MPTS Medical Practitioners Tribunal Service

Record of Determinations – Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 15/05/2023 - 26/05/2023

Medical Practitioner's name:	Dr Saada RADHI
GMC reference number:	6058154
Primary medical qualification:	MB ChB 1993 University of Baghdad

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

Summary of outcome

Suspension, 3 months.
Review hearing directed

Tribunal:

Legally Qualified Chair	Mr Stephen Gowland
Lay Tribunal Member:	Mr Geoff Brighton
Medical Tribunal Member:	Dr Leigh-Anne Hill

Tribunal Clerk:	Mr Francis Ekengwu

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Anthony Haycroft, Counsel, instructed by DAC Beachcroft LLP
GMC Representative:	Mr Paul Williams, 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 Facts - 18/05/2023

Background

1. Dr Radhi qualified in 1993 with a Basic Medical Qualification (MB ChB) from Baghdad University in Iraq. Prior to the events which are the subject of the hearing Dr Radhi was employed as a Salaried GP with Princes Park surgery in Eastbourne.

2. The Allegation that has led to Dr Radhi's hearing can be summarised as on 27 January 2021, during a telephone consultation, Dr Radhi failed to conduct an adequate assessment and examination of Patient A, and in light of the symptoms, failed to undertake a more detailed face to face review with the patient.

3. It is further alleged that on three occasions, following the telephone consultation with Patient A, Dr Radhi made alterations to the medical records. These changes included not marking her amendments as not being contemporaneous and that they were of a substantive nature. In doing so her actions were dishonest and her assessment of Patient A were dishonest.

The Allegation and the Doctor's Response

4. The Allegation made against Dr Radhi is as follows:

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

1. On 27 January 2021 during a telephone consultation with Patient A you failed to conduct an adequate assessment and examination of Patient A in that, in light of the symptoms, you failed to undertake a more detailed face to face review to include:

    a. a general examination, to see if Patient A looked well in herself;
    Admitted and found proved

    b. an assessment/examination of Patient A's:

i. temperature; **Admitted and found proved**

ii. pulse and blood pressure; **Admitted and found proved**

iii. cranial nerve; **Admitted and found proved**

iv. limb function; **Admitted and found proved**

v. gait and balance. **Admitted and found proved**

2. You made alterations in Patient A's medical records to the note of the telephone consultation with Patient A as described at paragraph 1 on:

a. 17 February 2021; **Admitted and found proved**

b. 1 March 2021; **Admitted and found proved**

c. 4 March 2021. **Admitted and found proved**

3. The alterations described at paragraph 2 were:

a. not made contemporaneously; **Admitted and found proved**

b. substantive, in that they were additions and/or removal of clinical information; **Admitted and found proved in relation to 2b and 2c. To be determined with regard to 2a.**

c. not noted by you in the medical records as being retrospectively altered. **Admitted and found proved.**

4. When you altered the records as described at paragraph 2, you:

a. did so to make it appear that your assessment of Patient A was adequate; **Admitted and found proved in relation to 2b and 2c. To be determined in relation to 2a.**

b. knew that your assessment of Patient A was inadequate. **Admitted and found proved.**

5. Your actions at paragraph 2 were dishonest by way of paragraphs 3 and 4. **Admitted and found proved in relation to 2c. To be determined in relation to 2a and 2b**.

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

The Admitted Facts

5. At the outset of these proceedings, through her counsel, Mr Haycroft, Dr Radhi made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

The Facts to be Determined

6. In light of Dr Radhi's response to the Allegation made against her, the Tribunal is required to consider whether the GMC has proved to the requisite standard that Dr Radhi's amendments to the medical records on the 17 February 2021 were substantive in that they were additions and/or removal of clinical information, and whether such amendments were made to make it appear that her assessment of the patient was adequate. The Tribunal also had to determine whether Dr Radhi's amendments to the medical records on the 17 February 2021 and 1st March 2021 were dishonest.

Witness Evidence

7. Dr Radhi provided her own witness statement, dated 21 December 2022 and also gave oral evidence at the hearing on 16 May 2023.

Expert Witness Evidence

8. The Tribunal received evidence from two expert witnesses on 16 May 2023. The Tribunal, on behalf of the GMC, received oral witness evidence via video link on 16 May 2023, from Dr B, a General Practitioner and expert witness, who also provided a written report dated 9 March 2022, and a supplemental report, dated 17 May 2022.

9. The Tribunal, on behalf of Dr Radhi, also received oral evidence in person on 16 May 2023, from Dr C, a retired General Practitioner and now expert witness, who continues to practise part time, who provided a written report, dated 19 December 2022.

10. The Tribunal also had the benefit of the joint report of the experts dated 15 February 2023.

Documentary Evidence

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

- Witness statement of Ms D, Primary Care Paramedic, dated 25 March 2022;
- Dr Saada Radhi's CV, undated;
- Consultation record and notes relating to patient A.
- Radiology Examination, MRI Scan, dated 17 February 2021; and

- Patient A's hospital records, dated 1 March 2021.

The Tribunal's Approach

12. 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 Radhi does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, that is whether it is more likely than not that the events occurred.

13. The Tribunal received advice from the legally qualified chair (LQC) and noted that it must make a determination on matters of dishonesty. This advice included but was not limited to the test set out in *Ivey v Genting Casinos (UK) Limited (t/a Crockfords Club) [2017] UKSC 67:*

> *'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 and Findings

14. 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.

15. Firstly, it reminded itself that Dr Radhi had made admissions to several paragraphs of the Allegation and as a result these were found proved.

