

**Dates:** 16/07/2018 - 19/07/2018

**Medical Practitioner's name:** Dr Tajeshwar Singh Aulakh

**GMC reference number:** 6061384

**Primary medical qualification:** MB BS 2000 Punjabi University

**Type of case**

Restoration following disciplinary erasure

**Summary of outcome**

Restoration application refused. No further applications allowed for 12 months from last application.

**Tribunal:**

Legally Qualified Chair	Mr Geoffrey Payne
Medical Tribunal Member:	Dr Joanne Topping
Medical Tribunal Member:	Dr Nitesh Raithatha
Tribunal Clerk:	Ms Laura Piercy

**Attendance and Representation:**

Medical Practitioner:	Present and not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Mr Paul Williams, 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.

## **Record of Determinations – Medical Practitioners Tribunal**

### **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 restoration application - 19/07/2018**

1. Dr Aulakh has applied to the General Medical Council (GMC) for the restoration of his name to the Medical Register (the Register). The Tribunal has considered Dr Aulakh's application in accordance with the provisions set out in Section 41 of the Medical Act 1983 (as amended) and Rule 24 of the GMC (Fitness to Practise) Rules 2004 (as amended).

### **Background**

2. This Tribunal has been informed of the background to Dr Aulakh's case which led to a Fitness to Practise (FTP) Panel in July 2010 (the 2010 Panel) determining that his name should be erased from the Medical Register. It noted that Dr Aulakh did not attend this hearing and was not legally represented.

3. The 2010 Panel found that in 2008, Dr Aulakh was working as an Honorary Research Fellow at the Robert Jones and Agnes Hunt Orthopaedic and District Hospital NHS Trust (the Trust).

### Hip operation

4. The 2010 Panel found that on 7 May 2008 he assisted Professor A in carrying out a hip operation. It found that, towards the end of this procedure, Dr Aulakh leaned over the instrument trolley, grabbed instruments for himself, pushed the trolley into Ms B, the Operating Department Practitioner, and refused her assistance. It found that, near the end of the procedure, Professor A indicated that he wanted to put the patient's leg on a mayo table and that Dr Aulakh refused to wait for Ms B to remove the instruments from the mayo table. Further, that he grabbed the mayo table, pushed it towards the patient, attempted to pull the table towards himself once Ms B retrieved it and would not allow her to raise the mayo table above the patient's foot.

5. The 2010 Panel found that, at the end of the procedure, Ms B offered Dr Aulakh scissors to suture the patient's wound, and that he snatched the scissors from her, and threw the scissors onto the instrument trolley, causing other instruments to fall on the floor. It found that Dr Aulakh grabbed a blade handle with

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a blade mounted on it from the instrument trolley, slashed the sutures within the wound using the blade, and threw the blade towards Ms B, piercing two trolley covers. Following the procedure, the 2010 Panel found that Dr Aulakh stood very close to Ms B, acted in an intimidating manner towards her and ripped off his gown and threw it in the bin in an angry manner.

### Conference in Nice

6. The 2010 Panel found that Dr Aulakh sought financial assistance from the Orthopaedic Institute Limited at the Trust, to attend the annual European Federation of the National Association of Orthopaedics and Traumatology (EFORT) conference, held in Nice from 28 May to 1 June 2008. It found that on 13 June 2008 Dr Aulakh emailed Ms C, Secretary of the Orthopaedic Institute Limited, and stated that he had successfully attended the EFORT meeting in Nice, that he had presented three papers at the meeting and that two of the three papers were shortlisted for awards. The 2010 Panel found that Dr Aulakh did not attend the meeting in Nice and that in 2008 he claimed expenses in relation to his attendance at that conference. It found that his actions in relation to this conference were inappropriate, not of the standard expected of a registered medical practitioner, and were misleading.

### Interview with UCL Hospitals NHS Foundation Trust

7. The 2010 Panel found that, in February 2010, Dr Aulakh attended an interview with UCL Hospitals NHS Foundation Trust (UCL Trust) for a post as a Locum Specialist Registrar in Trauma and Orthopaedics. It also found that, on 11 March 2010, an Interim Orders Panel imposed conditions on Dr Aulakh's registration. Then, on 15 March 2010, Dr Aulakh submitted a signed Criminal Conviction and Fitness to Practise declaration to the UCL Trust, in which he did not inform his prospective employer that his registration was subject to conditions or that he was subject to fitness to practise proceedings. The 2010 Panel found that Dr Aulakh's actions in failing to declare conditions and the investigation breached the Interim Order of conditions.

### Dishonesty

8. The 2010 Panel found Dr Aulakh's actions in relation to his seeking financial assistance relating to the conference in Nice, and his failure to declare the interim order of conditions on the declaration from to UCL Trust to have been dishonest.

9. The 2010 Panel concluded that all three aspects of Dr Aulakh's conduct presented an "ongoing risk to patients and to public confidence in the profession" and concluded that his fitness to practise was impaired by reason of misconduct.

