

## PUBLIC RECORD

Dates: 27/10/2021 - 29/10/2021

Medical Practitioner's name: Dr Omar CHARAF

GMC reference number: 5182226

Primary medical qualification: Magister (Physician) 1994 I. P. Pavlov Higher Medical Institute Plovdiv

**Type of case**Restoration following  
disciplinary erasure**Summary of outcome**

Restoration application refused. No further applications allowed for 12 months from last application.

**Tribunal:**

Legally Qualified Chair	Mr Paul Moulder
Medical Tribunal Member:	Dr Farah Yusuf
Medical Tribunal Member:	Dr Jeffrey Phillips

Tribunal Clerk:	Miss Jennifer Lane
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**Attendance and Representation:**

Medical Practitioner:	Present and not represented
GMC Representative:	Mr Saul Brody, 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 Restoration – 29/10/2021

### Background

1. This is Dr Charaf's first restoration application. His name was erased from the Medical Register for disciplinary reasons in January 2016, following a Medical Practitioners Tribunal.
2. Dr Charaf qualified from the Pavlov Higher Medical Institute Plovdiv with the Magister (Physician) 1994 I.P. qualification. He was registered with the GMC in July 2008.

### The 2016 Medical Practitioners Tribunal ('The 2016 Tribunal')

3. Dr Charaf's case was first considered by a Medical Practitioners Tribunal in January 2016 ("The 2016 Tribunal"). Dr Charaf was present at the hearing and was not represented.
4. The 2016 Tribunal made the following findings of fact:

#### Deficient Professional Performance

1. You underwent a General Medical Council assessment of the standard of your performance on:  
7 – 10 December 2014 (peer review);  
17 December 2014 (tests of competence). **Admitted and found proved**
2. Your professional performance was unacceptable in the following areas:
  - a. maintaining professional performance; **Found proved**
  - b. assessment; **Found proved**
  - c. clinical management; **Found proved**

- d. operative/technical skills; **Found proved**
  - e. relationships with patients; **Found proved**
  - f. working with colleagues. **Found proved**
3. In the Knowledge Test you scored 30% which was below the set score of 66.43%  
**Admitted and found proved**

Misconduct

4. On 15 January 2014 you falsely informed the General Medical Council, by email that your ~~contact~~ **contract** at Worthing Hospital had ended ‘for the time being’ due to personal circumstances. **Found proved**
5. The information you submitted at paragraph 4 above:
- a. was untrue; **Found proved**
  - b. you knew to be untrue. **Found proved**
6. Your actions as described at paragraph 4 were:
- a. misleading; **Found proved**
  - b. dishonest. **Found proved**

And by reason of the matters set out above, your fitness to practise is impaired because of your:

- a. deficient professional performance in respect of paragraphs 2 and 3;
- b. misconduct in respect of paragraphs 4 - 6.

5. The 2016 Tribunal found that Dr Charaf’s fitness to practise was impaired by reason of misconduct and deficient professional performance.

6. The 2016 Tribunal first considered whether Dr Charaf’s actions constituted misconduct in relation to professional performance. The 2016 Tribunal noted that the

performance assessors' formal opinion of whether Dr Charaf should practise was '*not at all*' and the consensus of all the assessors was that Dr Charaf had '*a profound underlying lack of knowledge and ability*'. The 2016 Tribunal had regard to his low scores in the knowledge test and that his Objective Structured Clinical Examinations (OSCEs) were very significantly below the standard expected for a competent doctor and noted that '*The assessment team concluded that in order to return to practise you would need to undergo training equivalent to undergraduate level*'. The 2016 Tribunal was satisfied that Dr Charaf's professional performance was deficient at the time of the assessment and did not meet the standards expected of a registered practitioner.