Paragraph 3(b) in relation to 2(a)

16. The Tribunal firstly noted that the outstanding paragraphs of the Allegation related to Dr Radhi's alleged substantive alteration (addition and/or removal) of clinical information to the surgery's electronic patient record system.

17. The Tribunal also noted that these events took place during the global COVID-19 pandemic.

18. As part of his report Dr B reproduced the chronological changes to the clinical records as follows:

"Audit showed that the bulk of Dr Radhi's record had been made on 27th January 2021 at 1101-1104:

Problem: Viral labyrinthitis (Review)
History: vertigo still, not worsening
says left side of body feels weak and slurred speech.
walking OK
Not worried about Covid-19
Examination: Still sounds nasally
No speech problem otherwise.
Comment: Patient given advice
Prochlorperazine [issued]

Dr Radhi then amended the record on 17th February 2021 at 2106 [alterations]:

Problem: Viral labyrinthitis (Review) [status changed from active to past]
History: vertigo still, not worsening
says left side of body feels weak ***[~~and~~ with]*** *slurred speech.*
[but] *walking OK*
not worried about Covid-19
Examination: still sounds nasally
no speech problem otherwise.
Comment: Patient given advice ***[r/v next week]***
[sos if worsening]
Prochlorperazine [issued]

Dr Radhi then further amended the record on 1st March 2021 at 1344 [alterations]:

Problem: Viral labyrinthitis (Review)
History: vertigo still, not worsening
says left side of body feels weak [and with] slurred speech ***[episode]****.*
[but] walking OK
not worried about Covid-19
Examination: still sounds nasally ***[/nasal speech]***
no speech problem otherwise.
Comment: Patient given advice [r/v next week]
[sos if worsening]
Prochlorperazine [issued]

Dr Radhi then further amended the record on 4th March 2021 at 0925

[alterations]:

Problem: Viral labyrinthitis (Review)
History: vertigo still, not worsening
says left side of body feels weak ***[~~and~~ [~~with~~] ~~slurred~~***
~~speech~~ [~~episode~~]]
[but] walking OK
not worried about Covid-19
Examination: still sounds nasally [/nasal speech]
*no speech problem [**~~otherwise~~**].*
Comment: Patient given advice [r/v next week]
[sos if worsening] ***[/new symptoms]***
Prochlorperazine [issued]"

19. The Tribunal analysed the changes to the clinical record as seen on 17 Feb 2021. It noted that 'and' was changed to 'with' and there was the introduction of the word 'but'. There was also the addition of 'r/v next week' and 'sos if worsening'.

20. The Tribunal considered the expert witness evidence of Dr B and Dr C. It found Dr B to be a reliable expert witness who was consistent albeit with one concession. His initial opinion was that all changes made to the record on 17 Feb 2021 were substantive. He then later conceded during the joint expert report that replacing 'and' with 'with' and introducing the word 'but' were simple grammatical changes, which were not substantive.

21. The Tribunal then considered Dr B's oral evidence in which he stated the addition of ' r/v next week' and ' sos if worsening' both amounted to clinical information as both of these entries were based on the clinical picture. Dr B's view was that the review itself became specific in nature ('r/v next week') and 'sos if worsening' amounted to specific safety netting advice. Dr B opined that because these changes were based on clinical information, and due to the fact they added specificity to Dr Radhi's entry of 'patient given advice' they amounted to substantive additions of clinical information.

22. Dr B stated that based on the entry in the notes on 27 January 2021, he did not think these indicated that Patient A required a clinical review in one week.

23. The Tribunal found Dr C to be a reliable and consistent witness. When considering the addition of 'r/v next week' and 'sos if worsening' Dr C was of the opinion that these were not substantive additions as these phrases did not involve clinical information. He explained that clinical information was usually information involving a patient's history, symptoms, signs and examination findings. Dr C drew the Tribunals attention to Dr Radhi's entry of 'patient advice given'. When explaining why he did not consider these entries to amount to clinical information, he explained that, if it is accepted that Dr Radhi had given the advice recorded in the alterations made to the clinical record to Patient A, that the additions were a clarification of the exact advice given. He stated his opinion would be that these would be substantive additions if extra clinical or medical information was included, however because they were

clarifications to the medical record they were not substantive. He also explained that not everything within the clinical record was clinical information.

24. Dr C's opinion, in oral evidence, was that because of Patient A's recorded symptoms of slurred speech and left sided body weakness this patient, 'cannot be left without review'.

25. The Tribunal found Dr Radhi to be a credible witness who was consistent with her written statement on this point.

26. Dr Radhi, in oral evidence, explained that the additions 'r/v next week' and 'sos if worsening' were added as she wanted the clinical note to accurately reflect the advice, she actually gave to Patient A. The Tribunal found Dr Radhi's evidence, to be clear, concise and consistent. She explained that she went back into Patient A's medical records following receipt of a hospital letter, which contained additional information, and this prompted her to make the clarifying amendments.

27. On balance, the Tribunal were persuaded by Dr C's evidence that Patient A required review because of the recorded symptoms of slurred speech and left sided weakness. The Tribunal preferred Dr C's evidence that the addition of 'r/v one week' and 'sos if worsening' amounted to an expansion of the advice given and were not additions and/or removal of clinical information and formed part of the management plan and safety netting. The Tribunal also noted that Dr Radhi had written in the notes 'patient advice given'. The Tribunal, therefore, on the balance of probabilities, believed that Dr Radhi had given advice to Patient A that she wanted to review her in 1 week and had told her advice to the effect of 'sos if worsening'. The Tribunal therefore concluded that these alterations to the clinical record were merely clarifications of what actually happened during Dr Radhi's consultation with Patient A and were not substantive and/or removal additions of clinical information.