10. The 2010 Panel concluded that Dr Aulakh's conduct was fundamentally incompatible with continued registration, and that erasure was the only means of

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protecting patients, maintaining public confidence in the profession and declaring and upholding proper standards of behaviour.

### The Evidence

11. The Tribunal has been provided with evidence on behalf of the GMC as follows:

- A witness statement dated 18 June 2018 from Mr D, Investigation Officer at the GMC
- An Interim Orders Panel determination dated 14 April 2010
- The determinations of the 2010 Panel
- The transcripts of the Fitness to Practise Panel in July 2010.

12. Mr D's statement stated that on 6 July 2010 the GMC became aware of an interview Dr Aulakh had attended on 25 June 2010 at Blackpool Hospital for an ST1 post in Orthopaedics. However, Mr D also stated that Dr Aulakh was suspended by an Interim Orders Panel on 14 April 2010, so was suspended at the time this interview took place. The Tribunal noted that Dr Aulakh had attended the Interim Orders Panel hearing.

13. The Tribunal has also been provided with documentary evidence in support of Dr Aulakh's application for restoration which included, but was not limited to, the following:

- Dr Aulakh's application form, applying for restoration to the Medical Register
- A Certificate of Good Standing from the Punjab Medical Council, dated 29 November 2017
- A certificate dated 5 March 2010 for a course entitled Communication Skills for Junior and Middle Grade Doctors
- Extracts of documents presented to the 2010 Panel
- Email correspondence from Dr Aulakh in August 2017, including a copy of his CV
- A statement and oral evidence from Mr E, a former colleague of Dr Aulakh who has known him since 2006.

14. Dr Aulakh also gave oral evidence. He told the Tribunal that he had not attended the Fitness to Practise hearing in 2010, and that he wanted a chance to put forward his side of the case which led to his erasure. Dr Aulakh took the Tribunal through his account of the events in theatre in May 2008, the circumstances surrounding the conference in Nice, and the interview at the UCL Trust. He told the Tribunal that the events did not happen the way they were portrayed by the Trust, specifically referring to Ms B and Professor A's accounts.

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15. In relation to the post in Blackpool, Dr Aulakh told the Tribunal that he had applied for a clinical post so that he could get in front of the consultant there and put himself forward for a research post instead. He told the Tribunal that he attended the interview and told the interview panel about his interim order of suspension after approximately 15 minutes of the interview had passed and it was reaching its conclusion.

16. Dr Aulakh told the Tribunal that he had reflected on his actions and he agreed that there were instances where he could have done an “extra bit”. He told the Tribunal that those events are now in the past, and that all he can do now is make sure that future “I come across such a situation and I do that extra bit so it doesn’t go to this level.”

17. Dr Aulakh told the Tribunal about his medical practice in India, which included joining the Indian Air Force and working as part of the Medical Corp.

### **Submissions**

18. Dr Aulakh submitted that he would like to return to medical practice in the UK. He told the Tribunal that he joined the Indian Air Force to ensure that his medical skills and knowledge could be kept up to date within a standardised care environment, so that if he was successful in returning to medical practise in the UK he could continue to provide care to a similar quality and standard. Dr Aulakh accepted that there had been a gap in his medical knowledge due to his time away from working in the UK and the NHS, but told the Tribunal that he would seek assistance from colleagues.

19. Dr Aulakh submitted that he had undertaken a communication course in 2010, so that he could develop his communication skills, and that he was willing to undertake further courses to assist him in communicating and maintaining trust with his colleagues. Dr Aulakh submitted that he could not point the finger at others and that he should improve himself to make sure that he was open and honest with people. He told the Tribunal that he was keen to be part of any remedy which would help him improve himself.

20. On behalf of the GMC, Mr Williams submitted that, although Dr Aulakh intended to return to practise in the UK, he was yet to reach the level where the Tribunal could grant his application to be restored to the Medical Register.

21. Mr Williams reminded the Tribunal that Dr Aulakh needed to demonstrate that he had insight into the findings of the 2010 Panel, that he had remediated the concerns of the 2010 Panel, and that he was safe to return to practise without restriction.

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22. Mr Williams submitted that Dr Aulakh did not seem to appreciate that his approach to seeking a post in Blackpool was fundamentally wrong, as he did not reveal pertinent facts about his availability to work in a clinical post from the outset of the application process, and that this was highly misleading and potentially dishonest.

23. Mr Williams reminded the Tribunal that it could not revisit the findings of the 2010 Panel and submitted that, as Dr Aulakh has not engaged regarding those findings which led to his erasure, he has not been able to demonstrate insight or remediation into those findings. He submitted that this indicated that there could be a risk of repetition of his misconduct in relation to his behaviour or his probity.

24. Mr Williams accepted that Dr Aulakh may have kept up some of his skills and knowledge by practising in India since his erasure from the Medical Register in the UK, but he submitted that there was a limit to which working in those specific and unique areas would have kept up the skills he needed to work in the NHS in the UK.

