

PUBLIC RECORD

Dates: 17/07/2023 - 21/07/2023

Medical Practitioner's name: Dr Peyman ARABI

GMC reference number: 6106659

Primary medical qualification: Vrach 2001 O O Bogomolets National Medical University

Type of case	Outcome on facts	Outcome on impairment
New – Misconduct	Facts relevant to impairment found proved	Impaired

Summary of outcome

Suspension, 4 weeks.

Tribunal:

Legally Qualified Chair	Mr Sean Ell
Lay Tribunal Member:	Ms Rachel Jones
Medical Tribunal Member:	Dr Harriet Leyland

Tribunal Clerk:	Mr Matt O'Reilly
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Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Chris Pataky, Counsel, instructed by Hugh James Solicitors
GMC Representative:	Ms Katie Jones, 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 - 19/07/2023

Background

1. Dr Arabi began his medical studies at the O. O. Bogomolets University in Kyiv, Ukraine, between 1995 and 2001. Between 2001 and 2003 he undertook postgraduate study in Kyiv, with an emphasis on Cardiology. Dr Arabi then undertook the role of a locum in General Medicine in Istanbul, Turkey between 2003 and 2004. Between 2004 and 2009, Dr Arabi practised intermittently in Turkey and obtained his provisional registration with the GMC. In 2009, he passed his speciality training entrance examination in Turkey. Dr Arabi graduated his speciality training in January 2014 and worked independently in general cardiology until 2018 in various locations in Turkey. On 23 May 2014 Dr Arabi obtained full registration with the GMC.
2. Whilst on educational leave from Turkey in 2018, Dr Arabi obtained a short-term position as a Junior Clinical Fellow in Cardiology at the Manchester University Hospital. He returned to Turkey in December 2018 to complete his contract, after which he returned to the UK permanently in 2019. He took up a position as a Senior House Officer in Cardiology and General Medicine at the University Hospital of Wales in Cardiff, and then the same post at Morriston Hospital in Swansea from August 2020 for a year. Dr Arabi successfully passed part 1 of the Membership of the Royal Colleges of Physicians ('MRCP') of the United Kingdom in 2019.
3. Dr Arabi worked at the Homerton University Hospital as a Senior Clinical Fellow in Heart Failure between August 2021 and November 2021. He then began work at the Epsom and St Helier University Hospitals NHS Trust as a Speciality Doctor in Cardiology, until present.
4. The matters before this Tribunal relate to Dr Arabi's actions when undertaking part 2 of the MRCP exam on 22 June 2021. Due to COVID, Dr Arabi took this exam online. The examination was run by a company called 'BTL' on behalf of the Royal College of Physicians ('RCP'), and was monitored by a 'Proctor', akin to an invigilator. It was the Proctor's role to

perform a number of checks to ensure there were no misconduct issues by those undertaking the examination.

5. Following Dr Arabi's examination, BTL produced a report which was provided to Mr A, MRCP Quality and Policy Manager, which demonstrated that Dr Arabi had taken screenshots during the examination, in breach of the exam rules. Mr A sent a letter via email to Dr Arabi on 27 July 2021 stating that there was an indication that he had taken "a screenshot" during the exam and had therefore breached the exam regulations.

6. It is alleged that during the examination, Dr Arabi took 25 screenshots of questions during the first part of the exam. In so doing, it is alleged that Dr Arabi breached the MRCP(UK) Regulations for MRCP(UK) Examination Candidates; the MRCP(UK) Candidate Code of Conduct for Examination Applicants and Candidates; and a Non-Disclosure Agreement ('NDA') that he accepted prior to taking the examination.

7. Following further investigation Dr Arabi was asked via email on 4 August 2021 by Mr A how many screen shots he had taken and it is alleged that Dr Arabi responded on the same date stating '*definitely it was not more than 2 or 3 screenshots*'. It is alleged that Dr Arabi knew that this statement was untrue, and that his response was dishonest.

8. The matter was referred to Clinical Board of the Part 2 Examination by Mr A. The outcome decision letter was sent to Dr Arabi on 22 September 2021 in which it set out that Dr Arabi's results for the exam were annulled; and that he was banned from re-sitting the exam for the next eight sittings of the exam, which amounted to an effective two-year ban before he could undertake the exam again.

9. Dr Arabi appealed the decision of the Clinical Board on 25 September 2021. On 28 September 2021 the decision of the Clinical Board was upheld by an independent adjudicator. Mr A reported this matter to the GMC on 12 November 2021.

The Outcome of Applications Made during the Facts Stage

10. On Day 1 of the hearing, Ms Katie Jones, Counsel on behalf of the GMC, made an application pursuant to Rule 34(13) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules') for GMC witness, Mr A to provide his evidence via MS Teams. She submitted that Mr A was travelling from London, and that this was not one of those cases where in person evidence was necessary. Mr Chris Pataky, Counsel on behalf of Dr Arabi, made no objection to the application. The Tribunal was satisfied that there would be no injustice or unfairness caused to either party if Mr A provided his evidence virtually via MS Teams. It therefore granted the application. Subsequent to this application, Ms Jones confirmed that Mr A had already made plans to attend in person and that he would attend in person.

