

PUBLIC RECORD

Dates: 09/03/2021 – 10/03/2021

Medical Practitioner's name: Dr Shehla FARRUKH

GMC reference number: 7405141

Primary medical qualification: MBBS 2007 Bahria University - Frontier
Medical College Abbottabad

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Not Impaired

Summary of outcome

Warning

Tribunal:

Legally Qualified Chair	Mr Ian Comfort
Medical Tribunal Member:	Dr Helen Crabtree
Medical Tribunal Member:	Dr Peter Kyle

Tribunal Clerk:	Ms Racheal Gill
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Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Ms Hannah Thomas, Counsel, instructed by Mr Gareth Gibson of RadcliffesLeBrasseur LLP.
GMC Representative:	Ms Suzie Kitzing, 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 Facts and Impairment- 10/03/2021

Rule 41

1. The Tribunal determined that, pursuant to Rule 41 of the Rules, this determination will be announced in private XXX. However, a redacted version will be published at the close of the hearing.

Background

2. Dr Farrukh qualified with MBBS from Bahria University - Frontier Medical College, Abbottabad in 2007. She registered with the General Medical Council in April 2014. Prior to the events which are the subject of the hearing, Dr Farrukh worked as a registrar in Rheumatology at University Hospital Kerry from 2017 to 2019.

3. The Allegation that has led to Dr Farrukh's hearing can be summarised as follows: on 11 July 2019, in support of her application to restore her licence to practise with the GMC, Dr Farrukh uploaded a Certificate of Good Standing issued to her by the Pakistan Medical and Dental Council. It is alleged that Dr Farrukh intentionally covered the words on the Certificate that said it was only valid for use in the U.A.E and that her actions were dishonest.

The Allegation and the Dr Farrukh's Response

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

1. In support of your application to restore your licence to practise with the GMC on 11 July 2019, you uploaded a Certificate of Good Standing issued to you by

the Pakistan Medical and Dental Council ('PDMC') on 7 March 2019 ('the Certificate') to GMC Online and you:

- a. intentionally covered the words 'only valid for U.A.E' on the Certificate prior to submission;

Admitted and found proved

- b. knew that:

- i. the Certificate was only valid for use in the U.A.E;

Admitted and found proved

- ii. you should have purchased a new Certificate of Good Standing from the PDMC, which would be valid for use in the United Kingdom.

Admitted and found proved

2. Your actions as described at paragraph 1a were dishonest by reason of paragraph 1b.

Admitted and found proved

The Admitted Facts

5. At the outset of these proceedings, through her counsel, Ms Thomas, Dr Farrukh made admissions to some of the 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.

Impairment

6. In light of Dr Farrukh's response to the Allegation against her, there were no facts to be determined. The Tribunal next had to decide in accordance with Rule 17(2)(l) of the Rules, whether or not Dr Farrukh's fitness to practise is impaired by reason of her misconduct.

Evidence

7. The Tribunal also received evidence on behalf of the GMC in the form of witness statements from Ms A, dated 12 April 2020, Manager of the Voluntary Erasure, Restoration and Licensing 'VERL' team at the GMC.

8. As agreed by the parties, Ms A was not called to give oral evidence.
9. Dr Farrukh provided her own witness statement, dated 5 February 2021, but declined to give oral evidence.

Documentary Evidence

10. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included but was not limited to:
 - GMC application form, dated 11 July 2019 and GMC confirmation email of application form, dated 15 July 2019;
 - Email from Dr Farrukh explaining personal circumstances, dated 17 July 2019;
 - Certificate of Good Standing from Pakistan Medical & Dental Council, dated 7 March 2019 (U.A.E only);
 - Dr Farrukh’s reflective statement;
 - Letter of attendance Ethics Foundation workshop, dated 11 May 2020;
 - CPD Probity and Ethics Certificate, dated 6 June 2020; and
 - Certificate of Good Standing from Pakistan Medical Commission, dated 18 February 2021 (UK only).

