

PUBLIC RECORD

Dates: 15/01/2024 - 16/01/2024

Medical Practitioner's name: Miss Fawzia ASHKANANI

GMC reference number: 4621777

Primary medical qualification: MB BCh 1985 University of Kuwait

Type of case: **Outcome on impairment**
Review - Misconduct Not Impaired

Summary of outcome

Suspension revoked

Tribunal:

Legally Qualified Chair	Mrs Aaminah Khan
Medical Tribunal Member:	Dr Shazad Amin
Medical Tribunal Member:	Dr Richard Vautrey

Tribunal Clerk:	Miss Emma Saunders
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Attendance and Representation:

Medical Practitioner:	Present, not represented
GMC Representative:	Ms Rina Hill, 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 - 16/01/2024

1. At this review hearing the Tribunal has to decide in accordance with Rule 22(1)(f) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'), whether Miss Ashkanani's fitness to practise is impaired by reason of misconduct.

The Outcome of an Application made during the Impairment Stage

2. On 15 January 2024 the Tribunal granted the GMC's application for Ms Hill, GMC Counsel, to participate in the hearing virtually via video link. The Tribunal's full decision on the application is included at Annex A.

Background

3. Miss Ashkanani graduated from the Medical College at Kuwait University in 1985. She was awarded a Fellowship of the Royal College of Surgeons in Glasgow in 1995 and completed the Postgraduate Surgical Training Programme in Kuwait in 1996. Miss Ashkanani started working in the UK in 1997 and was employed at Aberdeen Royal Infirmary as an Honorary Registrar. She then worked as a Specialist Registrar in 1999 and was placed on the GMC Specialist Register as a General Surgeon in May 2005. Miss Ashkanani worked at Dumfries and Galloway Royal Infirmary between 2004 and 2016. Since 2016, save for a six-month locum post as a Consultant General Surgeon in Dr Gray's Hospital in Elgin between July 2018 and January 2019, Miss Ashkanani was working as a Consultant General Surgeon in Kuwait. In her documents prepared for this hearing and in oral evidence, Miss Ashkanani stated that she has continued to work as a Consultant Surgeon in Kuwait.

February 2020 Tribunal

4. A Medical Practitioners Tribunal (MPT) convened to consider Miss Ashkanani's case on 3 to 11 February 2020 ('the February 2020 Tribunal'). Miss Ashkanani admitted the majority of the Allegation. The February 2020 Tribunal found proved a number of failings in respect of

the clinical care Miss Ashkanani provided to Patient A on 12, 27 and 28 December 2013, who underwent repair of his right inguinal hernia. The failings included not reassessing whether Patient A required the surgery and inappropriately discharging Patient A. It was also found that Miss Ashkanani had inappropriately changed the record of Patient A's admission, and had failed to record her assessment and actions.

5. The February 2020 Tribunal found that Miss Ashkanani's actions amounted to serious misconduct. It found that her actions had put Patient A at unwarranted risk of harm and had brought the medical profession into disrepute. The February 2020 Tribunal noted that it appeared that Miss Ashkanani had limited acceptance of responsibility and was overly reliant upon others raising concerns. It was of the view that Miss Ashkanani's insight into her misconduct was not yet fully developed, albeit that they accepted that there was no real risk of repetition. The February 2020 Tribunal determined that Miss Ashkanani's fitness to practise was impaired and to suspend her registration for a period of four months, with a review hearing directed.

July 2020 Tribunal

6. A reviewing MPT convened on 8 July 2020 ('the July 2020 Tribunal'). Miss Ashkanani was neither present nor represented. The July 2020 Tribunal found that there had been some progress in Miss Ashkanani's insight from the documentation placed before it. However, it found that her insight was not complete. The July 2020 Tribunal found that Miss Ashkanani had not fully addressed the concerns of the February 2020 Tribunal, was still to an extent deflecting blame, and that there was no evidence of completion of relevant Continuing Professional Development (CPD) activities. The July 2020 Tribunal found that Miss Ashkanani's fitness to practise remained impaired and determined to impose a further period of suspension for three months.