The Allegation and the Doctor's Response

11. The Allegation made against Dr Arabi is as follows:

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

1. On 22 June 2021 you took the Membership of the Royal Colleges of Physicians of the United Kingdom ('MRCP(UK)') Diploma Part 2 examination.
Admitted and found proved
2. During the examination you took 25 screenshots of the examination paper.
Admitted and found proved
3. Your actions at paragraph 2 were in breach of:
 - a. the MRCP(UK) Regulations for MRCP(UK) Examination Candidates;
Admitted and found proved
 - b. the MRCP(UK) Candidate Code of Conduct for Examination Applicants and Candidates; **Admitted and found proved**
 - c. a Non-Disclosure Agreement that you were required to accept prior to taking the examination. **To be determined**
4. On 4 August 2021 when asked by Mr A how many screenshots you had taken, you stated 'definitely it was not more than 2 or 3 screenshots'.
Admitted and found proved
5. You knew that the information you provided to Mr A was untrue.
To be determined
6. Your actions at paragraph 4 were dishonest by reason of paragraph 5.
To be determined

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

The Facts to be Determined

12. At the outset of these proceedings, through his counsel, Dr Arabi made admissions to some of the paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the Rules. In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs of the Allegation as admitted and found proved.

Witness Evidence

13. On behalf of the GMC, the Tribunal received a witness statement and a supplementary witness statement, dated 25 April 2022 and 21 January 2023, respectively, from Mr A, MRCP Quality and Policy Manager (at the time of the matters before the Tribunal). Mr A also provided oral evidence at the hearing.

14. Dr Arabi provided his own witness statement and supplementary witness statement, dated 2 May 2023 and 2 July 2023, respectively. He also gave oral evidence at the hearing.

Documentary Evidence

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

- MRCP(UK) Guidance for Candidates sitting MRCP(UK) examinations from 1 September 2020, dated November 2020;
- MRCP(UK) Code of Conduct for Examination Applicants and Candidates, undated;
- ‘What to Expect’ document sent by MRCP(UK), undated;
- Non-Disclosure agreement provided by MRCP(UK) to students, undated;
- Report prepared by BTL, dated 8 April 2022;
- Email chain between MRCP(UK) and Dr Arabi, dated 27 July to 28 July 2021, and 4 August 2021;
- Statement provided by Dr Arabi to MRCP(UK), dated 1 August 2021;
- Screenshare review spreadsheet conducted by MRCP(UK), undated;
- Email chain between Dr Arabi and MRCP(UK), dated 22 September 2021 to 25 September 2021;
- Letter emailed to Dr Arabi from MRCP(UK), dated 6 October 2021.
- Video footage of the Dr Arabi’s sitting the MRCP(UK) part 1 of the Part 2 examination;
- Screenshots from the video footage of Dr Arabi sitting MRCP(UK) part 1 of the Part 2 examination taken by Mr A;
- Testimonial evidence.

Legally Qualified Chair’s Legal Advice

16. 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 Arabi 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.

17. In relation to the allegation of dishonesty, the Tribunal noted the test to be applied is as set out by Lord Hughes at paragraph 74 of *Ivey v Genting Casinos [2017] UKSC 67* which states:

“74. When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”

The Tribunal’s Analysis of the Evidence and Findings

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

Paragraph 3c of the Allegation

3. Your actions at paragraph 2 were in breach of:
 - c. a Non-Disclosure Agreement that you were required to accept prior to taking the examination. **Determined and found proved**

19. The Tribunal noted that Dr Arabi admitted that during the examination he took 25 screenshots of the examination paper, as set out at paragraph 2.

20. The Tribunal had regard to the NDA which stated:

“NDA

...This test is confidential. The rights in the intellectual property, copyright and trademarks used in providing the test are protected by law. The test is made available to you as a candidate solely for the purpose of your assessment. You are expressly prohibited from disclosing, publishing, reproducing, or transmitting this test, in whole or in part, in any form or by any means including visual, aural, verbal, written, electronic or mechanical, for any purpose without the prior express written permission of the Federation of the Royal Colleges of Physicians of the UK (Federation). To do so would be a serious breach of regulations, which may mean referral to the GMC...”

21. Ms Jones submitted that taking a screenshot was caught by the term reproducing, in the NDA. The use of the word ‘or’ in the NDA made clear that the prohibited actions were alternatives and it was not necessary for Dr Arabi to have disclosed the screenshots to another person for there to have been a breach of the NDA.

22. In his supplementary witness statement, dated 2 July 2023, Dr Arabi stated:

“8. ...I deny factual particular 3(c). I do not accept that, by taking 25 screenshots of the examination paper, I breached the provisions of the Non-Disclosure Agreement that I was required to accept prior to taking the examination. The Non-Disclosure Agreement is concerned with the protection of the MRCP(UK)'s intellectual property, copyright and trademark rights (as is made clear by the second sentence of the Agreement itself (Exhibit JB/4)). At no point did I disclose the content of the examination to any other individual. As I indicated in my first witness statement, I deleted the screenshots I had taken after seeing a warning from the Proctor informing me that screenshots were prohibited. These screenshots were not, therefore, disclosed, published, reproduced, or transmitted by me in any way that would have compromised the MRCP(UK)'s rights and I contend that this does not, therefore, amount to a breach of the provisions of the Non-Disclosure Agreement.”

23. In his oral evidence Dr Arabi stated that he did not reproduce, disclose or publish the screenshots and that he immediately deleted them. He denied that he had disclosed them to anybody else. He said that he only took the screenshots to check the answers to those questions he was not sure of and that his understanding was that taking a screenshot itself was not reproducing; as they were taken for his own use.

