

PUBLIC RECORD

Dates: 17/09/2020 - 18/09/2020

Medical Practitioner's name: Dr Rajesh JAIN

GMC reference number: 6132419

Primary medical qualification: MB BS 1995 Rajasthan University

Type of case	Outcome on impairment
Review - Misconduct	Not Impaired

Summary of outcome

Conditions revoked

Tribunal:

Legally Qualified Chair	Mr Nicholas Flanagan
Lay Tribunal Member:	Mr Peter Scofield
Medical Tribunal Member:	Professor Robert Mansel
Tribunal Clerk:	Mr Edward Kelly

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Lee Gledhill, Counsel, instructed by the Medical Defence Shield
GMC Representative:	Ms Zoe Dawson, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Impairment - 18/09/2020

1. The Tribunal has convened to review Dr Jain's case in accordance with Rule 22 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'). In accordance with Rule 22(1)(f), it first has to decide whether Dr Jain's fitness to practise is currently impaired by reason of misconduct.

Hearing in Private

2. At the outset of proceedings, the Tribunal identified that the majority of the submissions in Dr Jain's case would be XXX. Mr Gledhill, on behalf of Dr Jain, and Ms Dawson, on behalf of the GMC, concurred that matters being discussed should be in private.
3. The Tribunal determined, in accordance with Rule 41XXX of the Rules, that the hearing should be heard in private XXX. This determination will also be read in private. However, as this case also concerns allegations of past misconduct, a redacted version will be published at the close of the hearing XXX.

Background

4. The Tribunal does not intend to rehearse the entire background of this case in detail because this is a matter of record.
5. Dr Jain qualified with an MBBS Degree in 1995 and undertook a Postgraduate MD in Psychological Medicine in 2000. After obtaining the equivalent certificate of completion of training (CCT or CESR) by the Specialist Training Authority in February 2004 he was admitted to the Specialist Register of the General Medical Council from 2005. Dr Jain has worked as a Locum Consultant in the UK since then. In July 2016, he was revalidated as an Approved Clinician and Responsible Clinician in adult psychiatry.

6. In August 2015, Dr Jain was referred to the GMC by Plymouth Community Healthcare, where he had worked as a full time Locum Consultant in Psychiatry between February 2015 and June 2015. Concerns were raised by Plymouth Community Healthcare regarding alleged inappropriate consultations, including questions of an excessively sexual nature to four patients; A to D.
7. More recently, Dr Jain has worked as a Locum Consultant Psychiatrist (inpatient) at Northumberland, Tyne and Wear NHS Trust from 24 July 2019 for a period of six months.

The 2019 Tribunal

8. Following his referral and the resultant GMC investigation, Dr Jain attended an MPT hearing, commencing on 10 July 2017 into the allegations brought against him. Due to there being insufficient time to conclude matters initially, the proceedings were adjourned several times before concluding in January 2019 ('the 2019 Tribunal').
9. The 2019 Tribunal identified a number of failings in the consultations with Patients A to D, by Dr Jain, including issues with his record keeping and prescribing, and asking inappropriate questions. Dr Jain was found to be impaired by reason of misconduct and the 2019 Tribunal concluded that an order of conditions would be the most appropriate and proportionate sanction to impose in his case. The Tribunal imposed XXX conditions on Dr Jain's registration for a period of 18 months, to allow Dr Jain the time to develop further insight, to attempt to seek suitable employment, to XXX and to ensure his clinical skills are kept up to date.
10. The 2019 Tribunal determined that a reviewing Tribunal may be assisted by Dr Jain producing the following:
 - XXX
 - Report/s from the workplace supervisor;
 - XXX
 - XXX and
 - any other information that Dr Jain considered might assist.

The Evidence

11. The Tribunal has taken into account all the evidence received during proceedings, including, but not limited to the following documentation:

- Witness statements from Dr Jain, dated 20 August 2020 and 16 September 2020;
- Record of Determinations from the 2019 Tribunal, dated 24 April 2019;
- Email from Dr Jain to the GMC, dated 22 February 2019;
- XXX
- Email between the GMC and the MDS, various dates from 22 February 2019 - 8 June 2020, including the following information:
 - Work Details Form.
 - Letter from MDS, dated 22 February 2019.
 - letter from Dr C, dated 12 March 2019.
 - MDS's letter to the GMC, dated 8 June 2020, enclosing Early Review Application Bundle.
- Progress report from Dr C, dated 4 March 2019;
- XXX
- Report from Professor D, dated 28 August 2019;
- Clinical supervision report from Dr E, dated 23 October 2019;
- Workplace report from Dr F, dated 25 October 2019;
- Email exchange between the GMC and Dr F, between 31 October 2019 - 11 November 2019;
- Dr Jain's CV, undated;
- Detail of Dr Jain's compliance with conditions, various dates;
- Northumberland Tyne and Wear Mental NHS Foundation Trust Contract, dated 25 July 2019;
- Dr G Report, dated 3 March 2019;
- Professor A Report, dated 22 November 2019;
- Professor D Report, dated 13 May 2019;
- CPD Log and certificates, various dates;
- Details of courses attended by Dr Jain; various dates;
- Appraisal Summary, from December 2019;
- Patient and colleague feedback, undated; and
- Testimonials.

