PUBLIC RECORD

Dates: 03/10/2022 - 14/10/2022

Medical Practitioner's name:	Dr Mohammad BAKHTIAR ** Please note at least one other Medical Practitioner faced allegations at this hearing*
GMC reference number:	4694470
Primary medical qualification:	LMSSA 2000 Society of Apothecaries of London

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Not Impaired

Summary of outcome

Warning

Tribunal:

Legally Qualified Chair	Mr Nicholas Flanagan
Lay Tribunal Member:	Ms Val Evans
Medical Tribunal Member:	Dr Candida Borsada

Tribunal Clerk:	Ms Jemine Pemu

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Ms Neair Maqboul , Counsel, instructed by JMW Solicitors
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 the Facts and Impairment – 12/10/2022

Background

1. Dr Bakhtiar qualified from St. George's Hospital and Apothecaries of London in 2000. Dr Bakhtiar had previously worked as a junior, then senior Microbiologist at several hospitals in London, as well as teaching third year Imperial Medical students in note-taking and clinical skills. After obtaining his medical qualification, he trained as a GP. At the time of the events, Dr Bakhtiar was practising as a part-time sessional GP at the Maida Vale Medical Centre and at the Whittington Hospital Urgent Care Centre. His sessional GP role at the Medical Express Clinic ('the Clinic') began in 2004 and at the time of the events, he worked two sessions per week. Since 2018, he has worked at the Clinic full-time and is the lead clinician and CQC registered manager.

2. The allegation that has led to Dr Bakhtiar's hearing is that between 14 January 2014 and 28 November 2014, Dr Bakhtiar inappropriately transcribed, signed and issued 148 private prescriptions for third party patients (the 'Patients'). The patients were based outside the UK and one or more of the patients named on the prescriptions did not exist. This was undertaken whilst he was working in a private role for Medical Express Clinic. It is alleged that Dr Bakhtiar inappropriately completed the Prescriptions at the request of the Clinic and/or Kool Pharma Limited (the 'Pharmacy'); that he failed to adequately investigate or monitor the system of prescription requests used by the Pharmacy or Clinic and that he completed the Prescriptions based on insufficient information to allow for safe prescribing.

3. It is also alleged that Dr Bakhtiar failed to identify a number of 'red flags' relating to the Prescriptions; that he failed to contact the Patients or other relevant parties in relation to the Prescriptions; that he failed to adequately assess or examine the Patients; that he failed to review the Patients' medical records or arrange for specialist assessment or examination of the Patients in the UK; that he failed to query the quantity or type of medication that he prescribed; that he failed to ensure that the Prescriptions were safe, clinically appropriate or were being administered appropriately; that he failed to arrange or conduct any follow up, safety netting, supervision, near patient testing, monitoring or review of the Patients; that he failed to provide details of the medications prescribed by him to the Patients' GPs, overseas consultants or specialists.

4. It is further alleged that Dr Bakhtiar failed to keep adequate records; that the Prescriptions were for medications in inappropriate quantities and without adequate knowledge, by him, of the relevant surrounding circumstances, such as value, monitoring arrangements, who was collecting them or where they were being sent. Moreover, by completing the Prescriptions, he prescribed medicines in an irresponsible and unsafe manner; and that Dr Bakhtiar's issuing of the Prescriptions could have led to patient harm or death. It is further alleged that Dr Bakhtiar acted outside of his level of competence.

5. The initial concerns were raised with the GMC in 2014 by Mr A, a Pharmacy Manager at King Edward VII Hospital (the 'Hospital'). Mr A's report to the GMC followed inspections and investigations by the Care Quality Commission ('CQC') and General Pharmaceutical Council ('GPhC'). Those enquiries by the CQC and GPhC highlighted concerns that highly specialised medications were being dispensed by the Hospital, in response to prescriptions issued by the Clinic. Mr A's own investigations established that three doctors at the Clinic, including Dr Bakhtiar, had issued prescriptions for high risk and high value medications, which had been collected from the Hospital by Kool Pharma Ltd.

6. Mr A reported his concerns to the Medicines and Healthcare Products Regulatory Agency (the 'MHRA'). Those concerns were investigated by Mr B, a Financial Investigator

employed by the MHRA. Mr B's investigation commenced in February 2015 and established that the Clinic had issued 621 prescriptions to the Hospital, for patients residing outside the UK, of which 148 prescriptions had been signed by Dr Bakhtiar. The investigation did not result in any criminal allegation being instigated against any of the clinicians and there were no concerns regarding their honesty or probity. However, during the course of his investigation, Mr B established that a number of the patients to whom the prescriptions related did not exist; in fact, by 2019, Mr B had received no evidence of the existence of any of the patients to whom the Clinic's prescriptions purportedly related.