7. The 2016 Tribunal then considered if Dr Charaf's fitness to practise was impaired by reason of misconduct in having sent a particular email to the GMC. It found that Dr Charaf's actions were misleading and dishonest. Dr Charaf's action could have obstructed the regulator in performing its statutory duty and the consequences of this were potentially very serious and was misconduct. The Tribunal considered that Dr Charaf's performance deficiencies had not been remediated and his fitness to practise was impaired on this basis. The Tribunal determined that Dr Charaf's dishonest misconduct had not been remediated and there was a risk of repetition. It also determined that the need to maintain public confidence in the profession and to uphold standards required a finding of impairment.

8. Having found Dr Charaf's fitness to practise impaired, the 2016 Tribunal went on to consider what sanction, if any, to impose. The 2016 Tribunal found his deficient professional performance to be so serious as to amount to a serious departure from the principles set out in Good Medical Practice (GMP). The 2016 Tribunal determined that Dr Charaf had a lack of insight regarding the level of his performance and his attitudinal problems were a considerable barrier to appropriate self-reflection, learning and remediation.

9. The 2016 Tribunal determined that Dr Charaf's deficient professional performance was fundamentally incompatible with continued registration and that erasure was therefore the only proportionate sanction in the circumstances.

### Today's Restoration Hearing

10. This Tribunal has convened to consider Dr Charaf's application for his name to be restored to the Medical Register in accordance with Section 41 of the Medical Act 1983 (as amended) and Rule 24 of the GMC (Fitness to Practise) Rules 2004 (as amended).

## The Evidence

11. The GMC called no witnesses to give oral evidence and relied solely on the documentary evidence provided to the Tribunal. This included the determination and transcript of the 2016 Tribunal and Dr Charaf's restoration application.

12. Dr Charaf gave oral evidence at the hearing and relied upon the documentary evidence he provided. Dr Charaf gave evidence to the Tribunal on his own behalf. He took the Tribunal to his supporting letters and certificates of good standing and other references and expanded on their relevance. He gave evidence that at the time of the past poor clinical performance XXX. Dr Charaf explained the relevance of the exhibited photographs, worksheets, testimonials and patient investigations included. On the second day of the hearing, Dr Charaf produced a further testimonial and reflective piece of writing. Dr Charaf was cross-examined and also answered questions from the Tribunal. Dr Charaf told the Tribunal that he had not attended any certificated courses since his erasure.

## Submissions

13. On behalf of the GMC, Mr Brody submitted that Dr Charaf's application to be restored to the medical register was opposed.

14. Mr Brody reminded the Tribunal of his opening which set out the background to the fitness to practise hearing in 2016. Mr Brody submitted that the Tribunal must consider whether or not Dr Charaf has insight into his performance. He referred the Tribunal to the conclusions of the GMC Assessors, whose evidence was that Dr Charaf's performance was seriously below what was expected of a registered doctor.

15. Mr Brody submitted that it remains unclear what steps Dr Charaf has taken to address his deficient professional performance. He referred to some continuing professional development (CPD) in the form of attendance at lectures and eLearning, but what he described cannot reassure the Tribunal that those areas of concern have been addressed adequately, or at all. Mr Brody added that Dr Charaf provided very little if any evidence of measurable relevant remediation.

16. Mr Brody submitted that Dr Charaf has provided none of the evidence suggested by the previous Tribunal, with no reflection or explanation put forward as to what has gone

wrong and how he is or intends to address this. He submitted that given the lack of evidence to demonstrate that Dr Charaf has addressed the concerns or the previous findings of impairment, the Tribunal cannot be satisfied that he has reflected on or addressed these matters and is no longer impaired.

17. Mr Brody submitted that when one looks at the seriousness of the matters which led to erasure in this case, there was a real risk of repetition if Dr Charaf was allowed to return to unrestricted practice, given the lack of cogent evidence to show what, if anything, he has learnt from the events that gave rise to his erasure.

