

PUBLIC RECORD

Dates: 29/03/2021 - 06/04/2021

Medical Practitioner's name: Dr Mohammad MAARIJ

GMC reference number: 7080388

Primary medical qualification: MD 1986 Avicenna State Medical Institute of Kabul

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	No facts found proved	Not impaired

Summary of outcome

No action (warning not considered)

Tribunal:

Legally Qualified Chair	Mr Damian Cooper
Lay Tribunal Member:	Ms Wanda Rossiter
Medical Tribunal Member:	Dr Deborah Brooke
Tribunal Clerk:	Mr Josh Dayco

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Ghazan Mahmood, Counsel, instructed by Medical Defence Shield
GMC Representative:	Mr Ian Brook, Counsel

Attendance of Press / Public

In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held in public.

Overarching Objective

Throughout the decision making process the tribunal has borne in mind the statutory overarching objective as set out in s1 Medical Act 1983 (the 1983 Act) to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

Determination on Facts - 06/04/2021

Background

1. Dr Maarij qualified as a doctor in 1986 and obtained his Assistant Professor Academic degree in 1997 from Kabul Medical University. He worked as a surgeon in Afghanistan until 2007. He then moved to the UK, registering with the General Medical Council ('GMC') in 2011. Between April 2011 and March 2012, Dr Maarij took clinical posts in the General Surgery and Orthopaedic department at Newham University Hospital in London. Dr Maarij also worked as a Senior House Officer ('SHO') in General Surgery at West Middlesex University Hospital in London. Between December 2012 to September 2018, he worked in General Surgery at the Princess Royal University Hospital ('the Hospital') which is part of Kings College Hospital NHS Foundation Trust ('the Trust'). At the time of the events, Dr Maarij was practising as a surgical registrar at the Hospital.

2. The Allegation that has led to Dr Maarij's hearing relates to an incident that occurred in the Emergency Department of the Hospital on 28 May 2018. By way of background, Patient A was showing signs of mental illness and had been present in the Emergency Department for many hours. The sequence of events leading to the subject matter of the Allegation began when, during the afternoon, Patient A had verbally abused a member of the public. Following this, in the 'Majors A' section of the Emergency Department, Patient A approached Dr Maarij from behind and struck him on the head. It is alleged that, in an angry manner, Dr Maarij told Patient A to 'come here', or words to that effect. Further, it is alleged that he deliberately struck Patient A's head with his open hand.

3. On 8 August 2018, Dr Maarij self-referred to the GMC via email. On 15 August 2018, following an internal disciplinary investigation which resulted in Dr Maarij's dismissal, the Trust also raised concerns with the GMC.

The Allegation and the Doctor's Response

4. The Allegation made against Dr Maarij is as follows:

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

1. On 28 May 2018 whilst employed as a Surgical Assessment Registrar at the Princess Royal University Hospital you:

a. said to Patient A in an angry manner ‘come here’, or words to that effect;

To be determined

b. deliberately struck Patient A’s head with your open hand.

To be determined

The Facts to be Determined

5. Dr Maarij did not make any admissions to the Allegation. The Tribunal is therefore required to determine whether Dr Maarij said to Patient A, in an angry manner, ‘come here’ or words to that effect and whether he deliberately struck Patient A’s head with his open hand.

Factual Witness Evidence

6. The Tribunal received evidence on behalf of the GMC from the following witnesses, by video link:

- Dr B, Foundation Year 2 (FY2) doctor at the Hospital (at the time of the events);
- Mr C, Junior Charge Nurse in the Emergency Department;
- Ms D, Paediatric Staff Nurse in the Emergency Department;
- Dr E, Clinical Director for Acute and Emergency Medicine; and
- Dr F, Associate Specialist in the Emergency Department.

