

**Date:** 14/02/2019

**Medical Practitioner's name:** Dr Phyu Phyu WAI

**GMC reference number:** 4390109

**Primary medical qualification:** MB BS 1991 Med Inst (I) Rangoon

**Type of case**

Review - Misconduct

**Outcome on impairment**

Not Impaired

**Summary of outcome**

Conditions revoked

**Tribunal:**

Legally Qualified Chair	Mr Martin Jackson
Lay Tribunal Member:	Mr Darren Shenton
Medical Tribunal Member:	Dr Shehleen Khan
Tribunal Clerk:	Mrs Sam Montgomery

**Attendance and Representation:**

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Alan Jenkins, Counsel, instructed by Hempsons Solicitors
GMC Representative:	Mr Alan Taylor, 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.

## **Record of Determinations – Medical Practitioners Tribunal**

### **Determination on Impairment - 14/02/2019**

#### **Background**

1. The Tribunal has noted the background of Dr Wai's case which was first considered by a Fitness to Practise Tribunal in December 2016 (the 2016 Tribunal). That Tribunal found that, on 10 June 2012, Dr Wai reviewed Patient A during a post take ward round, and she failed to conduct an adequate assessment. It further found that Dr Wai misdiagnosed Patient A with a migraine, and she failed to adequately investigate Patient A's condition.
2. The 2016 Tribunal also found that evidence given by Dr Wai, to the HM Coroner on 3 February 2014, namely that during the ward round she spoke to Patient A and performed a physical examination was untrue, was known by her to be untrue and was dishonest.
3. The 2016 Tribunal determined that Dr Wai's fitness to practise was impaired by reason of her misconduct. It also determined to suspend Dr Wai's registration for a period of 12 months to mark the unacceptability of her dishonesty and maintain public confidence in the medical profession. Furthermore, that Tribunal considered a period of suspension would give Dr Wai an opportunity for careful reflection and to develop fuller insight into her actions and the potential impact on the reputation of the profession.
4. A review hearing commenced in December 2017 and concluded in February 2018 (the 2018 Tribunal). That Tribunal first considered Dr Wai's clinical competency. Whilst the 2018 Tribunal noted the findings of the 2016 Tribunal, that Dr Wai had done all that was possible to remediate her clinical failings, it bore in mind that Dr Wai had been out of practice for 12 months. As such the 2018 Tribunal was concerned that her skills would not be up-to-date. It also noted that Dr Wai accepted that this was a concern and that she did not wish to return to unrestricted practice immediately on these grounds. The 2018 Tribunal further had regard to the evidence of Professor B, Dr Wai's mentor and Executive Medical Director and Deputy Chief Executive of Warrington and Hulton Hospitals NHS Foundation Trust (the Trust) and Dr D, Consultant Physician at the Trust and Dr Wai's Clinical Supervisor. It noted that they both agreed that if Dr Wai was to return to work, a phased approach would be required.
5. The 2018 Tribunal then considered the issues of dishonesty and insight. It noted that since the 2016 Tribunal hearing Dr Wai had accepted that she did not complete an examination of Patient A on 10 June 2012. Nevertheless, whilst Dr Wai accepted the facts of the previous Tribunal's findings she still did not accept that she had acted dishonestly. However, that Tribunal considered Dr Wai's written reflections and found that her insight had developed to the extent of recognising the importance of honesty in respect of her position as a medical practitioner. At the

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same time, the 2018 Tribunal noted that Dr Wai's conduct had not been tested in a similar clinical setting, and was therefore concerned that, given her denial of dishonest conduct, there was a risk of repetition should she find herself in similar circumstances.

6. Furthermore, the 2018 Tribunal considered that whilst Dr Wai had demonstrated some insight into her dishonesty, she had not demonstrated that she accepted responsibility for her dishonesty. As such, the Tribunal determined that it could not be satisfied that Dr Wai's dishonest conduct had been fully remediated. Accordingly, the Tribunal found that Dr Wai's fitness to practise remained impaired by reason of her misconduct.

7. The 2018 Tribunal determined that the period of suspension imposed had been sufficient to mark the seriousness of the misconduct and send a message to the public and profession that Dr Wai's misconduct was unacceptable. However, given the concerns regarding Dr Wai's clinical ability, due to the period of suspension, the 2018 Tribunal determined to impose conditions on her registration for a period of 12 months to provide Dr Wai with sufficient opportunity to complete her remediation; demonstrate full compliance with the conditions; and to facilitate a safe, phased return to work.

8. Dr Wai was also advised that the review Tribunal may be assisted by receiving the following:

- Current testimonials as to her character and conduct during the period of her conditions, written in the knowledge of her conditions;
- Any other evidence she believed may assist the Tribunal in her return to unrestricted practice.

### **Today's Review Hearing**

9. This Tribunal has today reviewed Dr Wai's case and has considered, in accordance with Rule 22(f) of the Rules, whether her fitness to practise is impaired. In so doing it has considered the submissions made by Mr Taylor, Counsel, on behalf of the GMC and those made by Mr Jenkins, Counsel, on Dr Wai's behalf.