The Allegation and the Doctor's Response

7. The Allegation made against Dr Bakhtiar is as follows:

That being registered under the Medical Act 1983 (as amended):

1. Between 14 January 2014 and 28 November 2014 you transcribed, signed and issued 148 private prescriptions for third party patients outside of the UK ('the Prescriptions') and:

    a. one or more of the patients named on the Prescriptions did not exist;

    Admitted and found proved

    b. you did so at the request of Kool Pharma Ltd ('the Pharmacy') and/or Medical Express Clinic ('MEC'):

        i. which was inappropriate;

        Admitted and found proved

        ii. without adequately investigating and/or monitoring the system of prescription requests used by the Pharmacy and/or MEC;

        Admitted and found proved

iii. based on information provided by the Pharmacy which contained insufficient information to allow for safe prescribing because it did not contain patient:

1. gender;

Admitted and found proved

2. contact details;

Admitted and found proved

3. GP or specialist medical records;

Admitted and found proved

4. community GP contact details;

Admitted and found proved

5. proof of identity;

Admitted and found proved

6. medical history, including any:

a. presenting complaint;

Admitted and found proved

b. capacity and/or competence;

Admitted and found proved

c. mental health history;

Admitted and found proved

d. work history;

Admitted and found proved

e. addiction history;

Admitted and found proved

f. drug monitoring;

Admitted and found proved

g. current prescribed medication and/or over the counter medication;

Admitted and found proved

h. allergies;

Admitted and found proved

i. recent blood test results;

Admitted and found proved

j. follow up and/or monitoring arrangements in place;

Admitted and found proved

c. you failed to:

i. identify red flags, including:

1. overseas consultants requesting medication to be transcribed for patients in a different country to themselves;

Admitted and found proved

2. patients residing in more economically developed countries where they could be reasonably expected to obtain the medications;

Admitted and found proved

3. the medications requested being:

a. of high value;

Admitted and found proved

b. specialist in nature which should only have been used:

i. in an inpatient hospital setting;

Admitted and found proved

ii. under the observation of secondary care in a community setting;

Admitted and found proved

c. potentially fatal if the patient was not properly monitored;

Admitted and found proved

ii. contact:

1. patients;

Admitted and found proved

2. patients' community GP(s);

Admitted and found proved

3. patients' overseas consultant and/or specialist(s);

Admitted and found proved

4. a relevant specialist in the UK;

Admitted and found proved

iii. adequately assess the patients, including that you did not:

1. ascertain:

a. their:

i. gender;

Admitted and found proved

ii. presenting complaint;

Admitted and found proved

iii. capacity and/or competence;

Admitted and found proved

b. any:

i. mental health history;

Admitted and found proved

ii. addiction history;

Admitted and found proved

iii. work history;

Admitted and found proved

iv. recent blood test results;

Admitted and found proved

v. current prescribed medication and/or over the counter medication;

Admitted and found proved

vi. allergies;

Admitted and found proved

vii. follow up and/or monitoring arrangements already in place;

Admitted and found proved

2. review the patients' medical records;

Admitted and found proved

iv. examine the patients, including that you did not:

1. measure:

a. blood pressure;

Admitted and found proved

b. weight;

Admitted and found proved

2. conduct:

a. blood tests;

Admitted and found proved

b. electrocardiogram screening;

Admitted and found proved

v. arrange for specialist assessment and/or examination of the patients in the UK;

Admitted and found proved

vi. query the:

1. quantity of medication requested;

Admitted and found proved

2. type of medication requested;

Admitted and found proved

vii. ensure that the Prescriptions were:

1. safe;

Admitted and found proved

2. clinically appropriate;

Admitted and found proved

3. being administered:

a. in an inpatient hospital setting;

Admitted and found proved

b. under the observation of secondary care in a community setting;

Admitted and found proved

viii. arrange and/or conduct with the patients any appropriate:

1. follow up;

Admitted and found proved

2. safety netting;

Admitted and found proved

3. supervision;

Admitted and found proved

4. near patient testing;

Admitted and found proved

5. monitoring and/or review, including:

a. blood tests;

Admitted and found proved

b. blood pressure;

Admitted and found proved

c. electrocardiogram screening;

Admitted and found proved

d. weight;

Admitted and found proved

e. clinical response;

Admitted and found proved

f. dosage;

Admitted and found proved

g. side effects;

Admitted and found proved

ix. provide details of the medication prescribed to the patients':

1. community GP(s);

Admitted and found proved

2. overseas consultant(s) and/or specialist(s);

Admitted and found proved

x. keep adequate patient records;

Admitted and found proved

d. you prescribed medications:

i. in inappropriately large quantities;

Admitted and found proved

ii. without adequate knowledge of:

1. what they were for;

Admitted and found proved

2. their indications;

Admitted and found proved

3. the monitoring arrangements they required;

Admitted and found proved

4. their value;

Admitted and found proved

5. who was collecting them;

Admitted and found proved

6. where they were being sent;

Admitted and found proved

iii. in an irresponsible and unsafe manner;

Admitted and found proved

e. you acted outside your level of competence because you did not have current experience in the relevant specialist fields, including:

i. infectious disease;

Admitted and found proved

ii. blood or renal carcinomas;

Admitted and found proved

iii. psychology;

Admitted and found proved

iv. pulmonology;

Admitted and found proved

f. your issuing of the Prescriptions could have led to patient:

i. harm;

Admitted and found proved

ii. death.

Admitted and found proved

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct. To be determined

The Admitted Facts

8. At the outset of these proceedings, through his counsel, Ms Neair Maqboul, Dr Bakhtiar made admissions to all paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

Determination on Impairment

9. 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 as set out before, Dr Bakhtiar's fitness to practise is impaired by reason of misconduct.

The Evidence

10. The Tribunal has taken into account all the evidence received during the impairment stage of the hearing, both oral and documentary, as summarised below.

11. The Tribunal received evidence on behalf of the GMC from Mr A, Pharmacy Manager at King Edward VII Hospital, in the form of a witness statement dated 28 April 2015. Mr A also gave oral evidence at the hearing via video link.

12. The Tribunal received evidence on behalf of the GMC in the form of a witness statement from Mr B, Financial Investigator, Medicines and Healthcare Products Regulatory Agency (MHRA), dated 10 December 2019. It also received a supplemental witness statement dated 26 May 2022. This evidence was agreed and he was not called to give oral evidence at the hearing.

