

PUBLIC RECORD

Date: 04/06/2021

Medical Practitioner's name: Mr Simon BRAMHALL

GMC reference number: 3358940

Primary medical qualification: MB ChB 1988 University of Birmingham

Type of case: Review - Conviction

Outcome on impairment: Not Impaired

Summary of outcome

Suspension to expire

Tribunal:

Legally Qualified Chair	Mr David Urpeth
Lay Tribunal Member:	Mr Andrew Gell
Medical Tribunal Member:	Dr Neil Smart

Tribunal Clerk:	Mr Andrew Ormsby Mrs Anne Bhatti
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Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Jon Holl-Allen, QC, instructed by RadcliffesLeBrasseur
GMC Representative:	Ms Emma Gilsenan, 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 - 04/06/2021

1. This determination will be handed down in private XXX. A redacted version will be published at the close of the hearing.

Background

2. Mr Bramhall qualified in 1988 with a MB ChB from the University of Birmingham. Prior to the events which are the subject of the hearing Mr Bramhall had been a Consultant Hepatobiliary Surgeon and Lecturer at University Hospitals Birmingham NHS Foundation Trust ('The Trust'), Queen Elizabeth Hospital ('the Hospital') since 2002. At the time of the events Mr Bramhall had also been the Deputy Director of the Division of Medicine at the Hospital, a post he had held since 2012. Mr Bramhall has been a Fellow of the Royal College of Surgeons since 1992.

3. In December 2020 an MPT Tribunal considered the Allegation that Mr Bramhall received two convictions for common assault contrary to Section 39 Criminal Justice Act 1988, at Birmingham Crown Court on 13 December 2017. Mr Bramhall pleaded guilty to both counts which arose from incidents in February and August 2013, when he used an argon beam coagulator ('a surgical device') to place his initials on the transplanted liver of a patient at the conclusion of surgeries he had performed ('the incidents'). On 12 January 2018 Mr Bramhall was sentenced to community orders with unpaid work and a fine of £10,000. Mr Bramhall made full admissions to the Allegation.

4. The December 2020 Tribunal found that Mr Bramhall's fitness to practise was impaired by reason of his conviction.

5. The December 2020 Tribunal considered that Mr Bramhall's convictions represented a serious breach of Good Medical Practice ('GMP') and any sanction lower than suspension would be insufficient to maintain public confidence in the medical profession. The December 2020 Tribunal stated that it had focused on the need to maintain public confidence in the

profession and to uphold standards. It suspended Mr Bramhall's registration for a period of five months and directed a review.

6. The December 2020 Tribunal invited Mr Bramhall to consider providing a statement to the reviewing Tribunal to confirm that he is fit to resume unrestricted practice.

Today's Tribunal

7. This is the first review hearing of Mr Bramhall's case.

8. This Tribunal now has to decide in accordance with Rule 22(1)(f) of the Rules whether Mr Bramhall's fitness to practise remains currently impaired by reason of his conviction.

The Evidence

9. In addition to the previous determination, this Tribunal has taken account of the evidence provided:

- Medical Protection Certificated, dated 13 January 2021;
- BMJ Learning Certificate, 'Understanding Consent', dated 13 January 2021;
- Certificate of continuing professional development, 'conflict resolution – Level 1', dated 14 January 2021;
- Reflections from Mr Bramhall following MPTS hearing December 2020, undated;
- Bundle of documents including caselaw; and
- Submissions from both counsel.

Submissions

10. On behalf of the GMC, Ms Emma Gilson submitted that the GMC was neutral on impairment. She submitted that the GMC's position on Mr Bramhall's current impairment was without prejudice to GMC's appeal on the substantive decision of the Tribunal in December 2020. Ms Gilson submitted that Mr Bramhall had provided a detailed reflective statement. She referred the Tribunal to the test for review cases of *Abrahaem v GMC 2008 [EWHC 183] (admin)*. She submitted that a review had to consider whether all concerns raised had been sufficiently and significantly dealt with and that a doctor had to be safe and fit to return before he could resume practise.

11. On behalf of Mr Bramhall, Mr Jon Holl-Allen, QC submitted that Mr Bramhall's fitness to practise was no longer impaired. He referred the Tribunal to the findings of the previous

Tribunal on impairment, that they had not found impairment on the basis of public protection in terms of patient safety and therefore that limb of the tripartite basis was not considered to be relevant in this case. In addition, the previous Tribunal had found that the physical injury was ‘transient’ and it was unlikely that Mr Bramhall would place patients in unwarranted harm. He submitted that Mr Bramhall had a significant amount of insight.

12. Mr Holl-Allen referred the Tribunal to Mr Bramhall’s reflective statement following MPTS Hearing December 2020, undated:

‘...foolishly made a mark on the adjacent liver

...

My actions have undoubtedly caused the patient significant harm to her mental health which could so easily have been avoided had I not been so foolhardy and arrogant.

...

My actions were a serious departure from Good Medical Practice at a number of levels including carrying out the marking of the liver without the patients’ consent, not treating my patients with the dignity that they deserve and harming the public and patients trust in the medical profession. My actions demonstrated ‘professional arrogance of such magnitude that it strayed into criminal behaviour’.

....

my actions in 2013 were stupid and entirely wrong

....

There is, however, a fine line between self-belief and confidence in one’s abilities, and arrogance. On reflection, I undoubtedly stepped over this line.

....

but the event undoubtedly demonstrated that I was capable of an extreme lapse of judgement. In this respect, I am a fallible ordinary human who needs to try harder to meet the high standards expected of healthcare practitioners in the workplace.

