

PUBLIC RECORD

Date: 14/04/2021

Medical Practitioner's name:	Dr Shaban DAGHEM
GMC reference number:	4566148
Primary medical qualification:	MB BCh 1982 University of Al Fateh
Type of case	Outcome on impairment
Review - Misconduct	Impaired

Summary of outcome

Suspension, 9 months
Review hearing directed

Tribunal:

Legally Qualified Chair	Mr William Hoskins
Lay Tribunal Member:	Ms Deborah Spring
Medical Tribunal Member:	Dr Ranjana Rani
Tribunal Clerk:	Mrs Rachel Horkin

Attendance and Representation:

Medical Practitioner:	Not present and not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Mr Saul Brody, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Impairment - 14/04/2021

The Outcome of Applications Made during the Impairment Stage

1. The GMC applied at the outset to proceed in the absence of Dr Daghem. The Tribunal determined to proceed in Dr Daghem's absence, under Rule 31 of the Rules. The Tribunal's full decision on the application is included at Annex A.

Background

The April 2017 Tribunal (the 2017 Tribunal)

2. Dr Daghem's case was first considered by a Medical Practitioners Tribunal in April 2017. On 6 November 2013 Dr Daghem undertook a forensic medical examination of Patient A at Cobridge Park Sexual Assault Referral Centre (SARC), Stoke on Trent, in the presence of a Forensic Medical Examiner, following allegations made by Patient A of sexual assault. About a year later, Dr Daghem was informed by the police that Patient A had made a disclosure that she had been sexually active before Dr Daghem undertook his examination. Dr Daghem subsequently gave oral evidence at the Crown Court trial of the alleged perpetrator.

3. The 2017 Tribunal found that there were a number of failings in Dr Daghem's examination of Patient A, which he carried out on 6 November 2013 as part of a joint examination with another Forensic Medical Examiner, in that he did not:

- adequately document consent from Patient A
- obtain an adequate history about or from Patient A
- conduct an adequate examination of Patient A
- adequately assess Patient A, and
- adequately record matters in Patient A's medical records.

4. The Tribunal found that in the report that Dr Daghem provided after the examination he

- used terminology which was not recommended in RCPCH guidance

- interpreted his findings in a way that was not in keeping with published research and evidence statements from the RCPCH
- did not consider differential diagnosis in his interpretation of the clinical findings, and
- did not consider the limitations of the examination.

5. The 2017 Tribunal also found that on 28 January 2015 at Stafford Crown Court, Dr Daghem failed to provide adequate expert evidence.

6. The Tribunal found that the proven facts amounted to misconduct, and determined that Dr Daghem's fitness to practise was impaired by reason of that misconduct. It determined that, given the serious departures from the expected standards, suspending his registration was the proportionate and appropriate sanction. It determined that a period of 12 months was proportionate to ensure the protection of the public, whilst enabling Dr Daghem to re-evaluate his core clinical practice, develop his insight into his past misconduct and take the necessary steps towards remediation.

7. The 2017 Tribunal advised Dr Daghem that the reviewing Tribunal would be assisted by receiving the following information:

- evidence that Dr Daghem has reflected on the issues raised in this case and has acquired insight
- evidence of re-training undertaken in the area of his proposed practice and in community paediatrics
- evidence that he has kept his knowledge and skills up to date, including details of any continuing professional development activities he has undertaken
- any other evidence that Dr Daghem considers will be of assistance to the reviewing tribunal.

The April 2018 Tribunal (the 2018 Tribunal)

8. On 1 June 2017 the GMC wrote to Dr Daghem to advise him of the provisional date for his review hearing and to remind him of the information that the 2017 Tribunal had indicated would assist a future Tribunal reviewing his case.

9. In a telephone note dated 22 December 2017, from Dr Daghem to the GMC, he stated that he was unsure of what documents the Tribunal required and requested information regarding voluntary erasure.

