

PUBLIC RECORD

Date: 27/11/2020

Medical Practitioner's name: Dr Roop SHARMA

GMC reference number: 7538207

Primary medical qualification: MBBS 2008 Jiwaji University - Gajra Raja
Medical College**Type of case**

Review - Misconduct

Outcome on impairment

Impaired

Summary of outcome

Erasure

Immediate order imposed

Tribunal:

Legally Qualified Chair:	Mr Lindsay Irvine
Medical Tribunal Members:	Dr Barry Adams-Strump Dr Harriet Leyland
Tribunal Clerks:	Ms Esther Morton Ms Olivia Moy

Attendance and Representation:

Medical Practitioner:	Not present and not represented
GMC Representative:	Mr Peter Byrne, Counsel, instructed by GMC Legal

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 Impairment - 27/11/2020

1. Today's hearing is taking place virtually via Skype for Business.

Background

2. Dr Sharma qualified in India in 2008 and, after practising as a doctor in the UK between March 2016 and January 2018, returned to India. On 3 May 2018 Dr Sharma submitted a request to the GMC for Voluntary Erasure ('VE'). Concerns were subsequently raised about the validity of documents submitted in support of this application, namely a certificate of good standing ('CGS') purportedly issued by the Delhi Medical Council.

2019 Hearing

3. Dr Sharma's case was first considered by a Medical Practitioners Tribunal ('MPT') in July 2019 ('the 2019 Tribunal'). Dr Sharma was neither present nor represented at that hearing. At the 2019 hearing a representative from Delhi Medical Council confirmed that the CGS had not been issued by them, and the 2019 Tribunal found proved that Dr Sharma had provided the GMC with a falsified CGS.
4. The 2019 Tribunal further found proved that Dr Sharma had acted dishonestly by signing a declaration stating:

'Are you aware of any proceedings, acts or omission on your part which might render you liable to be referred to the General Medical Council for investigation or consideration of your fitness to practise?'
5. The 2019 Tribunal described Dr Sharma's actions as a 'deliberate and premeditated act of deception' and determined that his actions breached a number of the principles set out in *Good Medical Practice* ('GMP').
6. The 2019 Tribunal found that Dr Sharma's actions amounted to misconduct. Turning to sanction, it bore in mind Dr Sharma's lack of insight, his failure to recognise the broader impact of his actions on public confidence and the reputation of the profession, and the fact that there was no apology or admission from Dr Sharma in relation to his dishonesty.

Accordingly, the 2019 Tribunal determined to suspend Dr Sharma's registration for a period of six months and directed a review.

February 2020 Hearing

7. Dr Sharma's case was first reviewed by a Medical Practitioners Tribunal in February 2020 ('the February Tribunal'). The February Tribunal determined that Dr Sharma continued to minimise his dishonesty by referring to his actions as an 'error' or a 'mistake', and it noted that Dr Sharma had not addressed the fundamental issues regarding probity, honesty, or trustworthiness in his updated reflective statement. It further noted an absence in training courses or CPD addressing these issues.

8. The February Tribunal considered that Dr Sharma appeared to be concerned with the impact of his actions on his personal image and reputation rather than the overall impact of his actions on the public and the profession, and it determined that his fitness to practice remained impaired by reason of his misconduct.

9. The February Tribunal set out that a further period of suspension was required in order to permit Dr Sharma to further develop his insight into his dishonesty, and to reflect and demonstrate an understanding of the gravity of his situation. It therefore suspended Dr Sharma's registration for a further period of three months and directed a review.

May and June 2020 Hearing

10. A Medical Practitioners Tribunal next met to review Dr Sharma's case in May 2020; this hearing adjourned part-heard and concluded in June 2020 ('the June Tribunal'). Dr Sharma was present at that hearing but was not legally represented.

11. The June Tribunal considered that Dr Sharma had not followed the 'very clear advice' set out by the February Tribunal with regards to remediation, and it determined that Dr Sharma had failed to 'adequately address the fundamental issues regarding probity, honesty or trustworthiness' in his updated reflective statement. The June Tribunal further considered that, whilst Dr Sharma accepted the gravity of his misconduct, he appeared to lack understanding into the root causes of his dishonesty. Additionally, the June Tribunal noted that Dr Sharma had failed to demonstrate that he fully understood the impact of his misconduct on public confidence and the maintenance of the reputation of the profession.