24. The Tribunal considered that the NDA was clear on what candidates are prohibited from doing. It is broadly drafted and states that the examination is produced for the sole purpose of the assessment and that candidates cannot reproduce any part of the examination for any reason. The Tribunal was satisfied that by taking a screenshot, Dr Arabi was reproducing a part of the examination electronically. The reason why he had done this was irrelevant for the purpose of the NDA. Whilst as Dr Arabi noted in his evidence the purpose of the NDA is to protect copyright, the Tribunal agreed with the submission made by Ms Jones that it was not necessary for Dr Arabi to disclose the screenshots to another person in order for there to be a breach of the NDA.

25. The Tribunal therefore concluded that by taking screenshots of the examination Dr Arabi did breach the NDA. The Tribunal therefore found paragraph 3c of the Allegation proved.

Paragraph 5 of the Allegation

5. You knew that the information you provided to Mr A was untrue.
Determined and found proved

26. Dr Arabi admitted that when asked by Mr A on 4 August 2021 how many screenshots he had taken, he replied ‘*Definitely it was not more than 2 or 3 screenshots*’.

27. The Tribunal considered the submissions made to it in respect of Dr Arabi’s credibility as a witness generally. It noted that the parties took differing views on whether or not Dr Arabi’s explanation as to why he had thought it was permissible to take screenshots during

the exam was credible. Having considered the evidence, the Tribunal concluded that Dr Arabi's account about why he believed he could take screenshots was credible. It was satisfied that having been warned by the Proctor that taking screenshots was not permitted, Dr Arabi did not take any further screenshots. From the outset, when contacted by Mr A, Dr Arabi provided the explanation that he had not read and familiarised himself with the regulations and was consistent on this throughout his responses and evidence to the Tribunal.

28. Dr Arabi also told the Tribunal that he did not read the regulations, the code of conduct, or the NDA before starting the exam. He confirmed that he had received the 'What To Expect' letter notifying him of the rules and regulations at least two to three days before the exam. He stated that it was a bad habit of his that he did not read the rules and regulations as he was focussed on working towards passing the exam. He said that he took the screenshots for the purpose of checking the answers to the questions he was unsure of, so that he would have an idea of how well he did on the exam. The Tribunal was satisfied that Dr Arabi's evidence in this regard was also credible. It noted that in the video, when taking screenshots, Dr Arabi spent longer going through those questions. The Tribunal considered that this was consistent with his evidence that these were questions for which he was unsure of the answer.

29. Ms Jones identified to the Tribunal what she submitted was an inconsistency in Dr Arabi's evidence which undermined his credibility. In his witness statement, dated 2 May 2023, Dr Arabi stated:

"...I do not recall seeing the notification about successful saving of the screenshots that is visible on the footage of the examination that has been made available and which I have now seen..."

30. In his evidence to the Tribunal Dr Arabi stated he had only viewed the video footage the day before. Ms Jones submitted this was inconsistent with his witness statement, as above. In clarification to the Tribunal Dr Arabi explained that he was referring to the screenshots of the video and not the video itself in his statement. The Tribunal accepted Dr Arabi's explanation. It was not satisfied he had given inconsistent evidence such as to undermine his credibility.

31. The Tribunal had the benefit of watching the recorded video footage of Dr Arabi's examination as well as the opportunity to view a screenshots bundle showing what appeared on his screen on each of the 25 occasions when he took a screenshot. On each occasion, a small grey box appeared at the bottom right-hand side of Dr Arabi's screen which stated:

"Screenshot saved - The screenshot was added to your OneDrive"

32. The video footage also shows that Dr Arabi's cursor clicks on this message to make it disappear on most of the occasions when it appears. The Tribunal was satisfied that at the time of the exam, Dr Arabi would have been aware that he was taking multiple screenshots,

particularly given his evidence that he had to press three keys on his keyboard to take the screenshot and that he clicked to make the notifications disappear. The Tribunal was satisfied on the day of the exam Dr Arabi knew he had taken significantly more than two or three screenshots.

33. Dr Arabi stated that at the time he replied to Mr A's question about the number of screenshots he had in his mind that it was two or three, that he was not certain all of his attempts had been saved and he had by the time of the question deleted the screenshots. The Tribunal took into account his previous good character, the pressure of the exam, the passage of time between the exam and the question and the speed in his response. It also noted that in his initial emails he accepted responsibility for not knowing the rules of the exam and had apologised.

34. However, the Tribunal was satisfied on the balance of probabilities that Dr Arabi knew that he had taken more than two or three screenshots at the time of his email to Mr A. The Tribunal was of the view that whilst he might not have known the exact number, it was implausible that he genuinely believed it to definitely be only two or three occasions. He knew that he had taken screenshots of questions that he considered he may have got wrong, he had seen and dispatched the repeated messages appearing on his screen when taking the screenshots and had to utilise three keys on the keyboard in order to take the screenshot. The Tribunal considered that the passage of time was not such that his knowledge of the number of screenshots he had taken would have changed this significantly from the day of his exam.

35. The Tribunal also considered it more likely than not that as Dr Arabi knew he had taken significantly more than two or three screenshots during the exam the discrepancy in the response he gave to Mr A was to minimise and downplay the actual number.

36. The Tribunal was therefore satisfied that Dr Arabi did know that when asked by Mr A on 4 August 2021 how many screenshots he had taken, that his response 'definitely it was not more than 2 or 3 screenshots' was untruthful.

37. The Tribunal therefore found paragraph 5 of the Allegation proved.

Paragraph 6 of the Allegation

6. Your actions at paragraph 4 were dishonest by reason of paragraph 5.
Determined and found proved

38. The Tribunal was satisfied that knowingly providing untruthful information in the course of an investigation into exam misconduct would be considered dishonest by an ordinary decent member of the public, in the knowledge of all the facts in this case.

