. The 2022 Tribunal noted that this was Dr Nayar’s second conviction for drink-driving and that he received a GMC warning for his first conviction. The 2022 Tribunal considered that Dr Nayar’s offence was so serious that a finding that his fitness to practise was not impaired would undermine public confidence in the profession and bring the profession into disrepute.
15. The 2022 Tribunal determined that Dr Nayar’s fitness to practise was impaired by reason of his conviction.

The 2022 Tribunal’s Decision

16. Given the seriousness of Dr Nayar’s conviction and the aggravating factors in this case, the 2022 Tribunal determined that a three months’ suspension was the appropriate and proportionate sanction. The 2022 Tribunal considered that imposing a suspension on Dr Nayar’s registration would have a deterrent effect and send out a signal to him, the profession and public about what is regarded as behaviour unbecoming a registered doctor.
17. There was no suggestion that Dr Nayar is not fit to practise safely as a doctor. The 2022 Tribunal considered that a lengthier suspension would deprive the public of an otherwise

good doctor and would be disproportionate. The Tribunal considered that imposing an order of suspension satisfied limbs b) and c) of the overarching objective.

18. The 2022 Tribunal directed a review of Dr Nayar’s case shortly before the end of the period of suspension. The 2022 Tribunal stated that at the review hearing, the onus will be on Dr Nayar to demonstrate how he has developed further insight and remediated. It therefore suggested that the reviewing Tribunal may assisted if Dr Nayar provided:

- Evidence that he has kept his skills and knowledge up to date
- XXX
- XXX
- XXX
- Further reflective writings on the impact of his actions on the profession and the views of the public towards the profession.
- XXX
- Dr Nayar will also be able to provide any other information that he considers will assist.

19. No immediate order of suspension was imposed.

Today’s Tribunal

The Evidence

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

21. Dr Nayar provided his own witness statement undated and also gave oral evidence at the hearing.

22. The Tribunal received but its consideration was not limited to the following evidence:

- Record of Determination from the MPT hearing on 10 to 12 August 2022;
- Correspondence between GMC and Dr Nayar, various dates;
- Dr Nayar’s witness statements from 2022 hearing;
- PDP activities from October 2021 to 2022;
- XXX;

- Letter confirming Dr Nayar’s attendance at Indore Psychiatry Society dated 31 October 2022;
- XXX;
- Photographs of Dr Nayar with his spiritual guide.

Submissions

On behalf of the GMC

23. On behalf of the GMC, Ms Natalia Cornwall, Counsel submitted that Dr Nayar’s fitness to practise is impaired. She submitted that since August 2022 Dr Nayar had completed eight hours of teaching in terms of keeping his skills and knowledge up to date. However, he had remained working as a doctor up until very recently. XXX.
24. Ms Cornwall submitted that Dr Nayar had provided further reflective writing on the impact of his actions and the risks of drink driving. She submitted that Dr Nayar had XXX. She submitted that this suggested a lack of insight into the difficulties which would occur in life which were outside his control.
25. She submitted that Dr Nayar had not complied with all of the directions made by the previous Tribunal and there was still work which remained to be completed in relation to insight and remediation.

Dr Nayar

26. Dr Nayar submitted that his fitness to practise was no longer impaired. He submitted that XXX. Dr Nayar confirmed that he had been practising as a doctor for 40 years and had seen a lot of sadness, injury and death. He submitted that his faith, yoga, walking, communicating with friends and family, singing, acting and writing plays had all helped him to cope with adversity.

The Relevant Legal Principles

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

28. This Tribunal must determine whether Dr Nayar’s fitness to practise is impaired today, taking into account Dr Nayar’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

Conviction

29. In reaching its determination, the Tribunal had regard to the relevant paragraphs of the Sanctions Guidance 2020, in particular paragraphs 163 and 164, which state:

‘163 It is important that no doctor is allowed to resume unrestricted practice following a period of conditional registration or suspension unless the tribunal considers that they are safe to do so.

164 In some misconduct cases it may be self-evident that, following a short suspension, there will be no value in a review hearing. However, in most cases where a period of suspension is imposed, and in all cases where conditions have been imposed, the tribunal will need to be reassured that the doctor is fit to resume practice – either unrestricted or with conditions or further conditions. A review hearing is therefore likely to be necessary, so that the tribunal can consider whether the doctor has shown all of the following (by producing objective evidence):

- a they fully appreciate the gravity of the offence*
- b they have not reoffended*
- c they have maintained their skills and knowledge*
- d patients will not be placed at risk by resumption of practice or by the imposition of conditional registration.’*

30. The Tribunal was satisfied that Dr Nayar had kept his knowledge and skills up to date. Dr Nayar formally retired from his substantive role as a Consultant Psychiatrist on 17 November 2022. Dr Nayar had provided the Tribunal with evidence of completing eight hours of teaching since the 2022 Tribunal hearing.

31. XXX.

32. XXX

33. Dr Nayar had provided the Tribunal with a further reflective statement on the impact of his actions on the profession and the views of the public towards the profession. The further reflections that he had submitted demonstrated that Dr Nayar's insight, which the previous Tribunal found to be developing, had progressed. Dr Nayar had reflected on the impact of his offending behaviour on the witnesses to the offence and on its impact on the reputation of the profession. Dr Nayar had also accepted that the highly inappropriate and dangerous nature of the offence and recognised now that he was sentenced appropriately and with lenience. XXX.
34. The Tribunal was of the view that Dr Nayar had completed sufficient remediation and had insight into the conduct which led to his conviction.
35. The Tribunal took into consideration the strategies Dr Nayar had put in place XXX. These included physical activities: he was a member of group with which he walked with regularly, he practised yoga every day, he taught singing and sang himself. Dr Nayar had found solace in his spiritual practice and faith was in regular contact with his spiritual Guru. In retirement, Dr Nayar had a structure and routine which he had found helpful. He regularly spoke to family members. He spoke to his mother every day. Dr Nayar had confirmed that his immediate future plans were not to return to clinical work as doctor but to resume some of the medical work he was doing before his suspension.
36. The Tribunal concluded that the risk of repetition in this case was low.
37. This Tribunal has therefore determined that Dr Nayar's fitness to practise is not impaired by reason of a conviction.
38. The Tribunal noted that the period of suspension of three months imposed by the 2022 Tribunal was imposed to mark the seriousness of Dr Nayar's conviction, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for the members of the profession. In the circumstances, this Tribunal determined, that it was in the wider public interest, that the current order of suspension on Dr Nayar's registration should lapse upon its expiry on 16 December 2022.
39. That concludes the case.