September 2020 Tribunal

7. A further review hearing took place on 29 September 2020 ('the September 2020 Tribunal'), at which Miss Ashkanani was neither present nor represented. No additional written reflections were provided by Miss Ashkanani, but she did submit testimonials. The September 2020 Tribunal found that Miss Ashkanani had not appreciated the gravity of her misconduct, had not provided the information suggested by the previous Tribunal, and had not provided sufficient evidence to demonstrate her understanding of her misconduct and how she would avoid repetition. The September 2020 Tribunal found that Miss Ashkanani's fitness to practise remained impaired and imposed a further suspension of six months.

March 2021 Tribunal

8. A further review took place on 12 March 2021 ('the March 2021 Tribunal'), at which Miss Ashkanani was neither present nor represented. She did not provide evidence to this Tribunal. The March 2021 Tribunal found that in the absence of any further evidence, the concerns about Miss Ashkanani's level of insight remained. It concluded that Miss Ashkanani

was either unable or unwilling to accept that there was a persuasive burden on her to demonstrate full insight into her misconduct. In particular, the March 2021 Tribunal was concerned by Miss Ashkanani's statement that she had already submitted all necessary documents and did not wish to repeat the same submissions she had already made. The March 2021 Tribunal determined that Miss Ashkanani's fitness to practise remained impaired and imposed a further suspension of six months.

December 2021 Tribunal

9. A further review hearing initially started on 17 September 2021, but did not complete due to lack of hearing time and it was adjourned. The suspension was extended for three months, and the hearing reconvened on 8 December 2021 ('the December 2021 Tribunal'). Miss Ashkanani was present at this hearing. She gave oral evidence and the December 2021 Tribunal accepted that her insight had developed further. However, it found that Miss Ashkanani had provided little evidence of remediation to assist it. The December 2021 Tribunal found that, whilst Miss Ashkanani was willing to address her failings, the evidence she had given and the documents she had provided did not sufficiently demonstrate a meaningful level of reflection, insight or remediation. The Tribunal found that Miss Ashkanani's fitness to practise remained impaired and determined to impose conditions on her registration for a period of 12 months.

December 2022 Tribunal

10. The next review took place on 19 to 20 December 2022 ('the December 2022 Tribunal'), at which Miss Ashkanani was present and gave oral evidence. The December 2022 Tribunal found that Miss Ashkanani had made demonstrable progress in understanding her shortcomings and had explained how she had changed her practice as a result. However, the December 2022 Tribunal noted that Miss Ashkanani had not provided the information suggested by the previous Tribunal. During her evidence, Miss Ashkanani acknowledged that she had not been able to explain - clearly and fully - how she had reflected on the matters which gave rise to these proceedings. The December 2022 Tribunal concluded that it had not been provided with any meaningful written reflection and, overall, that she had not demonstrated full insight into her misconduct. The December 2022 Tribunal was mindful that Miss Ashkanani had not engaged with the conditions imposed on her registration by the previous Tribunal because she was not working in the UK. It considered that a further order of conditions would not be workable or measurable. The December 2022 Tribunal determined to suspend Miss Ashkanani's registration for six months.

July 2023 Tribunal

11. The next review took place on 12 to 13 July 2023 ('the July 2023 Tribunal'), at which Miss Ashkanani was present and gave oral evidence. The July 2023 Tribunal was satisfied that Miss Ashkanani's misconduct related to an isolated incident almost ten years ago. There was no evidence that further concerns about her practice had been raised. The July 2023 Tribunal noted Miss Ashkanani's engagement with the proceedings and determined that she had

made good progress since the previous hearing. The July 2023 Tribunal noted that her reflective statement set out, in detail, the clinical errors she had made and what she should have done differently. However, the July 2023 Tribunal remained concerned that Miss Ashkanani had not yet adequately reflected on the impact of her actions on public confidence in the profession and the wider public interest.

12. The July 2023 Tribunal acknowledged that Miss Ashkanani had attended a range of courses but was concerned that she had not completed the courses that had been previously suggested as relevant to her misconduct. Further, it was concerned that Miss Ashkanani stated that she took notes during each course but had not made these available.