39. The Tribunal therefore found paragraph 6 of the Allegation proved.

The Tribunal's Overall Determination on the Facts

40. The Tribunal has determined the facts as follows:

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

1. On 22 June 2021 you took the Membership of the Royal Colleges of Physicians of the United Kingdom ('MRCP(UK)') Diploma Part 2 examination.
Admitted and found proved
2. During the examination you took 25 screenshots of the examination paper.
Admitted and found proved
3. Your actions at paragraph 2 were in breach of:
 - a. the MRCP(UK) Regulations for MRCP(UK) Examination Candidates;
Admitted and found proved
 - b. the MRCP(UK) Candidate Code of Conduct for Examination Applicants and Candidates; **Admitted and found proved**
 - c. a Non-Disclosure Agreement that you were required to accept prior to taking the examination. **Determined and found proved**
4. On 4 August 2021 when asked by Mr A how many screenshots you had taken, you stated 'definitely it was not more than 2 or 3 screenshots'.
Admitted and found proved
5. You knew that the information you provided to Mr A was untrue.
Determined and found proved
6. Your actions at paragraph 4 were dishonest by reason of paragraph 5.
Determined 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**

Determination on Impairment - 20/07/2023

41. 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 above, Dr Arabi's fitness to practise is impaired by reason of misconduct.

The Evidence

42. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary. In addition, the Tribunal received a Stage 2 defence bundle on behalf of Dr Arabi, which included:

- Completion of Clinical Audit, December 2021;
- Certificate of Attendance – Leading through Education for Excellence Patient Care, May 2022;
- Certificate of Completion – Quality Improvement Project, August 2022;
- Certificate of Participation – Homerton NHS Foundation Trust Research and Innovation Conference, 2022;
- Advanced Life Support Course Certificate, 8 January 2023;
- Certificate of Accreditation – Audit Transthoracic Echocardiography, March 2023;
- Certificate of Attendance – British Cardiovascular Society Annual Conference, June 2023;
- Certificate of Attendance – Introduction to Nuclear Cardiology, June 2023.

Submissions on behalf of the GMC

43. Ms Jones submitted that the Tribunal, having found the facts proved, must consider whether those findings could amount to misconduct and then if that misconduct could lead to a finding of impaired fitness to practise. She submitted that when considering the overarching objective, a finding of misconduct and impaired fitness to practise was both necessary and appropriate in this case. She referred the Tribunal to the relevant case law when considering misconduct and impairment.

44. When considering misconduct, Ms Jones submitted that paragraphs 1, 65, 68 and 71a and b of Good Medical Practice ('2013') ('GMP') were engaged in this case. She submitted that when measuring Dr Arabi's conduct against those paragraphs of GMP, it was clear that the facts found proved fell below the standards expected. She submitted that the gravity of the dishonesty as found by the Tribunal was such that it amounts to serious misconduct. She submitted that if the Tribunal was with her on this, it would need to go on to consider the question of impairment.

45. Ms Jones reminded the Tribunal of the guidance provided by Dame Janet Smith in the Fifth Shipman report. She submitted that there was no suggestion that Dr Arabi poses a risk to patient safety, but he had brought the profession into disrepute, breached one of the fundamental tenets of the profession and that the Tribunal may consider his integrity could not properly be relied upon due to his dishonesty.

46. Ms Jones referred the Tribunal to the case of GMC v Nwachuku [2017] EWHC 2085 (Admin) (10 August 2017), in particular paragraphs 45 to 50. She submitted the following principles could be taken from the judgment:

- dishonesty encompasses a very wide range of different facts and circumstances, any instance of which is likely to impair fitness to practise;
- a finding of dishonesty lies at the top end in the spectrum of gravity of misconduct;
- a finding of impairment does not necessarily follow upon a finding of dishonesty; and
- it will be an unusual case where dishonesty is not found to impair fitness to practise.

47. Ms Jones submitted that those principles were relevant to the Tribunal's considerations in this case. She reminded the Tribunal that it must consider the issue of impairment as of today, not as of the date of the Allegation, but that the Tribunal is entitled to and indeed required to look back at what has happened. The Tribunal also needs to consider whether there is any evidence that Dr Arabi has developed insight or remediated for his misconduct. She reminded the Tribunal that dishonesty is notoriously difficult to remediate because of its very nature. Ms Jones invited the Tribunal to consider whether there is any evidence before it that demonstrates that Dr Arabi has an understanding of where he went wrong and accepts his dishonesty.

48. Ms Jones submitted that Dr Arabi is perfectly entitled to deny any allegation against him and there should not be any criticism attached to him for those denials. However, the Tribunal found against him specifically in relation to paragraphs 5 and 6 of the Allegation. She submitted that it is therefore not possible for Dr Arabi at the present time to put forward any evidence of his insight or remediation having denied those paragraphs of the Allegation.

49. Ms Jones submitted that although Dr Arabi had a previously unblemished record and this is an isolated incident of dishonesty, in most cases of dishonesty there needs to be a finding of impairment of the doctor's practice. She submitted this was not a case where a finding of impairment did not need to be made. She submitted the Stage 2 defence bundle provided little assistance to the Tribunal, containing evidence of Dr Arabi's Continued Professional Development 'CPD'.

50. Ms Jones submitted in conclusion that it was necessary for the Tribunal to make a finding of impaired fitness practise in this case in order to declare and uphold proper standards of conduct.

Submissions on behalf of Dr Arabi

51. Mr Pataky referred the Tribunal to the Stage 2 Defence Bundle which contained evidence of Dr Arabi's CPD and demonstrated a continuing commitment to develop his skills and knowledge.