Submissions

On behalf of the GMC

11. Ms Kitzing submitted that Dr Farrukh’s fitness to practise is impaired by reason of her misconduct. She reminded the Tribunal of the two-stage process to be adopted. Firstly, whether the facts found proved amount to misconduct and secondly, whether Dr Farrukh’s fitness to practise is currently impaired by reason of her misconduct.
12. Ms Kitzing submitted that the allegation admitted by Dr Farrukh amounted to serious misconduct. She reminded the Tribunal that Dr Farrukh had made a false declaration within the certificate and in doing so, intentionally acted dishonestly. She submitted that Dr Farrukh’s actions constituted a serious departure from Good Medical Practice (2013 edition) (‘GMP’). In particular, Ms Kitzing highlighted a paragraph 65, 66 and 71 in GMP (set out below) that she submitted were engaged in Dr Farrukh’s case.

13. Turning to the issue of current impairment, Ms Kitzing reminded the Tribunal of the overarching objective and submitted that a finding of impairment is necessary in the wider public interest. Ms Kitzing submitted that a reasonably informed member of the public would find Dr Farrukh's conduct unacceptable and that Dr Farrukh's actions seriously undermined public trust in the profession. Further, she stated that Dr Farrukh had breached a fundamental tenet of the medical profession, that a doctor must act with honesty and integrity. She submitted that fellow practitioners would find her conduct deplorable.

14. Ms Kitzing acknowledged that not every instance of dishonesty will lead to a finding of impairment and that there can be features in a case where such a finding does not follow. In terms of insight, the GMC accepted that there is documentary evidence that Dr Farrukh has continued to undergo professional development and has made some efforts by way of reflection and remediation.

15. Ms Kitzing argued that Dr Farrukh's actions represented a serious departure from proper professional standards and breached the fundamental relationship of trust between doctors and patients. She submitted that it would undermine public trust in the medical profession if a finding of impairment were not made by the Tribunal.

16. Ms Kitzing submitted that, given the serious nature of the conduct in this case, a finding of impairment is necessary to protect the public, to maintain appropriate standards of behaviour and to maintain public confidence in the profession.

On behalf of Dr Farrukh

17. Ms Thomas submitted that Dr Farrukh's fitness to practice is not currently impaired by reason of the facts admitted and found proved. Ms Thomas accepted that the Allegation is a serious matter, and in most cases, a finding of impairment is required, but given the circumstances in this case as outlined below, a finding of impairment is not necessary.

18. Firstly, dishonesty has been accepted by Dr Farrukh from the outset and she has admitted fault at the earliest opportunity. Ms Thomas submitted that Dr Farrukh could have waited for the Certificate of Good Standing. In Dr Farrukh's emails to the GMC she was trying to explain her personal circumstances. Ms Thomas drew the Tribunal's attention to Dr Farrukh's numerous positive testimonials, which she submitted spoke of Dr Farrukh's honest character.

19. Secondly, Ms Thomas submitted that this case of dishonesty is not of the most serious kind. Ms Thomas submitted that "*in life there is a spectrum of dishonesty*" and that Dr Farrukh's actions fell at the lower end of the scale of dishonesty; and that a finding of

impairment was not necessary in the circumstances of this case. Ms Thomas made it clear that Dr Farrukh does not seek to belittle her actions but submits that this is limited to a single one-off incident, that she explained within days. Ms Thomas submits that there was no malice underlying the action and no harm was caused to either patients or the public.

20. Ms Thomas reminded the Tribunal that there is evidence before it that confirms that Dr Farrukh knew she had to send a hard copy of her Certificate of Good Standing, which she did at a later date.

21. Thirdly, with regard to the issue of insight, Ms Thomas submitted that Dr Farrukh has shown great insight, she has candidly admitted in her witness statement that she did not know at first what she had done was dishonest but *“in retrospect (she) wholly accepts that this was dishonest”*. Ms Thomas submits that Dr Farrukh has demonstrated that she has reflected fully and that she recognises the gravity of her actions. Dr Farrukh understands that dishonesty breaks a fundamental tenet of the medical profession and that probity is at the very foundation of the medical profession. She has shown elements of accountability by informing friends and colleagues of the Allegation.

22. Ms Thomas invited the Tribunal to consider Dr Farrukh’s actions in the context of an otherwise unblemished career and that Dr Farrukh’s dishonest action at that time was mitigated by personal circumstances. XXX.