28. Accordingly, it found paragraph 3(b) in relation to 2(a) not proved.

<u>Paragraph 4(a) in relation to 2(a)</u>

29. The Tribunal next considered paragraph 4(a) in relation to 2(a). This required the Tribunal to consider if Dr Radhi's alterations of Patient A's electronic clinical records on 17 February 2021 amounted to an attempt to make it appear that her assessment of Patient A during the telephone consultation seemed adequate.

30. The Tribunal noted that Dr Radhi had already admitted that her clinical record as a whole was not adequate.

31. Further, the Tribunal noted that it had already decided that the alteration of the electronic clinical record at paragraph 2(a) of the Allegation was no more than clarification of what had taken place in the telephone consultation with Patient A. The Tribunal also noted that both expert witnesses agreed that the changes did not make the notes adequate.

32. Accordingly, the Tribunal found paragraph 4(a) in relation to 2(a) not proved.

Paragraph 5 in relation 2(a) and 2(b)

33. The Tribunal noted that Dr Radhi had admitted dishonesty with regard to paragraph 2(c) of the Allegation and that it was required to consider dishonesty at paragraph 5 of the Allegation in relation to paragraph 2(a) and 2(b).

34. The Tribunal considered paragraph 5 of the Allegation in relation to 2(a) and accepted Dr Radhi's oral evidence in which she stated that in altering Patient A's clinical record she was purely seeking to clarify and accurately reflect what she had said during the telephone consultation and not with the intention of being dishonest. Accordingly, the Tribunal found that Dr Radhi's state of mind was that she was seeking to clarify the record of the initial consultation and not to make her assessment seem adequate. The Tribunal considered that her state of mind was such that she believed that the alterations she was making were accurate clarifications. When applying the objective standards of ordinary decent people, the Tribunal found that on any objective assessment Dr Radhi's action could not be considered to be dishonest.

35. The Tribunal found paragraph 5 of the Allegation in relation to 2(a) not proved.

36. The Tribunal accepted Dr Radhi's oral evidence that the slurred speech had been a single episode and her addition to this effect was therefore no more than a clarification. The Tribunal considered the addition of 'nasal speech' to be no more than a restatement of 'still sounds nasally'. Accordingly, the Tribunal found that these alterations also amounted to no more than clarifications.

37. Accordingly, the Tribunal found paragraph 5 of the Allegation in relation to 2(b) not proved when applying the two-stage test in *Ivey*. The Tribunal found that Dr Radhi believed at this stage that she was continuing to clarify the record which by the objective standards of ordinary decent people would not be considered to be dishonest.

The Tribunal's Overall Determination on the Facts

38. The Tribunal has determined the facts as follows:
That being registered under the Medical Act 1983 (as amended):

1. On 27 January 2021 during a telephone consultation with Patient A you failed to conduct an adequate assessment and examination of Patient A in that, in light of the symptoms, you failed to undertake a more detailed face to face review to include:

    a. a general examination, to see if Patient A looked well in herself;
    Admitted and found proved

    b. an assessment/examination of Patient A's:

i. temperature; **Admitted and found proved**

ii. pulse and blood pressure; **Admitted and found proved**

iii. cranial nerve; **Admitted and found proved**

iv. limb function; **Admitted and found proved**

v. gait and balance. **Admitted and found proved**

2. You made alterations in Patient A's medical records to the note of the telephone consultation with Patient A as described at paragraph 1 on:

   a. 17 February 2021; **Admitted and found proved**

   b. 1 March 2021; **Admitted and found proved**

   c. 4 March 2021. **Admitted and found proved**

3. The alterations described at paragraph 2 were:

   a. not made contemporaneously; **Admitted and found proved**

   b. substantive, in that they were additions and/or removal of clinical information; **Admitted and found proved in relation to 2b and 2c. Not proved in relation to 2a.**

   c. not noted by you in the medical records as being retrospectively altered. **Admitted and found proved.**

4. When you altered the records as described at paragraph 2, you:

   a. did so to make it appear that your assessment of Patient A was adequate; **Admitted and found proved in relation to 2b and 2c. Not proved in relation to 2a.**

   b. knew that your assessment of Patient A was inadequate. **Admitted and found proved.**

5. Your actions at paragraph 2 were dishonest by way of paragraphs 3 and 4. **Admitted and found proved in relation to 2c. Not proved in relation to 2a and 2b**.

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 - 24/05/2023

39. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts found proved, Dr Radhi's fitness to practise is impaired by reason of misconduct.

The Evidence

40. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary.

41. Dr Radhi gave oral evidence at the impairment stage of the hearing.

42. Dr Radhi responded to questions from Mr Haycroft, her legal counsel, Mr Williams, the GMC's legal counsel and the Tribunal. She described the difficult journey she had undertaken since 4 March 2021, to develop her insight and to remediate her misconduct which she had admitted at the facts stage. Dr Radhi also provided details about the difficult discussions she had had with the facilitator of the course on ethics that she had attended, which contributed towards her admitting the misconduct. Dr Radhi told the Tribunal about how she had initially, and for a long time, struggled to come to terms with her dishonesty. She admitted that she had been in denial about her dishonesty, omitted and/or minimised it in relevant conversations or misled people about the dishonesty including in her 2021 and 2022 appraisal.