52. Mr Pataky accepted on behalf of Dr Arabi that given the Tribunal's Stage 1 finding on dishonesty the facts found proven would amount to misconduct and that Dr Arabi's fitness to

practise would be impaired. It was, however, a matter for the Tribunal's judgement. He referred the Tribunal to the relevant case law when considering misconduct and impairment.

53. Mr Pataky submitted that the Tribunal should adopt a two-stage process to consider firstly whether its findings amounted to misconduct and secondly whether Dr Arabi is impaired by reason of the misconduct. Whilst there is no statutory definition of misconduct, Mr Pataky invited the Tribunal to have regard to the definition given by the Court in *Roylance v. The General Medical Council (Medical Act 1983) [1999] UKPC 16 (24th March, 1999)*. He submitted that the misconduct needed to be serious, and that Dr Arabi accepted that the Tribunal's findings on dishonesty were sufficiently serious to amount to misconduct.

54. Mr Pataky reminded the Tribunal that whilst it has been established that the regulations, code and the disclosure agreement had been breached, these were not deliberate breaches but rather a misplaced belief by Dr Arabi that he could take screenshots. He submitted that the focus of this stage will inevitably be the dishonesty element of the Tribunal's findings. He referred the Tribunal to the case of *Grant*, and submitted there are two very separate considerations in terms of impairment. Firstly, whether there is a risk to the public or to patients, this is not part of the GMC's case. He submitted the second consideration is the need to uphold public confidence in the profession and uphold standards. Mr Pataky submitted that Dr Arabi has fully engaged in these proceedings and requested the hearing be an in person hearing so that he could engage as much as possible.

55. In respect of taking the screenshots and subsequent email to Mr A, Mr Pataky submitted that these flow from effectively a single exam and therefore should be considered through the prism of a singular incident. He said that they occurred outside of Dr Arabi's professional practice, though linked, and that it did not involve patient care. He submitted there was no harm caused to patients as a result of the conduct.

56. Mr Pataky submitted that there has been no previous issues of concern nor subsequent repetition of dishonesty. He acknowledged that Dr Arabi had sought to downplay the actual number of the screen shots taken. He also noted that the email from Dr Arabi to Mr A stating the number of screenshots he had taken was an almost instantaneous response to the question and the information provided did not derail or negatively impact the course or the outcome of the investigation. He submitted that it was dishonesty within a sea of honesty. He invited the Tribunal to consider that it has found Dr Arabi's explanations to have been credible, save for the explanation that was provided in relation to his email of 4 August 2021.

57. Mr Pataky referred the Tribunal to the testimonial evidence, which relate to his clinical practice, but also reassured the Tribunal that Dr Arabi demonstrates honesty, integrity, and professionalism during his work as a senior heart fellow at St. Helier Hospital. He reminded the Tribunal of Dr Arabi's willingness to apologise for taking screenshots and that he had been quick to accept mistakes.

58. Mr Pataky submitted that in assessing impairment on public protection grounds, there is nothing before the Tribunal to suggest this is necessary. When considering whether Dr Arabi will in the future present a risk to public or patients, Mr Pataky submitted that there is substantial reassurance before the Tribunal that he poses no risk. He submitted that there is no criticism being made about Dr Arabi's abilities as a doctor, and therefore if the Tribunal does, as is likely, find impairment, he invited it not to be found on the ground of public protection. He accepted that impairment on public interest grounds is likely to be established, given the dishonesty.

59. Mr Pataky submitted that Dr Arabi's dishonesty does not lie at the top end of the spectrum. He submitted that Dr Arabi accepted he had taken multiple screenshots, and that is the heart of this matter, that the dishonesty relates to a single email where Dr Arabia stated a number, which was still a plural number, just that it was not the larger number which he had in fact taken.

The Relevant Legal Principles

60. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision of impairment is a matter for the Tribunal's judgement alone.

61. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved amounted to misconduct, and then whether the finding of that misconduct which was serious, could lead to a finding of impairment.

62. The Tribunal must determine whether Dr Arabi'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.

63. Whilst there is no statutory definition of impairment, the Tribunal had regard to the guidance provided by Dame Janet Smith in the Fifth Shipman report as adopted by the *High Court in CHRE v NMC and Paula Grant [2011] EWHC297 Admin*, in particular:

"a) Whether the registrant 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;

b) Whether the registrant has in the past brought and/or is liable in the future to bring the profession into disrepute;

c) Whether the registrant has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the profession.

d) Whether the registrant has in the past acted dishonestly and/or is liable to act dishonestly in the future.

74 *In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, 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 confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances."*

The Tribunal's Determination on Impairment

Misconduct

64. In determining whether Dr Arabi's fitness to practise is currently impaired by reason of misconduct, the Tribunal first considered whether the facts found proved amounted to misconduct.

Paragraphs 1-2

65. The Tribunal noted that paragraph 1 and 2 of the Allegation were factual, as such they could not lead to a finding of misconduct.

Paragraph 3

66. The Tribunal accepted Dr Arabi's evidence that he had not read the MRCP examination regulations, the code of conduct or the NDA prior to taking the Part 2 examination. Although he certainly should have been familiar with the requirements, the Tribunal accepted that at the relevant time he was unaware that he could not take any screenshots during the exam. The Tribunal found that once made aware of the prohibition on taking screenshots of the exam Dr Arabi did not take any further screenshots.