18. Dr Charaf submitted that he was ready to return to practice in the UK, and that the work he had done in Bulgaria in the years since his erasure supported this. He apologised to the Tribunal for his past mistakes, which he agreed were not acceptable. He reminded the Tribunal of his oral evidence that at the time of the events XXX which contributed to his poor performance and dishonesty. He submitted XXX and wished to help people again.

19. Dr Charaf submitted that he did need to attend some courses but that he had been attending lectures both virtually and in person, reading books and researching new treatments on the internet so that he could be a better doctor. He asked the Tribunal to have regard to the differences between requirements in the UK and those needed in Bulgaria, which made it difficult for him to attend courses.

20. Dr Charaf referred the Tribunal to the documentation he provided in advance of and during the hearing, and the work he had carried out in Bulgaria since his erasure. He submitted that his goal was always to return to UK practice when he was allowed to do so, and that he had gone to Bulgaria to work as a doctor with this in mind. He stated that he had worked well for five years and had not repeated his mistakes in this time as evidenced by the certificate of good standing received from the Bulgarian Medical Association. He reminded the Tribunal that he had not harmed a patient, and that there had been no incidents raised in the five years since his erasure. He submitted that the risk of repetition and to patients was minimal

### The Tribunal's Approach

21. Throughout its consideration of Dr Charaf's application for restoration, the Tribunal was guided by the approach laid out in the MPTS Guidance document: *Guidance for medical*

*practitioners tribunals on restoration following disciplinary erasure* (October 2019) ('the Guidance').

22. The Tribunal reminded itself that the onus is on Dr Charaf to satisfy the Tribunal that he is fit to return to unrestricted practice. The Tribunal should not seek to go behind the findings on facts, impairment and sanction made by the 2016 Tribunal.

23. The test to be applied by Tribunals when considering if a doctor should be restored is that set out in *GMC v Chandra* [2018] EWCA Civ 1898, namely: '*having considered the circumstances which led to erasure and the extent of remediation and insight, is the doctor now fit to practise having regard to each of the three elements of the overarching objective.*'

24. The Tribunal reminded itself that, in making its decision, it should consider the following factors:

- the circumstances that led to disciplinary erasure;
- whether the doctor has demonstrated insight into the matters that led to erasure, taken responsibility for their actions, and actively addressed the findings about their behaviour and skills including consideration of:
  - insight and remorse;
  - remediation and risk of repetition;
  - whether findings about the doctor's behaviour have been remedied;
  - likelihood of repetition of the previous findings about the doctor's behaviour;
- what the doctor has done since their name was erased from the Register including consideration of:
  - overseas practice;
- steps the doctor has taken to keep their skills and knowledge up to date; and
- the lapse of time since erasure.

25. After considering these factors, the Tribunal reminded itself that it should balance its findings against whether restoration meets the overarching objective, carefully considering each of the three elements and acting in a way which:

- protects, promotes and maintains the health, safety, and well-being of the public;
- promotes and maintains public confidence in the profession; and
- promotes and maintains proper professional standards and conduct for members of the profession.

26. The Tribunal took account of all the evidence before it, both oral and documentary. It has also considered the submissions made by Mr Brody, on behalf of the GMC and from Dr Charaf.

### **The Tribunal's Decision**

#### The circumstances that led to disciplinary erasure

27. The Tribunal took into account the determination of the 2016 Tribunal fully. It noted the seriousness of Dr Charaf's professional performance and misconduct which led to his erasure.

28. The Tribunal noted that the 2016 Tribunal had found that Dr Charaf's actions leading to his erasure were very serious and fundamentally incompatible with registration. The Performance Assessment Team [PAT] concluded that he was '*not at all*' fit to practise and there was a number of areas where his fitness to practise was deemed to be unsafe. The Tribunal in 2016 noted the failure by Dr Charaf to provide sufficient evidence of reflection on his shortcomings regarding deficient professional performance and noted his lack of insight.