### **Evidence**

10. The Tribunal has been provided with documentation which included, but was not limited to:

- Full determinations of Dr Wai's previous MPT hearings;
- A statement from Dr Wai and supporting documents, dated 19 November 2018;
- A reflective statement prepared by Dr Wai, dated 29 January 2019;

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- Supporting evidence of Continuing Professional Development (CPD), including a log book and Royal College of Physicians CPD diary;
- A work place report, dated 11 September 2018 and a testimonial, dated 28 January 2019, both provided by Dr D;
- A letter, dated 19 July 2018 and a testimonial, dated 28 January 2019, both provided by Professor B;
- Testimonials from other doctors at the Trust;
- Appraisal document, dated 17 January 2019;
- 360 degree feedback, dated January 2019.

11. The Tribunal heard oral evidence from:

- Professor B

12. Dr Wai also gave oral evidence to the Tribunal, in which she referred to her phased return to practice in her current post of Specialty Doctor in General Medicine (including diabetes and endocrinology) at the Trust, which she commenced on 23 July 2018. She also referred to the unpaid clinical attachment she undertook with Dr D until July 2018.

13. Dr Wai expanded on the CPD and reflection she has undertaken during the period of conditional registration. She told the Tribunal that she has undertaken independent coaching for the purpose of resilience building, in order to help her in a phased return to her previous position of consultant physician. She also responded to issues raised by one colleague regarding over-investigation of patients and her speed of working. Dr Wai explained that this related to blood tests, and she had discussed this with the colleague who raised it and with her supervisors to their satisfaction.

14. Dr Wai told the Tribunal that she had found supervision helpful as she has been in a completely new working environment. She told the Tribunal that she is on a fixed term contract at the Trust which is due to conclude mid-April. Dr Wai was unsure as to her future plans.

15. Dr Wai referred to her detailed reflective statement in which she set out the challenges conditional registration presented. She referred to a scenario when her honesty and probity had been tested in a clinical setting. Dr Wai stated that she maintains her position that at the material time in 2012 she did not act dishonestly, as she thought she had undertaken the examination, a position reached on the basis of her usual practice. However, she told the Tribunal that that she had been open with others about the findings made against her and the action taken on her registration. Dr Wai explained that she recognises the consequences of dishonesty on the medical profession and the importance of being open and honest. She also explained that it is 'very crucial' for members of the public to be able to place their trust in the medical profession, as they put their life in the doctor's hands.

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16. Professor B referred to the written evidence he provided, namely his letter, dated 19 July 2018 and a more recent testimonial, dated 28 January 2019. He also referred to his opinion of the impact proceedings have had upon Dr Wai; the progress she has made in a phased return to work and the significant improvement made in the past few months in relation to her time-management. Professor B told the Tribunal that he stood by his opinion that, at this stage, he would not propose full consultant responsibility for Dr Wai in the acute medical unit where she is currently working. However, this would be kept under continual review and Dr Wai may be capable of working at the level of consultant in other areas.

17. Professor B explained that the Trust imposed additional conditions over and above those imposed by the previous Tribunal, to support her in view of the time Dr Wai had been out of clinical practice. He stated that he has no concerns regarding Dr Wai's clinical competence; he confirmed that Dr Wai is effective at the current level of specialty doctor. However, the ultimate aim for the future is for Dr Wai to operate as a consultant physician. Professor B referred to the issue of over-investigation and explained that it is accepted that doctors may do things differently. He told the Tribunal that he was not critical of Dr Wai's meticulous approach as it is within the expected range of behaviours for doctors who have been through disciplinary proceedings. Professor B stated that he has no concerns regarding Dr Wai's honesty and integrity. In his view there is a 'negligible chance' of events being repeated.

18. Professor B told the Tribunal that Dr Wai has complied with the conditions imposed on her registration, and that the supervision has been useful. He also referred to the coaching sessions undertaken by Dr Wai. Professor B stated that he has no concerns regarding Dr Wai's fitness to practise.

19. Dr D, in her written evidence, detailed the progress Dr Wai has made in her phased return to practice. She stated that in her opinion Dr Wai is not a dishonest person but rather one who holds professional honesty in high esteem. Further, since the MPT hearings Dr Wai is very careful to make considered decisions and her letters are extremely detailed. Dr D also referred to the impact these proceedings have had upon Dr Wai's confidence and the steps taken to address this.

### **Submissions**

20. Mr Taylor submitted that the question for the Tribunal is whether it is safe to allow Dr Wai to return to unrestricted practice. He submitted that the GMC is neutral on the matter of impairment and it is for the Tribunal to determine.

21. Mr Jenkins submitted that Dr Wai has fully complied with the conditions imposed. He submitted that Dr Wai has apologised for her misconduct; she has accepted the findings made; she has reflected on the issues before the Tribunal and

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the risk of repetition is low. Further, Dr Wai recognises and accepts the importance of honesty within the medical profession.