67. Dr Arabi should have familiarised himself with the rules and regulations of the exam that he was sitting so as not to have broken the examination rules. However, the Tribunal was satisfied that whilst amounting to misconduct, breaching the rules in the way that he did fell short of amounting to misconduct that was serious.

Paragraphs 4-6

68. The Tribunal reminded itself that it had found that Dr Arabi had knowingly provided untruthful information in an email to Mr A on 4 August 2021. When asked how many screenshots he had taken, he stated 'definitely it was not more than 2 or 3 screenshots' when he knew it was more.

69. The Tribunal determined that Dr Arabi's conduct was contrary to paragraphs 1, 65, 68 and 71a and b of GMP, as highlighted by Ms Jones:

“1. Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law.”

“65. You must make sure that your conduct justifies your patients’ trust in you and the public’s trust in the profession.”

“68. You must be honest and trustworthy in all your communication with patients and colleagues. This means you must make clear the limits of your knowledge and make reasonable checks to make sure any information you give is accurate.”

“71. You must be honest and trustworthy when writing reports, and when completing or signing forms, reports and other documents. You must make sure that any documents you write or sign are not false or misleading.

a. You must take reasonable steps to check the information is correct.

b. You must not deliberately leave out relevant information. “

70. The Tribunal noted that there was one finding of dishonesty which occurred in a single email. It was an isolated incident. However, the dishonesty occurred during the course of an investigation into exam misconduct and Dr Arabi sought to downplay the number of screenshots he had taken and therefore his culpability. The Tribunal considered that such conduct amounted to misconduct that was serious.

Impairment

71. Having decided that the facts found proved amounted to serious misconduct, the Tribunal went on to consider whether, as a result of that conduct, Dr Arabi’s fitness to practise is currently impaired.

72. The Tribunal noted that Dr Arabi, through Mr Pataky, accepted that given the Tribunal’s finding on dishonesty at the fact stage, his fitness to practise would be impaired. The Tribunal reminded itself that impairment was, however, a matter for its own judgment.

73. The Tribunal determined that Dr Arabi had, through his misconduct, brought the profession into dispute and breached a fundamental tenet of the profession and acted dishonestly.

74. The Tribunal considered that its finding in respect of dishonesty was a one-off isolated incident. The Tribunal had accepted Dr Arabi’s account as to why he had taken the screenshots and this was not a case where there had been a financial motive for the dishonesty. Instead, Dr Arabi had sought to minimise and downplay his actions during an

investigation into possible exam misconduct. The Tribunal was satisfied that Dr Arabi's dishonesty was at the lower end of the spectrum.

75. The Tribunal reminded itself that dishonesty is inherently difficult to remediate. When considering insight, the Tribunal noted Dr Arabi's acceptance of the seriousness of its finding in respect of dishonesty and the consequence that a finding of misconduct and impairment would likely follow. The Tribunal considered this demonstrated some insight into dishonesty, professional standards and the public interest in maintaining proper professional standards.

76. The Tribunal noted the positive testimonial evidence which spoke to Dr Arabi's integrity as a doctor and as a good clinician. The Tribunal was satisfied that Dr Arabi has some insight into his dishonesty. Given the circumstances around the dishonest conduct, the Tribunal was of the view that Dr Arabi would be unlikely to put himself in the same position again and consequently would be unlikely to repeat his misconduct.

77. However, the Tribunal concluded that given its finding in respect of misconduct a finding of impairment was necessary in order to uphold proper standards and to maintain public confidence in the medical profession. Although an isolated incident of dishonesty, it is one that occurred during an investigation into possible misconduct during a professional examination and requires a finding of impairment.

78. The Tribunal has therefore determined that Dr Arabi's fitness to practise is impaired by reason of misconduct.

Determination on Sanction - 21/07/2023

79. Having determined that Dr Arabi's fitness to practise is impaired by reason of misconduct, the Tribunal now has to decide, in accordance with Rule 17(2)(n) of the Rules, on the appropriate sanction, if any, to impose.

The Evidence

80. The Tribunal has taken into account all the evidence received during the earlier stages of the hearing.

Submissions on behalf of the GMC

81. Ms Jones referred the Tribunal to what she submitted were the relevant paragraphs of the Sanctions Guidance (16 November 2020) ('SG'). Ms Jones reminded the Tribunal that the purpose of a sanction is not to punish doctors, but that a sanction may have a punitive effect. She reminded the Tribunal that any sanction imposed must be proportionate, doing no more than that which is necessary to meet the overarching objective.

82. Ms Jones referred the Tribunal to its Stage 2 determination in which it found that Dr Arabi has demonstrated insight into his dishonesty. She submitted that this was a mitigating factor, as was the Stage 2 defence bundle of Continuous Professional Development ('CPD') which she submitted provided evidence of Dr Arabi keeping up to date with his medical skills and knowledge.

83. Ms Jones invited the Tribunal to consider paragraphs 120 and 124 of the SG in respect of dishonesty cases which state that:

"120 Good medical practice states that registered doctors must be honest and trustworthy, and must make sure that their conduct justifies their patients' trust in them and the public's trust in the profession."

"124 Although it may not result in direct harm to patients, dishonesty related to matters outside the doctor's clinical responsibility (eg providing false statements or fraudulent claims for monies) is particularly serious. This is because it can undermine the trust the public place in the medical profession. Health authorities should be able to trust the integrity of doctors, and where a doctor undermines that trust there is a risk to public confidence in the profession. Evidence of clinical competence cannot mitigate serious and/or persistent dishonesty."

84. Ms Jones reminded the Tribunal of its Stage 2 decision and said that it found that although the dishonesty was towards the lower end of the spectrum, it took place in the context of an investigation into academic misconduct, and that a finding of impairment had been necessary.