43. The Tribunal also received further documentary evidence at the impairment stage, from the GMC and from Mr Haycroft, on behalf of Dr Radhi. This evidence included but was not limited to:

- Dr Radhi's reflective statement, dated May 2023;
- Dr Radhi's responsible officer statement, dated 28 March 2023;
- Feedback from two trainee's in support of Dr Radhi;
- Details of a Maintaining Professional Ethics course, between 11 – 13 January 2022;
- Details of a Documentation and Record Keeping course, on 12 December 2021; and
- 360 feedback.

44. Upon request from the Tribunal, Mr Haycroft provided a copy of Dr Radhi's 2022 Appraisal which took place on 14 July 2022.

45. The Tribunal also received supportive testimonials from Dr Radhi's colleagues dated between 7 June 2022 and 15 May 2023, and cards and letters from patients, all of which it had read.

Submissions

<u>On Behalf of the GMC</u>

46. Mr Williams said that this case had two parts. The inadequate assessment of Patient A and the dishonest amendment of Patient A's medical record. He added that taken together they had a significant impact for the safety of patients.

47. Mr Williams submitted that all clinical assessments must be full, proper, and adequate even during the unusual COVID-19 circumstances and that practices had to be adapted to ensure that assessments continued to be adequate. He referred the Tribunal to testimonials submitted on behalf of Dr Radhi to get a sense of her usual standards.

48. Mr Williams submitted that dishonesty goes to the character of the person despite their clinical abilities and added that honesty and probity goes to the heart of the medical profession.

49. Mr Williams submitted that Dr Radhi had chosen to act dishonestly in a situation where honesty was particularly important, even if Dr Radhi's dishonesty was driven by feelings of panic and fear because of her missed diagnosis. Mr Williams added that a patient's medical records are the very means of communication between healthcare professionals and are the basis by which a patient and that patient's care can be passed on from one professional to another. He added that it was important that the medical records are accurate and honest for the purposes of ongoing management, learning and for reference by other professionals.

50. Mr Williams submitted that Dr Radhi maintained the deception and an untruthful account over many months. He added that Dr Radhi, at her 2021 and 2022 appraisal, minimised and lied about her dishonest conduct.

51. Mr Williams submitted that dishonesty is difficult to remediate, although not impossible, but it required one to challenge one's own character and added that Dr Radhi had started the journey towards insight, but that it is far from complete.

52. Mr Williams submitted that there was a lack of coherence to Dr Radhi's description of how she came about accepting that she had been dishonest and seemed to contradict herself. He added that this indicated that a risk of repetition remains and continues to remain until Dr Radhi gains full insight.

53. Mr Williams submitted that in the Tribunal's consideration on impairment, it needed to consider if Dr Radhi acted in a way that undermined public confidence. Mr Williams submitted that Dr Radhi's misconduct had undermined public confidence and that the Tribunal should find her fitness to practise impaired.

On Behalf of Dr Radhi

54. Mr Haycroft submitted that in respect of the single act of dishonesty that Dr Radhi had admitted that it amounted to a breach of Good Medical Practice ('GMP'); was a breach

of a fundamental tenet of the profession; and would be regarded as deplorable by fellow practitioners; and was serious.

55. Mr Haycroft submitted that the dishonesty amounted to misconduct. He further submitted that the other errors admitted by Dr Radhi had been categorised by Dr B as being seriously below the standard expected of a reasonably competent GP.

56. Mr Haycroft submitted that it is accepted that Dr Radhi's dishonest conduct amounted to impairment with respect to the public interest elements of the overarching objective.

57. Mr Haycroft submitted that with regard to paragraph 1 of the Allegation, and to limb 1 of the overarching objective that Dr Radhi is not currently impaired and reminded the Tribunal of its determination on facts in which it stated that Dr Radhi had been clear, concise, and consistent in providing evidence and that her account had been accepted.

58. Mr Haycroft submitted that insight and risk of repetition were highly relevant factors when considering impairment. Mr Haycroft submitted that Dr Radhi's evidence during her lengthy reflections demonstrated her full insight into what she had done wrong following an initial period of denial. As a result, the risk of repetition of her misconduct was low. Mr Haycroft further submitted that Dr Radhi was now open and frank about her insight journey, had provided chronological evidence concerning her insight and had remediated her misconduct.

59. Mr Haycroft referred the Tribunal to the *COVID-19: assessing the risk to public protection posed by a doctor as a result of concerns about their practice during the pandemic guidance* which suggested that decision-making at that time may have been under unusual pressure. He added that it was perhaps relevant to how the Tribunal categorised failures in care, but that it did not excuse dishonesty.

60. Mr Haycroft submitted that Dr Radhi had cooperated with the authorities (NHS England and the GMC) and had undertaken courses on ethics and carried out remediation work. He further submitted that Dr Radhi had apologised and expressed remorse, shame, and regret to the authorities, to the MPT for her actions and to the public in her oral evidence.

61. Mr Haycroft said that Dr Radhi had submitted a reflective statement, testimonials (which the Tribunal noted were supportive), details of courses surrounding clinical management of neurological matters, record keeping and ethics.

62. Mr Haycroft submitted that there is no evidence of an ingrained personality trait disposing her to dishonesty and stated that Dr Radhi's actions were wholly out of character. He added that the risk of repetition of this isolated incident of dishonesty is low as it occurred during a time when Dr Radhi was under great strain.

The Relevant Legal Principles

63. 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.