23. Ms Thomas submits an important distinction – that Dr Farrukh is not a dishonest person but an honest person who acted dishonestly. She submitted that there is no risk of any repetition of Dr Farrukh’s past actions which occurred nearly two years ago and invited the Tribunal to consider Dr Farrukh’s level of insight and remediation. Therefore, in all relevant circumstances, Ms Thomas submitted that a finding of impairment is not necessary.

The Relevant Legal Principles

24. The Tribunal had regard to the advice given by the Legally Qualified Chair as a matter of record.

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

26. 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 Tribunal must exercise its own judgement on the basis of the evidence.

27. Whilst there is 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 & Grant (2011) EWHC 927*. In particular, the Tribunal considered whether its findings of fact showed that Dr Farrukh's fitness to practise is impaired in the sense that she:

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 value of this test is threefold: it identifies the various types of activity which will arise for consideration in any case where fitness to practise is in issue; it requires an examination of both the past and the future; and it distils and reflects, for ease of application, the principles of interpretation which appear in the authorities.

28. The Tribunal bore in mind that it must determine whether the doctor's fitness to practise is currently impaired by reason of misconduct, taking into account her conduct at the time of the events and any other relevant factors such as any development of insight, whether the matters are remediable or have been remedied and the likelihood of repetition.

29. The Tribunal also bore in mind the observations of Mr Justice Cox in the case of *Grant* that:

'in determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant Tribunal should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances'.

30. The Tribunal considered the case of *GMC vs Chaudhury [2017] EWHC 2561 (Admin)*, referenced by Ms Kitzing's in her submissions, and reminded itself that when considering

dishonesty in the context of this Allegation it must give proper weight to all three elements of the GMC’s statutory overarching objective.

Tribunal’s Determination on Impairment

Inferences

31. The Tribunal invited further submissions from both Counsel on the issue of whether to draw any adverse inferences on the fact that Dr Farrukh did not give any oral evidence during the course of these proceedings. It also had regard to the case of *R (Kuzmin) v GMC [2019] EWHC 2129 (Admin)*, where, unless it would be unfair to do so and in certain circumstances, a tribunal has the power to draw an adverse inference from a doctor’s failure to give evidence or answer a particular question.

32. Ms Kitzing did not wish to draw any adverse inferences from Dr Farrukh not giving evidence.

33. Ms Thomas, submitted that Dr Farrukh giving oral evidence would not provide the Tribunal with any more information than it has within the documentary evidence.

34. The Tribunal noted Dr Farrukh’s witness statement and her reflective piece in relation to ethics courses that she had undertaken. Further, within the documentary evidence, it was clear to the Tribunal that Dr Farrukh had made efforts to engage with her regulator and made clear and candid admissions of fault at the earliest opportunity.

35. Therefore, in all the circumstances, whilst Dr Farrukh being subject to cross examination and questioning may have been helpful, it did not draw an adverse inference from the fact she did not give oral evidence, given the documentary evidence before it.

Misconduct

36. In determining whether Dr Farrukh’s fitness to practise is currently impaired by reason of misconduct, the Tribunal first considered whether the facts found proved amounted to misconduct.

37. The Tribunal had regard to all the facts outlined in this case. On the 11 July 2019, Dr Farrukh had applied to the GMC to restore her medical licence, she did not have the correct certificate at that time and she deliberately tried to mislead a regulatory body. On the 17 July 2019, Dr Farrukh emailed the GMC and explained her difficult personal circumstances, and,

on the 11 August 2019, the GMC had received Dr Farrukh's original copy of her certificate of good standing (valid only for the U.A.E).

38. The Tribunal considered the paragraphs of GMP which set out the standards that a doctor must continue to meet throughout their professional career. It considered that the following were not met by Dr Farrukh in this case, as outlined by Ms Kitzing's submissions:

'1 Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues [...] are honest and trustworthy, and act with integrity and within the law.

65 You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.

66 You must always be honest about your experience, qualifications and current role

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. '

39. The Tribunal found that Dr Farrukh's actions, namely her dishonesty was a serious departure from GMP. Therefore, the Tribunal concluded that Dr Farrukh's conduct fell so far short of the standards of conduct to be expected of a doctor as to amount to serious misconduct.