85. When considering sanction, Ms Jones submitted that taking no actions would be inappropriate as there are no exceptional circumstances in this case. Further, that conditions would not be appropriate in this case as the matters before this Tribunal do not relate to the doctor's health, performance, specific areas of his practise or language. She submitted that the appropriate and proportionate sanction in this case was one of suspension.

86. Ms Jones referred the Tribunal to the relevant paragraphs in respect of suspension and submitted that the following paragraphs were engaged:

"97 Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.

a A serious breach of Good medical practice, but where the doctor's misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.

...

e No evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor's unwillingness to engage.

f No evidence of repetition of similar behaviour since incident.

g The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour."

87. Ms Jones submitted that if the Tribunal determines to impose a period of suspension, it is a matter for its own judgment as to the length of that suspension. She also submitted that this is a case that where a review should be directed so that a future Tribunal could decide whether or not the doctor has demonstrated further insight.

Submissions on behalf of Dr Arabi

88. Mr Pataky accepted on behalf of Dr Arabi that this is not a case in which no action could be taken nor one in which conditions would be appropriate. He submitted that suspension would be the likely appropriate and proportionate sanction and invited the Tribunal to consider the imposition of a short suspension of one or two months.

89. Mr Pataky submitted that Dr Arabi's misconduct was not fundamentally incompatible with continued registration. He invited the Tribunal to consider its earlier findings that Dr Arabi's dishonest conduct was brief in nature, occurring in a quick email that was sent to downplay the number of screenshots he had taken. He reminded the Tribunal of its conclusion that this fell at the lower end of the scale of dishonesty and that Dr Arabi had already admitted to taking multiple screenshots taken by him. Mr Pataky submitted that Dr Arabi had apologised for the breach of the examination regulations and for not having read them prior to sitting the exam. He further submitted that Dr Arabi accepted that the Tribunal's factual findings would amount to misconduct and impaired fitness to practise and that the Tribunal had accepted this demonstrated some insight into the seriousness of his misconduct.

90. Mr Pataky submitted that a sanction of erasure would go beyond what is appropriate or proportionate in the case. He further submitted, in agreement with the GMC, that Dr Arabi's conduct was not fundamentally incompatible with continued registration so as to require erasure. He submitted that admissions in respect of part of the Allegation had been made promptly, and there was no harm to patients, abuse of position or trust in this case.

91. Mr Pataky submitted that Dr Arabi co-operated with enquires, with the exception of the email of 4 August 2021 to Mr A regarding the number of screenshots taken, and that he engaged fully with these proceedings making substantive admissions at the outset. He submitted the Tribunal could be reassured that Dr Arabi would not act dishonestly in the

future. Mr Pataky set out Dr Arabi's personal mitigation and the impact any suspension would have on his family. He invited the Tribunal to consider Dr Arabi's commitment to his profession when considering the sanction to be imposed.

92. Mr Pataky concluded by submitting that a short suspension is the appropriate and proportionate outcome and that there would be limited value in there being a review in this case due to the lack of concerns about Dr Arabi posing any risk.

The Tribunal's Determination on Sanction

93. The Tribunal had regard to the submissions of Ms Jones and Mr Pataky. The Tribunal also had regard to its detailed determinations on facts and impairment and has taken those into account during its deliberations on sanction.

94. In considering the issue of sanction the Tribunal applied the overarching objective of protecting the public which involves the pursuit of the following objectives.

1. *to protect, promote and maintain the health, safety and wellbeing of the public*
2. *to maintain public confidence in the profession*
3. *to promote and maintain proper professional standards and conduct for members of the profession.*

95. The Tribunal took into account that there is no burden or standard of proof at this stage. The Tribunal instead is required to undertake a multi-faceted evaluative decision based on all the circumstances of the case.

96. In reaching its decision on any sanction to impose, the Tribunal should start with the least restrictive sanction and impose the least restrictive sanction it considers necessary in the circumstances of the case that meets the overarching objective.

97. The Tribunal noted that whilst a sanction is not meant to punish a doctor, in upholding the overarching objective namely the protection of the public, a sanction may have a punitive effect. Patients must be able to trust doctors and the reputation of the profession as a whole is more important than the interests of any individual doctor.

98. The Tribunal reminded itself that any sanction must be proportionate. It should therefore weigh the interests of the public against those of the doctor. The Tribunal bore in mind that it should take into account any mitigating and aggravating factors, including any personal mitigation.

The Tribunal's Determination on Sanction

Aggravating and Mitigating Factors

99. Before considering what sanction to impose the Tribunal considered and balanced the aggravating and mitigating factors in this case.

100. The Tribunal considered that there were no aggravating factors in this case.

101. In respect of mitigation, the Tribunal considered that Dr Arabi's acceptance of the seriousness of its finding in respect of dishonesty and the consequence that a finding of misconduct and impairment would likely follow, demonstrated some insight into dishonesty, professional standards and the public interest in maintaining proper professional standards. It also considered that Dr Arabi's evidence of Continuous Professional Development demonstrated he is adhering to the important principles of GMP keeping his clinical skills and knowledge up to date.

102. The Tribunal bore in mind the mitigating factors throughout its deliberations on what the appropriate and proportionate sanction to impose would be, if any. The Tribunal considered each sanction in ascending order starting with the least restrictive.

No action

103. The Tribunal first considered whether to conclude the case by taking no action. It accepted that taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances. The Tribunal determined that there are no exceptional circumstances in this case. It determined that given its finding of dishonesty amounting to misconduct, it would not be sufficient, proportionate, nor in the public interest to conclude this case by taking no action.

