

PUBLIC RECORD

Dates: 30/05/2023 - 01/06/2023

Medical Practitioner's name: Dr Mohamed ELMASRY

GMC reference number: 4641001

Primary medical qualification: MB BCh 1991 Cairo University

Type of caseRestoration following
voluntary erasure**Summary of outcome**

Restoration application refused. No further applications allowed from 12 months after tribunal's decision.

Tribunal:

Legally Qualified Chair	Mrs Helen Potts
Lay Tribunal Member:	Ms Bronwen Cooper
Medical Tribunal Member:	Mr Gurpreet Singh
Tribunal Clerk:	Mr Francis Ekengwu

Attendance and Representation:

Medical Practitioner:	Not present and not represented
GMC Representative:	Mr Duncan McPhie, Counsel, instructed by GMC Legal

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 APPLICATION FOR RESTORATION FOLLOWING VOLUNTARY ERASURE – 01 /06/2023

1. The Tribunal has convened to consider Dr Elmasry's application for restoration to the list of registered medical practitioners (the Medical Register), in accordance with Section 41 of the Medical Act 1983 (as amended), the General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004 ('the Regulations'), and Rule 24 of the General Medical Council (GMC) (Fitness to Practise) Rules 2004 as amended ('the Rules').
2. This is Dr Elmasry's first application for the restoration of his name to the Medical Register following the voluntary erasure of his name from the Medical Register on or around 11 April 2013.
3. Dr Elmasry's application for restoration has been referred to the Tribunal because of concerns about his fitness to practise.

Background

4. Dr Elmasry qualified as a doctor in 1991 with an MBBCh from Cairo University. He arrived in the UK in 1997 and worked in Leeds from September 2004. From September 2005 to August 2006, Dr Elmasry was employed as a Specialist Registrar in Trauma and Orthopaedics at St James' University Hospital, Leeds and at Leeds General Infirmary.
5. On 12 December 2009, Dr Elmasry's registration was suspended for 12 months by a fitness to practise panel following a finding that his fitness to practise was impaired by reason of misconduct. At a review hearing on 17 December 2010, that suspension was extended for a further 12 months. A further review hearing was held on 19 December 2011, at which the panel concluded that Dr Elmasry's fitness to practise remained impaired, and imposed conditions on his registration.
6. A further concern was raised about Dr Elmasry's fitness to practise in September 2012. On 16 January 2013, Dr Elmasry applied for voluntary erasure. On 11 April 2013, he was informed that his application had been granted.
7. At the time his name was erased from the Medical Register, Dr Elmasry's registration was still subject to conditions imposed by a panel at a fitness to practise hearing on 19 December 2011.

Summary of previous decisions by the fitness to practise panel

12 December 2009 -suspended

8. On 12 December 2009, Dr Elmasry's registration was suspended for 12 months by a fitness to practise panel. Dr Elmasry did not attend the hearing and made no submissions. The Panel found that Dr Elmasry had been dishonest in presenting two separate National Health Service (NHS) prescriptions (with a combined value of £218.52) for a relative at two different pharmacies on one day (23 May 2006). He had not informed pharmacy staff that his relative was not entitled to an NHS prescription, he failed to pay for the prescriptions and he told a pharmacist that the prescription was for XXX, who had his own GP, who was staying with him and that he did not have to pay as XXX; this was not true.

9. In concluding that Dr Elmasry's fitness to practise was impaired, the Panel noted that Dr Elmasry had 'been inconsistent and has given different accounts.', which they considered raised serious questions as to his insight. The Panel also noted that no evidence had been presented regarding what Dr Elmasry had done since the events or whether he now had insight into his actions. The Panel concluded that it could not be reassured that there would not be any repetition of Dr Elmasry's dishonest conduct.

10. The Panel stated that the case would be reviewed before the end of the 12-month suspension period, and on that occasion it would expect Dr Elmasry to provide evidence that he had developed insight, including the following.

- Evidence as to the steps he has taken during the period of suspension of his continued professional development, including relevant journals read and courses attended.
- Evidence of his plans for return to medical practice.
- Testimonials as to his character and conduct during the period of his suspension.

17 December 2010- suspension extended

11. On 17 December 2010, Dr Elmasry's suspension was extended for a further 12 months. Dr Elmasry was not present at the review hearing and was not represented.

