

PUBLIC RECORD

Dates: 14/04/2022

Medical Practitioner's name: Dr Nilesh VADHER

GMC reference number: 6030578

Primary medical qualification: MB ChB 2001 University of Birmingham

Type of case	Outcome on impairment
Review - Misconduct XXX	Not Impaired XXX

Summary of outcome
Conditions, 12 months.
Review hearing directed

Tribunal:

Legally Qualified Chair	Miss Megan Larrinaga
Lay Tribunal Member:	Ms Polly Cowan
Medical Tribunal Member:	Dr Louis Savage
Tribunal Clerk:	Miss Evelyn Kramer

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Dr Sailesh Vadher
GMC Representative:	Ms Kyra Badman, 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 - 14/04/2022

1. At the review hearing the Tribunal had 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 Vadher's fitness to practise remains impaired by reason of misconduct XXX.

The Outcome of Applications Made during the Impairment Stage

2. The Tribunal granted Dr Vadher's application under Rule 33 of the Rules, for Dr Sailesh Vadher (Dr Nilesh Vadher's brother) to act as a lay representative for him during the course of these proceedings. Dr Sailesh Vadher had previously represented Dr Nilesh Vadher at his Interim Order Tribunal ('IOT') hearings and at the Medical Practitioners Tribunal Service ('MPTS') hearing in July 2021. The GMC did not oppose the application. The Tribunal was satisfied that Dr Sailesh Vadher was a suitable person to represent Dr Vadher at the hearing.

3. Following a discussion about the potential implications of proceeding wholly in public, Dr Sailesh Vadher made an application pursuant to Rule 41 of the Rules for the hearing to proceed part in public and part in private. The Tribunal granted the application and considered it appropriate for all elements of Dr Vadher's case relating XXX be heard in private. Therefore, this determination will be read in private. However, as this case concerns Dr Vadher's misconduct a redacted version will be published at the close of the hearing with those matters relating to XXX removed.

Background

4. Dr Vadher qualified in 2001 from the University of Birmingham. Dr Vadher attended an MPT hearing between 28 June and 1 July 2021 ('the 2021 Tribunal'). At the outset of the 2021 Tribunal, he made full admissions to the Allegation. The 2021 Tribunal heard that while Dr Vadher was employed as a doctor in the Accident and Emergency Department ('A&E') at the Queen Elizabeth Hospital Birmingham ('the Trust'), he prescribed medication to Patient A and Patient B for his personal use. He admitted that this was dishonest. On 20 May 2019, Dr

Vadher sent an email to Patient B ('the Email') which included a 'story' for Patient B to provide if she was asked about the prescriptions. Dr Vadher admitted that he knew the information provided in the email to Patient B was false and that he had acted dishonestly XXX.

5. The 2021 Tribunal found that Dr Vadher's two courses of admitted dishonesty and his producing 21 false prescriptions over 11 months, were sufficiently serious departures from what is expected of doctors as to amount to misconduct. The 2021 Tribunal found that fellow practitioners and members of the public would find such conduct deplorable. In respect of Patient B, the 2021 Tribunal found that Dr Vadher's attempt to 'cover his tracks' by encouraging Patient B to lie on his behalf may have been an act of desperation, but was nevertheless inexcusable. It concluded that he had placed improper pressure upon Patient B and distressed her. The 2021 Tribunal considered that Dr Vadher's conduct in advising what Patient B should say if anyone at the hospital asked her about the prescriptions demonstrated a degree of pre-planning which members of the profession and public would find deplorable. It determined that Dr Vadher's conduct was a clear breach of paragraph 65 of Good Medical Practice (2013) (GMP), amounted to serious misconduct and engaged all three limbs of the overarching objective.

6. The 2021 Tribunal found that Dr Vadher's misconduct put patients at unwarranted risk of harm and brought the medical profession into disrepute. It found that his admitted dishonesty represented a breach of a fundamental tenet of the medical profession, namely to act honestly. The 2021 Tribunal concluded that Dr Vadher had demonstrated a good level of insight into his misconduct, making early admissions, accepting full responsibility for his actions and demonstrating contrition. The 2021 Tribunal considered that, as Dr Vadher's misconduct, was linked, at least to some extent, to XXX, it was not possible to determine with certainty the risk of repetition. However, the 2021 Tribunal found that level of insight and contrition displayed by Dr Vadher provided a degree of reassurance that the likelihood of him repeating his misconduct was low, provided XXX. Though the risk of repetition was low, the 2021 Tribunal concluded that a finding of impairment by reason of misconduct was necessary to maintain public trust given the very grave nature of the misconduct in Dr Vadher's case.

7. XXX

8. At the sanction stage, following the submissions made of behalf of Dr Vadher, the 2021 Tribunal considered its assessment of his insight again. The 2021 Tribunal concluded that Dr Vadher had demonstrated only partial insight into the implications of his misconduct,

both in terms of their impact on Patient A and Patient B and their wider impact on the medical profession and the public. XXX. The 2021 Tribunal concluded that Dr Vadher had XXX a significant way to go in demonstrating sufficient insight into his misconduct.