...

The reflection that I have carried out within myself has helped me realize that as a doctor one has to be on guard at all times and one’s behaviour needs to be exemplary without exception.

...

Such a fall from grace has undoubtedly changed my behaviour and views, and I believe that I am no longer the arrogant surgeon that I was in 2013.

...

I believe that my reflection has made me more attuned to the need to protect the dignity of patients in all aspects of the care that I offer.

....

I recognize that I have often done things out of a sense of prudence, but these events have made me stop and realise that my actions also need to be carried out for the right reasons and with the appropriate attitude informed by appropriate values.'

13. He submitted that Mr Bramhall had reflected on his own personality, consent and the vulnerabilities of the patients at the time and he had engaged in online courses on consent.

14. Mr Holl-Allen submitted that it had been an extremely long road for Mr Bramhall, who continued to believe that despite everything he had gone through, he had no one to blame but himself, it was his behaviour that set-in train the sequence of events. He submitted that Mr Bramhall's fitness to practise was no longer impaired by reason of his conviction.

15. Mr Holl-Allen referred the Tribunal to caselaw in relation to allowing a practitioner back in practice without ensuring that he was safe to do so. He submitted that this case had never been about his surgical skills; rather it was about Mr Bramhall's lack of respect for the dignity of the patients. He submitted that was a key factor to determine whether he was safe to practise. Mr Bramhall wanted to return to medical practice at the end of the GMC process. XXX

The Relevant Legal Principles

16. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision of impairment is a matter for the Tribunal's judgement alone. The onus is on Mr Bramhall to satisfy the Tribunal that his fitness to practise is no longer impaired.

17. The Tribunal must determine whether Mr Bramhall's fitness to practise is impaired today, taking into account all relevant factors.

18. The Tribunal also had regard to *Obukofe v General Medical Council [2014] EWHC 408 (Admin)* that the Tribunal's review does not involve going behind or re-opening the determination which resulted in the suspension being imposed in the first place.

19. This Tribunal must determine whether Mr Bramhall's fitness to practise is impaired today, taking into account Mr Bramhall'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.

The Tribunal's Determination on Impairment

20. The Tribunal noted the current GMC appeal proceedings with regard to the December 2020 Tribunal decision. It considered that it was required to decide on the issue of impairment and confine its review to the findings of the previous Tribunal and set aside any consideration of an ongoing GMC appeal.

21. The Tribunal noted that the December 2020 Tribunal invited Mr Bramhall to consider providing a statement to the reviewing Tribunal to confirm that he is fit to resume unrestricted practice.

22. The Tribunal noted Mr Bramhall's undated reflective statement titled 'Reflections Following MPTS Hearing December 2020' which was submitted as the previous Tribunal had recommended.

23. The Tribunal considered that Mr Bramhall's reflective statement was fully accepting of the criticisms made of him at both the Crown Court and by the December 2020 Tribunal.

24. It particularly noted that Mr Bramhall was fully accepting of the accusations of arrogance of his part:

'My actions were a serious departure from Good Medical Practice at a number of levels including carrying out the marking of the liver without the patients' consent, not treating my patients with the dignity that they deserve and harming the public and patients trust in the medical profession. My actions demonstrated 'professional arrogance of such magnitude that it strayed into criminal behaviour'. On reflection these facts are undoubtedly correct and represent behaviour that is so alien to me in my practice of medicine that it struck me to the core and made me question everything that I had ever done in my career.'

25. The Tribunal further noted that Mr Bramhall had shown significant insight into the public outrage that surrounded the media coverage of the index incident and the effect on the mental health of one of the patients involved:

'The witness statement provided by the patient talked about her belief that my actions lead to her first transplant failing (this was not supported by expert evidence but undoubtedly affected her mental health) and she continues to have flashbacks. My actions have undoubtedly caused the patient significant harm to her mental health which could so easily have been avoided had I not been so foolhardy and arrogant. The

fine was paid, and the community service carried out at the first opportunity. The community service involved volunteering in a charity shop which gave me further opportunity to reflect on my own behaviour and its effect on the trust that the medical profession is held by the general public.'

26. The Tribunal also noted the evidence provided of Mr Bramhall's continuing professional development and considered that this was further persuasive evidence of the efforts he had undertaken to provide the remediation recommended by the December 2020 Tribunal.

27. The Tribunal further noted that the previous Tribunal found that Mr Bramhall's fitness to practise was impaired on the basis that it was necessary in order to maintain public confidence in the medical profession and to uphold proper professional standards and conduct for members of the profession and not for reasons of patient safety.

28. The Tribunal considered that Mr Bramhall had done what was required of him as far as remediation was concerned and had shown significant evidence of insight in his reflective statement.

29. The Tribunal concluded that, when confined to the findings of the previous December 2020 Tribunal and their recommendations, it was clear that Mr Bramhall had provided evidence of the required remediation and significant evidence of insight.

30. XXX

31. Having given this case careful consideration, the Tribunal was satisfied that Mr Bramhall has taken sufficient steps to address the concerns raised by the December 2020 Tribunal. Accordingly, in the Tribunal's judgment, Mr Bramhall has discharged the persuasive burden on him by providing sufficient evidence and assurance to satisfy the Tribunal that his insight and remediation have developed sufficiently. The Tribunal was satisfied that there is no discernible risk of repetition. In the circumstances Mr Bramhall's fitness to practise is now no longer impaired by reason of conviction.

Confirmed

Date 04 June 2021

Mr David Urpeth, Chair