12. The Panel noted that Dr Elmasry had provided 'a CV-like document' which stated that he was the Assistant Director of a Learning Resource Centre in Cairo, but observed that the CV did not say whether he had been involved in any clinical work, teaching, or research during his period of suspension. Nor did it say that he had kept up to date by reading any medical journals.

13. The Panel had noted that it had received no evidence to indicate that Dr Elmasry now had insight into his actions, nor had it received any plans for his return to medical practice in the UK. The Panel stated that Dr Elmasry had not reassured the Panel that there would be no repetition of his dishonest conduct.

14. The Panel determined, taking these matters into account, that Dr Elmasry had shown no evidence that he had gained insight, nor that he had shown any improvement in his situation during his period of suspension.

15. The Panel stated that the case would be reviewed before the end of the further 12-month suspension period, and that at the next review hearing, it would help the Panel in its deliberations if Dr Elmasry could produce the following.

- Detailed and full evidence of his workplace activities since this hearing.
- Documentary evidence of courses attended.
- Documentary evidence of journals read and other materials relating to keeping up to date with current medical practice.
- Other evidence from Dr Elmasry that he has gained insight into his previous dishonest actions.
- Evidence of any plans for return to medical practice in the UK.
- Testimonials as to his character and conduct during the period of his suspension. In these testimonials the authors should state that they have read the determinations of the Fitness to Practise hearings in October/December 2009 and the hearing in December 2010.

19 December 2011- conditions imposed

16. At a review hearing on 19 December 2011, a panel concluded that Dr Elmasry's fitness to practise remained impaired, and imposed conditions on his registration. Dr Elmasry was present at the hearing but was not represented.

17. The Panel stated that it considered that it had limited information before it in respect of Dr Elmasry's workplace activities and his efforts to keep his knowledge up to date through courses and reading; the Panel stated that the courses Dr Elmasry had attended were limited in their scope and did not demonstrate a comprehensive attempt on Dr Elmasry's part to maintain his general clinical knowledge in order to return to practice in the UK. The Panel stated that Dr Elmasry had not provided any evidence or detailed information of the journals he had read, nor had he undertaken any clinical observation activities.

18. The Panel stated that it considered that Dr Elmasry had compartmentalised the GMC proceedings and the findings of misconduct, in his own mind, and that he had failed to recognise that how he behaves in non-clinical settings can inform the Panel's view of his fitness to practise in a clinical setting. The Panel noted that as a result, Dr Elmasry had not provided evidence from other sources regarding his insight and conduct. The Panel accepted that Dr Elmasry may not have realised this and reminded him that the findings of misconduct give rise to questions about his conduct and integrity in general, and not solely his conduct and integrity within a clinical setting. The Panel stated that it would have been assisted by

receiving much more comprehensive information as to his conduct since the last hearing from any employer or individual of good standing with whom Dr Elmasry had had contact in the intervening period.

19. The Panel stated that it was encouraged by Dr Elmasry's decision to engage with the GMC, his decision to attend the hearing, and by his frank acknowledgement that he had previously been in denial regarding his misconduct. The Panel stated that Dr Elmasry had taken a significant first step in terms of developing his insight but that it remained concerned by the limited evidence before it of Dr Elmasry's efforts to keep his knowledge up-to-date and by the fact that Dr Elmasry had now been out of clinical practice for some two years.

20. In imposing conditions on Dr Elmasry, the Panel stated that before the end of the period of conditions, a Panel would meet to review the case and noted that that it would be assisted in receiving the following at the next review hearing.

- Detailed and full evidence of Dr Elmasry's workplace activities since December 2011.
- Documentary evidence of courses attended and ongoing CPD activities.
- Report(s) from his workplace reporter.
- Report(s) from any supervising consultant(s).
- A report from his Postgraduate Dean (or their nominated deputy).
- Evidence that he has gained further insight into his misconduct.
- Testimonials as to his character and conduct during the period of conditional registration.

23 September 2012 - Alleged Breach of conditions

21. One of the conditions placed on Dr Elmasry's practice was that he should confine his medical practice to posts within the NHS and not undertake any private practice.