9. The 2021 Tribunal concluded XXX. However, given the serious, persistent and repeated dishonest conduct of Dr Vadher, it determined that conditions would not be sufficient to satisfy the overarching objective, nor mark the gravity of the 2021 Tribunal's findings. The 2021 Tribunal determined that suspension was the appropriate and proportionate sanction in Dr Vadher's case. It determined to suspend Dr Vadher's registration for a period of nine months.

10. The 2021 Tribunal directed a review and considered that the future reviewing Tribunal would be assisted by:

- Evidence of reflection on the impact that his misconduct has had on the reputation of the profession and on public confidence in him;
- Evidence of any learning with respect to medical ethics and the importance of integrity in medical practice;
- Evidence of any reflection that his actions had on Patients A and B, particularly given that Patient B was an aspiring medical health professional;
- XXX;
- XXX;
- XXX; and
- Evidence that he has kept his medical knowledge and skills up to date through Continuing Professional Development ('CPD'), for example online CPD and clinical attachments.

11. Dr Vadher's registration was made subject to an immediate order of suspension by the 2021 Tribunal.

12. Having had regard to the background, this Tribunal went on to consider whether Dr Vadher's fitness to practise remains impaired.

The Evidence

13. The Tribunal received documentary evidence that included but was not limited to:

- The 2021 Tribunal’s Record of Determinations;
- Email correspondence between Dr Vadher and the GMC, various dates;
- XXX;
- XXX;
- XXX;
- XXX;
- Dr Vadher’s submissions, including personal reflections, Continuing Professional Development (CPD) certificates and his hopes and plans for the future.

14. Dr Vadher chose not to give evidence at the impairment stage of the hearing. No adverse inference was drawn from this decision.

Submissions

15. On behalf of the GMC, Ms Badman, Counsel, set out the background to Dr Vadher’s case. XXX. In respect of his misconduct, Ms Badman acknowledged that Dr Vadher had demonstrated insight, reflection, remorse and shame into his misconduct and therefore the GMC was neutral on current impairment.

16. On behalf of Dr Vadher, Dr Sailesh Vadher asked the Tribunal to carefully consider all of the written submissions provided. Dr Sailesh Vadher submitted that Dr Vadher is no longer impaired XXX.

17. Dr Sailesh Vadher submitted that Dr Vadher has changed from who he was before and that he is ready to return to work. Dr Sailesh Vadher accepted that conditions may be placed on Dr Vadher’s registration if he were to return to work as patient safety is paramount. Dr Sailesh Vadher encouraged the Tribunal to ensure any such conditions are workable.

The Relevant Legal Principles

18. The Tribunal reminded itself that the decision of impairment is a matter for the Tribunal’s judgement alone. As noted above, the 2021 Tribunal set out the matters that a future Tribunal may be assisted by. This Tribunal noted it is for the doctor to satisfy it that he would be safe to return to unrestricted practise.

19. This Tribunal must determine whether Dr Vadher's fitness to practise is impaired today, taking into account his misconduct XXX 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

Misconduct

20. The Tribunal first considered whether Dr Vadher's fitness to practise is currently impaired by reason of his misconduct.

21. The Tribunal had regard to the evidence Dr Vadher had provided. It acknowledged that Dr Vadher had addressed each of the matters that the 2021 Tribunal had set out the reviewing Tribunal would be assisted by.

22. The Tribunal noted and was impressed by Dr Vadher's thoughtful and detailed reflections. It considered he had sought to reflect on and address all of the concerns raised by the 2021 Tribunal regarding the limitations of his insight and remediation. The Tribunal accepted Dr Vadher's candid acknowledgement that he had not, during the 2021 Tribunal, understood why his insight was found to be limited. However, having had regard to his reflective statement, the Tribunal was satisfied that Dr Vadher he had taken time to ensure he fully understood the findings of the 2021 Tribunal, addressed the concerns raised and carefully set out how his perspective on his own behaviour and the impact of it had changed over time.

23. The Tribunal was also impressed by Dr Vadher's CPD activities which represented in excess of 60 hours relevant both to his speciality in emergency medicine and seeking to address the findings of the 2021 Tribunal. The Tribunal considered that the modules completed by Dr Vadher represented an engagement in a methodical course of remediation in respect of XXX his misconduct XXX along with the need to maintain his clinical skills and knowledge. The Tribunal also noted that Dr Vadher had arranged an appraisal during the course of his suspension and that he had been open and honest with his appraiser as to his circumstances including that he was currently suspended from practice.

24. The Tribunal was satisfied on the basis of the evidence before it that Dr Vadher has been forthright about his suspension and the reason for it, both to himself, his appraiser XXX.

25. The Tribunal reminded itself that the 2021 Tribunal found that, XXX, Dr Vadher's risk of repeating his misconduct was low. Having regard to the exceptional further reflections, development of insight and remediation completed by Dr Vadher, the Tribunal was satisfied that any such risk of repetition has been further reduced. The Tribunal found that the steps taken by Dr Vadher, in his development of further insight and his remediation, had fully addressed the concerns of the 2021 Tribunal's with regard to his misconduct. The Tribunal concluded and that a finding of impairment was no longer required to uphold the statutory overarching objective.

26. Accordingly the Tribunal determined that Dr Vadher's fitness to practise was no longer impaired by reason of misconduct.

XXX