12. The June Tribunal concluded that Dr Sharma had begun to develop insight, but that this insight remained limited. It set out that, whilst Dr Sharma stated that he had 'learnt a lesson', he was unable to articulate how he could apply this learning in future and, as such, there remained a risk of repetition. Accordingly, the June Tribunal found that Dr Sharma's fitness to practise remained impaired by reason of his misconduct.

13. Turning to sanction, the June Tribunal determined to suspend Dr Sharma's registration for a further period of six months. It set out that a further period of suspension

would allow Dr Sharma time to ‘put together a detailed portfolio of evidence and reflection and thus provide the opportunity to gain full insight and to demonstrate that he has fully remediated his misconduct’. In relation to erasure, the June Tribunal stated as follows:

‘The Tribunal is mindful this is Dr Sharma’s second review and considered that a further period of suspension will give Dr Sharma ample opportunity to remediate his misconduct and to evidence full insight into his misconduct. The Tribunal determined that erasure would not be appropriate at this time. Nevertheless, Dr Sharma should be aware that the sanction of erasure may be a consideration for a future Tribunal, if he does not provide sufficient meaningful evidence that he has fully remediated his misconduct or that his insight continues to be lacking.’

14. The June Tribunal set out that any future Tribunal reviewing Dr Sharma’s case may be assisted by the following:

- A copy of a Personal Development Plan (‘PDP’) which addresses the specific root causes of his dishonesty;
- Further and more detailed and specific evidence of reflection in relation to the root causes, gravity and impact of his dishonest misconduct; (emphasis by June Tribunal)
- Evidence of how he has sought to address and remediate his dishonest misconduct, for example via completion and reflection on relevant courses on probity and engagement with a mentor etc;
- A Testimonial from a mentor evidencing the steps that Dr Sharma has taken to reflect on his misconduct in particular and issues of probity more generally;
- Reflections on any meetings/sessions with a mentor;
- Testimonials (in particular those from current employers, patients, colleagues or personal acquaintances) which deal in particular with honesty and character (and which note the specific facts as found proved by the 2019 Tribunal);
- Evidence of what he has done to maintain his skills and knowledge; and
- Any other information he considers will assist the reviewing Tribunal.

Today’s Hearing

15. Today’s Tribunal noted that, on the evidence before it, there appears to be little material change in circumstances since Dr Sharma’s June hearing.

16. The Tribunal noted the correspondence between the GMC and Dr Sharma. On 10 September 2020 the GMC asked Dr Sharma whether he would be able to provide the evidence requested by the June Tribunal by 16 September 2020. Dr Sharma responded, also on 10 September, setting out:

‘I apologise for a delayed reply. I would not be able to collect all the required documents by 15th September. I have a scheduled probity and ethics course in 1st week of October. It all got delayed because of my duties as an Intensivist in the Corona ward. So, I request you to kindly extend the last date of submission of previously mentioned documents.’

No evidence or documentation relating to such a course was provided by Dr Sharma.

17. The Tribunal had regard to the documentary evidence provided, which includes:

- The Records of Determinations from Dr Sharma’s previous MPTs; and
- Correspondence between the MPTS, the GMC, and Dr Sharma in relation to today’s hearing.

Submissions

18. The Tribunal had regard to the submissions made by Mr Peter Byrne, Counsel, on behalf of the GMC.

19. Mr Byrne submitted that, once again, Dr Sharma has failed to follow advice given to him by previous review Tribunals. He submitted that Dr Sharma has failed to take what was clearly intended to be a ‘last chance’ to engage with this process and to provide evidence in relation to fundamental issues relating to his probity and trustworthiness. Mr Byrne submitted that Dr Sharma appears to have taken a ‘step back’ since his June hearing, in that he has failed to engage by providing further documentation as requested, adding that meaningful engagement with the GMC has effectively ceased. Bearing all of the above in mind, Mr Byrne submitted that Dr Sharma’s fitness to practise remained impaired by reason of his misconduct.

