

PUBLIC RECORD

Date: 16/04/2021

Medical Practitioner's name: Dr Mukhlis AZIZ ABID SIMAWI
GMC reference number: 7043607
Primary medical qualification: Lekarz 1999 Akademia Medyczna w Krakowie

Type of case Outcome on impairment
Review - Misconduct Not Impaired

Summary of outcome
Suspension revoked

Tribunal:

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| Legally Qualified Chair | Mr Robin Ince |
| Medical Tribunal Member: | Mr Gurpreet Singh |
| Medical Tribunal Member: | Dr Andrew Hoyle |

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| Tribunal Clerk: | Ms Lauren Duffy |
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Attendance and Representation:

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| Medical Practitioner: | Present and represented |
| Medical Practitioner's Representative: | Ms Penny Maudsley, Counsel, Doctors Defence Service |
| GMC Representative: | Ms Shirlie Duckworth, Counsel |

Attendance of Press / Public

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

Overarching Objective

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

Determination on Impairment - 16/04/2021

1. This determination will be read in private. However, as this case concerns Dr Simawi's misconduct, a redacted version will be published at the close of the hearing XXX.
2. The Tribunal has convened to decide in accordance with Rule 22(1)(f) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules') whether Dr Aziz Abid Simawi's fitness to practise remains impaired by reason of misconduct.

Background

3. Dr Simawi qualified as a doctor in 1999 from the Medical University of Krakow.

The 2019 Tribunal

4. Dr Simawi's case was first considered by a Medical Practitioners Tribunal ('MPT') in November 2019 ('the 2019 Tribunal').

Study Leave Application

5. In February 2017, Dr Simawi began working as an anaesthetist at the Kings College Hospital ('the Trust'). Shortly after commencing employment, Dr Simawi submitted a study leave application requesting leave to attend a course in Dresden, between 20-27 February 2017. At the outset of the 2019 hearing, Dr Simawi admitted to informing the Trust that he had made arrangements to attend a course between 20 -27 February 2017 and that he had made these arrangements in early 2016. The 2019 Tribunal found that Dr Simawi had not submitted an application for study leave, but rather a part completed Continuing Professional Development ('CPD') funding form. It was satisfied that Dr Simawi had requested leave from Dr A and Ms B and because he had said he was attending a conference they had assumed that he was requesting study leave.

6. Whilst the 2019 Tribunal did not find that Dr Simawi had dishonestly submitted a study leave application, it did find that he had dishonestly submitted a programme purporting to be for the Dresden conference when he knew that the Dresden programme was a copy of another conference programme.

7. The 2019 Tribunal determined that this finding of dishonesty was a breach of a fundamental tenet of the medical profession. It determined that such actions fell so seriously short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct.

Failure to disclose GMC Investigation and Interim Order

8. On 20 December 2017, Dr Simawi submitted an application for a post of Senior Clinical Fellow in Anaesthesia at Chelsea and Westminster Trust ('C & W Trust'). At the outset of the 2019 hearing, Dr Simawi admitted that he had failed to disclose to the C & W Trust the fact that he had been subject to a GMC investigation and that conditions had been imposed on his registration by an interim orders tribunal ('IOT').

9. Given that Dr Simawi was in attendance at the IOT where the conditions were imposed upon his registration, the 2019 Tribunal determined that he knew his registration was subject to conditions. However, the 2019 Tribunal determined that this inaccuracy arose from Dr Simawi's lax and careless attitude to reviewing the application form. It found that such conduct would not be considered dishonest by ordinary decent people. Therefore, it did not find that Simawi's actions were dishonest in this regard.

10. Although the 2019 Tribunal did not find that Dr Simawi's actions in this regard were dishonest, it determined that his lax and careless attitude in completing the application form fell below the standards expected under Good Medical Practice ('GMP') and amounted to misconduct.

11. The 2019 Tribunal also found that Dr Simawi had supplied to the C & W Trust a copy of his revalidation details where the dates had been amended. It found that Dr Simawi knew that these dates were untrue and that it determined that his actions were dishonest. The 2019 Tribunal found that this dishonesty would be considered deplorable by fellow practitioners and amounted to misconduct.