10. On 9 January 2018 Dr Daghem sent an email to the GMC stating;

- *I would like to inform you that I've taken the tribunal recommendations on board, seriously, and in spite of [XXX] I completed my annual appraisal in July 2017.*

- *I have enrolled onto several courses related to communication skills and community pediatrics.*
- *As I am retired now, I have dedicated a lot of time to reading books, articles, and journals about community pediatrics, especially topics related to improving history taking and examination in community pediatrics. I can now reflect properly about improving my history taking and my physical examination of patients and dealing with the situation in a different way.*
- *I have devoted some time to my personal and professional development*
- *I have discussed these developments with my senior colleagues who have been and continue to be very supportive of my efforts to improve. For example Dr B and Dr C.*

11. The 2018 Tribunal took into account Dr Daghem's reflective statement dated 27 March 2017 (Dr Daghem confirmed during his submissions that this was actually written in March 2018), two appraisal report documents relating to Dr Daghem's work at South Staffordshire and Shropshire Healthcare NHS Foundation Trust from April 2015 to March 2017, and various Continuing Professional Development (CPD) material.

12. The 2018 Tribunal took note of the evidence which showed that Dr Daghem was working towards further remediation. In particular, he had attended a number of relevant CPD courses. It noted that much of the CPD evidence related to courses and activities undertaken in or around January 2018. The 2018 Tribunal was aware that Dr Daghem XXX for a large part of the period of his suspension, and was sympathetic that this had limited his ability to provide further evidence in relation to remediation.

13. With regard to insight, the 2018 Tribunal noted that Dr Daghem had made admissions in relation to the vast majority of his failings. He also apologised on a number of occasions for his wrongdoings. However, the 2018 Tribunal was of the view that his insight was not fully developed as he appeared not to have come to terms fully with the Tribunal's findings.

14. Given that the 2018 Tribunal did not consider that Dr Daghem's remediation was yet complete, and that he had not demonstrated full insight, the 2018 Tribunal concluded that a finding of impairment was necessary in order to ensure patient safety and to uphold public confidence in the medical profession. Dr Daghem's fitness to practise remained impaired by reason of his misconduct.

15. Dr Daghem's registration was made subject to conditions for a period of 12 months. The 2017 Tribunal advised Dr Daghem that the reviewing Tribunal would be assisted by receiving the following information:

- A report from his clinical supervisor and / or appraiser
- Feedback from professional colleagues
- Written evidence from his supervising consultant for any locum posts he undertakes

- Evidence of ongoing CPD / evidence that his medical knowledge and skills are up to date

The April 2019 Tribunal (the 2019 Tribunal)

16. Prior to the April 2019 Tribunal Dr Daghem sent an email to Mr D, GMC Investigation officer, dated 9 January 2019 in which he stated,

‘As you know I have not been working for the last year, having taken a break to look after my family. I would like to thank the GMC and the MPTS teams for their help and apologise to everyone for my mistakes and ask for forgiveness. Thank you for all your support.’

17. The Tribunal also had regard to a telephone note of a call by Dr Daghem to Mr D on 28 January 2019. During the telephone conversation, Dr Daghem advised Mr D that he had not been able to secure work because of the conditions imposed upon him and had been refused employment by his own Trust.

18. On 3 February 2019, Dr Daghem emailed Mr D detailing his current employment situation. He stated that he had been in touch with the Trust that he had worked for previously but had been told that due to his conditions they would be unable to give him any job. He had contacted the RCPCH asking them for any junior jobs as he was prepared to start from an SHO position but again they had told him that with the conditions it was difficult to help him. He had registered with two locum agencies informing them of his situation and his conditions. They were happy to forward his papers to various Trusts with open positions but the Trusts were unable to appoint him as a result of his conditions. Consequently, Dr Daghem confirmed that he had decided to take a sabbatical, but that he looked forward to being able to return to work having learnt from his previous mistakes. He apologised for them and stated that he felt that he had learnt from them.

19. The 2019 Tribunal noted that Dr Daghem received clear guidance from the 2018 Tribunal, which has been reiterated in correspondence to him from the GMC, with regards to evidence which may assist a future Tribunal. Despite having had the opportunity to provide such evidence, Dr Daghem failed to provide any such material.

20. The 2019 Tribunal considered Dr Daghem’s misconduct, which involved failures relating to assessment, history taking, recording and providing expert evidence. The 2019 Tribunal was provided with no evidence to show that he had fully remedied his shortcomings, or that he had full insight into them. Accordingly, the 2019 Tribunal determined that Dr Daghem’s fitness to practise remained impaired by reason of his misconduct.

21. Although he had not provided any further evidence of remediation in the last 12 months, the 2019 Tribunal was of the view that, given Dr Daghem’s shortcomings were in a specific area of his practice, a further period of supervised practice would be the most

appropriate way to allow him to demonstrate full remediation of his failings and to gain full insight. The 2019 Tribunal considered that it had no evidence to suggest that Dr Daghem would not comply with conditions.