22. On 23 September 2012, the GMC received information which indicated that Dr Elmasry may have breached his conditions, by seeking to refer a patient to an MRI Centre (the Centre) in London.

23. The complainant stated that Dr Elmasry first sought to persuade the Centre to accept a referral directly from the patient him/herself, and that when it was explained that this was not possible, Dr Elmasry sought to make the referral himself. The complaint stated that Dr Elmasry gave the patient's details, his own name and GMC number and gave his practice details as 'Ultimate Care Network', XXX.

24. On 10 December 2012, in commenting on the alleged breach, Dr Elmasry stated that the Ultimate Care Network facilitated medical services for patients from the Middle East to have private treatment in United Kingdom. Dr Elmasry added that the private patient in question was formally referred for a scan, in writing, by Dr R, not by himself.

16 January 2013 - Voluntary erasure (VE) application

25. On 16 January 2013, Dr Elmasry applied for VE.

26. Dr Elmasry stated in an email to the GMC of 7 January 2013 that he no longer required his GMC registration because ‘I had a recent XXX problem that I believe will prevent me from doing clinical work in the future. I need my name to be erased from the register’.

27. On 11 April 2013, Dr Elmasry was informed that his application for VE had been granted. He was also advised that if he made a subsequent application for restoration to the register, such application would be referred to the case examiners for consideration and that at that point, any previous evidence about his fitness to practise would be taken into account and a further investigation may be initiated before any decision is made in respect of his restoration application.

28. In granting the application for VE, the case examiners noted that the allegations that led to Dr Elmasry being referred to a Fitness to Practise Panel in 2009 had been aired in public on more than one occasion and they concluded that the public interest had therefore been satisfied.

29. The case examiners noted that there was an outstanding issue as to whether Dr Elmasry had breached one of his conditions, but concluded that there was insufficient evidence at that time to support such an allegation; specifically, there was no written evidence that Dr Elmasry himself made any referral to the Centre, and they noted that further evidence may be difficult to obtain, given issues of consent.

30. Finally, the case examiners noted that even if it were established after further investigation that Dr Elmasry had breached one of his conditions, this may not reach the threshold for establishing impairment.

Dr Elmasry’s restoration application

31. On 7 November 2022 the GMC received an application from Dr Elmasry to restore his registration. Dr Elmasry’s application stated that he is registered as a doctor with the medical regulator in Egypt and that he had been working as a specialist in orthopaedics and emergency medicine, with Vida Healthcare Clinics since 1 October 2015.

32. The application was considered by the Case Examiners who determined to refer it to a medical practitioners Tribunal due to outstanding concerns about Dr Elmasry’s fitness to practise.

The Current Restoration Hearing

The Outcome of Applications made during the hearing

8. Dr Elmasry was neither present nor represented at the hearing. The Tribunal determined that he had been properly served with notice of the hearing in accordance with Rules 23 and 40 of the GMC (Fitness to Practise) Rules Order of Council 2004 (*“the Rules”*) and Schedule 4, paragraph 8 of the Medical Act 1983 (as amended). The Tribunal acceded to an application by the GMC pursuant to Rule 31 of the Rules, to proceed in the absence of Dr Elmasry. The Tribunal’s full decision on the application is included at Annex A.

The Evidence

Documentary Evidence

33. The parties provided the following documentary evidence:

- Dr Elmasry’s restoration application, dated 11 November 2022;
- Dr Elmasry’s written submissions to the GMC, dated 14 January 2023;
- FTP Panel minutes (determination), dated 26 – 29 October and 10 – 12 December 2009;
- Review FTP Panel minutes (determination), dated 17 December 2010;
- Outcome of Fitness to Practise Hearings Letter for Dr Elmasry’s second review hearing, dated 20 December 2011;
- Referral regarding alleged breach of conditions, dated 10 December 2012;
- Certificate of good standing from Egyptian Medical Syndicate, dated 11 February 2013;
- Letter with Case Examiner decision granting voluntary erasure, dated 11 April 2013; and
- Case Examiners restoration application decision dated 30 January 2023.

34. The Tribunal has taken into account all the documentary evidence that it has received. No oral evidence was called. The Tribunal, therefore, placed weight on the written comments submitted by Dr Elmasry as part of his restoration application and had regard to Mr McPhie’s oral submissions on behalf of the GMC.