13. However, the July 2023 Tribunal determined that Miss Ashkanani had made *“good progress in the development of her insight since the previous hearing. It had regard to the reflective statement in which she took responsibility for her actions and identified what she should have done differently in relation to Patient A”*. The July 2023 Tribunal considered that *“Miss Ashkanani’s reflections did demonstrate remediation and insight into the clinical treatment of Patient A and was satisfied that further attempts at remediation could be successful”*.

14. Overall, the July 2023 Tribunal was therefore not satisfied that Miss Ashkanani’s reflection or remediation was complete or sufficient for her to immediately return to unrestricted practise. It found that her fitness to practise remained impaired and imposed a further period of suspension for four months.

15. The July 2023 Tribunal stated that a reviewing Tribunal may be assisted by Miss Ashkanani providing:

- Evidence that she had attended the courses that she had referred to in her oral evidence, including evidence of her attendance on a course relating to record keeping;
- Her reflections on courses that she had attended, and was due to attend, and how she had applied the learning to her practice;
- A further reflective statement which should focus on the impact of her original misconduct on public confidence in the profession;
- Any other information she wished to provide (which may include testimonials from patients and colleagues not in the UK), that Miss Ashkanani considered would assist a future reviewing Tribunal in considering whether she was fit to return to unrestricted practise in the UK.

November 2023

16. It was intended that a review of the order imposed would take place in November 2023, however the hearing was adjourned to a new Tribunal as permission had not been sought for Miss Ashkanani to give oral evidence from Kuwait. Miss Ashkanani indicated that she would travel to the UK to attend her hearing in person.

This Hearing - January 2024

The Evidence

17. The Tribunal has taken into account all of the evidence, both oral and documentary. This is the ninth hearing listed to review the case.

Documentary Evidence

Courses and lectures attended

18. The Tribunal received documentary evidence including the determinations of all the previous Tribunals; and various CPD certificates including *“Training the Clinical Trainer”* on 14-15 November 2023 and *“Probity for doctors”* on 7 December 2023, for which Miss Ashkanani provided an overview that she had completed of the learning undertaken. Miss Ashkanani also provided a written document entitled *“Self-reflection and developing insight”*, in which she reflected on a lecture that she attended on 8 June 2023 on the subject of *“Developing Personal Insight”*.

Reflective essays/statements

19. In addition, Miss Ashkanani provided a written document entitled *“Patients' Confidence in the Health System and the Impact of Doctor Misconduct”*, and a number of reflective essays including on *“Feedback Culture - November 2023”* and the *“Avoiding risk in consent: a masterclass for doctors”* course that she attended on 7 September 2023. Miss Ashkanani also provided a number of additional written reflections, relating to her practice in Kuwait, including on a case presented on her on call and on a morbidity case.

Future courses to be attended

20. The Tribunal also received booking confirmations for the following courses: *Risk Management: Good practice in record keeping for doctors* on 30 January 2024 and *“Professionalism: fulfilling your duties as a doctor”* in March 2024.

Oral Evidence

21. Miss Ashkanani gave oral evidence at the hearing and was questioned by Ms Hill, on behalf of the GMC and the Tribunal.

22. Ms Hill stated that the previous Tribunal had suggested that it would be helpful for Miss Ashkanani to provide an oral reflective statement or reflections in writing. She referred to one of Miss Ashkanani's written documents entitled *“Patients' Confidence in the Health System and the Impact of Doctor Misconduct”* and suggested that this was written in general terms rather than specific to Miss Ashkanani's original misconduct. Miss Ashkanani agreed

this was the case but that she thought it represented everything about public confidence in relation to this hearing.

23. Miss Ashkanani told the Tribunal how she had completed this written document, including that she searched for different articles and literature on the topic of 'public confidence' and had identified the listed papers as the most relevant. She stated that, as her first language is Arabic, [Ms A] had helped her with the grammar and paragraph structure, however the content was written by her alone. Miss Ashkanani stated that she spent several weeks preparing the document, as it took her time to research the topic of public confidence including reading the literature.