13. Dr Bakhtiar provided an undated witness statement and also gave oral evidence at the hearing.

14. The Tribunal also received in support of Dr Bakhtiar a number of testimonials, the authors of which were all aware of the GMC proceedings. The Tribunal has read and considered these carefully.

Expert Witness Evidence

15. The Tribunal also received written and oral evidence from the GMC expert witness Dr C, GP. Dr C was instructed by the GMC to assist the Tribunal in understanding whether Dr Bakhtiar's alleged conduct met the standards expected of a reasonably competent General Practitioner. Dr C was also asked for her opinion on whether Dr Bakhtiar acted outside of his level of competence.

16. 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 as set out before, Dr Bakhtiar's fitness to practise is impaired by reason of misconduct.

17. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included but was not limited to:

- Dr Bakhtiar's Curriculum Vitae, undated;
- CQC inspection report for King Edward VII's Hospital, dated 15 July 2014;
- Letter from Professor D to Pharmacy Department, King Edward VII's Hospital, dated 01 June 2013;
- Handwritten letter from Pharmacy Department, King Edward VII's Hospital to MEC, dated 31 July 2013;
- Email from Mr A to Kool Pharma and MEC, dated 06 May 2014;
- Email from Kool Pharma to Mr A, dated 14 May 2014;
- Emails from Mr A to MHRA, dated 14 and 16 May 2014;
- Email from MHRA to Mr A, dated 15 May 2014;

- Email from Mr A to Kool Pharma, dated 15 May 2014;
- Mr B's MHRA Witness Statement, dated 08 August 2019;
- Dr Bakhtiar remote prescribing policy, dated July 2016;
- A letter regarding the arrangement between Medical Express Clinic and the Pharmacy, dated 1 June 2013;
- Various transcribing of prescription audit summaries dated 08 August 2017 to 18 September 2019;
- Medical records for GP workshop certificate of attendance, dated 16 December 2019;
- Good record keeping certificate, dated 15 October 2018;
- Providing medicine advice certificate, dated 08 February 2020;
- Controlled drug prescription audits from 2020, 2021 and 2022;
- Bundle of testimonial letters, with various dates;
- Dr Bakhtiar's appraiser summaries 2019-2020, with various dates;
- 27 CPD certificates, with various dates.

Submissions

On behalf of the GMC

18. Mr Kevin Slack, Counsel, submitted that the facts admitted by Dr Bakhtiar amounted to serious misconduct, such that his fitness to practise is currently impaired. He said that Dr Bakhtiar's misconduct was directly linked to his practice of medicine and was sustained over a prolonged period of time, in that it involved the completion of 148 prescriptions from January to April 2014. He reminded the Tribunal that outside of this period, Dr Bakhtiar also issued two further prescriptions dated May and November 2014. Mr Slack stated that this was not an isolated failure on a single occasion, but a sustained course of conduct over several months.

19. Mr Slack reminded the Tribunal that, although Dr Bakhtiar had admitted the Allegation, and conceded that it amounted to misconduct, it was a matter for the Tribunal's

own independent assessment as to whether his fitness to practise was thereby impaired. Mr Slack stated that Dr Bakhtiar displayed a reckless approach in completing the Prescriptions on the basis of 'scant' patient information. Mr Slack submitted that Dr Bakhtiar had no way of knowing if the medications he prescribed were safe, and he prescribed without conducting any Patient examination, checking their medical history, warning of side effects which may have been extremely serious or fatal, or ensuring that adequate monitoring or follow-up was in place.

20. Mr Slack referred the Tribunal to guidance on '*Good Practice in Prescribing and Managing Medicines and Devices',* 2013 ('GPP'), and he submitted that there had been a wholesale disregard of Dr Bakhtiar's obligations under GPP. He submitted that Dr Bakhtiar's actions had breached almost every provision of GPP, making particular reference to paragraphs 3,5,14,21,22,24,32,33,37,51,53,55,56,57,59 and 61.

21. Mr Slack submitted that Dr Bakhtiar had regarded what he was doing as transcribing rather than prescribing. However, he submitted that Dr Bakhtiar was wrongheaded in that assumption, given the contents of the prescription and the third party request form which clearly spelt out that doctors are responsible for all the prescriptions they write. He submitted that prescriptions issued to patients by doctors from another country cannot simply be re-written.

22. Mr Slack submitted that Dr Bakhtiar had accepted that his conduct was reckless after having reflected on matters. He reminded the Tribunal that the issuing of the Prescriptions could have led to patient harm or death. Mr Slack reminded the Tribunal of the oral evidence of Dr C, in which she confirmed that many of the drugs prescribed were exclusively for use in a hospital setting and potentially harmful. For example, Dr C stated that one of the chemotherapy drugs prescribed by Dr Bakhtiar could harm a patient's internal organs.

23. Mr Slack cited the authority of *Cohen v GMC* [2008] EWHC 581 Admin as relevant to the Tribunal's considerations. He stated that Dr Bakhtiar has practised under prescribing

restrictions for 7 years with no repetition of his misconduct. However, he reminded the Tribunal that in Dr Bakhtiar's witness statement dated February 2022, he denied several of the allegations that he has subsequently admitted, in particular, those that specified his own wrongdoing. Mr Slack asserted that Dr Bakhtiar's insight must therefore only be partial.