Written submissions by Dr Elmasry

35. On 14 January 2023, Dr Elmasry provided the following comments in support of his restoration application:

‘Whether the concerns about your practice are easily remediable?’

I believe it is totally remediable in particular given the proper time, I totally understand now how much was my behavior misconduct. I have worked on myself

and learnt the lesson, the concerns raised was initially related to a self-prescription. I have refrained myself to be involved in such thing, over the last 10 years at least, I haven't adopted to do any self-prescription and still would like to do the same in the future

Whether the concerns have already been addressed. You may wish to provide us with evidence of remediation which you feel is relevant to the specific concerns being raised, and helps to demonstrate what steps you have taken to address any potential concerns about your practice?

I have been practicing very safely & sound. I didn't have any concerns raised over such period of time and this can be evidenced by the Certificate (sic) of good conduct. Since I have started practicing medicine from year 1993 till now whether in UK or Egypt, this was my single incidence (sic) to happen, and apart from this all my practice before and after the incidence (sic) was safe and sound.

The likelihood that the concerns could happen again?

I am totally confident that the concerns are not likely to happen again.'

Submissions on behalf of the GMC

36. Mr McPhie submitted that the GMC opposes Dr Elmasry's application for the restoration of his name to the Medical Register. He added that, under section 41(6) of the Medical Act 1983(as amended), the onus was on Dr Elmasry to satisfy the MPT that he was fit to return to unrestricted practice.

37. Mr McPhie submitted that the 2009 Fitness to Practise Panel and the reviewing Fitness to Practise Panels of 2010 and 2011 all found Dr Elmasry's fitness to practise to be impaired. He said that Dr Elmasry had been clearly signposted as to what evidence he needed to provide to demonstrate that his fitness to practise was no longer impaired, including details of his work place activities, courses attended and evidence of ongoing CPD activities, but on each occasion he had provided no such evidence.

38. Mr McPhie submitted that Dr Elmasry's written submissions (as set out in full above) are unsupported by any certifying evidence. Further, there were no meaningful testimonials in support of Dr Elmasry's character and conduct during his period under suspension, during his subsequent conditional registration and/or in any period after that.

39. Mr McPhie submitted that there has been limited engagement and limited information from Dr Elmasry. He added that there is a paucity of evidence and scant information regarding Dr Elmasry's clinical practice.

40. Mr McPhie submitted that Dr Elmasry has only provided the name of his place of employment since 2015 but no information as to actual workplace activities.

The Tribunal's Approach

41. The Legally Qualified Chair ('LQC') gave legal advice to the Tribunal on the approach to be taken in restoration hearings.

42. 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.

43. While the Tribunal has borne in mind the submissions made by the parties, the decision as to whether to restore Dr Elmasry'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 Elmasry's name should be restored to the Medical Register, it cannot put restrictions on his practice.

44. The Tribunal was guided by the "Guidance for Medical Practitioners Tribunals on restoration following voluntary or administrative erasure".

45. The Tribunal reminded itself that the onus is on Dr Elmasry to satisfy it of his fitness to return to unrestricted practice and that the Tribunal should not seek to go behind the previous fitness to practise panels' findings on facts, impairment and/or sanction.

46. The Tribunal reminded itself of the test to be applied when considering if an applicant's name should be restored to the register, as was considered in the Court of Appeal case of GMC v Chandra [2018] EWCA Civ 1898, and as set out in the document: "Guidance for Medical Practitioners Tribunals on restoration following voluntary or administrative erasure":

"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?"

47. 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 Elmasry 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 Elmasry has done since his name was erased from the register;
- d. the steps Dr Elmasry 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

48. The Tribunal has considered the parties' submissions carefully and has evaluated the evidence in order to reach its decision as to whether Dr Elmasry is fit to practise.

The circumstances which led to Dr Elmasry's erasure

49. The Tribunal considered the circumstances, which had led to Dr Elmasry's voluntary erasure in April 2013. It had regard to paragraphs B19 – B21 of the Guidance, which deals with findings against doctors who have been the subject of previous Tribunal hearings:

"B19 Case examiners will sometimes refer a restoration application from a doctor who took voluntary erasure or was administratively erased while their registration was subject to conditions or an active suspension imposed by a medical practitioners tribunal. They may also refer applications from doctors who had undertakings in place (either agreed with case examiners or a tribunal) at the point of erasure.