22. Conditions were imposed on Dr Daghem's registration for a period of 24 months and the 2019 Tribunal advised Dr Daghem that the reviewing Tribunal would be assisted by receiving the following information:

- A report from his clinical supervisor and / or appraiser
- Feedback from professional colleagues
- Written evidence from his supervising consultant for any locum posts he undertakes
- Evidence of ongoing Continuing Professional Development / evidence that his medical knowledge and skills are up to date

Today's Tribunal

23. The Tribunal has considered, under Rule 22(f) of the Rules, whether Dr Daghem's fitness to practise remains impaired by reason of misconduct. It considered the submissions made by Mr Saul Brody, Counsel, on behalf of the GMC. It has also taken account of the documentary evidence before it.

The Evidence

24. In addition to the previous determinations, this Tribunal has taken account of the evidence provided. This included emails, letters and telephone calls between Dr Daghem and the GMC. The Tribunal noted that Dr Daghem informed the GMC on 3 March 2021 via email that he has been retired for 4 years. The Tribunal further noted that he has made an application for Voluntary Erasure (VE) but that this application remains ongoing at the time of this hearing.

25. The Tribunal noted an internal GMC email dated 25 January 2021 in which it was advised that Dr Daghem has not engaged with the GMC investigation team during his period of conditions. The Tribunal also noted the letter dated 8 January 2021 sent from the GMC to Dr Daghem requesting any information that he would like to be put to today's Tribunal.

Submissions

26. Mr Brody rehearsed the background of the case and reminded the Tribunal that Dr Daghem had not engaged with the GMC following the 2019 Tribunal until he submitted his VE application in January 2021. Mr Brody submitted that Dr Daghem's fitness to practise remains impaired by reason of misconduct and since the previous review, Dr Daghem's position has "deteriorated", as the length of time since he practised has increased and he has not engaged with the GMC at all. Mr Brody submitted that Dr Daghem's insight has not

developed since the Tribunal hearing in 2018. For these reasons, his fitness to practise remains impaired by reason of misconduct.

The Relevant Legal Principles

27. 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. The onus is on Dr Daghem to satisfy the Tribunal that his fitness to practise is no longer impaired.

28. The Tribunal must determine whether Dr Daghem's fitness to practise is impaired today, taking into account all relevant factors.

The Tribunal's Determination on Impairment

29. 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.*

Misconduct

30. The Tribunal noted that Dr Daghem has not engaged with the GMC for a significant period of time. The Tribunal reminded itself that Dr Daghem has made an application for VE but failed to follow this up with the requested documentation until very recently and therefore, he remains on the medical register at the time of today's hearing.

31. Dr Daghem has not provided any of the evidence that the 2019 Tribunal indicated would be useful to a future reviewing Tribunal. Dr Daghem has not provided any evidence relating to the development of further insight or any material relating to remediation. In view of the absence of any evidence of increased insight or remediation the Tribunal concluded that there remained a risk of harm to patients.

32. The Tribunal has taken into account the length of time since Dr Daghem practised and XXX of which he has informed the GMC and which have prevented him from returning to work during the Covid 19 pandemic. The Tribunal reminded itself that the onus is on Dr Daghem to demonstrate that he is fit to practise, and he has not done so. The Tribunal considered that there is a risk to public safety as Dr Daghem's clinical skills and knowledge will not be up to date.

33. Further, the Tribunal noted that Dr Daghem had not taken any of the steps suggested by the previous reviewing Tribunal and that contact between himself and the GMC had been very limited. In these circumstances the Tribunal concluded that a finding of impairment was also required 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.

34. The Tribunal has therefore determined that Dr Daghem's fitness to practise remains impaired by reason of misconduct.

Determination on Sanction - 14/04/2021

35. Having determined that Dr Daghem's fitness to practise is impaired by reason of misconduct, the Tribunal now has to decide in accordance with Rule 22(1)(h) of the Rules what action, if any, it should take with regard to Dr Daghem's registration.

The Evidence

36. The Tribunal has taken into account the background to the case and the evidence received during the earlier stage of the hearing where relevant to reaching a decision on what action, if any, it should take with regard to Dr Daghem's registration.