7. Dr Maarij provided his own witness statement, dated 16 January 2020 and also gave oral evidence at the hearing.

Documentary Evidence

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

- Witnesses interview notes from the initial accounts dated between May to June 2018;
- Four different annotated diagrams of the ‘Majors A’ area;
- Datix reports dated between 28 - 30 May 2018;
- Medical records of Patient A;
- Dr Maarij’s CV;
- Outcome of the disciplinary hearing, dated 8 August 2018;
- Patient and colleague feedback;

- Course certificates;
- Various testimonials on behalf of Dr Maarij; and
- Dr Maarij’s appraisal certificate dated 29 March 2019.

The Tribunal’s Approach

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

10. The Tribunal bore in mind that the more serious the allegation, the more cogent the evidence must be. However, it noted that the balance of probabilities remained the standard to be applied. It also noted that if Dr Maarij’s credibility was an issue, or there was a dispute between his evidence and that of others, evidence of his good character was relevant and admissible but the weight to be put on such evidence was a matter for the Tribunal.

11. The Tribunal noted that its determination in relation to paragraph 1b of the Allegation required it not only to determine whether Dr Maarij struck the Patient A’s head with his open hand but also, if he did so, whether he did so deliberately.

12. The Tribunal also noted that the four GMC witnesses present at the incident were located in four different places in the Majors A area of the Emergency Department. Each was likely to have been concentrating on different aspects of the incident, depending upon what they had been doing, or had seen, in the immediate build up to the incident. Each would also have had a different angle of view and a different perception of who may have been in front of, or behind, whom. Therefore, the Tribunal concluded that some inconsistencies between accounts would not be surprising. Such inconsistencies did not detract from the weight accorded by the Tribunal to the evidence given by each of the witnesses.

The Tribunal’s Analysis of the Evidence and Findings

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

Paragraph 1a

14. In considering this paragraph of the Allegation, the Tribunal was mindful that it was only Dr B who made reference to Dr Maarij saying the words ‘*come here*’ or words to that effect to Patient A during the incident.

15. The Tribunal first considered Dr B’s contemporaneous account taken on 31 May 2018. The handwritten account of her statement noted the following:

'I saw surgical Reg touch head. He then walked back 2-3 step from where she had hit him. She was saying to? pt "Come here" and then he leaned over and slapped pt...'

16. In the typed notes of Dr B's interview with Dr E on 31 May 2018, it is stated:

'The surgical SpR (Dr Maarij) then walked 2 to 3 steps from where the patient had had hit him towards the patient and was saying to the patient something like "come here". The Surgical SpR then leaned over [Mr C] and slapped the patient'

17. Dr B's GMC witness statement is consistent with the typed interview notes. She stated:

'[...] Dr Maarij then walked 2-3 steps from where Patient A hit him towards Patient A. To clarify, Dr Maarij had to walk back from Table 2 towards Table 3 in order to get to Patient A. Dr Maarij said something like 'come here' to Patient A. I am not 100% sure if these were the exact words that he used but it was something along those lines. Dr Maarij was clearly shocked from having been hit but I would say that he definitely seemed angry when he said this. I formed this impression from the tone of his voice, his facial expression and the events that followed.'

18. In cross examination, Dr B was asked about the inconsistency between the contemporaneous handwritten note, which stated, '*she said*', and the typed note and GMC witness statement, which both stated '*he said*' in relation to the words spoken. Dr B was unable to explain the inconsistency. Mr Mahmood, on behalf of Dr Maarij, suggested that this at least raised the possibility that Dr B was mistaken about who had spoken the words in question.

19. Whilst all of the GMC witnesses are consistent in recollecting that Dr Maarij appeared to be in shock following being hit over the head by Patient A, the Tribunal noted that the other three GMC witnesses at or around the scene of the incident, made no reference to hearing Dr Maarij say '*come here*' or words to that effect in an angry manner. It noted that Dr B's reference to Dr Maarij appearing angry was only made in her GMC witness statement and was not present in the earlier notes of her interview with Dr E.