B20 In these circumstances, the tribunal hearing the restoration application will be able to rely on the findings of the previous tribunal and (unless there are new concerns) will not need to weigh evidence to make factual findings.

B21 The key question will be whether the doctor has demonstrated insight into the original concerns and successfully remediated such that their fitness to practise is no longer impaired and restoration can be granted".

50. The Tribunal noted that Dr Elmasry had been voluntarily erased from the Register while there were outstanding concerns about his fitness to practise. His registration had been suspended in December 2009 following a finding of dishonesty and, at the time of his application for voluntary erasure, his practice remained subject to conditions.

51. The Tribunal noted, that at the time that Dr Elmasry's application for voluntary erasure was granted, the GMC was in receipt of information to suggest that he may have breached one of the conditions on his practice. The Case Examiners who considered Dr

Elmasry's application for voluntary erasure concluded that there was insufficient evidence to take the matter further. There was no new information before the Tribunal and it, therefore, determined to put no weight on the allegation.

52. The Tribunal considered that a finding of dishonesty against a doctor is a serious matter. It noted, however, that previous fitness to practise panels had not concluded that Dr Elmasry's conduct was fundamentally incompatible with registration as a doctor. Further, the panel which considered his case in December 2011, and had the benefit of hearing oral evidence from him, concluded that he 'had taken a significant first step in terms of developing his insight' although that panel remained concerned by the limited evidence of his efforts to keep his knowledge up-to-date and by the fact that Dr Elmasry had by then been out of clinical practice for some two years.

53. The Tribunal accepted the view of previous panels that Dr Elmasry's misconduct is not fundamentally incompatible with registration. It noted, however, that at the time of his erasure, there were conditions upon his practice following a finding that his fitness to practise was impaired. At the point of his erasure he was not, therefore, considered fit to practise without restriction.

The extent to which the applicant has shown remorse and insight

54. The Tribunal then went on to look at what steps Dr Elmasry has taken since his voluntary erasure to address the outstanding concerns in relation to his fitness to practise. It noted that while there has been a significant lapse in time from Dr Elmasry's voluntary erasure in 2013 to date, there is a paucity of evidence about his activities in the intervening 10 years.

55. The Tribunal reminded itself that it was for Dr Elmasry to provide evidence to satisfy it that he is now fit to practise without restriction.

56. The Tribunal considered the extent to which Dr Elmasry has gained insight and remediated his past dishonest conduct since the date of his voluntary erasure.

57. In considering Dr Elmasry's insight, remorse and remediation, the Tribunal was guided by paragraph B10 and B15 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*
- c demonstrated empathy for any individual involved, for example by apologising fully*
- d taken steps to remediate and to identify how they will act differently in the future to avoid similar issues arising*

58. The Tribunal took into account Dr Elmasry's written submissions in support of his application for restoration in which he acknowledges 'how much was my behaviour misconduct' and says that 'I have worked on myself and learnt the lesson'. However, he had produced no objective evidence or further detail of the work he submits he has done on himself and no reflection from which the Tribunal could conclude that his insight has developed further.

59. It took the view that Dr Elmasry needed to undertake deeper and more detailed reflection into his misconduct to enable it to conclude that he had fully understood what he had done wrong and the impact of his conduct on public confidence in the profession.

The extent to which the doctor has remediated

60. The Tribunal next considered the extent to which Dr Elmasry has remediated the outstanding concerns about his fitness to practise. It took into account that dishonesty is difficult to remedy. Further, there may be difficulties for a doctor to remediate in circumstances where they are no longer on the register. It took into account paragraph B15 of the Guidance:

B15 Remediation can take several forms, including, but not limited to:

- a participating in training, supervision, coaching and/or mentoring relevant to the concerns raised*
- b attending courses relevant to the concerns raised, for example anger management, maintaining boundaries, ethics or English language courses*
- c evidence that shows what a doctor has learnt following the events that led to the concerns being raised, and how they have applied this learning in their practice (where applicable)*

d evidence of good practice in a similar environment to where the concerns arose.”