29. The Tribunal also had regard to XXX at the time of the Performance Assessment. XXX. The Tribunal noted that this explanation did not appear in the determination of the 2016 Tribunal, and that no evidence has been provided to support that this was a factor. This Tribunal attached little weight to this explanation as it cannot go behind the findings of the 2016 Tribunal XXX.

#### Insight and Remorse

30. The Tribunal had regard to all relevant paragraphs of the Guidance. In considering Dr Charaf's oral evidence, the Tribunal gave particular consideration to paragraph B10 of the Guidance:

*'B10 Factors that can be relevant to a doctor demonstrating genuine insight include, but are not limited to, evidence they have:*

- a considered the concern, understood what went wrong and accepted they should have acted differently*
- b demonstrated that they fully understand the impact or potential impact of their performance or conduct, for example by showing remorse*
- c demonstrated empathy for any individual involved, for example by apologising fully*
- d taken steps to remediate and to identify how they will act differently in the future to avoid similar issues arising'*

31. Dr Charaf provided a number of documents in support of his restoration application. These contained little detailed evidence of insight into the issues around the deficient professional performance arising from the Performance Assessment in 2014. The Tribunal was particularly concerned by the absence of any detailed, targeted written reflections on his deficient professional performance.

32. The Tribunal considered that if Dr Charaf had insight into his deficient professional performance, he would have been able to produce some evidence or demonstrate some progress, but he provided the Tribunal with only brief comments on a few lectures he stated he attended. Dr Charaf failed to provide detailed and measurable information concerning his having attended or participated in lectures or training relevant to the specific areas of deficient professional performance identified in the Performance Assessment and which had concerned the 2016 Tribunal.

33. The Tribunal determined that, while Dr Charaf in his written and oral evidence demonstrated some remorse and regret for his actions, he failed to demonstrate that he understands the seriousness of his actions and the findings against him. It noted that Dr Charaf was unable to articulate what had gone wrong in the course of events which lead to his erasure. Further Dr Charaf had not demonstrated to the Tribunal that he appreciated the impact his actions on the reputation of the profession. Therefore, the Tribunal determined that Dr Charaf remains lacking in sufficient insight into the past concerns over his deficient professional performance.

Remediation

34. The Tribunal gave careful consideration to the remediability of the matters which led to Dr Charaf's erasure. The Tribunal considered that Dr Charaf's past deficient professional performance was potentially remediable, however in this application it was for the doctor to demonstrate evidence that he had remediated. It went on to consider the evidence of remediation.

35. The Tribunal again had regard to the relevant paragraphs of the Guidance and gave particular consideration to B15:

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

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

36. The Tribunal had regard to whether Dr Charaf had undertaken any remediation since his erasure and whether that remediation was relevant, objective, measurable, and effective.

37. The Tribunal had regard to the statements and personal reflections Dr Charaf submitted. It noted that in these statements, Dr Charaf focuses on the dishonesty aspect of the 2016 hearing and not the performance issues. The Tribunal has borne in mind the view of the 2016 Tribunal that the dishonesty was an isolated incident and formed the opinion that the insight Dr Charaf has demonstrated in respect of the dishonesty is sufficient enough to have been remediated. However, it noted that Dr Charaf has not addressed the performance issues, which were the serious concerns which led to Dr Charaf's erasure.

38. The Tribunal took into account the other documentary evidence submitted by Dr Charaf in support of his application. It noted that he provided a number of testimonials and references from colleagues which on the whole were positive. The references provided by Dr Charaf's colleagues were positive with respect to his clinical practice, but the Tribunal found that they did not address the specific issues found in the performance assessments or provide an objective structure of steps taken by Dr Charaf to address the concerns raised.