24. Miss Ashkanani was asked about whether she had thought about the suggestion of the previous Tribunal in terms of producing a further reflective statement focusing on the impact of her original misconduct on public confidence in the profession, in comparison with the more general piece about the topic. Miss Ashkanani said that she felt the content would be "*more or less the same*", as the principles applied to all misconduct. She explained that there would be implications in terms of patient trust and consequences including that patients may not attend appointments when they have health issues. Upon further questions from the Tribunal, Miss Ashkanani stated that any misconduct would affect public confidence, even if it was a small mistake.

25. Miss Ashkanani explained in her evidence that she had provided earlier Tribunals with reflective statements, which were specific to reflections upon her actions in her care of Patient A. She stated that she had received feedback that in the first one she sought to place the blame upon others and so she reflected further and later produced a revised version, in which she accepted full responsibility for her mistakes.

26. Miss Ashkanani was asked how her practice had changed in comparison with the original case that led to the finding of misconduct. She stated that she should have looked at the symptoms and comorbidities and would have said that the patient did not need the procedure. Miss Ashkanani stated that she had not had the time to properly go through the matter on the day of the surgery, as the patient had been seen by a different consultant team, but that, if anything similar ever happened, she would bring the patient to outpatients and ensure she assessed the patient properly.

27. Miss Ashkanani stated that she did her best not to harm patients and that she cared about her patients and their wellbeing. She reiterated that, in the future, if a patient was admitted unnecessarily or the patient was not ready for surgery that she would not proceed.

28. Following this oral evidence on 15 January 2024, Miss Ashkanani was given the opportunity by the Tribunal, at the suggestion of Ms Hill, to compile further evidence, either in written or oral form, in terms of explaining her reflections upon the impact upon public confidence in the profession, with specific reference to her own misconduct.

29. Miss Ashkanani then provided a further written reflective document, which stated the following:

“The impact of my misconduct in the case will affect my relationship with the patient and their trust. More importantly it will lead to lack of trust and confidence in the health care system which can have severe consequences and eventually lead to problems in patients care.

Lack of trust in the health system and care provided can lead to patient skipping and not following treatment orders with potential serious consequences for the individual and the population.

Also lack of trust and confidence lead to patient dissatisfaction and patient doctors relationship would suffer and patient health will suffer. In addition it will affect the population following health police’s (sic).

To rebuild patient confidence in care I am providing I should disclose and admit to mistakes that happen and this should be done as soon as possible. In this if I was informed of the patient being re admitted I would meet the family and explain what happened and admit to my mistakes in the care of the patient explain that the patient and the family has the right to complain and take further.”

30. Miss Ashkanani was asked to clarify that by “health police’s” she meant “health policies”. She confirmed this was the case.

Submissions

Submissions on behalf of the GMC

31. Ms Hill stated that the GMC acknowledged the documentary and oral evidence that Miss Ashkanani had provided in previous review hearings and for the hearing today. She stated that Miss Ashkanani’s oral evidence at this hearing, along with her written submissions, certainly indicated that she appeared to have now developed insight into the potential impact of her misconduct on public confidence in the profession. Ms Hill submitted that, as such, the GMC was neutral as to the issue of impairment of Miss Ashkanani’s fitness to practise.

Submissions from Miss Ashkanani

32. Miss Ashkanani stated that she had been practising for 37 years, including working in the UK from 1997 to 2016, and the misconduct that was the subject of this hearing, which occurred over 10 years ago now, was the only incident that she had had. She referred to the case of Dr Bawa-Garba and the comments of Lord Hoffman, regarding doctors who had a previously unblemished career. Miss Ashkanani again referenced her otherwise unblemished career of 37 years and how she had worked hard to be approved in a new system. Miss

Ashkanani asked the Tribunal to consider these points. She stated that she believed that her fitness to practise is no longer impaired.

The Relevant Legal Principles

33. The Tribunal reminded itself that the decision of impairment is a matter for the Tribunal's judgement alone. As noted above, the previous Tribunal set out the matters that a future Tribunal may be assisted by. This Tribunal is aware that it is for the doctor to satisfy it that she would be safe to return to unrestricted practise.

34. The Tribunal must determine whether Miss Ashkanani's fitness to practise is impaired today, taking into account Miss Ashkanani'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.