The Tribunal’s Determination on Impairment

20. In reaching its decision on impairment the Tribunal bore in mind that its primary responsibility is to the statutory overarching objective, which is as follows:

- To protect, promote, and maintain the health, safety, and well-being of the public;
- To promote and maintain public confidence in the medical profession;

- To promote and maintain proper professional standards and conduct for members of that profession.

21. The Tribunal further bore in mind that, at a review hearing, there is a persuasive burden on the practitioner to demonstrate that they have sufficiently remediated any past misconduct.

22. The Tribunal noted that the June Tribunal clearly set out what they expected from Dr Sharma at his next review hearing, as recorded at paragraph 14 above. This included an updated PDP, as well as further detailed reflection on the root causes, gravity, and impact on his misconduct. None of the evidence set out by the June Tribunal has been forthcoming.

23. The Tribunal noted that, on 10 September 2020, Dr Sharma indicated that he would be attending an ethics course, however it has not received any documentation in relation to this course. On the contrary, in Dr Sharma's email to the GMC of 6 November 2020 he appeared to indicate that he would not be providing today's Tribunal with any further documentation, writing:

'I am writing this email to inform you that I will not be attending my upcoming hearing scheduled on 27/11/20. I have already provided all the documents and testimonials which I could. I have nothing new to submit...'

Dr Sharma has not provided any reason for this failure to provide additional documentation as requested by the previous Tribunal and – based on this email - he appears to be unwilling to engage any further with this process.

24. The Tribunal considered that, since his June hearing, Dr Sharma has not engaged with the GMC nor with the hearing process. He has not shown any intent to meet the requirements set out by the June Tribunal, and has failed to address any of the matters that would be necessary in order for this Tribunal to find him not impaired. Accordingly, the Tribunal determined that Dr Sharma's fitness to practise remains impaired by reason of misconduct.

Determination on Sanction - 27/11/2020

25. Having determined that Dr Sharma's fitness to practise remains impaired by reason of his misconduct, the Tribunal now has to decide on the appropriate sanction, if any, to impose today.

26. The Tribunal took into account all of the evidence received during the earlier stage of the hearing. It also heard submissions from Mr Byrne on behalf of the GMC, as summarised below.

Submissions

27. Mr Byrne submitted that there were no exceptional circumstances that would justify the Tribunal taking no further action on Dr Sharma's registration. He added that it would be difficult to envisage suitable conditions in Dr Sharma's case given the issue is remediation of dishonesty, and he similarly submitted that conditions would be neither workable, measurable, or proportionate.

28. Turning to suspension, Mr Byrne submitted that – at this stage – a further period of suspension would be 'ineffective' in addressing the issues that have been highlighted to Dr Sharma on a number of occasions. He submitted that Dr Sharma has been given multiple opportunities to address these issues, but has thus far failed to do so. Further, he submitted that Dr Sharma has now disengaged with the GMC and with this process. Bearing this in mind, he submitted that the appropriate sanction in Dr Sharma's case is now one of erasure.

29. Mr Byrne submitted that, should the Tribunal determine to erase Dr Sharma's name from the Medical Register, it must also consider whether to impose an immediate order of suspension on his registration. Mr Byrne submitted that it would be appropriate to do so in the circumstances of Dr Sharma's case, adding that an immediate order would be of no real disadvantage to Dr Sharma.

The Tribunal's Determination on Sanction

30. The decision as to the appropriate sanction to impose, if any, is a matter for this Tribunal exercising its own judgment. In reaching its decision the Tribunal has taken account of the Sanctions Guidance ('SG') and has borne in mind that the purpose of a sanction is not to be punitive, although a sanction may have a punitive effect. The Tribunal has applied the principle of proportionality, weighing Dr Sharma's interests against the wider public interest.

Mitigating and aggravating factors

31. In terms of aggravating factors, the Tribunal noted that Dr Sharma initially appeared to be engaging with the GMC and with this process, and that he attended his last review hearing and provided updated evidence. However, since that time, he appears to have taken a step back in terms of engagement. Dr Sharma has failed to provide any evidence at this hearing, and has not met any of the requirements set by the June Tribunal.