24. Mr Slack informed the Tribunal that it had received considerable evidence regarding Dr Bakhtiar's skills and attributes, demonstrating that he was of good standing. Mr Slack acknowledged that Dr Bakhtiar did not present a risk to public safety and that the Tribunal might be easily persuaded that the risk of repetition was low. In addition, he stated that a number of testimonials pointed to Dr Bakhtiar's skills and achievements, which needed to be weighed in the balance.

25. Mr Slack submitted that the GMC's position was that Dr Bakhtiar had engaged in remediation, but added that some forms of impairment are harder to remediate than others, depending on the seriousness of the Allegation. He added that, even if the Tribunal determines that Dr Bakhtiar has achieved full insight and has done everything in the way of CPD and reflection that is expected of him, his fitness to practise may remained impaired due to the gravity of the misconduct. Mr Slack submitted that the Tribunal must ask itself if the need to uphold proper professional standards and uphold public confidence will be met by finding his fitness to practise not currently impaired.

<u>On behalf of Dr Bakhtiar</u>

26. Ms Neair Maqboul, Counsel, submitted that Dr Bakhtiar accepts that his conduct amounts to serious professional misconduct. However, she submitted that Dr Bakhtiar's fitness to practise is not currently impaired as a result of his misconduct.

27. Ms Maqboul further submitted that it was conceded by Professor D that Dr Bakhtiar was not involved in the initial relationship between the Pharmacy and the Hospital. She stated that Professor D accepted that the extent of Dr Bakhtiar's involvement in the matter

was limited to issuing prescriptions in the manner he has admitted. Ms Maqboul submitted that this corroborates the account and explanation given by Dr Bakhtiar in his written and oral evidence. She asked that the Tribunal consider Dr Bakhtiar suitable to remain on the register and free to practise without restrictions. She submitted that Dr Bakhtiar accepts that his involvement in the matters relating to the allegation stemmed from a serious lack of judgment at the time. However, Ms Maqboul submitted that Dr Bakhtiar is no longer impaired and poses no risk to public or patient safety.

28. Ms Maqboul submitted that Dr Bakhtiar has developed considerable insight, he has accepted his failings and has provided the Tribunal with his explanation for his conduct. Dr Bakhtiar accepts that he should have been more diligent. Ms Maqboul reminded the Tribunal of the evidence of Mr A who, in his evidence, told the Tribunal that he believed Dr Bakhtiar had been fooled into this conduct. Ms Maqboul asked the Tribunal to contextualise these matters against the backdrop of the Allegations.

29. Ms Maqboul asked that the Tribunal distinguish Dr Bakhtiar in terms of his evidence of insight, remorse, reflection and remediation from Professor D. She submitted that Professor D advised Dr Bakhtiar that he had the blessing of the GMC and BMA in their conduct. Ms Maqboul reminded the Tribunal that this account was consistent with the evidence of Dr Bakhtiar that he raised concerns with Professor D at the time. She submitted that Dr Bakhtiar has put himself under the scrutiny of the Tribunal and has been subject to robust cross-examination, as he wanted to put right his wrongs. She submitted that Dr Bakhtiar has berated himself for 9 years as a result of his actions and he feels he has let himself down. Ms Maqboul stated that Dr Bakhtiar feels he has let down the profession he adores and one that he feels privileged to be a part of. She submitted that Dr Bakhtiar has brought great shame not only to himself, but to the profession, which he readily acknowledges. Ms Maqboul asked that the Tribunal note the length of time that these matters have been hanging over Dr Bakhtiar. She submitted that this in itself is significant punishment.

30. Ms Maqboul submitted that Dr Bakhtiar has demonstrated considerable insight into his wrongful conduct and that he has provided explanations as to why he undertook the actions that he did, as well as why those actions will never be repeated. Ms Maqboul stated that Dr Bakhtiar's conduct is remediable as it falls within an area of clinical practice that may be construed as deficient. She submitted that this conduct has been remediated by Dr Bakhtiar to the best of his ability. She submitted that there are no other concerns regarding Dr Bakhtiar and the misconduct has not been repeated in the past 9 years.

31. Ms Maqboul submitted that Dr Bakhtiar's reflection has been ongoing and that today, Dr Bakhtiar is a very different man to the one who fell short in 2013 and 2014. She submitted that Dr Bakhtiar has admitted that he always intended to read the guidance but unfortunately never got round to it. Ms Maqboul submitted that if Dr Bakhtiar had read the guidance, he would never have behaved in the way that he did. She submitted that Dr Bakhtiar maintains very high standards in his clinical practice and regularly attends meetings, courses, reads guidance and discusses with colleagues. Ms Maqboul submitted that Dr Bakhtiar has taken what he has learned from his deficiency and used it to create a remote prescribing policy at the Medical Express Clinic. She submitted that he has used his previous failings to implement positive change and educate others on the very thing he did wrong, and has been proactive in ensuring his practice is completely different to how it was in 2014.

32. Ms Maqboul submitted that the number of testimonials provided on behalf of Dr Bakhtiar from numerus people within the profession, show that he is held in high esteem by his colleagues. She submitted that Dr Bakhtiar accepts his wrongdoing in the situation that he created and found himself in. Ms Maqboul submitted that Dr Bakhtiar poses no risk to patient safety or public confidence. She submitted that a reasonably well-informed member of the public appraised of all the circumstances of this case would not be offended by a finding of no impairment.