Current Impairment

40. The Tribunal having found that the facts found proved amounted to serious misconduct, then went on to examine whether there were grounds for finding Dr Farrukh's fitness to practise to be currently impaired.

41. The Tribunal took into account all the factors in this case. Dr Farrukh made full admissions and has fully engaged with the regulatory proceedings. She expressed regret and remorse, as demonstrated in her witness statement, reflective statement and training in probity and ethics. The Tribunal considered that Dr Farrukh understands that her behaviour

fell well short of that expected of a doctor. It was satisfied that Dr Farrukh has reflected sufficiently on how her actions could have impacted on patient safety and public confidence in the profession. The Tribunal did not think that Dr Farrukh could have done any more to demonstrate remediation and determined that Dr Farrukh's has developed sufficient insight into her failings.

42. The Tribunal had regard to the positive testimonials provided on behalf of Dr Farrukh. It noted that her colleagues who provided the testimonials did so with knowledge of the Allegation made against her. The Tribunal took the view that it is clear that Dr Farrukh is a highly regarded doctor and that this incident was out of character. Although Dr Farrukh's actions were dishonest, this was a single one-off incident that occurred at a time XXX. Taking into account that there have been no clinical concerns raised regarding Dr Farrukh's practice, the Tribunal considered that looking forward, Dr Farrukh does not pose a risk to patients.

43. The Tribunal considered a member of the profession or member of the public would find Dr Farrukh's actions at the lower end of the serious spectrum and be reassured by her remediation and reflection. Therefore, in these circumstances, the Tribunal determined that a finding of impairment was neither proportionate nor necessary in this case.

44. The Tribunal concluded that Dr Farrukh's fitness to practise is not impaired by reason of her misconduct, pursuant to Section 35C(2)(a) of The Medical Act 1983 as amended.

Determination on Warning - 10/03/2021

45. As the Tribunal determined that Dr Farrukh's fitness to practise was not impaired it considered whether in accordance with s35D(3) of the 1983 Act, a warning was required.

Submissions

On behalf of the GMC

46. Ms Kitzing submitted that a warning would be appropriate in this case based on the Tribunal's finding that Dr Farrukh's conduct did amount to misconduct. Ms Kitzing directed the Tribunal's attention to the relevant paragraphs of the GMC's Guidance on warnings (February 2018) ('the Guidance'). Ms Kitzing submitted that action must be taken, therefore a warning would be proportionate in this case.

On behalf of Dr Farrukh

47. Ms Thomas invited the Tribunal to consider taking no action or issue a warning.
48. Ms Thomas referred the Tribunal to its findings on facts and impairment, specifically its positive findings made at paragraph 41- 44, which refer to a number of mitigating factors. Ms Thomas submitted that this is an isolated incident, and at the “*low end*” of dishonesty. Dr Farrukh had demonstrated acceptance, remorse, and insight into her failings. Dr Farrukh has engaged with proceedings, has no previous regulatory history and no clinical concerns on her practice. Furthermore, Ms Thomas invited the Tribunal to consider that the regulatory proceedings have already been a shock and warning to Dr Farrukh.
49. Ms Thomas submitted that if the Tribunal was not agreeable to taking no action and wished to issue a warning that it must be fair, proportionate, and not restrict her ability to practice.
50. Ms Thomas submitted that Dr Farrukh hopes to return to practice medicine, especially during the current pandemic and that medicine is her passion.

The Tribunal’s Determination on Warning

51. The decision whether or not to issue a warning is a matter for the Tribunal alone to determine, exercising its own professional judgement. In making its decision, the Tribunal had regard to the Guidance, and in particular to paragraphs 11, 13, 14, 20, 24 and 25 which state:

11 ‘Warnings [...] are a formal response from [...] MPTS tribunals in the interests of maintaining good professional standards and public confidence in doctors [...].’

13 ‘Although warnings do not restrict a doctor’s practice, they should nonetheless be viewed as a serious response, appropriate for those concerns that fall just below the threshold for a finding of impaired fitness to practise.’

14 ‘Warnings should be viewed as a deterrent. They are intended to remind the doctor that their conduct or behaviour fell significantly below the standard expected and that a repetition is likely to result in a finding of impaired fitness to practise. Warnings may also have the effect of highlighting to the wider profession that certain conduct or behaviour is unacceptable.’

