

PUBLIC RECORD

Date: 12/04/2024

Medical Practitioner's name: Mr Rajeev KUSHWAHA
GMC reference number: 4207337
Primary medical qualification: BChir 1995 University of Cambridge

Type of case	Outcome on impairment
Review - Misconduct	Not Impaired
Review - Caution	Not Impaired

Summary of outcome

Suspension to expire

Tribunal:

Legally Qualified Chair	Ms Joanne Shelley
Lay Tribunal Member:	Mrs Helena Suffield-Thompson
Medical Tribunal Member:	Dr Fade Ibitoye

Tribunal Clerk:	Ms Evelyn Kramer
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Attendance and Representation:

Medical Practitioner:	Present, not represented
GMC Representative:	Ms Fiona McNeill, Counsel

Attendance of Press / Public

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

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 - 12/04/2024

The Outcome of Applications Made during the Impairment Stage

1. The Tribunal agreed, in accordance with Rule 41 of the General Medical Council (GMC) (Fitness to Practise Rules) 2004 as amended ('the Rules'), that parts of this hearing should be heard in private where the matters under consideration are confidential. As such, this determination will be handed down in private. However, a redacted version will be published at the close of the hearing with confidential matters removed as this case concerns Mr Kushwaha's misconduct and caution for a criminal offence.
2. The Tribunal granted Mr Kushwaha's application to admit further evidence, namely two further testimonials, under Rule 34(1) of the Rules. The GMC did not oppose this application. The Tribunal was satisfied that the evidence was fair and relevant and should be admitted.

Background

3. Mr Kushwaha qualified in 1995 from the University of Cambridge. Since 2009 Mr Kushwaha held an NHS Consultant post as a colorectal, general, and laparoscopic surgeon at the Manchester Royal Infirmary ('MRI'). In addition to his work at the MRI, Mr Kushwaha undertook private work. In 2019, Mr Kushwaha held private clinics at the Oaklands Hospital (operated by Ramsay Health Care UK).

The 2023 Tribunal

4. A Medical Practitioners Tribunal (MPT) hearing took place in June 2023 ('the 2023 Tribunal'). Mr Kushwaha was present and not represented at the June 2023 Tribunal. He made full admissions to the Allegation. The facts admitted and found proved by the 2023 Tribunal can be summarised as, on or around 14 August 2019, Mr Kushwaha acted dishonestly in claiming payments for undertaking proctoscopies on five patients which he

knew he had not carried out and could not claim payment for. Separately, it was admitted and found proved that on 27 September 2021 at Swinton Police Station, Mr Kushwaha accepted a caution for fraud by false representation in that between January and July 2019, he dishonestly made false claims of work to the NHS, intending to make a gain, namely £180, for himself, contrary to sections 1 & 2 of the Fraud Act 2006. Mr Kushwaha gave oral evidence at the 2023 Tribunal and accepted that his misconduct was serious and that his fitness to practise was impaired.

5. The 2023 Tribunal found that Mr Kushwaha's dishonesty was not an isolated incident but was persistent and had occurred over a prolonged period of several months. The 2023 Tribunal bore in mind that Mr Kushwaha's misconduct stopped only because it was discovered by staff. The 2023 Tribunal concluded that, in dishonestly making false claims of work to the NHS, Mr Kushwaha's misconduct breached a fundamental tenet of the medical profession and brought the profession into disrepute. The 2023 Tribunal concluded that Mr Kushwaha's actions, as set out in the Allegation, amounted to serious misconduct.

6. The 2023 Tribunal found that Mr Kushwaha was genuinely ashamed of his actions and was remorseful. He demonstrated that he understood the gravity of his actions and the impact they had, or potentially may have had, on others and the public. He showed an understanding that his actions fell far below the standards required and how they impact public confidence and had accepted that his fitness to practise was impaired. However, the 2023 Tribunal concluded that Mr Kushwaha had not demonstrated that he fully understood, nor had he explained why he had behaved dishonestly. The 2023 Tribunal found that Mr Kushwaha's explanations had varied and were inconsistent. The 2023 Tribunal considered that whilst Mr Kushwaha had taken responsibility for his actions, he had consistently put them in the context of the issues in his private life. It concluded that his insight was not yet complete.

7. The 2023 Tribunal was not satisfied that Mr Kushwaha had sufficient tangible actions in place to cope with future stressors. It accepted that he is unlikely to defraud the NHS again, but that given his developing, but incomplete insight, there remained a risk that he could repeat similar conduct in the future. The 2023 Tribunal had regard to Mr Kushwaha's written evidence which set out the steps that he had taken to remediate. The 2023 Tribunal found that the three-day professional ethics course that Mr Kushwaha had completed was relatively recent and that his personal and restoration plan was even more recent and that there was a lack of evidence of progress against the plan's actions. The 2023 Tribunal concluded that Mr Kushwaha's fitness to practise was impaired and that such a finding was necessary to maintain public confidence in the medical profession and to uphold proper professional standards and conduct for members of the profession.