33. Ms Maqboul stated that Dr Bakhtiar has not sought to diminish or dilute his culpability and he had been open and candid when addressing the Tribunal. She asserted that there was clear evidence from Dr Bakhtiar's appraisals and detailed reflections that he was a

safe doctor. Ms Maqboul submitted that, in such circumstances, a finding of impairment was not necessary.

The Relevant Legal Principles

34. With advice from the Legally Qualified Chair, the Tribunal reminded itself that, at this stage of proceedings, there is no burden or standard of proof and the decision on impairment is a matter for the Tribunal's judgment alone.

35. The Tribunal had regard to the case of *CHRE v NMC & Grant (2011) EWHC 927 (Admin)* in which Cox J stated:

> '*the term "impairment of fitness to practise" has not been defined... the concept has the advantage of flexibility being capable of a multiplicity of problems, but also the disadvantages that flow from a lack of clarity and definition. Further, recognising fitness to practise inevitably involves making a value judgment. In determining whether a practitioner's fitness to practise is impaired…. The relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidences in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'*

36. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts found proved amounted to misconduct which was serious; and second whether Dr Bakhtiar's fitness to practise is currently impaired by reason of that misconduct.

37. The Tribunal must determine whether or not Dr Bakhtiar's fitness to practise is impaired today, taking into account his 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.

38. The Tribunal had regard to the principles established in case law and was particularly mindful of:

i) The points established in the case of *Cohen v General Medical Council [2008] EWHC 581 (Admin):*

a. The sequential approach to considering allegations means that not every finding of misconduct etc. will automatically result in a Panel concluding that fitness to practise is impaired, as: "There must always be situations in which a Panel can properly conclude that the act… was an isolated error on the part of the... practitioner and that the chance of it being repeated in the future is so remote that his or her fitness to practise has not been impaired… It must be highly relevant in determining if... fitness to practise is impaired that... first the conduct which led to the charge is easily remediable, second that it has been remedied and third that it is highly unlikely to be repeated".

b. It is important for Panels to recognise that the need to address the "critically important public policy issues"

39. 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 *Grant case.* In particular, the Tribunal considered whether its findings of fact showed that Dr Bakhtiar'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 or is liable in the future to bring the medical profession into disrepute; and/or

c. Has in the past breached or is liable to breach in the future one of the fundamental tenets of the medical profession; and/or

d. Has in the past acted dishonestly and/or is liable to act dishonestly in the future'

40. The Tribunal reminded itself of the statutory overarching objective which is to protect the public and which includes to:

- protect, promote and maintain the health, safety, and well-being of the public;
- promote and maintain public confidence in the medical profession; and
- promote and maintain proper professional standards and conduct for members of that profession.

The Tribunal's Determination on Impairment

41. The Tribunal acknowledged that Dr Bakhtiar had admitted misconduct but was aware that the decision on misconduct and impairment was for the Tribunal to determine, exercising its own independent judgment.

42. The Tribunal approached the determination in two stages: firstly it considered whether the facts found amounted to serious misconduct and then whether, as a result, Dr Bakhtiar's fitness to practise was currently impaired.

Misconduct

43. The Tribunal first considered whether the facts, as found proved in the Allegation, are a sufficiently serious departure from the standards of conduct reasonably expected of Dr

Bakhtiar, to amount to serious misconduct. The Tribunal noted that Dr Bakhtiar made full admissions to the Allegation and also admitted that his actions amounted to misconduct.

44. The Tribunal had regard to the provisions of GPP and, in particular, those paragraphs of the guidance highlighted in the GMC's Expert Report ('the Expert Report') prepared by Dr C. The Tribunal also had regard to the provisions of Good Medical Practice 2013 ('*GMP*'), specifically the following elements of paragraph 16:

> *'16 In providing clinical care you must:*
>
> *a. prescribe drugs or treatment, including repeat prescriptions, only when you have adequate knowledge of the patient's health and are satisfied that the drugs or treatment serve the patient's needs*
>
> *b. provide effective treatments based on the best available evidence*
>
> *d. consult colleagues where appropriate*
>
> *f. check that the care or treatment you provide for each patient is compatible with any other treatments the patient is receiving, including (where possible) self-prescribed over-the-counter medications'*.

45. The Tribunal noted that the Expert Report concluded that Dr Bakhtiar's conduct was seriously below the expected standard in that he:

- prescribed hospital-only medications in the community, unsupervised or without review or monitoring, which in Dr C's opinion could have led to patient harm or death;
- prescribed large quantities of hospital-only medication (some outside the British National Formulary recommendation), with no monitoring arrangements agreed;

- prescribed in an irresponsible and unsafe manner, being unfamiliar with some of the medications he was prescribing;
- inappropriately transcribed and issued third party prescriptions at the request of a pharmacy;
- did not have sufficient clinical information from the third-party prescription request form, but prescribed anyway;
- should have contacted the Patients but he did not;
- failed to arrange assessments and examinations of the Patients;
- failed to have adequate knowledge of the third-party Patients' health by not reviewing their medical records or contacting their overseas doctors;
- failed to discuss the Patients with their overseas specialist or family doctor/ GP;
- failed to ensure that the Patients were adequately monitored; and
- failed to ensure that safeguards were in place in respect of any of the Prescriptions.

46. The Tribunal placed considerable weight on the expert opinion of Dr C, in which she described Dr Bakhtiar's conduct as falling seriously below the standard expected of a reasonably competent General Practitioner. It took the view that the potential consequences of Dr Bakhtiar's misconduct were relevant. The Tribunal considered that Dr Bakhtiar, through his actions, could have potentially put patients at risk of harm for the reasons outlined in Dr C's report. There were also potential risks posed by the fact that a large quantity of hospital-only medication had potentially been released into the unregulated market, which could have harmed any person to whom the medication was provided to or sold.