12. Further, the 2019 Tribunal also found that Dr Simawi had made a statement about the conditions on his registration which he knew to be untrue in that the conditions on his

registration were more onerous than he had described to the C & W Trust. Nevertheless, the 2019 Tribunal did not find that Dr Aziz Abid Simawi's actions in this regard were dishonest.

13. The 2019 Tribunal determined that on 22 March 2018 Dr Simawi started working at the C & W Trust without HR approval. However, it was satisfied that he believed that he had supplied the information requested and thereby complied with the HR department's requirements. Therefore, the 2019 Tribunal did not identify any breach of GMP as to amount to misconduct.

14. The 2019 Tribunal also found that Dr Simawi had breached one of his conditions in that he failed to notify the GMC of the post before starting it. It determined that this failing was a serious breach of his professional obligations and was sufficient to constitute misconduct.

15. In relation Dr Simawi's actions in completing the application forms incorrectly and breaching the condition imposed upon him by the IOT, the 2019 Tribunal was satisfied that Dr Simawi had developed sufficient insight. It found that the likelihood of repetition was negligible and determined that these actions did not amount to current impairment.

16. However, the 2019 Tribunal remained concerned with Dr Simawi's dishonest conduct. It took the view that, whilst his admissions and reflective statement demonstrated a level of insight, it could not be satisfied that the risk of repetition had been eliminated. The 2019 Tribunal also considered that public confidence would be undermined if a finding of impairment were not made. Therefore, it found Dr Simawi's fitness to practise impaired by reason of his dishonest conduct.

17. The 2019 Tribunal was satisfied that a period of suspension was the proportionate sanction to mark the serious nature of Dr Simawi's dishonesty and to protect the members of the public and maintain public confidence in the profession. It was of the view that a period of nine months suspension would mark the seriousness of the dishonesty in this case whilst affording Dr Simawi the time and opportunity to reflect on his dishonest conduct.

18. The 2019 Tribunal determined to direct a review of Dr Simawi's case. It considered that the reviewing Tribunal would be assisted if Dr Simawi provided the following evidence:

- Evidence of the further and full development of Dr Simawi's insight;
- Evidence from any courses and learning undertaken in relation to the issue of probity;
- Evidence that Dr Simawi has maintained his relevant skills and knowledge;
- Any other evidence that Dr Simawi may consider useful for the Tribunal.

19. Dr Simawi appealed the decision of the 2019 Tribunal. The appeal was dismissed by the High Court and his suspension was made effective on 11 August 2020.

Today's hearing

The Evidence

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

- Record of Determination of the MPT hearing dated 21 November 2019;
- Correspondence between the MPTS and Dr Simawi;
- Email correspondence between the GMC and Dr Simawi from 8 April 2020 – 2 February 2021; and
- Email from Dr Simawi requesting an early review, dated 21 January 2021, and attaching:
 - Reflective statement;
 - EveryDoctor support letter;
 - Whistleblowers UK support letter;
 - Evidence of complete courses;
 - Certificates – probity and ethics;
 - References;
 - List of courses;
 - List of articles.

21. Dr Simawi provided his own reflective statement, dated 20 January 2021 and also gave oral evidence at the hearing.

Submissions

22. On behalf of the GMC, Ms Shirly Duckworth detailed the background to Dr Simawi's case and drew the Tribunal's attention to those matters it must consider when reaching a decision on current impairment of fitness to practise. Ms Duckworth told the Tribunal that the GMC was neutral on the issue of current impairment.

23. On behalf of Dr Simawi, Ms Penny Maudsley, Counsel, submitted that Dr Simawi's fitness to practice is no longer impaired and that he should be permitted to return to unrestricted practise.

24. Ms Maudsley reminded the Tribunal of the 2019 Tribunal's findings of two discrete instances of dishonesty. She referred the Tribunal to the 2019 Tribunal's determination that Dr Simawi displayed some insight into his dishonesty, and it was of the view that there was little risk of repetition in this case. Ms Maudsley submitted that Dr Simawi has continued to demonstrate further insight since the 2019 hearing. She referred the Tribunal to his reflective statement and submitted that he now fully accepts his failure to uphold GMP and that his actions damaged the reputation of the profession. She submitted that, in his oral evidence to this Tribunal, Dr Simawi further accepted his dishonesty and has shown that he now appreciates the gravity of his dishonesty.