### The Tribunal's approach

25. The Tribunal reminded itself that its power to restore a practitioner to the Medical Register is a discretionary one which is to be exercised in accordance with the over-arching objective as set out in the Medical Act 1983 (as amended).

26. The Tribunal also bore in mind that an applicant is not to be restored to the Register unless, in the Tribunal's judgement, the doctor is fit to return to unrestricted medical practice. It took account of the Guidance, in particular to paragraph 10(a) – (e) which sets out a number of factors which the Tribunal took into account when deliberating Dr Aulakh's application, as follows:

*The tribunal will consider a number of factors, including the following:*

*a The circumstances that led to erasure.*

*b The reasons given by the previous tribunal (or committee) for the decision to direct erasure.*

*c Whether you have any insight into the matters that led to erasure.*

*d What you have done since your name was erased from the register.*

*e The steps you have taken to keep your medical knowledge and skills up to date and the steps you have taken to rehabilitate yourself professionally and socially.*

27. The Tribunal considered Dr Aulakh's application in accordance with the provisions set out in Section 41 of the Medical Act 1983 (as amended), and Rule 24 of the General Medical Council (Fitness to Practise) Rules 2004 (as amended)(the Rules). It also recognised that it had a duty to apply the principle of proportionality, weighing the interests of the public with Aulakh's interests.

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28. In so doing, it took account of all the evidence, both oral and documentary, and the submissions made by Dr Aulakh and those of Mr Williams on behalf of the GMC.

29. The Tribunal reminded itself that it could not revisit the decisions of the 2010 Panel and that those facts had been found proved by that Panel.

### The Tribunal's Decision

30. The Tribunal took account of the circumstances surrounding Dr Aulakh's erasure from the Medical Register in 2010 and its finding of misconduct which included dishonesty.

31. The Tribunal understood that Dr Aulakh wished to present his account of the events at the Trust and of the interview at UCL Trust. However, the Tribunal was clear that it was unable to revisit those decisions or go behind them.

32. In relation to insight, the 2010 Panel stated:

*"It has grave concerns about Dr Aulakh's lack of insight into the seriousness of his actions and behaviour, or of their consequences to patients and the medical profession. The Panel is satisfied that there is a significant risk of him repeating his behaviour in the future and that there remains a continuing risk to patients."*

33. This Tribunal, having heard from Dr Aulakh, also has concerns about Dr Aulakh's insight. It was of the view that Dr Aulakh does not fully accept the findings and conclusions of the 2010 Panel, and that this has significantly hampered his ability to gain or demonstrate insight into his actions which led to a finding of misconduct. The Tribunal noted that Dr Aulakh has attended a course on communication, and it was satisfied that he has demonstrated some limited reflection on his actions. However, as Dr Aulakh has not accepted the basis of the findings of the 2010 Panel, this Tribunal is unable to conclude that he has full insight into the concerns of the 2010 Panel and the matters which ultimately led to him being erased from the Medical Register. Only then can Dr Aulakh attempt to fully remediate his misconduct.

34. The Tribunal was concerned about the incident at Blackpool Hospital, where Dr Aulakh applied for a clinical post when he was suspended from the Medical Register. Dr Aulakh's explanation of this was that he was seeking a research post and that it was difficult to get in front of the relevant consultants or decision-makers to obtain such a post, particularly in light of his fitness to practise history. The Tribunal was concerned about this approach, as Blackpool Hospital would have expected candidates applying for clinical posts to be able to work in such a post, or

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to have declared any restrictions at the time of application. Failing to make such a declaration calls Dr Aulakh's honesty and probity in to question.

35. The Tribunal noted that Dr Aulakh has continued to practise medicine in India. However, it noted Dr Aulakh's acceptance that there may be some gaps in his knowledge after being away from NHS practice for some time. Had the Tribunal otherwise been satisfied in relation to Dr Aulakh's insight and remediation, it would almost certainly have directed a performance assessment as a means of gauging any deficiencies in Dr Aulakh's skills and knowledge.

36. In all the circumstances, the Tribunal was not satisfied that Dr Aulakh had insight into the findings which led to his erasure, and as such could not rehabilitate or remediate in relation to those matters. Without this insight, the Tribunal was not satisfied that, should Dr Aulakh be presented with a clinical issue of patient safety or a probity issue, his response would be what members of the public or members of the profession would expect of him. It concluded that to restore Dr Aulakh to the Register under those circumstances would seriously undermine public confidence in the profession, and would undermine the proper professional standards and conduct for members of the medical profession.

37. Accordingly, the Tribunal has determined that Dr Aulakh's application for the restoration of his name to the Register is refused.

38. Under Section 41(2)(b) of the Medical Act 1983, as amended, Dr Aulakh has the right to re-apply for restoration after 12 months from the date of this decision.

39. That concludes this case.

**Confirmed**

**Date** 19 July 2018

Mr Geoffrey Payne, Chair