47. The Tribunal considered that Dr Bakhtiar's conduct took place over an extended period of time – 4 months – from January 2014 to April 2014. During this time, Dr Bakhtiar had repeatedly transcribed, signed and issued prescriptions without questioning whether his actions were right or wrong. The Tribunal recognised that there was a real risk of Dr Bakhtiar's actions resulting in serious harm and potentially death to patients. It reminded itself of the evidence of Dr C, in which she stated that many of the drugs prescribed by Dr

Bakhtiar would have required hospital observation and control in order to be safely administered.

48. In view of the conclusions set out in the Expert Report, and in light of the potential consequences, which included the risk of harm to patients and the general public, the Tribunal concluded that Dr Bakhtiar's conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to serious misconduct.

Impairment

49. The Tribunal, having found that the facts found proved amounted to misconduct, went on to consider whether, as a result of that, Dr Bakhtiar's fitness to practise is currently impaired.

50. The Tribunal took the view that Dr Bakhtiar's misconduct, though serious, was capable of remediation. It considered that the misconduct had largely been the result of Dr Bakhtiar's naivety and his misguided, but genuine, belief that his role was to transcribe the Prescriptions as part of humanitarian efforts, to assist patients in other countries. Dr Bakhtiar had, in the Tribunal's view, been deceived as to the true nature of his work and had been too trusting. He had been insufficiently aware of the 'red flags' that should have caused him to pause and reflect. The Tribunal concluded that, in such circumstances, Dr Bakhtiar's misconduct was not so egregious as to be irredeemable or incapable of remediation.

51. The Tribunal noted that in his witness statement and oral evidence, Dr Bakhtiar candidly admitted that at the time of the events, he had not read the recently published GPP. Dr Bakhtiar accepted that this was a significant shortcoming, but explained that if he had read the guidance, he would not have prescribed in the way that he did. Dr Bakhtiar also acknowledged that he had not given the completion of the Prescriptions the attention it deserved, and he said he took full responsibility for his behaviour. In his evidence, Dr Bakhtiar confirmed that he had re-familiarised himself with the GMC and national prescribing

guidelines and was now fully aware of the guidance on remote prescribing. In addition, he presented the Tribunal with evidence of the remote prescribing policy he had since developed and implemented at the Clinic. He also provided evidence of targeted CPD activities undertaken which were relevant to safe prescribing.

52. The Tribunal was satisfied that Dr Bakhtiar had done all that could expected of him by way of remediation in the eight years since the events relating to the Allegation. Whilst Dr Bakhtiar had continued to deny some matters in February 2022, the Tribunal concluded that his insight had now developed fully. The Tribunal determined that, since the events took place, Dr Bakhtiar had reflected maturely and deeply about his work for the Clinic. He has taken various steps, as shown by his numerous CPD certificates, to address the causes of his misconduct and to remediate further. It determined that the risks of repetition were so negligible that they could be safely disregarded. The Tribunal considered that Dr Bakhtiar's expressions of remorse, as well as his apologies to his colleagues and the wider profession, were genuine. It was satisfied that Dr Bakhtiar understood what had led to his misconduct and had reflected substantially on his behaviour. The Tribunal concluded that Dr Bakhtiar had full and complete insight into his misconduct, which was highly unlikely to be repeated.

53. The Tribunal had regard to each of the three limbs of the overarching objective. In relation to the first limb of the overarching objective, the Tribunal noted Dr Bakhtiar's admission that issuing the Prescriptions could have led to Patient harm or even death. The Tribunal also had regard to its own finding that the effect of Dr Bakhtiar's misconduct had been to create a potential risk of harm, either to the Patients (if they existed) or to any other person to whom the medications were sold or otherwise provided. The Tribunal noted that whilst the conduct took place over a seemingly prolonged period of time – 4 months – it observed that this was a relatively short period of time when viewed against the backdrop of an otherwise unblemished and distinguished career.

54. The uncontested evidence before the Tribunal was of an excellent clinician who is well regarded by his colleagues and patients alike. The Tribunal was satisfied that there were

otherwise no concerns. In the view of the Tribunal, Dr Bakhtiar had, through his remediation, addressed the patient safety concerns arising from the Allegation. The Tribunal concluded that Dr Bakhtiar did not present a risk to the health, safety or well-being of the public.

55. In relation to the second limb of the overarching objective, the Tribunal reminded itself of its finding that, whilst Dr Bakhtiar's misconduct was serious, it was not so egregious as to be irredeemable or incapable of remediation. The Tribunal considered that Dr Bakhtiar has fully remediated his misconduct and has full insight; further he is an excellent clinician who has the confidence and respect of his colleagues and patients, notwithstanding the Allegation. The Tribunal was of the view that there was nothing further that Dr Bakhtiar could do to remediate his conduct and that public confidence would not be undermined if a finding of impairment were not made.

56. With regard to the third limb of the overarching objective, the Tribunal was conscious of its earlier findings as to Dr Bakhtiar's remediation and level of insight. It also took into account the efforts of Dr Bakhtiar to improve patient safety standards and prevent the future recurrence of similar incidents, such as by utilising his learning to develop the remote prescribing policy that he created at the Medical Express Clinic. In light of its findings, the Tribunal considered that, in all the circumstances, a well-informed member of the public would not expect a finding of impairment against Dr Bakhtiar. The Tribunal concluded that the promotion and maintenance of proper professional standards and conduct for members of the medical profession does not require a finding that Dr Bakhtiar's fitness to practise is currently impaired.