8. Separately, the 2023 Tribunal concluded that a finding of impairment was required in respect of Mr Kushwaha's caution for a criminal offence. The 2023 Tribunal determined that such a finding was justified on the grounds that it was necessary to reaffirm clear standards of professional conduct so as to maintain public confidence in the practitioner and in the profession.

9. At the sanction stage, the 2023 Tribunal set out its conclusions that Mr Kushwaha had taken considerable steps to gain insight and that his insight, though incomplete, was sufficiently developed to allow it to conclude that the risk of repetition was low. The 2023 Tribunal was satisfied that, in time, Mr Kushwaha could develop further insight. The 2023 Tribunal concluded Mr Kushwaha's misconduct and caution to be serious behaviour that was unacceptable and wholly unbecoming a registered doctor. However, it did not consider that such misconduct was fundamentally incompatible with continued registration. The 2023 Tribunal reminded itself that there had been no concerns about patient safety.

10. The 2023 Tribunal identified aggravating and mitigating factors. It went on to determine to suspend Mr Kushwaha's registration for a period of nine months. It was satisfied that such a sanction would send a clear message to Mr Kushwaha, the profession, and the wider public that dishonesty constitutes behaviour unbecoming a registered medical practitioner and will be taken seriously. It also considered that a nine month suspension would give Mr Kushwaha adequate time to further remediate, gain full insight and complete any professional development needed in order to ensure that his medical knowledge had been kept up to date.

11. The 2023 Tribunal directed a review and suggesting that the reviewing Tribunal would be assisted by:

- A further reflective statement to include how Mr Kushwaha's insight has developed and what he how he would respond differently in the future;
- Meaningful Continuing Professional Development to demonstrate that he has maintained his medical skills and knowledge;
- Mr Kushwaha may also provide any other information that he considers will support his case in showing that his fitness to practise is no longer impaired.

This Hearing

12. The Tribunal now 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 Mr Kushwaha's fitness to practise remains impaired by reason of misconduct and a caution for a criminal offence.

The Evidence

13. The Tribunal has taken into account all the evidence received, both oral and documentary.

14. Mr Kushwaha provided written evidence, dated 15 January 2024 setting out how the findings of the 2023 Tribunal had been considered and applied to ensure he is fit to return to unrestricted practice. Mr Kushwaha also gave oral evidence at the hearing.

15. The Tribunal received documentary evidence which included, but was not limited to:
- The 2023 Tribunal’s Record of Determinations;
 - An activity tracker of Mr Kushwaha’s completed Continuing Professional Development (CPD) activities between January 2023 and January 2024;
 - Four testimonials were provided on behalf of Mr Kushwaha, dated between May 2023 and April 2024.

Summary of Mr Kushwaha’s Evidence

16. Mr Kushwaha told the Tribunal that he relied on the contents of his further written evidence. He said that in terms of CPD, he had been reading as much as possible. Mr Kushwaha stated that he had kept his knowledge, including of relevant national guidelines up to date.

17. Mr Kushwaha acknowledged that he had understood how his fitness to practise had been impaired before, and at the time of the 2023 Tribunal. He told the Tribunal that he no longer believed that his fitness to practise is impaired. He said he has reflected further and developed more insight. Mr Kushwaha said that he had done a ‘*bad thing*’ in a time of extreme stress. He acknowledged that other doctors faced with extreme stress do not go on to commit fraud or act dishonestly.

18. Mr Kushwaha referred the Tribunal to his written evidence about what had motivated him to act dishonestly and commit fraud. He apologised for the previous inconsistencies in his account as identified by the 2023 Tribunal. Mr Kushwaha told the Tribunal that he has done a lot of work on himself XXX. He explained how he has reflected on his own character. Mr Kushwaha told the Tribunal that he was no longer under the self-imposed pressures of high achievement and perceived financial pressures together with family XXX issues that had contributed to his previous dishonest behaviour.

19. Mr Kushwaha explained how he had selected the most pertinent courses and why he completed the CPD he had. XXX. Mr Kushwaha said that he is now more open and vulnerable with his friends and wider social network. He said that he is a much calmer and happier person and has an understanding of how to maintain that. XXX.

20. Mr Kushwaha explained that following the three-day Probity and Ethics course that he completed before the 2023 Tribunal, all those in attendance had formed a support group which had provided an opportunity for ongoing reflection and sharing of experiences. He explained that he believed his dishonest behaviour had arisen from internal problems with how he previously responded to stress. Namely, to work harder rather than address the stress he perceived he was under. He now understands the importance of having a life outside work and uses exercise and support from his social network as coping mechanisms. Mr Kushwaha said that he was confident that he would never get himself into a similarly stressful situation again. He said he would now know how to recognise that his stress levels

were increasing and could employ various coping mechanisms to deal with them appropriately.