Submissions

37. On behalf of the GMC, Mr Brody submitted that an order of erasure is necessary and proportionate in this case and that taking no action, or imposing a period of conditions or suspension would not be workable or appropriate. Mr Brody submitted that Dr Daghem has not engaged properly with the GMC following the 2019 Tribunal and has not provided any of the information requested by the 2019 Tribunal. Mr Brody further reminded the Tribunal that Dr Daghem has been retired for 4 years, has made an application for Voluntary Erasure and that XXX prevented Dr Daghem from assisting with the ongoing Covid-19 pandemic.

38. Mr Brody reminded the Tribunal that there has been a significant period of time since Dr Daghem practised medicine. He has made it clear that he wishes to leave the medical profession and has no intention of providing the information that the 2019 Tribunal requested. Mr Brody submitted that it is in Dr Daghem's interests for him to be erased as this would coincide with his desire for voluntary erasure and protect the public.

39. Mr Brody reminded the Tribunal that the previously imposed conditions have been in place for 3 years and that the current conditions on Dr Daghem's registration will expire on 5 May 2021.

The Tribunal's Determination

40. The Tribunal was aware that the decision as to the appropriate sanction, if any, to impose on Dr Daghem's registration is a matter for this Tribunal alone, exercising its own independent judgement.

41. In reaching its decision, the Tribunal had regard to relevant paragraphs of the Sanctions Guidance (SG). It has borne in mind that the purpose of a sanction is not to be punitive, although it may have a punitive effect. The Tribunal also had regard to the principle of proportionality, and it weighed Dr Daghem's interests against those of the public.

42. In deciding what sanction, if any, to impose, the Tribunal considered each of the options available starting with the least restrictive.

No action

43. The Tribunal considered whether to conclude Dr Daghem's case by taking no action. The Tribunal noted that following a finding of impairment, taking no action is only considered appropriate where there are exceptional reasons for doing so. The Tribunal determined that there were no exceptional circumstances which would justify a decision to take no action. It therefore determined that taking no action would not be appropriate, proportionate or in the public interest.

Conditions

44. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Daghem's registration. The Tribunal bore in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable.

45. The Tribunal noted that Dr Daghem had not been able to find work under the initially imposed conditions. He has now not practised for 4 years and there is no evidence that he has kept his medical skills and knowledge up to date. Dr Daghem has expressly indicated to the GMC that he has retired and no longer wishes to be on the register. He has recently reactivated his VE application. In these circumstances a conditions of practice order is clearly inappropriate.

Suspension

46. The Tribunal went on to consider whether to impose a period of suspension on Dr Daghem's registration. The Tribunal took into account that suspension would protect the public.

47. Further, the Tribunal considered that an order for suspension was a proportionate response to the present circumstances. The previous orders for conditions had not proved workable and the initial misconduct was not such as to justify an order for erasure.

48. The Tribunal carefully considered whether the limited engagement shown by Dr Daghem since the initial order of suspension and more particularly since the last review hearing justified an order for erasure at this point. The Tribunal concluded that it did not. In particular the Tribunal noted that Dr Daghem had referred in correspondence to XXX which had prevented him from helping out as he wished to do during the Covid-19 pandemic. XXX. In these circumstances the Tribunal was not confident that the relatively limited engagement over the last 24 months was a sufficiently aggravating feature to justify an order for erasure.

49. The Tribunal also considered Mr Brody's submission that as Dr Daghem was applying for voluntary erasure and had reactivated his application, erasure through a direction of this Tribunal was the appropriate course. The Tribunal did not accept this submission. It seemed to the Tribunal that there was a significant difference between erasure as the result of regulatory process and voluntary erasure as a result of the practitioner's application. The Tribunal considered that an order for erasure could only be justified if the circumstances of the case warranted such an order. In the Tribunal's assessment the circumstances of the case today did not warrant such an order.

50. The Tribunal therefore decided to impose a suspension order. The Tribunal considered that a period of 9 months was appropriate as this should allow ample time for any other process to take its course.

51. The Tribunal determined to direct a review of Dr Daghem's case. A review hearing will convene shortly before the end of the period of suspension, unless an early review is sought. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Daghem to demonstrate how he has developed insight and what remedial action he has taken. It therefore may assist the reviewing Tribunal if Dr Daghem provides the following information:

- Evidence of ongoing Continuing Professional Development;
- Evidence of ongoing learning;
- Evidence that his medical knowledge and skills are up to date;
- Testimonials and any report from a mentor;
- Any other evidence that Dr Daghem considers relevant at the next review.