22. Mr Jenkins referred to the positive testimonials provided on Dr Wai's behalf which attest to her clinical competence and her honesty and integrity. He submitted that Dr Wai is regarded as a dedicated and conscientious doctor. Mr Jenkins also referred to the positive opinions expressed by Professor B and Dr D regarding her ability as a doctor. Mr Jenkins submitted that the issue for the Tribunal is not whether she is fit to practise as a consultant but as a doctor. He also referred to the criticisms made of over-investigating and time-management and submitted that you would want a doctor to be cautious and meticulous. Mr Jenkins submitted that this matter has been addressed by Dr D and there are no concerns regarding Dr Wai's practice.

23. Mr Jenkins submitted that whilst Dr Wai does not accept that her conduct was dishonest, she accepts the findings made against her and she has served the sanction imposed. He submitted that this does not mean that Dr Wai places no weight on the requirement for honesty and integrity in the medical profession. Mr Jenkins concluded that Dr Wai's fitness to practise is not impaired.

### **The Relevant Legal Principles**

24. The Tribunal's decision as to whether Dr Wai's fitness to practise is impaired is a matter for the Tribunal's judgement alone. In a review case the persuasive burden falls upon the doctor to demonstrate that all the concerns identified have been adequately addressed, and that remediation has taken place.

25. The Tribunal must determine whether Dr Wai's fitness to practise is impaired today. In so doing, it has taken into account her conduct at the time of the allegations, together with any relevant factors since then, such as whether the matters are remediable, have been remediated and are highly unlikely to be repeated.

26. Throughout its deliberations, the Tribunal has borne in mind the statutory overarching objective, which includes the need to:

- a protect and promote the health, safety and wellbeing of the public
- b promote and maintain public confidence in the medical profession
- c promote and maintain proper professional standards and conduct for the members of the profession.

### **The Tribunal's Decision on Impairment**

27. The Tribunal also had regard to paragraphs 163 and 164 which state:

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**163** It is important that no doctor is allowed to resume unrestricted practice following a period of conditional registration or suspension unless the tribunal considers that they are safe to do so.

**164** In some misconduct cases it may be self-evident that, following a short suspension, there will be no value in a review hearing. However, in most cases where a period of suspension is imposed, and in all cases where conditions have been imposed, the tribunal will need to be reassured that the doctor is fit to resume practice – either unrestricted or with conditions or further conditions. A review hearing is therefore likely to be necessary, so that the tribunal can consider whether the doctor has shown all of the following (by producing objective evidence):

- a** they fully appreciate the gravity of the offence
- b** they have not reoffended
- c** they have maintained their skills and knowledge
- d** patients will not be placed at risk by resumption of practice or by the imposition of conditional registration.'

28. The Tribunal notes that the 2018 Tribunal imposed a period of conditions to allow Dr Wai a sufficient opportunity to complete her remediation, demonstrate full compliance with the conditions and facilitate a safe, phased return to work.

29. This Tribunal has considered the evidence, both oral and written, which has been presented today which demonstrates the steps taken by Dr Wai to further address and understand her previous misconduct.

30. The Tribunal has been provided with evidence of a competent clinician who takes a meticulous and conscientious approach to her work. Dr Wai has received consistently good 360 degree feedback and has taken steps to keep her medical knowledge up to date, including the voluntary continuation of a clinical attachment until she took up her post as a Specialty Doctor from 23 July 2018 onwards. Accordingly, the Tribunal is satisfied there are no patient safety concerns prohibiting a return to unrestricted practice.

31. The Tribunal is satisfied that Dr Wai accepts the findings made against her; that she fully appreciates the gravity of her misconduct and understands the impact of such conduct on the medical profession. It considers that Dr Wai has undertaken considerable reflection; and that she has demonstrated her appreciation of the gravity of her misconduct in the way she conscientiously and scrupulously discharges her duties as a doctor in her current practice. It also noted her oral evidence in response to Tribunal questions, when she expanded upon the need for honesty in a doctor's relationships with patients and fellow medical professionals, and the need to

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uphold public trust in the medical profession. Her evidence on this point satisfied the Tribunal she now has full insight into the gravity of her past misconduct.

32. The Tribunal is satisfied that Dr Wai has fully complied with the conditions imposed on her registration. It has borne in mind that there has been no repetition of the misconduct found; that Dr Wai has demonstrated remorse and has apologised for her actions. In all the circumstances the Tribunal is assured that Dr Wai has learnt a salutary lesson from this experience and the risk of repetition is very low.

33. In all the circumstances, the Tribunal is satisfied that Dr Wai has fully addressed the previous Tribunal's concerns. It has therefore determined that Dr Wai's fitness to practise is no longer impaired by reason of her misconduct.

34. The conditions currently imposed on Dr Wai's registration are revoked with immediate effect.

35. That concludes this hearing.

**Confirmed**

**Date** 14 February 2019

Mr Martin Jackson, Chair