Submissions

21. On behalf of the GMC, Ms McNeill took the Tribunal through the background of the case. Ms McNeill submitted that Mr Kushwaha's fitness to practise remains impaired. She submitted that the GMC remained concerned about the CPD completed by Mr Kushwaha. She submitted that there was a question as to whether sufficient work had been done on the topic of probity and ethics to demonstrate a further and clearer acknowledgment of his misconduct and caution for a criminal offence. Further, Ms McNeill submitted that concerns remained about how Mr Kushwaha would equip himself should a similar stressful situation arise during the course of his personal life. Ms McNeill acknowledged that Mr Kushwaha had made clear progress XXX. Ms McNeill submitted that the Tribunal might still have misgivings about whether Mr Kushwaha has gained and demonstrated sufficient insight and remediation so as to prevent repetition of his previous behaviour.

22. In response to submissions made on behalf of the GMC, Mr Kushwaha repeated his reflections that he had completed a Probity and Ethics course and during the period of suspension had reflected upon what honesty means to him within his profession. He said he had taken it upon himself to change his basic personality because he was not a dishonest person at heart. He said that if the Tribunal considered that he must complete a further course, he would do so. Mr Kushwaha said that he had gone through a huge personal change and journey. He said that he had not been dishonest before or since. Mr Kushwaha was confident that he will not react in same way if faced with similar stressors again as he understands his trigger points and how to address them. Mr Kushwaha submitted that he had made incredible progress since the 2023 Tribunal in avoiding stress and learning more about himself. He said that he is comfortable seeking advice and support now, which he never was previously. Mr Kushwaha acknowledged that if he experiences any challenges if permitted to return to work, he could seek further support XXX.

The Relevant Legal Principles

23. 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 Mr Kushwaha to satisfy it that he would be safe to return to unrestricted practice.

24. This Tribunal must determine whether Mr Kushwaha's fitness to practise is impaired today, taking into account his conduct and behaviour 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.

The Tribunal's Determination on Impairment

Misconduct and Caution for a Criminal Offence

25. The Tribunal bore in mind that the onus was on Mr Kushwaha to demonstrate that he had developed further insight and remediated his dishonesty. The Tribunal acknowledged that dishonesty is difficult, but not impossible, to remediate. As Mr Kushwaha's misconduct and his caution for a criminal offence related to dishonest behaviour, the Tribunal considered both matters together in determining whether Mr Kushwaha's fitness to practise remains impaired.

26. The Tribunal had regard to all of the oral and documentary evidence before it. It bore in mind that Mr Kushwaha had provided further written evidence setting out how he had considered and applied the findings of the 2023 Tribunal. He had also provided a log of the CPD activities to demonstrate how he had sought to keep his skills and knowledge up to date. In addition, he provided four testimonials. All of whom were aware of the findings of the 2023 Tribunal.

27. The Tribunal first considered whether Mr Kushwaha's level of insight had further developed since the 2023 Tribunal. The Tribunal had regard to Mr Kushwaha's written evidence in which he set out:

1. I accept I only had partial insight at the time of my hearing last summer.

2. It is clear to me now, as it was clear to the GMC and Tribunal, that I attempted to diminish my criminal responsibility, throughout the investigation subsequent to my 2019 suspension.

3. I did so out of fear of criminal sanction, such as imprisonment. The genuine fear for myself, from a selfish point of view, but also for XXX.

4. This fear of criminal sanction stalked me on a constant basis and was a large factor XXX...

15. This the discrepancy in the stories that I told to the GMC during the investigation, and that the tribunal correctly picked up on during the hearing. This adherence to such a pathetic attempt at evading criminal responsibility, was not practically wrong, but also morally and ethically wrong.

16. I probably understood it at the time, but my fear of criminal sanction was such that I continued with this erroneous, partial defence.

17. For trying to use a partial defence to diminish criminal responsibility, I am truly sorry...

22. This financial pressure is no longer present XXX.

23. So greed, perceived (not actual) financial threat, anxiety around the loss of the family home, fear of criminal, sanction, and an ethical failure to truly admit what I have done, and how I had tried to evade the consequences of my actions, are the main points of difference from my main reflective statement from last year's hearing.'

28. The Tribunal was satisfied that, particularly in his oral evidence, Mr Kushwaha had clearly, eloquently and persuasively explained how his understanding of his own motivations for acting dishonestly had developed and that he had addressed his mind to the importance of probity and ethics. The Tribunal was satisfied that the Probity and Ethics course he had completed before the 2023 Tribunal was in-depth and that reflections on the course and its applications had continued in a peer-support group of course attendees long after. He said such communications had only ended in the last three months.