20 ‘The decision makers should take account of the following factors to determine whether it is appropriate to issue a warning.’

- a. There has been a clear and specific breach of Good medical practice or our supplementary guidance.
- b. The particular conduct, behaviour [or performance] approaches, but falls short of, the threshold for the realistic prospect test or in a case before a tribunal, that the doctor's fitness to practise has not been found to be impaired.
- c. A warning will be appropriate when the concerns are sufficiently serious that, if there were a repetition, they would likely result in a finding of impaired fitness to practise. Warnings may be an appropriate response to any type of allegation [...]; the decision makers will need to consider the degree to which the conduct, behaviour or performance could affect patient care, public confidence in the profession or the reputation of the profession. If the decision makers consider that a warning is appropriate, the warning should make clear the potential impact of the conduct, behaviour or performance in question, accordingly.
- d. There is a need to record formally the particular concerns (because additional action may be required in the event of any repetition).'

24 'There is a presumption that the GMC should take some action when the allegations concern dishonesty. There are, however, cases alleging dishonesty that are not related to the doctor's professional practice and which are so minor in nature that taking action on the doctor's registration would be disproportionate. A warning is likely to be appropriate in these cases. An example of this might include, in the absence of any other concerns, a failure to pay for a ticket covering all or part of a journey on public transport.'

25 'In deciding whether to issue a warning the decision maker should apply the principle of proportionality, weighing the interests of the public with those of the practitioner. It is important to bear in mind, of course, that warnings do not restrict the practitioner's practice and should only be considered once the decision maker is satisfied that the doctor's fitness to practise is not impaired.'

52. The Tribunal applied the above Guidance to the facts found proved.

53. Throughout its deliberations, the Tribunal had regard to the statutory overarching objective. In that regard, it bore in mind that its power to issue a warning is central to its role in protecting the public, which includes: protecting patients; maintaining public confidence in the profession; and declaring and upholding proper standards of conduct and behaviour.

54. The Tribunal was satisfied that, given the nature of its findings in relation to Dr Farrukh's misconduct, her behaviour fell significantly below the standards expected as set out in GMP, which warrants a formal response by the Tribunal.

55. The Tribunal reminded itself that its decision that Dr Farrukh's fitness to practise was not currently impaired was influenced to a considerable degree by the existence of insight and remediation since the Allegation, as outlined in her witness statement, reflection and training. Whilst the Tribunal accept that there is a very low risk of Dr Farrukh repeating her misconduct, it determined that it was necessary to highlight to Dr Farrukh, the public and the medical profession that her misconduct was serious and unacceptable. The public interests required action be taken in relation.

56. Therefore, the Tribunal determined to issue the following warning in accordance with Section 35D(3) of the Medical Act 1983 and Rule 17(2)(m) of the Rules:

'Dr Farrukh, in support of your application to restore your licence to practise with the GMC on 11 July 2019, you uploaded a Certificate of Good Standing issued to you by the Pakistan Medical and Dental Council ('PDMC') on 7 March 2019 ('the Certificate') to GMC Online and you: intentionally covered the words 'only valid for the U.A.E' on the Certificate prior to submission; knew that the Certificate was only valid for use in the U.A.E; and should have purchased a new Certificate of Good Standing from the PDMC, which would be valid for use in the United Kingdom.

Your actions as described above were dishonest.

This conduct does not meet the standards required of a doctor. It risks bringing the profession into disrepute and it must not be repeated.

In this case, you breached the required standards as set out in Good Medical Practice (2013 edition). In this case paragraphs 1, 65, 66 and 71 of GMP are particularly relevant:

- 1 *Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge*

and skills up to date, establish and maintain good relationships with patients and colleagues [...] are honest and trustworthy, and act with integrity and within the law.

65 *You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.*

66 *You must always be honest about your experience, qualifications and current role*

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.'*

Whilst the Tribunal has found that a finding of impaired fitness to practise is not required for the reasons set out in the determination, it is necessary in response to issue this formal warning.

This warning will be published on the medical register in line with our publication and disclosure policy, which can be found at www.gmc-uk.org/disclosurepolicy.'

57. That concludes this case.

Confirmed

Date 10 March 2021

Mr Ian Comfort, Chair