32. In terms of potential mitigation, the Tribunal noted Dr Sharma's email to the GMC of 10 September 2020, where he set out:

'... I would not be able to collect all the required documents by 15th September. I have a scheduled probity and ethics course in 1st week of October. It all got delayed because of my duties as an Intensivist in the Corona ward...'

However, Dr Sharma did not build on this email any further by providing supporting information in relation to his current responsibilities as a result of COVID19, or by asking for a postponement as a result of his heavy workload. As a result, the Tribunal did not place much weight on this email, or consider that it amounted to sufficient mitigation for his lack of engagement.

No Action

33. The Tribunal first considered whether to conclude Dr Sharma’s case by taking no further action. It considered that there were no exceptional or extraordinary circumstances that would warrant it taking no further action. It further considered that doing so would be wholly inappropriate given its findings in relation to impairment and, in particular, Dr Sharma’s current lack of engagement with this process.

Conditions

34. The Tribunal next considered whether an order of conditions would be appropriate. In so doing, it bore in mind that any conditions imposed must be workable, measurable, and proportionate.

35. Paragraph 82 of the SG sets out that conditions are likely to be workable in cases where the doctor has insight, and where the Tribunal is satisfied that the doctor will comply with them. Given Dr Sharma’s repeated failure to demonstrate sufficient insight into the root causes of his dishonesty and the seriousness of that dishonesty, the Tribunal could not be satisfied that conditions would be workable. Further, given Dr Sharma’s lack of engagement with the GMC and with the hearing process, the Tribunal could not be satisfied that Dr Sharma would comply with any conditions imposed. In addition, the Tribunal considered that it would be difficult to impose any effective conditions given the concerns in this case relate to dishonesty. Accordingly, the Tribunal determined that conditions would not be appropriate in Dr Sharma’s case.

Suspension

36. Having determined that conditions would not be appropriate, proportionate, or workable in Dr Sharma’s case, the Tribunal next considered whether to impose a further period of suspension on Dr Sharma’s registration. In so doing, it had regard to the guidance on suspension given in the SG. Paragraphs 97(e) and (g) of the SG set out:

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

...

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

...

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

As set out above, the Tribunal is not satisfied that the doctor has insight; on the contrary, he appears to have a persistent refusal and/or an inability to recognise the gravity of his dishonesty and its root causes. Whilst this case arises from a single episode of dishonesty, Dr Sharma has continued to minimise that dishonesty and has failed to show insight and remediation. Dr Sharma has had multiple opportunities to address these outstanding issues, and has had three separate periods of suspension in which to do so. Despite this, he has ceased engaging in any meaningful way and has not provided this Tribunal with any evidence as to his insight or remediation. Given this, the Tribunal could not be satisfied that he would not repeat his behaviour in future.

37. Paragraph 92 of the SG sets out that suspension is appropriate in cases where the doctor’s misconduct is serious, but where it falls short of being fundamentally incompatible with continued registration. The Tribunal considered that, whilst Dr Sharma’s initial act of dishonesty was not so serious as to be fundamentally incompatible with continued registration, his subsequent persistent failure to recognise the seriousness of his dishonesty and take appropriate steps to remediate it means his misconduct is now incompatible with continued registration.

38. In reaching this decision, the Tribunal noted that Dr Sharma was explicitly told by the June Tribunal that he may be erased at a future review hearing should he not provide the evidence of insight and remediation requested. Dr Sharma has now had two years since the index complaint in which to produce this evidence. Despite this, today’s Tribunal has not received any substantial documentation from Dr Sharma other than his email of 6 November 2020 stating that he would not be providing any further evidence. The Tribunal considered that suspension is no longer appropriate or proportionate in this case given:

- An indication that Dr Sharma is no longer cooperating with this process;
- His continued failure to take remedial action;
- His failure to address the concerns clearly set out by three previous Tribunals; and
- His failure to comply with advice given by those Tribunals.

Accordingly, the Tribunal determined to erase Dr Sharma’s name from the Medical Register.

Erasure

39. In confirming its decision, the Tribunal again had regard to the findings of the original Tribunal that Dr Sharma’s misconduct amounted to a serious breach of GMP. It then had regard to paragraph 109(j) of the SG which sets out:

‘Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive)

...

(j) Persistent lack of insight into the seriousness of their actions or the consequences.’