57. The Tribunal has therefore determined that Dr Bakhtiar's fitness to practise is not impaired.

Determination on Warning - 14/10/2022

58. As the Tribunal determined that Dr Bakhtiar's fitness to practise was not

impaired, it considered whether, in accordance with s35D(3) of the 1983 Act, a warning was required.

Submissions

59. On behalf of the GMC, Mr Slack submitted that issuing a warning would be appropriate in this case, referring the Tribunal to various paragraphs of the Guidance on Warnings (February 2018) ('the Guidance').

60. Mr Slack submitted that as the Tribunal found Dr Bakhtiar's actions amounted to serious departures from GMP and GPP, it follows that a warning is required to mark the seriousness of Dr Bakhtiar's actions. The Guidance states:

> ***11*** *Warnings allow the GMC and MPTS tribunals to indicate to a doctor that any given conduct, practice or behaviour represents a departure from the standards expected of members of the profession and should not be repeated. They are a formal response from the GMC and MPTS tribunals in the interests of maintaining good professional standards and public confidence in doctors. The recording of warnings allows the GMC to identify any repetition of the particular conduct, practice or behaviour and to take appropriate action in that event. Breach of a warning may be taken into account by a tribunal in relation to a future case against a doctor, or may itself comprise misconduct serious enough to lead to a finding of impaired fitness to practise.*

61. Mr Slack submitted that a warning would uphold public confidence in the profession. He further submitted that it would also provide public protection in the event that further misconduct by Dr Bakhtiar occurred, because the warning could be taken into account during any future fitness to practise proceedings. He then referred to paragraph 14 of the Guidance:

> ***14*** *Warnings should be viewed as a deterrent. They are intended to remind the doctor that their conduct or behaviour fell significantly below the standard expected*

and that a repetition is likely to result in a finding of impaired fitness to practise. Warnings may also have the effect of highlighting to the wider profession that certain conduct or behaviour is unacceptable.

62. Mr Slack submitted that Dr Bakhtiar's actions were found by the Tribunal to have been a serious departure from GMP and that this indicates that a warning is appropriate in this case, as indicated at paragraph 16 of the Guidance:

> ***16*** *A warning will be appropriate if there is evidence to suggest that the practitioner's behaviour or performance has fallen below the standard expected to a degree warranting a formal response by the GMC or by a MPTS tribunal. A warning will therefore be appropriate in the following circumstances:*
>
> - *there has been a significant departure from Good medical practice…*

63. Mr Slack submitted that paragraph 20 of the Guidance is relevant, as there has been a clear breach of GMP and GPP and that if Dr Bakhtiar's actions were repeated, then a finding of impaired fitness to practise would likely be made. A warning would therefore serve as a formal record of the particular concerns identified. He added that the reference to repetition in this paragraph is not predicated on the likelihood of repetition, so can be applied in this case even if the likelihood has been identified as low.

> ***20*** *The decision makers should take account of the following factors to determine whether it is appropriate to issue a warning.*
>
> ***a*** *There has been a clear and specific breach of Good medical practice or our supplementary guidance.*

b *The particular conduct, behaviour or performance approaches, but falls short of, the threshold for the realistic prospect test or in a case before a tribunal, that the doctor's fitness to practise has not been found to be impaired.*

c *A warning will be appropriate when the concerns are sufficiently serious that, if there were a repetition, they would likely result in a finding of impaired fitness to practise. Warnings may be an appropriate response to any type of allegation (subject to the comments in paragraph 7 regarding cases solely relating to a doctor's health); the decision makers will need to consider the degree to which the conduct, behaviour or performance could affect patient care, public confidence in the profession or the reputation of the profession. If the decision makers consider that a warning is appropriate, the warning should make clear the potential impact of the conduct, behaviour or performance in question, accordingly.*

d *There is a need to record formally the particular concerns (because additional action may be required in the event of any repetition).*

64. Mr Slack submitted that, as at paragraph 14 of the Guidance, a warning would serve as a deterrent, not only to Dr Bakhtiar, but also to other members of the profession. He submitted that the scope and nature of matters admitted by Dr Bakhtiar are such that it would be appropriate for Dr Bakhtiar to be issued with a warning. Mr Slack submitted that the Tribunal has noted that the conduct took place over an extended period of time – 4 months, which cannot be viewed as isolated. He submitted that the Tribunal found that there was a real risk of Dr Bakhtiar's actions resulting in patient harm or death and this risk should be reflected by the imposition of a warning in this case.

<u>On behalf of Dr Bakhtiar</u>

65. Ms Maqboul submitted that a Warning is not necessary in order to uphold the overarching objective in the circumstances of this case.

66. Ms Maqboul asked that the Tribunal consider paragraph 32 of the Guidance.

> *32 If the decision makers are satisfied that the doctor's fitness to practise is not impaired […], they can take account of a range of aggravating or mitigating factors to determine whether a warning is appropriate. These might include:*
>
> *a the level of insight into the failings.*
> *b A genuine expression of regret/apology.*
> *c Previous good history.*
> *d Whether the incident was isolated or whether there has been any repetition.*
> *e Any indicators as to the likelihood of the concerns being repeated.*
> *f Any rehabilitative/corrective steps taken.*
> *g Relevant and appropriate references and testimonials.*

67. Ms Maqboul submitted that every element of paragraph 32 applies in this case. She submitted that there are no indications of any risk of repetition in this case and reminded the Tribunal of paragraphs 52 of the facts and impairment determination which states "*The Tribunal concluded that Dr Bakhtiar had full and complete insight into his misconduct, which was highly unlikely to be repeated".* Ms Maqboul also reminded the Tribunal of paragraph 55 of its facts and impairment determination, in which it stated that Dr Bakhtiar "*is an excellent clinician who has the confidence and respect of his colleagues and patients, notwithstanding the Allegation*".