61. The Tribunal acknowledged Dr Elmasry’s written submissions in which he states that the concerns about his practice are remediable. It took into account his statement that:

“I have refrained myself to be involved in such thing, over the last 10 years at least, I haven't adopted to do any self-prescription and still would like to do the same in the future”.

62. However, the Tribunal concluded that, in the absence of a demonstration of full insight into his misconduct, it could not be satisfied that Dr Elmasry had remediated to the extent that he was now fit to practise without restriction. The Tribunal noted that the fitness to practise panel which had heard his case in December 2011 had made suggestions about the type of evidence which might assist in satisfying a future panel of his fitness to practise, but that he had not produced any such evidence since.

Steps taken to keep clinical knowledge and skills up to date

63. The Tribunal accepted Mr McPhie’s submissions that Dr Elmasry has provided limited evidence, if any, of his occupation or what he has done since he was voluntarily erased, especially steps taken to keep his clinical skills and knowledge up to date.

64. It noted that Dr Elmasry has written that he has been working as a Specialist in Trauma, Orthopaedics and Emergency Medicine at the Vida Clinic since 1 October 2015 but he had provided no further information or independent evidence such as a detailed reference including working hours and nature of his work, from a relevant senior clinician with whom he had worked, to support his claim. Further he has not provided an up-to-date Certificate of Good Standing from the regulator in Egypt; the certificate he has provided from the Egyptian Medical Syndicate dates back to February 2013.

65. The Tribunal, could not, therefore, be satisfied of Dr Elmasry’s current clinical competence or readiness for unrestricted practice in the UK. The Tribunal again took into account that it was for Dr Elmasry to satisfy it of his suitability for restoration to the Medical Register.

The length of time elapsed since erasure

66. The Tribunal considered the length of time that had elapsed since Dr Elmasry’s voluntary erasure and noted that this was some 10 years since the decision to voluntarily erase Dr Elmasry from the Register. It had regard to paragraph B44 of the Guidance:

“B44 The length of time that has elapsed since the doctor was erased may be relevant as the longer the doctor has been away from clinical practice, the greater the likelihood that their knowledge and skills will have deteriorated to a degree that may place patients at risk. Tribunals should pay close regard to how the doctor has maintained their knowledge if they have had a lengthy period away from the register.”

67. The Tribunal noted that 10 years would have given Dr Elmasry sufficient time to address the underlying causes for the order of conditions on his registration. However, it also noted that without cogent evidence of how he has maintained or ensured that his clinical skills and knowledge have been kept up to date, it could not be satisfied that he is fit to practise without restriction.

Will restoration meet the overarching objective?

68. Having made the above findings, the Tribunal had regard to the statutory overarching objective. The Tribunal carefully balanced its findings against whether restoring Dr Elmasry’s name to the Medical Register will meet the overarching objective, considering each limb in turn.

Protecting, promoting, and maintaining the health, safety, and well-being of the public

69. For the reasons it has already set out, with limited evidence of insight and remediation in relation to his dishonest behaviour, the Tribunal concluded that Dr Elmasry has not provided sufficient evidence that the public would be safe if he were to return to practice. The Tribunal noted that the panel which heard oral evidence from Dr Elmasry in 2011 concluded that he had “compartmentalised, in his own mind, the proceedings taken by the GMC and the findings of misconduct and that he had failed to recognise that how he behaves in non-clinical settings can inform the Panel’s view of his fitness to practise in a clinical setting.” That panel had considered it necessary to impose conditions on Dr Elmasry’s registration to protect the public. The Tribunal today has no objective evidence regarding Dr Elmasry’s practice under those conditions up to the date of his voluntary erasure. Nor does it have any evidence about his workplace activities, any efforts to keep his knowledge up to date through courses and reading, or anything he has done to maintain his general clinical knowledge in order to return to practice in the UK. In these circumstances, the Tribunal concluded that restoration of his name to the Register would not support the objective of protecting, promoting, and maintaining the health, safety, and well-being of the public.

Promote and maintain public confidence in the profession

70. In relation to the second limb of the overarching objective, the Tribunal took the view that public confidence in the profession would be undermined by the restoration of Dr Elmasry to unrestricted practice at this time.