64. 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 that the misconduct was serious and then whether the finding of that misconduct which was serious, could lead to a finding of impairment.

65. The Tribunal accepted the advice of the Legally qualified chair. The Tribunal considered the case of *Roylance v General Medical Council (No.2) [2000]1 AC 311 (UKPC)* and the two-stage process for determining cases of misconduct. First, whether the facts as found proved amounted to serious professional misconduct and, secondly, whether as a result the doctor's fitness is impaired.

66. The Tribunal was reminded that it must determine whether Dr Radhi's fitness to practise is impaired today, taking into account Dr Radhi'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 as set out in *Cohen v GMC [2008] EWHC 581 (Admin)*.

67. The Tribunal also had regard to the principle set out by Sales J in the case of *Yeong v GMC [2009] EWHC 1923*, *GMC v Chaudhary [2017] EWHC 2561 (Admin)* and *General Medical Council v Dr Ihenayi Chidi Nwachuku [2017] EWHC 2085 (Admin).*

68. Whilst there was no statutory definition of impairment, the Tribunal was assisted by 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] EWHC 297 Admin*. The Tribunal noted that any of the following features were likely to be present when a doctor's fitness to practise is found to be impaired:

a. 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; and/or

b. Has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or

c. Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

d. Has in the past acted dishonestly and/or is liable to act dishonestly in the future

The Tribunal's Determination on Impairment

69. In determining whether Dr Radhi's fitness to practise is currently impaired by reason of misconduct, the Tribunal first considered whether the facts found proved amounted to misconduct and whether that misconduct was serious.

70. The Tribunal considered that paragraphs 15a, 21a, 21e, 37, 55, 65, 68, 71 of Good Medical Practice ('GMP') were relevant in this case as follows:

"15. You must provide a good standard of practice and care. If you assess, diagnose or treat patients, you must:

a) adequately assess the patient's conditions, taking account of their history (including the symptoms and psychological, spiritual, social and cultural factors), their views and values; where necessary, examine the patient

21. Clinical records should include:

a) relevant clinical findings

…

e) who is making the record and when.

37. You must be aware of how your behaviour may influence others within and outside the team.

55. You must be open and honest with patients if things go wrong. If a patient under your care has suffered harm or distress, you should:
a) put matters right (if that is possible)
b) offer an apology
c) explain fully and promptly what has happened and the likely short-term and long-term effects.

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."

71. It further agreed that the GMC guidance referred to above (paragraph 18) was engaged:

"Examples of these types of allegations arising in a clinical setting during the Covid-19 pandemic may include, but are not limited to, where it is alleged that a doctor:

- *kept records but their quality was not of the standard expected. For example, where they were illegible or incomplete and while the circumstances of the pandemic may have had an impact and full records were not possible, even in those circumstances, better quality records could have been made".*

Misconduct

72. The Tribunal considered Dr Radhi's misconduct, based on the facts it had found proved. It separately considered misconduct in relation to the paragraphs of the Allegations that did not involve dishonesty.

73. With regard to paragraph 1 of the Allegation, the Tribunal reminded itself that on 27 January 2021, Dr Radhi had a telephone consultation with Patient A. She had failed to conduct an adequate assessment of Patient A, and had failed to arrange a subsequent face-to-face consultation in light of the 'red flag' symptoms. The Tribunal reminded itself of the expert evidence regarding this paragraph of the Allegation. Dr B stated that failure to assess and examine Patient A was not consistent with relevant guidance or with GMP and was seriously below the standard expected of a reasonably competent GP. Dr C's view was that Patient A required a review due to the neurological symptoms recorded within the medical record. The Tribunal was of the view this constituted a breach of paragraph 15a of GMP (as above), and that there were potential patient safety implications and therefore Dr Radhi's failures amounted to misconduct which was serious.

74. With regard to paragraph 2 of the Allegation, the Tribunal reminded itself that on the 17 February 2021, 1 March 2021 and 4 March 2021, Dr Radhi made alterations to the medical records of Patient A's telephone consultation. In relation to paragraph 3, these alterations were not made contemporaneously and were not noted in the records as being retrospectively altered. With regard to the alterations on the 1 and 4 March 2021, the alterations were substantive, in that they were additions and/or removal of clinical information. In relation to paragraph 4, the alterations made on the 1 and 4 March 2021, were made to make it appear as if the assessment of Patient A was adequate. In addition, Dr Radhi had admitted that her assessment of Patient A was inadequate [paragraph 4(b)]. The Tribunal was of the view that Dr Radhi had breached paragraphs 21a, 21e, 37 and 68 of GMP (as above) and therefore her actions amounted to misconduct which was serious.

75. With regard to paragraph 5 of the Allegation in as much as it related to the alterations on the 4 March 2021, this amendment was admitted as being dishonest.

76. The Tribunal considered that the dishonest 4 March 2021 amendment of Patient A's medical record was serious as it was a breach of paragraphs 55, 65, 68, and 71 of GMP (as above). It further noted that although it had not led to actual patient harm, this did not make the actions of the Dr Radhi any less serious.

77. The Tribunal concluded that Dr Radhi's misconduct breached a fundamental tenet of the medical profession and the paragraphs of GMP listed above. The Tribunal concluded that Dr Radhi's conduct fell significantly below that which could be reasonably expected of a registered practitioner and amounted to misconduct which was serious.

Impairment

78. The Tribunal, having found that the facts found proved amounted to misconduct, went on to consider whether, as a result of that misconduct, that Dr Radhi's fitness to practise is currently impaired.