25. Ms Maudsley told the Tribunal that Dr Simawi has XXX where he has discussed his dishonesty and insight journey. She also referred the Tribunal to the highly relevant online courses on probity and ethics that he has attended.

26. Ms Maudsley informed the Tribunal that Dr Simawi was working on an Intensive Care Unit ('ICU') until May 2020. Since then, Ms Maudsley submitted that he has undertaken considerable online training to ensure that his medical knowledge and skills are kept up to date. Further, she stated that there has been no repetition of his dishonest conduct.

27. Ms Maudsley submitted that there has never been a risk to patient safety in this case. Further, she submitted that Dr Simawi is a valued member of the medical profession who should be able to return to unrestricted practise. She submitted that the overarching objective had been satisfied by the period of suspension and submitted that Dr Simawi's fitness to practise is not currently impaired.

The Relevant Legal Principles

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

29. This Tribunal must determine whether Dr Simawi's fitness to practise is impaired today, taking into account Dr Simawi's conduct at the time of the events and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.

The Tribunal's Determination on Impairment

30. The Tribunal considered whether Dr Simawi's fitness to practise remains impaired by reason of his misconduct.

31. The Tribunal has taken account of all the evidence presented to it along with the submissions made by Ms Duckworth on behalf of the GMC, and those made by Ms Maudsley on behalf of Dr Simawi.

32. The Tribunal had regard to the 2019 Tribunal's finding that Dr Simawi had begun to demonstrate insight into the gravity of his misconduct. In his oral evidence to this Tribunal, Dr Simawi confirmed that he accepted the findings of dishonesty made by the previous Tribunal. The Tribunal was satisfied that Dr Simawi has further developed his insight since the 2019 hearing and it was encouraged by the fact that Dr Simawi appreciated that the development of insight was an ongoing process.

33. The Tribunal acknowledged that it was difficult for a practitioner to remediate matters of dishonesty. The Tribunal has taken account of Dr Simawi's expression of genuine remorse as well as his engagement with the process of reflection and remediation. It is clear that he now understands the gravity of his dishonesty and the effect this had on colleagues, patients and public confidence in the medical profession. In his oral evidence, Dr Simawi also explained that he has XXX in which he discussed his dishonesty and insight journey which the Tribunal interpreted as a genuine and sustained effort to understand his wrongdoing.

34. The Tribunal noted that Dr Simawi was working in ICU throughout the Covid-19 pandemic until May 2020. It also had regard to the extensive CPD material that Dr Simawi has provided which demonstrates that he has attended various online courses throughout the period of suspension. In his oral evidence, Dr Simawi explained that he has been keeping up date with the current Covid-19 pandemic by attending regular online training courses. The Tribunal was satisfied that Dr Simawi has made extensive efforts to ensure his medical skills and knowledge have been kept up to date.

35. The Tribunal was of the view Dr Simawi now has significantly more insight into his dishonesty and its effect on his patients, his colleagues, and the wider profession than he did in November 2019. It was satisfied that he has demonstrated extensive and sufficient remediation. Therefore, it determined that the risk of repetition in this case was extremely low and that he had learnt his lesson.

36. The Tribunal noted that there have never been any concerns in relation to risk to patient safety. In considering the overarching objective, the Tribunal determined that the public interest, which includes the promotion and maintenance of public confidence in the profession and the promotion and maintenance of proper professional standards, has been satisfied by his suspension. The Tribunal is satisfied that it is in the public interest that Dr Simawi is allowed to return to unrestricted practise.

37. The Tribunal has therefore determined that Dr Simawi's fitness to practise is no longer impaired by reason of his misconduct.

Revocation of current order

38. In determining whether Dr Simawi's suspension should be revoked with immediate effect, the Tribunal noted that Dr Simawi had completed just over eight months of his nine month suspension. Ordinarily, the Tribunal would have determined that the suspension should run its full course so as to emphasize the seriousness of his wrongdoing. However, the Tribunal had regard to the current Covid-19 pandemic. Given Dr Simawi's specific skill set as an anaesthetist in ICU, the Tribunal determined that it was in the public interest for the current order of suspension on his registration to be revoked with immediate effect.

39. That concludes this case.

Confirmed

Date 16 April 2021

Mr Robin Ince, Chair