68. Ms Maqboul submitted that the doctor's previous good record, lack of adverse findings, insight, remediation, and the negligible likelihood of repetition all demonstrate that a Warning is not required in this case. In addition, the misconduct represented a momentary lapse in judgement by Dr Bakhtiar and his evidence made it clear that he acted in good faith.

69. Ms Maqboul submitted that a reasonable and well-informed member of the public may well be understanding, even sympathetic, of Dr Bakhtiar's circumstances and would appreciate that this was an error by Dr Bakhtiar. On that basis, the Tribunal should consider that a Warning is not necessary to protect public confidence in the profession.

The Tribunal's Approach

70. Once a Tribunal is satisfied that this doctor's fitness to practise is not impaired, it must consider whether the concerns raised are sufficiently serious to require a formal response by way of a Warning. The Tribunal must have regard to the public interest and overarching objective.

71. A warning will be appropriate if there is evidence to suggest that a doctor's behaviour has fallen below the standard expected, such as a significant departure from GMP, to a degree warranting a formal response. There is no definition of 'significant' in the Medical Act or in the Rules.

72. Even in an exceptional case, involving an isolated lapse in an otherwise unblemished career and where the risk of repetition is extremely low, a Warning may be required to uphold professional standards, particularly where there has been a clear departure from GMP: *PSA v (1) GMC (2) Hilton [2019] EWHC 1638 (Admin).* A Warning is a formal response, drawing a doctor's attention to specific concerns and highlighting that any repetition is likely to result in a finding of impaired fitness to practise.

73. The failure of a Tribunal to impose a Warning is capable of undermining public confidence in the medical profession: *PSA v GMC and Uppal [2015] EWHC 1304.*

The Tribunal's Determination on Warning

74. The Tribunal had regard to the Guidance and the relevant paragraphs, 61 to 65, of the GMC Sanctions Guidance 2019 ('Sanctions Guidance') and reminded itself of the overarching objective in making its decision. The Tribunal noted that a Warning will be appropriate if there is evidence to suggest that the practitioner's behaviour or performance has fallen below the standard expected to a degree warranting a formal response by the GMC or by a MPTS Tribunal.

75. In deciding whether to issue a Warning, the Tribunal applied the principle of proportionality, weighing the interests of the public with those of the doctor. The Tribunal has borne in mind that Warnings do not restrict the doctor's practice and should only be considered once it is satisfied that the doctor's fitness to practise is not impaired.

76. The Tribunal was satisfied that Dr Bakhtiar's misconduct was not deliberate and his actions during the significant period of time following these events demonstrate that he is a well-regarded clinician. However, the Tribunal reminded itself that Dr Bakhtiar had admitted misconduct and that the Tribunal had found that misconduct to be serious. The Tribunal bore in mind the significant insight and remediation that Dr Bakhtiar has demonstrated, but considered that this did not detract from the seriousness of his misconduct identified in this case. There was therefore a requirement to formally record the serious misconduct, because in the unlikely event of repetition, public confidence and the reputation of the profession would otherwise be undermined.

77. The Tribunal carefully considered the likely impact of a Warning on Dr Bakhtiar, as well as the mitigating circumstances of this case and the impressive testimonials provided. Despite the finding of Dr Bakhtiar's full insight and remediation, the Tribunal was satisfied that there had been significant breaches of a number of provisions of GMP and GPP which warranted a formal response.

78. The Tribunal was conscious of the lapse in time since the events, but was satisfied that the public interest required the marking of Dr Bakhtiar's serious misconduct as

unacceptable, to the public and the profession as a whole. In making its decision, the Tribunal balanced the interests of Dr Bakhtiar against the wider public interest and was satisfied that a Warning was necessary and proportionate.

79. The Tribunal therefore determined to impose the following Warning on Dr Bakhtiar's registration:

'Dr Bakhtiar

Between 14 January 2014 and 28 November 2014, you inappropriately transcribed, signed and issued 148 private prescriptions for third-party patients outside the UK.

Your conduct in issuing those prescriptions did not meet with the standards required of a doctor. It risked undermining public confidence and professional standards in the profession and it must not be repeated. The required standards are set out in Good Medical Practice and associated guidance (particularly that relating to prescribing). In your case, the following elements of paragraph 16 of Good Medical Practice are particularly relevant:

'16 In providing clinical care you must:

a. prescribe drugs or treatment, including repeat prescriptions, only when you have adequate knowledge of the patient's health and are satisfied that the drugs or treatment serve the patient's needs

b. provide effective treatments based on the best available evidence

d. consult colleagues where appropriate

f. check that the care or treatment you provide for each patient is compatible with any other treatments the patient is receiving, including (where possible) self-prescribed over-the-counter medications'.

Although this Warning does not place any restriction on your registration, it is a necessary response to your misconduct.'

80. This Warning will be published on the List of Registered Medical Practitioners (LRMP) in line with our publication and disclosure policy, which can be found at www.gmc-uk.org/disclosurepolicy.

81. The Interim Order currently in place is revoked.

82. That concludes this case.