79. The Tribunal considered the relevant factors as set out by Dame Janet Smith in her Fifth Shipman Report and cited by Cox J in *CHRE v NMC and Grant (2011) EWHC 927 (Admin)*. In particular, the Tribunal found that Dr Radhi's conduct engaged the three limbs set out in that decision, as shown below, in that she:

> *'…*
> *b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
>
> *c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
>
> *d. Has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

80. In determining whether Dr Radhi is currently impaired, the Tribunal considered whether the misconduct had been remedied, whilst noting that matters of dishonesty are more difficult to remediate. It looked for evidence of insight, remediation and the likelihood of repetition and balanced those against the three limbs of the statutory overarching objective.

81. The Tribunal noted that there was no evidence to suggest Dr Radhi's clinical skills were in question and that she had completed further training in relation to neurological issues.

82. The Tribunal noted that paragraph 1 of the Allegation arose from a single negligent act during the challenging global COVID-19 pandemic. It also heard evidence that Dr Radhi was an otherwise proactive practitioner, and that she had made changes to her clinical

practise including adjusting the balance of her ratio of telephone to face-to-face consultations. She stated she now has a much lower threshold for face-to-face reviews and has implemented additional catchup sessions to assist the running of her clinics. The Tribunal noted that Dr Radhi had reflected further on her misconduct and had completed a number of CPD courses including training on neurological conditions, as part of her remediation.

83. In relation to paragraph 1 of the Allegation, the Tribunal were reassured by the breadth and scope of her insight and remediation activities. These included the positive testimonials from Dr Radhi's colleagues: the positive feedback from various surveys and the thank you cards she had received. The Tribunal was of the view that Dr Radhi had become more aware of her 'blind spots' and was unlikely to repeat missing any future 'red flags' relating to neurological conditions.

84. The Tribunal concluded that Dr Radhi's fitness to practise was not currently impaired with regard to paragraph 1 of the Allegation.

85. In relation to the remainder of the paragraphs of the Allegation concerning the dishonesty element at paragraph 5, the Tribunal carefully considered the submissions of the parties. It noted that the GMC submitted that Dr Radhi had achieved some insight and that she was on the journey towards full insight. It noted that both parties had agreed that the paragraphs of the Allegation found proved would upon public confidence in the profession and adversely impact upon the need to uphold proper standards in the profession.

86. In terms of insight, Dr Radhi gave evidence as to how her thinking had been affected by the situation that occurred and affected by subsequent events. She also explained why it took some time to admit that she was dishonest, and that this realisation came some time along the pathway of her journey of evolving insight.

87. It had regard to Dr Radhi's responses in her oral evidence at the impairment stage. It noted that in response to questions about the importance of honesty, Dr Radhi had initially focussed on the impact the events had on herself, inefficiencies in service and the lack support she had received at the time.

88. The Tribunal also noted that when Dr Radhi attended the professional ethics course in January 2022, this had, for the first time, forced her to face that her actions were dishonest. However, her insight had not developed sufficiently by the time of her appraisal in July 2022 to enable her to take advantage of the opportunity to correct the wrong impression she had provided within her July 2021 appraisal. She did not gain insight into her dishonesty until, by her own admission, around December 2022 which was approximately 21 months after the misconduct. As such the Tribunal noted that Dr Radhi did not gain timely insight, and as such was unable to avail herself of advice from trusted colleagues either within the practice or elsewhere nor objective advice from her appraiser.

89. While the Tribunal agreed that Dr Radhi had developed insight, it noted that it was reactive and not timely as her understanding, and acceptance of her misconduct came late in

the day. It was also subject to events as they unfolded and as such her fitness to practise remains impaired with regard to the dishonesty aspect of the Allegation. The Tribunal agreed that the risk of repetition of the dishonest conduct was greatly reduced as a result of her developing insight.

90. The Tribunal noted that the public and the profession are entitled to expect doctors to act with honesty and integrity. The Tribunal was of the view that Dr Radhi's actions were so serious and fell short of the standards expected in GMP that a finding of impairment was necessary and in the public interest to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of the profession.

91. The Tribunal has therefore determined that Dr Radhi's fitness to practise is impaired by reason of her misconduct.

Determination on Sanction - 26/05/2023

92. Having determined that Dr Radhi's fitness to practise is impaired by reason of her dishonest conduct, 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

93. The Tribunal has taken into account evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction.

Submissions

On Behalf of the GMC

94. Mr Williams submitted that it is necessary and proportionate for there to be an order for a period of long suspension in conjunction with a review. He added that he would not be asking for an immediate order of suspension.

95. Mr Williams said that a sanction is not intended as punishment but designed to apply the overriding objective and to protect patients and the public interest.

96. Mr Williams submitted that dishonesty goes to the heart of the medical profession and added that it would not be appropriate for the Tribunal to take no action or apply conditions, in this case, as to do so would undermine public confidence in the profession.

97. Mr Williams submitted that persistent dishonesty on the face of it often means that erasure is the only appropriate measure but said that was not the case in this instance.

98. Mr Williams stated that this was a single incident of dishonesty within a clinical setting and is serious. He added that Dr Radhi was slow to develop insight and for this reason suspension was the appropriate sanction.

99. He added that Dr Radhi had developed insight, but this was reactive and not timely, as per the Tribunal's findings.

100. Mr Williams submitted that a low risk of repetition still remains, albeit the risk is reduced as a result of the developing insight, and there is further work to be done.