35. The Legally Qualified Chair (LQC) referred to the case of *Khan v General Pharmaceutical Council* [2017] 1 WLR 169, in that the focus of a review is upon the current fitness of the registrant to resume practice, judged in the light of what they have done or not done since the substantive hearing and whether they currently remain impaired.

36. The LQC also referred to the case of *Abrahaem v GMC* [2008] EWHC 183 (Admin), where the judge stated that:

"In practical terms there is a persuasive burden on the practitioner at a review to demonstrate that he or she has fully acknowledged why past professional performance was deficient and through insight, application, education, supervision or other achievement sufficiently addressed past impairments."

The Tribunal's Determination on Impairment

37. The Tribunal considered whether Miss Ashkanani's fitness to practise is currently impaired by reason of her misconduct.

38. The Tribunal referred back to the comments and conclusions of the July 2023 Tribunal in terms of the insight that Miss Ashkanani had at that stage demonstrated:

"The Tribunal determined that Miss Ashkanani had made good progress in the development of her insight since the previous hearing. It had regard to the reflective statement in which she took responsibility for her actions and identified what she should have done differently in relation to Patient A.... The Tribunal considered that Miss Ashkanani's reflections did demonstrate remediation and insight into the clinical treatment of Patient A and was satisfied that further attempts at remediation could be successful."

39. The Tribunal referred to the various items that the 2023 Tribunal indicated that this Tribunal might be assisted by. The Tribunal considered each of the points in turn.

- *Evidence that she had attended the courses that she had referred to in her oral evidence, including evidence of her attendance on a course relating to record keeping;*
- *Her reflections on courses that she had attended, and was due to attend, and how she had applied the learning to her practice.*

40. The Tribunal had regard to the evidence of the CPD provided by Miss Ashkanani, which it noted had been completed within the last six months. The Tribunal considered that Miss Ashkanani had been diligent in addressing the development issues that had been outstanding, and that the content of the courses completed appeared to have been relevant and targeted to the original misconduct. She has now provided reflections on courses that she has attended and how she has applied the learning to her practice.

- *A further reflective statement which should focus on the impact of her original misconduct on public confidence in the profession*

41. The Tribunal noted that one of the issues of the previous hearing was whether Miss Ashkanani understood and was able to express the impact of her misconduct on public confidence in the profession. The previous comments of the 2023 Tribunal showed that they were broadly content with the level of insight demonstrated by Miss Ashkanani in other areas. The Tribunal also noted that Miss Ashkanani had provided for earlier review hearings a number of previous reflective statements, which were not before this Tribunal, and had given oral evidence on a number of occasions. This remaining, and relatively narrow, issue as to insight into the impact upon public confidence was something which this Tribunal needed to see from Miss Ashkanani.

42. The Tribunal paid particular regard to the written document entitled “*Patients’ Confidence in the Health System and the Impact of Doctor Misconduct*”, which Miss Ashkanani had produced. This was expanded upon within Miss Ashkanani’s oral evidence and also within the short additional statement provided at the hearing, both of which are referred to above.

43. In considering the various pieces of evidence before it, the Tribunal concluded that Miss Ashkanani had demonstrated sufficient insight into the impact of her misconduct on public confidence. Whilst it would have appreciated clearer links to the misconduct in Miss Ashkanani’s written essay, it concluded that she was able to express sufficient insight into the impact of her misconduct upon public confidence, when taking together her oral evidence and the short additional statement submitted during the hearing. The Tribunal also noted the position of the GMC, who had acknowledged that Miss Ashkanani had developed insight into public confidence and that it took a neutral position on the issue of current impairment.

44. The Tribunal was of the view that the wording used by Miss Ashkanani in the short additional statement, including “*I should disclose*” and “*I would meet the family and explain what happened and admit to my mistakes*”, demonstrated a clear understanding of her personal obligations and the responsibility that needs to be taken for her own actions - both in the past and in the future. The Tribunal was satisfied that Miss Ashkanani was now more diligent in seeking consent and addressing the issues raised by her original misconduct.

45. While the development of Miss Ashkanani’s insight and her reflections has been somewhat piecemeal over various hearings, the Tribunal considered that this showed that Miss Ashkanani had been on a long journey of developing her insight and completing her remediation, since the substantive hearing. It determined that she has now met the requirements of what previous Tribunals had recommended would assist Miss Ashkanani in demonstrating insight and remediation at a review hearing.