As set out above, the Tribunal has found that Dr Sharma has a persistent lack of insight into the seriousness of his actions, and has failed to remediate or gain sufficient insight despite numerous opportunities provided by three previous Tribunals. Given this, combined with his recent indication that he no longer wishes to engage with the GMC and the hearings process, the Tribunal was left with no choice other than to erase Dr Sharma’s name from the Medical Register.

Immediate Order of Suspension

40. The effect of this direction is that Dr Sharma’s name will be erased from the Medical Register 28 days from when written notice of this decision is deemed to have been served him.

41. Given its decision that erasure is the appropriate and necessary response in Dr Sharma’s case, the Tribunal considered whether it should impose an immediate order of suspension. Having regard to the provisions in the SG and taking account of the public interest, it considered that there were no grounds to justify why the order should not be immediate. It therefore determined that it should impose an immediate order of suspension to cover this 28-day period.

42. The current order of suspension therefore remains in place during the 28-day appeal period. If an appeal is made, the current order of suspension on Dr Sharma’s registration will remain in force until the appeal has concluded.

43. That concludes Dr Sharma’s case.

Confirmed

Date 27 November 2020

Mr Lindsay Irvine, Chair

ANNEX A – 27/11/2020

DETERMINATION ON SERVICE AND PROCEEDING IN ABSENCE

1. Dr Sharma is neither present nor represented at this hearing. The Tribunal had regard to the GMC service bundle, which includes pre-hearing correspondence from the GMC and the MPTS to Dr Sharma.

2. On 13 October 2020 the GMC sent Dr Sharma a pre-hearing information letter setting out the date of today's hearing. This letter was sent to Dr Sharma's registered email address.

3. Also on 13 October 2020 the MPTS issued notice of today's hearing to Dr Sharma's registered email address. Dr Sharma was asked to respond to this email within two working days; if not, a hard copy would be issued to his registered postal address. This notice letter set out that:

'If you do not attend [the hearing], and are not represented, the Tribunal can hear and make a decision about your case in your absence, under rule 31 of the GMC (Fitness to Practise) Rules. If your fitness to practise is found to be impaired a sanction could be imposed on your registration in your absence...'

4. On 14 October 2020 Dr Sharma replied to this email, noting:

'Received with thanks.'

5. On 15 October 2020, Dr Sharma similarly replied to the GMC's email of 13 October 2020 confirming receipt.

6. Bearing the above in mind, the Tribunal was satisfied that the GMC and the MPTS have made all reasonable efforts to serve notice of today's hearing on Dr Sharma in accordance with the principles set out in the case of *GMC v Adeogba* [2016] *EWCA Civ 162*. Accordingly, the Tribunal determined that service has been affected in accordance with Paragraph 40 of the Rules and Paragraph 8 of Schedule 4 of the 1983 Act.

7. The Tribunal next considered whether it should exercise its discretion to proceed with today's hearing in Dr Sharma's absence. The Tribunal bore in mind that the discretion to proceed in Dr Sharma's absence should be exercised with the utmost care and caution, balancing fairness to Dr Sharma with the overarching objective, namely the protection of the public. The Tribunal had regard to an email dated 6 November 2020 from Dr Sharma to the GMC, in which he set out:

'Dear all,

I am writing this email to inform you that I will not be attending my upcoming hearing scheduled on 27/11/20. I have already provided all the documents and testimonials which I could. I have nothing new to submit. I have full faith on the MPTS committee and would respect the decision of my case.

Thanks for your understanding.'

8. The Tribunal noted from this email that Dr Sharma is aware of today's hearing and has chosen to voluntarily absent himself. It further noted that Dr Sharma has not requested any adjournment of today's hearing, and has indicated that he does not intend to provide any additional documentation. On this basis, the Tribunal was satisfied that there would be no unfairness to Dr Sharma in proceeding in his absence.

9. In reaching this decision, the Tribunal considered that it is in the interests of justice for matters to be reviewed expeditiously and - balancing Dr Sharma's interests with the public interest – it determined that any delay of today's hearing would not be in the public interest.

10. Bearing all of the above in mind, the Tribunal therefore determined to proceed with this hearing in Dr Sharma's absence.