101. Mr Williams drew the Tribunal's attention to paragraphs 93 and 97(a), (e), (f) and (g) of the Sanctions Guidance ('SG'). These paragraphs state:

> *93 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. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions (see paragraphs 24–49).*
>
> *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, e.g., 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.*

102. Mr Williams submitted that Dr Radhi's misconduct falls short of erasure and reiterated that only an order of suspension with a review, in which Dr Radhi would provide further evidence of her increased insight into her misconduct and remediation would be appropriate. Mr Williams added that this would be in the public interest and serve the purposes of the overriding objective.

On Behalf of Dr Radhi

103. Mr Haycroft submitted that the sanction is a matter of both meeting and giving effect to the statutory overarching objective, and that the purpose of a sanction is not to take

punitive action. He added that he agreed with almost everything Mr Williams said but that a short period of suspension with a review was appropriate in this case.

104. Mr Haycroft submitted that in connection with paragraph 92 of the SG, dishonesty is always serious, but in this case falls short of being incompatible with continued registration.

105. Mr Haycroft referred to paragraph 32 of *Abbas v GMC [2017] EWHC 51 (Admin)*, which suggested that persistent dishonesty with a lack of insight may mean that erasure is the appropriate sanction. He also submitted that *Abbas* makes it clear that there is a spectrum of dishonesty, and added that this was at the very lower end of the seriousness spectrum in terms of dishonesty.

106. He submitted that paragraph 101 of *Abbas* is relevant to the length of suspension:

> *"101 The tribunal's primary consideration should be public protection and the seriousness of the findings. Following any remediation, the time all parties may need to prepare for a review hearing if one is needed will also be a factor".*

107. He further submitted that there were no public protection issues. Mr Haycroft added that he and the opposing counsel, Mr Williams, were agreed on the appropriate sanction, and that was suspension with a review. Regardless of that agreed view between counsel, the Tribunal had to reach its own independent decision.

108. Mr Haycroft submitted that Dr Radhi is facing a sanction because of a single and isolated incident of dishonesty, during a moment of uncharacteristic madness in amending Patient A's medical record. He added that there was no patient harm as per the Tribunal's findings. He also said that Dr Radhi did not have a disposition towards dishonest conduct and there was no financial motive.

109. Mr Haycroft submitted that Dr Radhi maintained her dishonesty due to panic and embarrassment and as a result has lost her good character. Mr Haycroft further submitted that Dr Radhi is a good clinician and that this was shown through the documentary evidence provided at the impairment stage.

110. Mr Haycroft addressed the mitigating and aggravating factors and stated that the time taken to reach her current level of insight indicates that she has been genuine and honest with the Tribunal, regarding her difficult journey towards insight.

111. He submitted that Dr Radhi did not have a previous record of dishonesty and that the risk of repetition of her dishonesty was greatly reduced.

112. He reminded the Tribunal that they had accepted that Dr Radhi is capable of full insight and remediation and added that she had done a lot of work in this regard. Mr Haycroft added that it was in the public interest to retain an otherwise good clinician. In

conclusion, a short period of suspension, with a review, would be appropriate and proportionate.

The Tribunal's Determination on Sanction

113. The Tribunal accepted LQC's advice.

114. The Tribunal considered the aggravating and mitigating factors in this case.

115. The Tribunal identified the following mitigating factors:

- Dr Radhi was someway along her journey towards insight, and although it was not yet complete, the Tribunal saw evidence during these proceedings that her insight continued to develop, for example taking responsibility and accountability of her misconduct;
- Dr Radhi has made attempts to address and remediate her misconduct;
- The Tribunal accepts that Dr Radhi's insight and attempts to remediate are genuine;
- The Tribunal considered that Dr Radhi's expression of remorse was genuine and noted that she had apologised throughout this hearing for her actions;
- It is some time since the misconduct and the Tribunal agrees that repetition is unlikely;
- Dr Radhi is previously of good character; and
- Dr Radhi had provided positive testimonials and feedback from current and past colleagues, friends and patients as to her previous good character.

116. The Tribunal identified the following aggravating factors:

- The Tribunal noted that Dr Radhi had attended a Maintaining Professional Ethics course in January 2022 and as a result was forced to confront her dishonesty. However, following that course, Dr Radhi continued to perpetuate misleading accounts of the events to others including her appraiser in July 2022; and
- The Tribunal was of the view that Dr Radhi's insight was reactive and had not developed in a timely manner.

117. The Tribunal accepted Mr Haycroft's submission that Dr Radhi's actions fell at the lower end of the spectrum of dishonesty and that it was a single act of dishonesty.

118. The Tribunal balanced these factors throughout its deliberations and went on to consider each sanction in order of ascending severity, starting with the least restrictive.

119. The decision as to the appropriate sanction to impose, if any, in this case is a matter for this Tribunal exercising its own judgement.

120. In reaching its decision, the Tribunal has taken account of the SG and of the overarching objective. The Tribunal was mindful that the SG provides guidance and, if departed from the Tribunal is under a duty to justify any such departure.

121. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Radhi's interests with the public interest. It has borne in mind that the purpose of sanctions is not to be punitive, but to protect patients and the wider public interest, although the sanction may have a punitive effect.

No action

122. In coming to its decision as to the appropriate sanction, if any, to impose in Dr Radhi's case, the Tribunal first considered whether to conclude the case by taking no action.

123. The Tribunal had already determined that Dr Radhi's fitness to practise is impaired by reason of her serious misconduct. It determined that given the departures from GMP found, including dishonesty, and in the absence of any exceptional circumstances, it would be disproportionate to conclude this case by taking no action and the public interest would not be satisfied by such an outcome.