Determination on Immediate Order - 14/04/2021

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

Submissions

53. Mr Brody reminded the Tribunal that it is a matter for the Tribunal to determine if an immediate order is necessary

The Tribunal's Determination

54. The Tribunal has taken account of the relevant paragraphs of the SG, in particular paragraph 172 which states:

172 The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor...

55. The Tribunal determined that, given the circumstances of Dr Daghem's case, its findings on impairment and the sanction it has imposed, it is in the public interest to suspend his registration with immediate effect.

56. The substantive period of suspension to be imposed on Dr Daghem's registration will take effect 28 days from when notice is deemed to have been served upon him, unless he lodges an appeal in the interim. If Dr Daghem lodges an appeal, the immediate order for suspension will remain in place until such time as the outcome of any appeal is determined.

57. This concludes the case.

Confirmed

Date 14 April 2021

Mr William Hoskins, Chair

ANNEX A – 14/04/2021

Service and Proceeding in Absence

58. Dr Daghem is neither present nor represented today at this Medical Practitioners Tribunal ('MPT') review hearing. The Tribunal therefore considered whether the relevant documents had been served in accordance with Rules 20 and 40 of the General Medical Council ('GMC') Fitness to Practise Rules 2004 ('the Rules') and paragraph 8 of the fourth Schedule to the Medical Act 1983.

59. The Tribunal had regard to the GMC letter sent to Dr Daghem's registered postal address on 25 February 2021 and the proof of delivery signed 3 March 2021. The letter set out the arrangements that were being made for this review hearing.

60. The Tribunal also considered the email sent from Ms E, GMC to Dr Daghem dated 3 March 2021 in which she sent, via email, a copy of the Notice of Hearing (NoH).

61. The Tribunal was satisfied that notice of this hearing had been properly served upon Dr Daghem in accordance with Rules 20 and 40 of the Fitness to Practise Rules.

Proceeding in absence

62. The Tribunal further considered the note of the telephone conversation which took place between Ms E and Dr Daghem on 5 March 2021 in which Dr Daghem is reported to have confirmed that he had received the "paper version" of the letter. The Tribunal noted that, in this telephone note, Ms E further stated that,

"Ms E read out and explained the email dated 03/03/2021 i.e. that the application for VE has not been granted as the VERL team require further information...Ms E explained that the April review hearing will go ahead. Dr Daghem reiterated that he has no wish to practice as a doctor and stated that he will not be attending at the hearing."

63. The Tribunal had regard to the MPT NoH as sent to Dr Daghem's registered email address on 09 March 2021. The Tribunal noted the content of the email received from Dr Daghem dated 10 March 2021 in which he stated,

"...[XXX] I will not be able to attend the review and I will be happy with any decision taken at the review [XXX] I have no plan or intention to practice medicine in the UK any more."

64. Mr Brody drew the Tribunal's attention to the relevant evidence provided and submitted that Dr Daghem has been made aware of today's hearing and the Tribunal should consider dealing with this case in the doctor's absence. Mr Brody reminded the Tribunal that Dr Daghem has indicated that he has retired, does not intend to practise medicine in the UK and that he will not be attending the hearing today.

65. The Tribunal had regard to the documents before it and the submissions made by Mr Brody.

66. Having been satisfied that notice was properly served upon Dr Daghem, the Tribunal considered whether to proceed with this hearing in his absence, in accordance with Rule 31 of the Rules. The Tribunal was conscious that in accordance with the principles in *Adeogba (2016) EWCA Civ 162*, the discretion to proceed in the absence of a doctor should be exercised with the utmost care and caution, balancing the interests of the doctor with the wider public interest.

67. The Tribunal noted that Dr Daghem has responded to the MPT NoH sent to him and has stated that he does not intend to attend this hearing. The Tribunal is satisfied that Dr Daghem is aware of this hearing and has voluntarily absented himself. The Tribunal concluded that it is in the public interest and in the interests of justice to proceed with this hearing today. The Tribunal considered that there is no information before it to suggest that Dr Daghem would attend the hearing if an adjournment was granted today. Accordingly, the Tribunal determined that it was fair and reasonable to proceed in Dr Daghem's absence.