20. The Tribunal considered the evidence of the other witnesses in relation to the words said. It had particular regard to the evidence of Dr F and Ms D, who were close by and not directly involved in trying to de-escalate the situation. Mr C was the closest, but was directly involved in intervening in the incident. He said in his oral evidence that he was primarily concerned with the welfare of Patient A and Dr Maarij, and could not recall Dr Maarij saying anything to Patient A. Dr F confirmed that he did not hear anything being said by the doctor. Nevertheless, he did concede that if Dr Maarij had said something in a softly spoken manner, he would not have necessarily heard him from where he was sitting, as the department was generally busy and therefore quite noisy. Ms D thought she could hear words being said between Dr Maarij and Patient A but did not know what was said.

21. Dr Maarij made no reference in his evidence to saying anything after being hit by Patient A.

22. In all the circumstances, having carefully considered the evidence before it, the Tribunal was not satisfied that the GMC had adduced sufficient evidence to prove, on the balance of probabilities, that Dr Maarij said to Patient A in an angry manner ‘come here’, or words to that effect.

23. Accordingly, the Tribunal found paragraph 1a of the Allegation not proved.

Paragraph 1b

24. The Tribunal was of the view that it first needed to determine whether or not Dr Maarij had hit Patient A in the manner alleged.

25. The Tribunal first considered Dr B’s evidence. The Tribunal was of the view that Dr B gave clear and consistent written and oral evidence. Whilst there were some inconsistencies in her evidence compared with that of the other three witnesses (such as the exact location of the incident), the Tribunal did not agree with Mr Mahmood’s submission that Dr B was a wholly unreliable witness. It noted that the witnesses had been asked by the GMC to annotate the diagram of the Emergency Department, which involved recalling the exact location of the incident in the Majors A area, some considerable time after the event took place.

26. In his closing submission on facts, Mr Mahmood addressed the apparent inconsistency between Dr B’s and Ms D’s evidence in relation to the positioning of Dr Maarij in the department. Dr B’s description of events during her walk back from the Radiology department was that Dr Maarij was walking ahead of Dr B and the patient. Ms D’s evidence was that she was behind Patient A when Dr Maarij appeared and they both walked in the same direction with Patient A walking in front. Ms D explained in her evidence that she and Dr Maarij had parted ways at or around table 5/cubicle 6, Ms D going in a different direction to that of Dr Maarij, Dr B, Mr C and Patient A. The Tribunal was of the view that it was entirely plausible that Dr Maarij could have carried on walking, have passed Dr B and then been seen in front of Dr B. The Tribunal was also not persuaded that Dr B and Ms D were more than simply friendly work colleagues during the period they worked together. They did not maintain any friendship beyond the period during which they were professional colleagues. It was also not persuaded that their recollections were tainted by any conversations that they had prior to their interviews with Dr E.

27. Dr B maintained a consistent position in relation to her view of the incident. In cross-examination she was challenged about apparent obstacles to her line of sight, namely a tall computer trolley and a pillar. She acknowledged the presence of these things, and described where the pillar was in the Emergency Department, but was nevertheless firm in her recollection that her line of sight was not actually obscured. Her consistent evidence was

that Dr Maarij had slapped Patient A with his right hand and this appeared to be with his open hand to the left side of her head.

28. The Tribunal went on to consider the evidence of Mr C. In his GMC statement, he explained that *'Patient A went up to Dr Maarij, on his right hand side and hit him somewhere on the head...it was quite a close hit and I heard the sound'*. He went on to confirm that he thought Dr Maarij was *'surprised that it had happened'*. He then stated that Dr Maarij *'retaliated'* and *'slapped Patient A, with his open hand'*.

29. The Tribunal also had regard to Ms D's recollection that she saw Dr Maarij hit Patient A. Whilst Ms D did resile from her written evidence under cross-examination and concede that it was possible that there were obstacles that potentially impeded her view (such as the computer trolleys), in response to a direct question from the Tribunal whether she saw Dr Maarij hit Patient A, Ms D answered *'yes'*.