Conditions

124. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Radhi's registration. Any conditions imposed would need to be appropriate, proportionate, workable, and measurable.

125. The Tribunal was of the view that it could not formulate appropriate, workable, proportionate, and measurable conditions to address the seriousness and dishonest nature of the issues raised by Dr Radhi's misconduct.

126. The Tribunal determined that a period of conditional registration would not adequately protect public confidence in the profession or maintain and promote proper professional standards of conduct for members of the profession.

Suspension

127. The Tribunal then went on to consider whether suspending Dr Radhi's registration would be appropriate and proportionate.

128. The Tribunal were mindful of the seriousness of Dr Radhi's misconduct and the public interest element of it. The Tribunal noted that Dr Radhi was an otherwise competent and well-regarded GP.

129. The Tribunal bore in mind the impact of both mitigating and aggravating factors and balanced the public interest in returning an otherwise capable GP back to practice. The Tribunal also considered the public interest in Dr Radhi achieving full insight and remediation and sought to balance these conflicting interests.

130. In light of the above, the Tribunal determined that a period of suspension would be an appropriate and proportionate sanction when considering Dr Radhi's interests with that of the public interest. The Tribunal took into account the impact that this sanction may have upon Dr Radhi. However, in all the circumstances the Tribunal concluded that her interests are outweighed by the need to maintain public confidence in the profession and to declare and uphold proper standards of conduct and behaviour.

131. The Tribunal determined therefore that an order of suspension was required in this case. It then went on to determine the length of the suspension.

Length of Suspension

132. In determining the length of the suspension, the Tribunal had regard to paragraphs 99 to 102 of SG and the table following paragraph 102.

133. The Tribunal has set out its rationale for imposing a suspension in the wider public interest in order to maintain confidence and to uphold and promote proper professional standards within the profession.

134. The Tribunal took into account Mr Williams' submission that a lengthy suspension was required and considered that against the submission of Mr Haycroft who submitted that a short suspension would be the proportionate outcome. The Tribunal considered both their submissions in light of the aggravating and mitigating factors it had identified and considered that the mitigating factors went someway to outweigh the aggravating factors and that the length of suspension should lie somewhere between their two suggestions.

135. The Tribunal considered the aggravating factors in this case and acknowledged that this was a serious departure from the principles set out in GMP.

136. The Tribunal also had regard to the mitigating factors of the case in considering the length of the suspension. The Tribunal was satisfied that the likelihood of Dr Radhi repeating her misconduct was low. She had expressed regret and remorse for how she had behaved. At the outset of the hearing, she had made admissions to some of the paragraphs within the Allegation. Of the remaining paragraphs of the Allegation, none had been found proven.

137. Taking all these elements into account, the Tribunal was satisfied that imposing a period of three months suspension was appropriate and proportionate. In the Tribunal's view this would be sufficient to satisfy the need to promote and maintain public confidence and to send out a clear message to the profession that this type of conduct is unacceptable, so as to maintain proper professional standards. A reasonable and well-informed member of the public or the profession would be satisfied that this was a proportionate response to Dr Radhi's dishonest behaviour.

138. Accordingly, the Tribunal determined to suspend Dr Radhi's registration for a period of three months. The Tribunal considered this period to be proportionate and would allow her sufficient time to further remediate and gain complete insight.

Erasure

139. The Tribunal considered if erasure was a proportionate sanction and had regard to paragraph 92 of SG which states:

> *92 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 (i.e., for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession).*

140. The Tribunal considered its findings at the facts and impairment stage and reminded itself that Dr Radhi's misconduct was a single act of dishonesty.

141. Overall, the Tribunal decided that this case was not one where Dr Radhi's misconduct is 'fundamentally incompatible with continued registration' and therefore it considered that erasure would not be appropriate or proportionate, nor would it be in the public interest. Erasure would deny the public of an otherwise competent and well-regarded doctor.

Review

142. The Tribunal determined to direct a review of Dr Radhi's case. A review hearing will convene shortly before the end of the period of suspension.

143. A review is appropriate in this case as the Tribunal has found that Dr Radhi has not yet developed full insight into her misconduct, and that is why a review is necessary.

144. At the review hearing, the onus will be on Dr Radhi to demonstrate how she has further developed her insight. It therefore may assist the reviewing Tribunal if Dr Radhi provided:

- Further evidence of continuing professional development;

- Any further evidence demonstrating proactive insight for example providing objective evidence in the form of an additional appraisal; and

- Any other information that Dr Radhi wishes to provide that she considers will assist the reviewing Tribunal.

145. To summarise the Tribunal has directed that Dr Radhi's registration be suspended for a period of three months from the effective date and has ordered a review prior to the completion of the suspension period.

Determination on Immediate Order - 26/05/2023

146. Having determined that a three-month suspension was the proportionate sanction the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Radhi's registration should be subject to an immediate order.

Submissions

On Behalf of the GMC

147. Mr Williams submitted that an immediate was not necessary.

On Behalf of Dr Radhi

148. Mr Haycroft also submitted that an immediate order was not necessary.

The Tribunal's Determination

149. The Tribunal noted the submissions of the Parties. The Tribunal determined that an immediate order of suspension was not necessary given that there were no patient safety issues, the significant level of insight Dr Radhi has displayed and the low risk of repetition of similar misconduct. Further, the Tribunal noted that Dr Radhi has been working as a GP without further issue since the events leading up to the Allegation.

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

151. That concludes the case.