29. In addition, Mr Kushwaha had explained what support he had accessed XXX and building other coping strategies, including a social network with whom he could be open with had helped him recognise his previous failings and how to better handle stress in the future, including the need to take time off from work. The Tribunal accepted Mr Kushwaha's evidence that he has addressed personality issues that contributed to him acting as he did. Further, he explained that were his stress levels to rise to a concerning level again, he knew where he could seek support and that he would feel comfortable to do so XXX.

30. The Tribunal also bore in mind Mr Kushwaha's consistent evidence that he was no longer experiencing the perceived financial threat together with the other stressors that he believed was a driving factor in his previous dishonest and fraudulent behaviour.

31. Taken together, the Tribunal was satisfied that Mr Kushwaha had made significant further progress with his level of insight. He had accepted the findings of the 2023 Tribunal, included that his insight was partial. He had apologised for and explained his previous inconsistent accounts. He had demonstrated that he had reflected, in depth, on his dishonesty, what caused it, how stressors and his personality had contributed and what steps he had and would need to continue to take to avoid any risk of repetition in the future.

32. The Tribunal considered the testimonial provided on Mr Kushwaha's behalf. The Tribunal was particularly reassured by Ms A's testimonial which demonstrated how Mr Kushwaha's work and self-reflection has developed:

'...Raj was bereft last Summer and, from my observation, XXX. He was embarrassed, guilty, ashamed and full of remorse for his actions and consequences. He initially withdrew from friends and the community and retreated into himself. This was difficult to observe as Raj was becoming increasingly solitary, XXX and disinterested in engaging with people and previous social activities such as sport. During this time, my only real concern was for Raj himself; he did not present a threat of any kind to anyone else XXX...

Although it was hard to watch Raj XXX, the suspension did lead to Raj taking stock, making a personal inventory of his personal and professional behaviours, XXX and reflecting at significant length on the cause and consequences of his actions. Raj seems to me to have, in effect, written almost an autobiography for himself of his working and professional life, analysed it, identified flawed traits and behaviours and taken positive action to remedy said traits and behaviours. He accepted and acknowledged the sanction that had been imposed upon him and has sought to learn from this on a very fundamental level. During this time, I have never had any concerns about Raj returning to medical practice; indeed, after the reflection and changed behaviours, I thought it would be mutually beneficial to everyone if that were to be the outcome.'

33. The Tribunal was satisfied that Mr Kushwaha had developed sufficient insight into what led him to act the way he did, and that he had worked hard to address XXX other stressors. This level of insight, the evidence of his behavioural change as confirmed by Ms A, and the coping mechanisms and strategies that Mr Kushwaha now has in place reassured the Tribunal that he understands the importance of acting with honesty and integrity. The Tribunal concluded that Mr Kushwaha had now sufficiently remediated his dishonest actions. The Tribunal was satisfied, bearing in mind his efforts were all self-directed, that Mr Kushwaha's efforts in seeking to develop further insight and remediate, had further reduced the risk of repetition such that any risk of repetition was now highly unlikely.

34. The Tribunal considered that all of the mitigating factors identified by the 2023 Tribunal remained relevant to its consideration of current impairment. The Tribunal was mindful that Mr Kushwaha's dishonest actions had taken place almost five years ago and that there was no evidence of any repetition. He was a man of previous good character. He had not posed a risk to patients and was an otherwise good and competent surgeon. The Tribunal was satisfied that Mr Kushwaha had taken steps to maintain his clinical knowledge and skills.

35. Having regard to all of the above, the Tribunal concluded that Mr Kushwaha had utilised the time since his registration was suspended to improve himself, understand his past actions and put in place coping mechanisms to ensure his behaviour would not be repeated. The Tribunal was satisfied that Mr Kushwaha had addressed the concerns of the 2023 Tribunal and now had sufficient insight into his dishonest behaviour and had appropriately remediated for it. Mr Kushwaha had never posed a risk to patients and the Tribunal was of the view that the further reflection and remediation he had undertaken was likely to allow him to be a better clinician.

36. The Tribunal has therefore determined that Mr Kushwaha's fitness to practise is not impaired by reason of misconduct or a conviction or caution for a criminal offence.

37. The Tribunal determined to allow Mr Kushwaha's suspension order to expire on 30 April 2024. It bore in mind that the 2023 Tribunal had imposed a nine month suspension to mark seriousness of Mr Kushwaha's dishonest conduct and send a message to Mr Kushwaha,

the profession, and the wider public that dishonesty constitutes behaviour unbecoming a registered medical practitioner and will be taken seriously.

38. That concludes this case.