39. It also had regard to testimonials provided by some of Dr Charaf's patients in Bulgaria. These testimonials were positive and spoke highly of Dr Charaf as a doctor. However, there were striking similarities between two of the references which the Tribunal considered was unlikely to be a coincidence. In respect of the reference of Dr A, Dr Charaf accepted in his oral evidence that he had not provided some of the services that were listed by Dr A in that reference and therefore its contents were inaccurate. As such, the Tribunal could only attach limited weight to these testimonials due to the apparent similarities and the inaccuracy acknowledged by Dr Charaf.

40. The Tribunal noted that Dr Charaf had not undertaken any certificated courses to address the matter of his deficient professional performance since 2016. Dr Charaf had not provided the Tribunal with any evidence of significant learning, in the form of certificates or any reflective notes to highlight the relevance of any courses he had attended to these proceedings. It would have assisted the Tribunal to have evidence of courses undertaken and of how they had helped develop Dr Charaf's insight into his performance and misconduct. The Tribunal took the view that Dr Charaf could have provided further objective evidence of his insight and understanding.

41. The Tribunal also took into consideration B30 of the guidance which says:

*B30 Less weight should usually be given to online courses as these do not generally provide a proper opportunity for a doctor to witness doctor/patient interaction first hand and this can limit their value. However, tribunals will need to consider if there are good reasons why online learning was the best available way for the doctor to keep their knowledge and skills up to date. For example, if health issues or caring responsibilities meant they found it difficult to attend relevant learning in person.*

42. The Tribunal noted that Dr Charaf had provided little objective evidence of his attempts to understand his failures in his professional performance which led to his erasure and has not demonstrated remediation to that effect by undertaking relevant, measurable and effective training which he has evidenced to this Tribunal. The Tribunal took the view that Dr Charaf had not fully appreciated or addressed the findings of the previous Tribunal. In the Tribunal's view, Dr Charaf still did not understand the gravity of the findings against him and that until he addresses the findings of the 2016 Tribunal Dr Charaf will not be able to fully remediate. The Tribunal acknowledged that whilst findings of deficient personal performance are potentially remediable, they require a structured and careful approach to remediation, especially in view of the severity of the deficiencies noted in his assessment. However, in this case, the Tribunal has seen very little evidence of relevant remediation.

#### Risk of Repetition

43. The Tribunal took into consideration Dr Charaf's level of insight and its assessment of his remediation when considering whether there remained a risk that he would repeat his misconduct.

44. The Tribunal noted that the following factors to be relevant in its consideration of the risk of repetition in this case:

*'B22 In addition to the factual matters found proved, the following factors may also be relevant to a tribunal's decision on whether the doctor's fitness to practise is impaired and they can be allowed to return to unrestricted practice:*

- *evidence the doctor has insight into the concerns about their fitness to practise and has actively addressed them*
- *the lapse of time since erasure*
- *the steps the doctor has taken to keep their medical knowledge and skills up to date*
- *what the doctor has done since their name was erased from the register.*

*B24 Evidence of the doctor's current level of insight will be a significant factor for the tribunal in assessing the risk the doctor may repeat their previous misconduct or poor performance.'*

45. Overall, the Tribunal concluded that Dr Charaf has demonstrated insufficient insight into his deficient professional performance. It considered that while the deficiencies in his performance are capable of remediation, there is no evidence he has undertaken any significant remediation. There remains a risk of repetition, with adverse implications for patient safety and public confidence in the profession.

What Dr Charaf has done since his name was erased from the Register, steps taken to keep his medical knowledge up to date and lapse of time?

46. Dr Charaf's name was erased from the Medical Register in the UK in December 2016. It notes that in an email response to the GMC dated 30/04/21 he stated:

*'Since my arrival home in UK on 05/03/2021, I have contacted GMC for restoration and prepared documents you asked for restoration and waiting for your decision. Engage and update myself with e-learning. I have done a few jobs as interpreter for the UK authority via telephone or distant meeting via Skype. And a few time patients from Bulgaria has sent blood test and calling me asking for medical advice. I have attached blood test'.*

47. The Tribunal noted that he had worked in a clinical environment in Bulgaria and had undertaken some unpaid work. However, there has been a lack of action taken by Dr Charaf to productively use the period of erasure to address the 2016 Tribunal concerns. The Tribunal took the view that Dr Charaf had not taken adequate steps to improve his personal performance since his erasure in 2016.