71. The Tribunal was mindful of the finding of misconduct which led to Dr Elmasry’s suspension in 2009, following a finding that he had acted dishonestly. The panel which

reviewed his case in 2011 and imposed conditions on his registration found that he had only started to develop insight into his misconduct. While he has now provided some reflection on how he might act differently in future, he had provided no further evidence of steps taken to develop his insight or to remediate his dishonesty.

72. The Tribunal took the view that a well-informed member of the public would be concerned to learn that a doctor who had acted dishonestly, was permitted to return to the Medical Register unrestricted, despite an inadequate level of insight and remediation.

Promote and maintain profession standards and conduct

73. With regard to the maintenance of professional standards and conduct for members of the profession, the Tribunal was satisfied that restoring Dr Elmasry's name to the Register would be inconsistent with promoting and maintaining professional standards of conduct in the profession. Dr Elmasry, by his dishonesty, fell far short of the standards expected of a doctor. While the Tribunal did not consider that his previous actions were fundamentally incompatible with restoration to the Medical Register, it considered that the maintenance of professional standards and conduct in the profession required a doctor, upon application for restoration to the Medical Register, to advance positive evidence that he was now adhering to the standards and conduct expected of his profession. Dr Elmasry had not done so. Further, as set out above, he had provided no evidence that he had maintained his clinical skills to satisfy the Tribunal of his fitness to return to unrestricted practice.

74. The Tribunal concluded that Dr Elmasry is not fit to practise and that restoration of his name to the Medical Register would not meet the three limbs of the statutory objective. Accordingly, it determined that Dr Elmasry's name should not be restored to the Medical Register.

Dr Elmasry's right to make further applications for restorations

75. The Tribunal next considered what period of time should elapse before Dr Elmasry is permitted to reapply for his name to be restored to the Medical Register.

76. It took into account that under Regulation 5(9)(a) of the GMC (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004 the doctor cannot make a further application until the expiry of a period of 12 months, unless the Tribunal exercises its discretion to specify a different period under Regulation of 5(9)(b) of the GMC (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations

77. The Tribunal could see no reason to depart from the 12-month period set out in Regulation 5(9).

78. Should Dr Elmasry elect to make another application for restoration in the future, the Tribunal would wish to remind him that it is for him to produce evidence to satisfy a future Tribunal that he is currently fit to practise in the UK without restriction.

79. That concludes the hearing.

ANNEX A: Service and Proceeding in Absence – 01/06/2023

Service and Proceeding in Absence

80. Dr Elmasry was neither present nor represented at these proceedings.

Submissions

81. Mr McPhie, on behalf of the GMC, invited the tribunal to find that that Dr Elmasry had been properly served with notice of this hearing in accordance with Rules 23 and 40 of the GMC (Fitness to Practise) Rules Order of Council 2004 (*“the Rules”*) and Schedule 4, paragraph 8 of the Medical Act 1983 (as amended).

Mr McPhie also invited the Tribunal to proceed with the hearing in the absence of Dr Elmasry, pursuant to Rule 31 of the Rules. Mr McPhie said that Dr Elmasry had voluntarily absented himself from the hearing. Dr Elmasry had sent emails on 4 May and 23 May 2023 indicating that he would not be attending the hearing. Mr McPhie submitted that Dr Elmasry could have withdrawn his application for restoration, or asked for a postponement or an adjournment of his case, but had not made any such application.

Documentary Evidence

82. The Tribunal had regard to the following evidence referred to by the GMC in support of its application:

- Dr Elmasry’s application for restoration of his name to the register, dated 11 November 2022;
- Dr Elmasry’s letter to the GMC with written submissions supporting his application for restoration, dated 14 January 2023;
- GMC’s letter to Dr Elmasry informing him of the outcome of the decision of the Case Examiners and inviting him to confirm whether he wishes to continue with his application or withdraw it, dated 31 January 2023;
- MPTS letter to Dr Elmasry, with the dates of the restoration hearing and case management arrangements, dated 2 March 2023;
- GMC’s letter and covering email to Dr Elmasry, providing him with details regarding the management of his restoration hearing and enclosing the bundle for the hearing, dated 14 April 2023;
- MPTS Notice of Hearing to Dr Elmasry, with special delivery and tracking information, dated 18 April 2023;

- Dr Elmasry’s email to the GMC, informing them of his decision not to attend the hearing, dated 4 May 2023; and
- Dr Elmasry’s email to the GMC, confirming that he has received and reviewed the bundle and will not be able to attend the hearing, dated 23 May 2023.