46. The Tribunal also had regard to the fact that Miss Ashkanani is an experienced surgeon of some 37 years’ experience, with almost 10 years of practice in the UK, and an otherwise unblemished career. Further, she has continued to practise as a Consultant Surgeon in Kuwait. The Tribunal was conscious that Miss Ashkanani’s misconduct related to a single, albeit serious, incident over 10 years ago where upon the original Tribunal imposed a three month suspension, as being the appropriate and proportionate sanction. Previous Tribunals had also consistently identified the risk of repetition of the misconduct as low. The Tribunal noted that Miss Ashkanani has now had a total period of suspension of approximately 34 months, and a 12 month period of conditions in 2022.

47. In all the circumstances, the Tribunal determined that Miss Ashkanani’s fitness to practise is not currently impaired by reason of misconduct and that she was safe to return to unrestricted practice. It concluded that a finding of impaired fitness to practise was not required and that, especially given the insight now shown, it would have been inappropriate to decide otherwise. The Tribunal concluded that there were no outstanding public interest concerns and that its decision satisfied the need to: protect, promote and maintain the health, safety and well-being of the public; promote and maintain public confidence in the medical profession; and promote and maintain proper professional standards and conduct for members of that profession.

48. The Tribunal noted that the suspension of Miss Ashkanani’s registration is due to expire on 23 January 2024. In the light of its findings on impairment, the Tribunal determined to revoke the order of suspension with immediate effect. It was of the view that this was both appropriate and proportionate in the circumstances of this case.

49. That concludes this case.

ANNEX A - 16/01/2024

Application to allow Ms Hill to participate remotely

50. On 15 January 2024 Ms Hill, Counsel on behalf of the GMC, made an application to allow her to participate in this hearing remotely.

Submissions

Submissions on behalf of the GMC

51. Ms Hill submitted that there would be no prejudice to either party if she were permitted to present the case on behalf of the GMC remotely.

52. Ms Hill stated that her Clerks had been informed that this hearing would take place remotely. She stated that they had been briefed in December 2023 that it would take place remotely and it was on that basis that the case was accepted. Ms Hill stated that review hearings frequently take place remotely and so no alarm bells rang when instructions were taken.

53. Ms Hill stated that she noted on Friday that she had not been sent the hearing link and so chased the GMC for this. She stated that she was informed at 16:24 on Friday that the hearing was listed to take place in person. Ms Hill stated that her Clerks had been unable to find alternative cover to attend Manchester for this hearing. She said that she ordinarily would have made arrangements to attend Manchester in person by driving but that she needed to take her car to a garage this morning. Ms Hill stated that there was a fault and that the repair had been booked in since December. She said that she had to take her car in to the garage and it would be ready to collect on Wednesday.

54. Ms Hill stated that she had been told that, in addition, it would have been extremely difficult for her to get to Manchester via public transport, and certainly not before 9.15am today. She said that she had liaised with the GMC on Friday afternoon and it was suggested that she make this application this morning.

Submissions from Miss Ashkanani

55. Miss Ashkanani did not object to the GMC's application.

Tribunal's Decision

56. The Tribunal had regard to the submissions provided. It was unclear why arrangements could not have been made over the weekend for Ms Hill to have attended this hearing in person, given that she had received notification that the hearing was in person on Friday afternoon, albeit that it would be inconvenient for Ms Hill as her car was booked into the garage.

57. The Tribunal noted that Miss Ashkanani had attended this hearing by travelling from Kuwait. It was conscious that an adjournment to allow attendance by GMC Counsel would have had significant disruption and likely meant this hearing would have had to have adjourned. The Tribunal noted the events of the November 2023 hearing, which was already part heard, and was of the view that further delay, especially in the light of Miss Ashkanani's attendance would be highly undesirable and disproportionate.

58. The Tribunal determined to grant the GMC's application for Ms Hill to participate in this hearing remotely. It concluded that this was proportionate given the specific circumstances set out and to ensure the smooth running of this hearing. The Tribunal reiterated that this was not an ideal position and the lack of attendance should not have occurred.