30. The Tribunal also had regard to the evidence of Dr F. In his oral evidence to the Tribunal, he accepted that his view of the incident was limited because of the presence of a computer trolley. He explained that the trolley was such that, when seated close by, the trolley was tall enough to obscure your view of someone standing behind it, so that you would only see the upper part of their head. He explained that he witnessed Patient A approach Dr Maarij from behind and hit him on the back of his head. Whilst he was not able to clearly see Dr Maarij, he explained that he did witness Dr Maarij *'swing his arm'*. He also then clearly heard the blow. In his oral evidence, Dr F described the movement as aggressive rather than defensive. The Tribunal also noted the fact that incident was sufficiently shocking and inappropriate to prompt Dr F to report the incident to the consultant in charge of the Emergency Department at the time. The Tribunal found Dr F to be a helpful and clear witness. It was of the view that his accounts were consistent, and it considered that he had given a fair and balanced recollection of the incident, detailing the presence and impact of potential obstacles on his view of the incident.

31. Taking into account any obstacles that may have impeded their view of the incident, all four witnesses were consistently of the view that Dr Maarij had hit Patient A. The witnesses had either seen Dr Maarij strike the blow, seen the motion of his arm, or heard the sound of the blow being struck to Patient A's head such that it was sufficiently audible above the noise of department.

32. The Tribunal went on to consider Dr Maarij's evidence. In his GMC statement he stated:

'I believe that she hit me two or three times. I used my left hand to defend my face and with my right hand, I attempted to push her away. I pushed her back with my open hand by contacting her face but I am not quite sure about the exact location as everything happened very quick and I was shocked, panicked and scared...'

33. In his oral evidence to the Tribunal, Dr Maarij maintained that he was using his hand to defend himself. Whilst he conceded that his hand could have made contact with Patient A's face, he maintained that this action was to push Patient A away, as opposed to deliberately hitting her.

34. As part of his witness statement, Dr Maarij adduced a letter from Dr G, an Associate Specialist in the Emergency Department at the Hospital who also appeared to have witnessed the incident. In an undated letter to the Trust, Dr G confirmed that Dr Maarij was caught unaware and he *'hit the lady immediately in what appeared to be a reflex manoeuvre'*.

35. The Tribunal considered that there were five witnesses consistently stating that Dr Maarij had hit Patient A. Given the corroboration between these accounts, the Tribunal was satisfied that, on the balance of probabilities, it was more likely than not that Dr Maarij did hit Patient A and had not merely made contact with her face in the action of pushing her away.

36. Having determined that Dr Maarij had hit Patient A, the Tribunal went on to consider whether he had done so deliberately.

37. The Tribunal had regard to Mr Mahmood's closing submissions on facts where he stated that to act deliberately involved a *'conscious and intentional act'*. The Tribunal noted that the definition put forward by Mr Mahmood was not challenged by the GMC.

38. The balance of the evidence before the Tribunal was that Dr Maarij was standing at the notes trolley, adjacent to table 1 in the Emergency Department when the incident took place. The Tribunal was of the view that it was also clear from the evidence that Patient A had approached Dr Maarij from behind and hit him hard on the head. It was Dr Maarij's evidence that he was hit more than once. Dr B's evidence was that Dr Maarij was hit twice, first quite hard and then secondly with a glancing blow. Given that Dr Maarij was engaged in his work in a busy and quite noisy department, and was facing away from the approaching Patient A, the Tribunal was satisfied that Dr Maarij was taken by surprise. Dr F explained that Patient A had hit Dr Maarij hard enough to warrant Dr Maarij raising his hands and holding his head. The Tribunal was therefore satisfied that the hit from Patient A was unexpected and a shock to Dr Maarij.

39. The Tribunal was also of the view that it had received consistent evidence that the incident had happened very quickly. Dr B explained that the incident took place in *'one or two seconds'*. Further, Dr F also described the incident as happening in the *'blink of an eye'* and that he considered Dr Maarij's reaction to have been *'like an instinctive thing'*. In his initial account of the event Mr C stated that Dr Maarij seemed to *'retaliate so quickly that I thought it was probably a reflex action'*. The Tribunal was satisfied that it had received a consistent picture that this incident began and finished extremely quickly.