48. The Tribunal also noted that Dr Charaf referred in both his oral and documentary evidence to a plan he made at the time he was erased that he would use to achieve restoration. A copy of this plan was not provided to the Tribunal to consider as part of this application. While the systems for revalidation and appraisal in Bulgaria may be different to those in the UK, the Tribunal could see no reason why Dr Charaf could not have employed the knowledge he had of the UK appraisal system to inform his approach to gathering objective evidence in Bulgaria.

49. The Tribunal has not seen any certificates, or evidence of Dr Charaf’s ongoing CPD beyond comments made in his oral evidence and in his statements about attending lectures and completing eLearning. It has seen no list of modules completed or lectures he has attended, or any evidence of what he has learned from these things. It was therefore not satisfied that he had taken steps to maintain his medical knowledge. The Tribunal noted that, having worked in the UK previously he should, and admitted that he had, been familiar with the evidence-based appraisal system and its requirements.

50. On this basis, the Tribunal considered it would require more evidence from Dr Charaf to demonstrate he has kept his skills sufficiently up to date to be able to safely return to unrestricted practice.

#### **Will restoration meet the overarching objective?**

51. The Tribunal considered the Guidance in relation to the application of the overarching objective which states at B35:

*‘Having considered the different factors above, the tribunal must make findings in relation to whether the doctor is fit to practise. The tribunal should then step back and balance its findings against whether restoration will meet our overarching objective. This balancing exercise will involve careful consideration of each of the elements.’*

52. Having considered the specific concerns about Dr Charaf’s erasure and the factors set out above, the Tribunal went on to determine whether Dr Charaf is fit to practise and be restored to the Medical Register. The Tribunal carefully balanced its findings against whether restoring Dr Charaf to the Medical Register will meet the overarching objective, considering each of the three limbs.

53. The Tribunal was mindful of the serious findings that led to Dr Charaf’s erasure by the 2016 Tribunal. For the reasons it had already set out, although 5 years had passed, with limited insight and remediation, the Tribunal found that a risk to patients remains. On that basis restoration to the register would undermine the first limb of the overarching objective.

54. In relation to the second limb of the overarching objective the Tribunal took the view that confidence in the profession by the general public appraised of the circumstances of the case would be seriously undermined by the restoration of Dr Charaf into unrestricted practice, bearing in mind the decisions reached by the 2016 Tribunal and this Tribunal.

55. With regard to the maintenance of professional standards and conduct for members of the profession, the Tribunal was satisfied, for the reasons given above including Dr Charaf's insufficient insight, and incomplete reflection and inadequate or misfocused remediation that restoring him to the Register would be inconsistent with the overarching objective. The Tribunal has also borne in mind that a performance assessment is a check of standards and clinical competencies, in which Dr Charaf was found deficient. While Dr Charaf has provided some evidence that there has been no repetition in the five years since his erasure and that he has reached a high standard in Bulgaria, it determined that this evidence was in no way measurable and objective and therefore cannot satisfy the need to maintain professional standards.

56. Due to its assessment of Dr Charaf's lack of insight and the limited evidence of remediation, the Tribunal concluded it was not appropriate to direct a performance assessment before making a decision.

57. The Tribunal therefore determined that restoring Dr Charaf's name to the Medical Register would not promote and maintain patient safety, public confidence in the profession or maintain professional standards and conduct for members of the profession.

## Conclusion

58. Having carefully considered the evidence and specific circumstances of this case, the Tribunal was not satisfied that Dr Charaf is fit to return to unrestricted UK practice. Accordingly, it refused Dr Charaf's application to be restored to the Medical Register.

59. This concludes the case.