Conditions

104. The Tribunal next considered whether to impose conditions on Dr Arabi's registration. The Tribunal noted that the SG stated that in many cases the purpose of conditions is to help the doctor deal with health issues or remedy any deficiencies in practice or where there is evidence of shortcomings in specific areas of practice or knowledge of English. None of these factors apply in this case. The Tribunal acknowledged conditions must be appropriate, proportionate, workable and measurable. It was of the view that it would not be possible for conditions to be formulated that address Dr Arabi's dishonesty. The Tribunal therefore did not consider the imposition of conditions as a proportionate and appropriate sanction in this case.

Suspension

105. The Tribunal went on to consider whether a period of suspension would be appropriate. It noted that suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is behaviour unbecoming a registered doctor. Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public

confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration. Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the Tribunal is satisfied that the behaviour or incident is unlikely to be repeated.

106. When considering whether suspension was the appropriate sanction in this case, the Tribunal had regard to all of the circumstances, in particular that Dr Arabi's dishonesty was a one-off isolated incident, which fell at the lower end of the spectrum of dishonesty.

107. The Tribunal also had regard to paragraphs 97a, e, f and g of the SG as set out by Ms Jones in her submissions. It noted that Dr Arabi's conduct was contrary to GMP, but agreed with the submissions made by both parties that it was not conduct that was fundamentally incompatible with continued registration.

108. Dr Arabi accepted the seriousness of the Tribunal's Stage 1 finding at Stage 2 in respect of dishonesty and the consequence that would likely result in a finding of misconduct and impairment. The Tribunal was satisfied that this demonstrated some insight into dishonesty, professional standards and the public interest in maintaining proper professional standards.

109. The Tribunal reminded itself of the positive testimonial evidence which spoke to Dr Arabi's integrity as a doctor and as a good clinician. Furthermore, he has a previous unblemished career without any previous or subsequent adverse findings as to his fitness to practise. The Tribunal was therefore of the view that Dr Arabi's dishonest conduct was outside of his normal character and that any repetition is unlikely. The Tribunal also took into account that there are no patient safety concerns in this case.

110. The Tribunal was satisfied, weighing all the factors, including the interests of Dr Arabi against the need to meet the overarching objective, that a period of suspension was the appropriate and proportionate response in this case. The Tribunal determined that erasure would be a disproportionate response.

Length of Suspension

111. Having determined to impose a period of suspension on Dr Arabi's registration, the Tribunal went on to consider the length of the period of suspension.

112. Having considered the relevant parts of the SG the Tribunal determined to suspend Dr Arabi's registration from the medical register for a period of 4 weeks. It was satisfied that such a period of suspension marked the seriousness of Dr Arabi's misconduct by upholding the overarching objective to maintain public confidence in the profession and by upholding proper professional standards. The Tribunal considered that a longer period of suspension would be disproportionate given the single isolated occurrence of the misconduct and that it was unlikely that Dr Arabi would repeat his misconduct.

Review hearing

113. The Tribunal then considered whether to order a review hearing. It had regard to SG where it states that no doctor should be allowed to resume unrestricted practice following a period of suspension unless the Tribunal considers that they are safe to do so. The SG states that in some cases it may be self-evident that following a short suspension there will be no value in a review hearing but that in most cases the Tribunal will need to be reassured that the doctor is fit to resume practice.

114. The Tribunal was satisfied that a review hearing was not necessary in this case given the low risk of repetition, and the length of the suspension. It determined that a review hearing would serve no purpose and the public interest has been met by the suspension.

Determination on Immediate Order - 21/07/2023

115. Having determined to suspend Dr Arabi's registration, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether his registration should be subject to an immediate order.

Submissions

116. On behalf of the GMC, Ms Jones referred the Tribunal to the relevant paragraphs of the SG. She submitted that as there are no patient protection concerns an immediate order is not necessary in this case.

117. On behalf of Mr Arabi, Mr Pataky submitted that this is not a case concerning patient safety. He submitted that whilst the public interest is engaged, this is not a case which requires an immediate order.

The Tribunal's Determination

118. The Tribunal had regard to the relevant paragraphs of the SG which state:

***172** The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. The interests of the doctor include avoiding putting them in a position where they may come under pressure from patients, and/or may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.*

***173** An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety. For example, where they have provided poor*

clinical care or abused a doctor's special position of trust, or where immediate action must be taken to protect public confidence in the medical profession.

[...]

178 *Having considered the matter, the decision whether to impose an immediate order will be at the discretion of the tribunal based on the facts of each case. The tribunal should consider the seriousness of the matter that led to the substantive direction being made and whether it is appropriate for the doctor to continue in unrestricted practice before the substantive order takes effect."*

119. The Tribunal determined that the substantive order properly marks the seriousness of Dr Arabi's misconduct and upholds the overarching objective in maintaining public confidence in the profession and maintaining proper professional standards. It considered that in the absence of any concerns about patient safety, an immediate order would not be necessary in this case. It would also not be in the public interest to impose an immediate order in this case.

120. The Tribunal therefore determined not to impose an immediate order of suspension on Dr Arabi's registration.

121. This means that Dr Arabi's registration will be suspended 28 days from the date on which written notification of this decision is deemed to have been served unless he lodges an appeal. If Dr Arabi's does lodge an appeal, he will remain free to practise unrestricted until the outcome of any appeal is known.

122. There is no interim order to revoke.

123. That concludes the case.