40. Whilst all of the witnesses agreed that Dr Maarij's reaction was one of shock, Dr B went further in explaining that her perception was that Dr Maarij was angry and annoyed. Mr

C made reference to Dr Maarij looking '*surprised*'. Ms D commented in her witness statement on how shocked Dr Maarij was at being hit and described his demeanor when he hit Patient A as one of '*anger, shock and being annoyed*'. Under cross-examination she referred to Dr Maarij's shock and annoyance. Dr F could not comment on Dr Maarij's reaction as he confirmed he did not have a clear enough view of his facial expression. Dr Maarij described himself as being very '*shocked and scared*' by the incident. Given that the incident took place within an extremely short duration, the Tribunal was of the view that it would be difficult for the observers to interpret of Dr Maarij's motivation for his actions. The Tribunal accepted that this was an unprovoked attack on a doctor carrying out his duties in a busy department and considered that this would have been a very shocking incident for Dr Maarij.

41. The Tribunal next considered whether, following the hit from Patient A, Dr Maarij then stepped forward towards Patient A before hitting her. Two out of the four GMC witnesses make reference to this point. Dr B describes that Dr Maarij walked two or three steps forward towards Patient A before hitting her back. Dr F confirmed that he saw Dr Maarij take one step forward, after Patient A had stepped back. Mr C and Ms D made no comment about any movement forwards or backwards. The Tribunal was of the view that there was not enough corroboration for it to determine that Dr Maarij had taken any more than perhaps one step forward. Given that both Dr F and Mr C accepted in oral evidence that there was no '*brawl*' between Dr Maarij and Patient A, the Tribunal was not persuaded that Dr Maarij taking a step forward towards Patient A was itself indicative that Dr Maarij hitting Patient A was a deliberate act.

42. The Tribunal also considered the issue of whether Dr Maarij and patient A had to be '*separated*'. It was also not persuaded that the separation of Dr Maarij and Patient A was necessary because Dr Maarij was continuing to engage in the incident. It has already determined that this incident was not like that of a '*brawl*'. Mr C makes reference to separating Dr Maarij and Patient A, where as Dr B describes Mr C as standing in between Dr Maarij and Patient A. In his evidence, Dr F put more of an emphasis on witnessing Mr C stopping the witness from getting to Dr Maarij. The Tribunal was of the view that Mr C had intervened simply in order to de-escalate the situation.

43. In balancing the evidence, and applying the civil standard of proof, the Tribunal was also mindful of the context. An allegation that a doctor had deliberately struck a patient was a serious allegation. It was inherently less likely that the event occurred and therefore the stronger the evidence should be before the Tribunal concluded that the Allegation was proved on the balance of probabilities.

44. The Tribunal has already determined that Dr Maarij hit Patient A. It was of the view that Dr Maarij was in shock following the unprovoked and unexpected attack from behind by Patient A. His immediate reaction had been to hold his head, turn and lash out. The incident began and was over extremely quickly. The Tribunal was not satisfied that it had seen sufficient evidence that Dr Maarij had retaliated as part of a conscious intention to do so, as opposed to an unconscious immediate reaction to being hit. The Tribunal was not persuaded

that the GMC had adduced sufficient evidence that, on the balance of probabilities, Dr Maarij had deliberately hit Patient A.

45. Accordingly, the Tribunal found paragraph 1b of the Allegation not proved.

The Tribunal's Overall Determination on the Facts

46. The Tribunal has determined the facts as follows:

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

1. On 28 May 2018 whilst employed as a Surgical Assessment Registrar at the Princess Royal University Hospital you:

- a. said to Patient A in an angry manner 'come here', or words to that effect;
Not proved
- b. deliberately struck Patient A's head with your open hand.
Not proved

47. As the Facts have not been found proved it therefore follows that Dr Maarij's fitness to practise is not impaired.

48. That concludes the case.

Confirmed
Date 06 April 2021

Mr Damian Cooper, Chair