Submissions

- 12.** On behalf of the GMC, Ms Dawson submitted Dr Jain's fitness to practise remains impaired by virtue of his misconduct. She submitted that since the 2019 Tribunal Dr Jain has not fully addressed the concerns raised in those proceedings. She submitted that

there has been insufficient time, particularly whilst in work, for Dr Jain to demonstrate that no risk of repetition of the original misconduct remains.

13. Ms Dawson submitted that since the 2019 Tribunal Dr Jain has undertaken six months employment and that some concerns were raised as to his performance, albeit that these concerns were addressed locally by his employers. She submitted that Dr Jain had not done enough to assuage the Tribunal's concerns as to whether there is or remains a risk of repetition and that there is a lack of consistent current evidence to demonstrate that Dr Jain can perform at requisite standards.
14. On behalf of Dr Jain, Mr Gledhill submitted that Dr Jain's fitness to practise is no longer impaired by reason of his misconduct. He submitted that some 60 months have passed since the index events which gave rise to the Allegation. He submitted that Dr Jain had worked for 35-40 months of this period without any concerns arising.
15. Mr Gledhill noted the GMC's reference to 'informal issues' highlighted in the workplace report of Dr F, Consultant Psychiatrist, dated 25 October 2019. He submitted that these issues were dealt with in-house and were not reported to the GMC, though his workplace supervisors would have clearly known of the conditions upon Dr Jain's registration and their duty to report to the GMC if necessary.
16. Mr Gledhill submitted that Dr Jain had undertaken a significant volume of remediation and has clearly learned valuable lessons from the proceedings and has addressed the concerns identified.
17. Mr Gledhill submitted XXX. He submitted that Dr Jain has made the necessary changes in his life and practice to be able to address the issues that arose XXX. XXX
18. Mr Gledhill submitted that, taking into account the totality of the evidence, the Tribunal can be confident that Dr Jain will not repeat his misconduct and that there is no evidence to which the Tribunal could attach weight to persuade it that Dr Jain remains impaired.

The Relevant Legal Principles

19. The Tribunal reminded itself that the decision on impairment is a matter for the Tribunal's judgement alone, with no legal burden or standard of proof on either party. However, the Tribunal was conscious of a persuasive burden on Dr Jain to satisfy it that his fitness to practise is no longer impaired.

20. This Tribunal must determine whether Dr Jain’s fitness to practise is impaired today, taking into account Dr Jain’s conduct at the time of the events and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition. Throughout its deliberations, the Tribunal had regard to the overarching objective.

The Tribunal’s Determination on Impairment

21. The Tribunal considered whether Dr Jain’s fitness to practise is currently impaired by reason of his past misconduct. The Tribunal took account of all of the evidence before it and the submissions of both counsel. The Tribunal also had regard to the advice of the Legally Qualified Chair, which it accepted.

22. The Tribunal took into account the significant volume of evidence provided by Dr Jain. It noted the impressive evidence of CPD he had undertaken, including the evidence of Dr Jain’s work with the Doctors’ Group Initiative. The Tribunal found this was a clear demonstration that Dr Jain is not only engaging with his regulator but also assisting fellow doctors with their own difficulties. The Tribunal considered this to be a strong indicator of Dr Jain’s developed insight. The Tribunal took into account several positive testimonials and constructive workplace reports, which showed he was able to practise safely. The Tribunal also noted the targeted CPD undertaken by Dr Jain, which specifically addressed the concerns previously raised, such as difficulties with his communication and the impact of his actions on patients.

23. The Tribunal had regard to Ms Dawson’s submission that in the 18 months since the conditions were imposed, Dr Jain has worked for six months, which may be considered a relatively short period to demonstrate fully he has worked without any concerns. However, the Tribunal gave considerable weight to Mr Gledhill’s submission that Dr Jain had worked approximately 40 of the preceding 60 months, with no concerns raised since the substantive allegations occurred. The Tribunal also noted that Dr Jain had undertaken a significant number of locum posts around the country and that he had undertaken a considerable volume of sessions in the six months he was in employment since the 2019 Tribunal. XXX Upon appraising the array of work place assessments and testimonials, the Tribunal was persuaded that Dr Jain has provided sufficient evidence to demonstrate that he can work under pressure, XXX and no issues with his conduct have been raised with his conduct in excess of five years.

24. XXX

25. Taking all of the above into account, the Tribunal accepted that Dr Jain recognises the gravity of his past misconduct. The Tribunal found that Dr Jain has developed further insight, has taken the necessary steps to remedy his misconduct and has appropriate support structures and mechanisms in place. The Tribunal was satisfied that Dr Jain has addressed the 2019 Tribunal’s concerns; XXX and has taken steps to ensure that such misconduct will not reoccur. The Tribunal concluded that patients will not be placed at risk by Dr Jain’s resumption of clinical practice. The Tribunal was therefore satisfied that Dr Jain is safe to return to unrestricted practice, and that it is now in the public interest for him to do so.

26. The Tribunal has therefore determined that Dr Jain’s fitness to practise is no longer impaired.

27. The current order of conditional registration on Dr Jain’s registration is revoked with immediate effect.

28. That concludes this case.

Confirmed

Date 18 September 2020

Mr Nicholas Flanagan, Chair