The Tribunal’s Approach

83. The Tribunal accepted the Legally Qualified Chair’s (LQC) advice.

84. The LQC advised that, under Rule 23(2), the MPTS was required to serve a Notice of Hearing upon Dr Elmasry no less than 28 days before the date of the restoration hearing, and that Rule 23(4) set out the information which should be contained within that Notice. Under Rule 40, the Notice of Hearing can be served by post or electronic means to the practitioner’s registered address or last known address. If sent by email, service would only be effective if there was a receipt showing that the email had been opened or if the recipient acknowledged receipt.

85. The LQC advised that, under Rule 31 of the Rules, the Tribunal could proceed to consider and determine Dr Elmasry’s application, provided that it was satisfied that all reasonable efforts had been made to serve him with notice of the hearing. This was a discretion which should be exercised with the utmost care and caution, but the Tribunal should be guided by the context provided by the overarching objective. In considering the nature and circumstances of Dr Elmasry’s behaviour in absenting himself, the Tribunal was entitled to take into account that this was Dr Elmasry’s application for restoration to the register, that he had been provided with an opportunity to withdraw that application following receipt of the Case Examiners’ decision to refer that matter to the MPT, and that he had not done so. He had confirmed in writing that he did not intend to attend the hearing.

86. The Tribunal’s prime consideration was fairness and it must ensure that the hearing is as fair as the circumstances permit, taking reasonable steps to raise such points on behalf of Dr Elmasry as the evidence permits.

The Tribunal’s Decision on Service and Proceeding in Absence

Service

87. The Tribunal first considered whether a Notice of Hearing had been properly served on Dr Elmasry. The Tribunal noted that the Notice of Hearing was dated 18 April 2023, and had, therefore, been served on Dr Elmasry more than 28 days before the date of the hearing. The Tribunal was satisfied that the Notice of Hearing set out the information prescribed by Rule 23(4). It took into account the special delivery and tracking information which accompanied the Notice of Hearing as evidence that it had been sent to the practitioner’s registered address or last known address.

88. Having considered all the documentary evidence in relation to service, the Tribunal was satisfied that the Notice of Hearing had been properly served upon Dr Elmasry in accordance with the Rules.

Proceeding in Absence

89. The Tribunal went on to consider whether it would be appropriate to proceed with the hearing in Dr Elmasry's absence pursuant to Rule 31 of the Rules. The Tribunal was conscious that the discretion to proceed in the absence of a doctor should be exercised with the utmost care and caution, balancing the interests of the doctor with the wider public interest.

90. The Tribunal took into account that Dr Elmasry had been informed, by a letter dated 31 January 2023, of his right to withdraw his application and that he had not done so. It also noted that Dr Elmasry has not sought a postponement or an adjournment of these proceedings.

91. The Tribunal had regard to Dr Elmasry's email to the GMC dated 4 May 2023 in which he indicated that he would not attend the hearing and his subsequent email of 23 May 2023, in which he again set out that he would not be attending the hearing and that he had received and agreed with the substantive bundle for this hearing:

"I have reviewed the uploaded hearing bundle and I am in agreement with it ... I will not be able to attend the hearing scheduled on May 30th 2023".

92. The Tribunal was satisfied that Dr Elmasry was well aware of the hearing and the Tribunal's discretion to proceed in his absence. He had voluntarily absented himself from the hearing and no purpose would be served by an adjournment.

93. The Tribunal took into account that Dr Elmasry had produced written submissions which reduced any disadvantage he might suffer by not attending. The Tribunal further noted that this was not a case in which Dr Elmasry was seeking to defend an allegation by the GMC; Dr Elmasry had made an application for his name to be restored to the medical register and had subsequently made a decision not to attend the hearing.

94. The Tribunal considered that it was important that the application be considered and determined for the efficient delivery of regulation.

95. Taking into account all of the above matters the Tribunal was satisfied that it was appropriate to proceed in the absence of Dr Elmasry.