Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 01/08/2016 to 02/08/2016, 17/01/2017, 24/07/2017 to 27/07/2017

Medical Practitioner’s name: Dr Mohammed SHALI

GMC reference number: 6142895

Primary medical qualification: MB BS 1998 University of Mysore

Type of case
New - Misconduct

Outcome on impairment
Impaired

Summary of outcome
Suspension, 12 months.
Review hearing directed

Immediate order imposed

Tribunal:

<table>
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<tr>
<th>Role</th>
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<tbody>
<tr>
<td>Lay Tribunal Member (Chair)</td>
<td>Mr Andrew Gell</td>
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<tr>
<td>Medical Tribunal Member:</td>
<td>Dr Leigh-Anne Hill</td>
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<td></td>
<td>Dr Maureen Swanson</td>
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<tr>
<td>Legal Assessor:</td>
<td>Mr Michael Simon: 01/08/2016 to 02/08/2016</td>
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<tr>
<td></td>
<td>Ms Melissa Coutino 17/01/2017; 24/07/2017</td>
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<tr>
<td>Tribunal Clerk:</td>
<td>Ms Florence Ravelle</td>
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<td></td>
<td>Mrs Sam Montgomery (27/07/2017)</td>
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Attendance and Representation:

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<tr>
<th>Role</th>
<th>Description</th>
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<tr>
<td>Medical Practitioner:</td>
<td>Not present and not represented</td>
</tr>
<tr>
<td>Medical Practitioner’s Representative:</td>
<td>N/A</td>
</tr>
<tr>
<td>GMC Representative:</td>
<td>Mr Fraser Coxhill, Counsel</td>
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Allegation and Findings of Fact

That being registered under the Medical Act 1983 (as amended):

1. On 4 February 2013 you submitted a document entitled “An Unusual Cause of Dyspnoea – Mural Thrombus” (filename Mural Thrombus-case manuscript.docx) (Document 1) to Dr H, the Editor in Chief of the International Journal of Clinical Skills, for publication. **Found proved**

2. In Document 1 you:
   a. named yourself as lead author; **Found proved**
   b. gave a name similar to that of Dr A as co-author; **Found proved**
   c. used the text from a published article entitled “Symptomatic Thoracic Aorta Mural Thrombus” authored by Dr B, Dr C and Dr D (Article 1). **Found proved**
   d. failed to reference or acknowledge Article 1. **Found proved**

3. You submitted Document 1 for publication:
   a. knowing that you had not authored the content of Document 1; **Found proved**
   b. knowing that you were not entitled to name yourself as first author; **Found proved**
   c. without Dr A’s permission to submit a document bearing his name (or a version of his name) as co-author; **Found proved**
   d. without permission of the authors of Article 1 to reproduce the content of Article 1; **Found proved**
   e. with the intention of passing off Document 1 as your own original work. **Found proved**

4. On 4 February 2013 you submitted a document entitled “An Unusual Cause of Dyspnoea – Atrial Myxoma” (filename Atrial Myxoma-case manuscript.docx) (Document 2) to Dr H, the Editor in Chief of the International Journal of Clinical Skills, for publication. **Found proved**
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5. In Document 2 you:
   a. named Dr F as lead author; **Found proved**
   b. named Dr G as co-author; **Found proved**
   c. named yourself as co-author **Found proved**

6. You supplied Document 2 for publication:
   a. without obtaining Dr F’s permission to submit Document 2 for publication; **Found proved**
   b. without ascertaining whether the content of Document 2 had already been published; **Found proved**
   c. knowing that you were not entitled to name yourself as co-author. **Found not proved**

7. On 18 March 2013 you were notified by Dr F by email that Document 2 had already been published and you acknowledged that email on 20 March 2013. **Found proved**

8. Following that notification you:
   a. did not notify the Editor in Chief of the International Journal of Clinical Skills that Document 2 had already been published; **Found proved**
   b. did not attempt to withdraw Document 2 from submission to the International Journal of Clinical Skills for publication. **Found proved**

9. On 19 October 2014 you were telephoned by Dr H and during this conversation you told Dr H that Document 1 was your own work, or words to that effect. **Found proved**

10. Your actions at paragraphs 1, 2, 3, 4, 5(c), 6, 8 and 9 were:
   a. dishonest; **Found proved in relation to paragraphs 1, 2, 3, 4, 5(c), 6a, 6b, 8, and 9**
   b. misleading. **Found proved in relation to paragraphs 1, 2, 3, 4, 5c, 6a, 6b, 8, and 9**

11. XXX
And that by reason of the matters set out above your fitness to practice is impaired because of your:

a. misconduct;

b. XXX

Attendance of Press / Public
The tribunal agreed, in accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004, that the press and public be excluded from those parts of the hearing where matters under consideration were deemed confidential.

Service, video link application, proceeding in absence and decision to adjourn the hearing
- 02/08/2016

Mr Coxhill:

Service

1. Dr Shali was neither present nor represented at these proceedings. The Tribunal noted the Notice of Hearing, dated 23 June 2016, which was sent to Dr Shali’s registered address by Special Delivery. An electronic copy was also sent to his registered email address on the same day.

2. In the circumstances, the Tribunal was satisfied that notice of this hearing has been properly served in accordance with Rule 15 of the GMC (Fitness to Practise) Rules 2004 (“the Rules”).

Dr Shali’s application to give evidence via video link or telephone link

3. The Tribunal next considered a written application by Dr Shali to give evidence as this hearing via video link or telephone link. In response to Dr Shali’s indication that this was his preferred method of attending the hearing, on 20 July 2016 a member of MPTS staff contacted Dr Shali setting out the relevant parts of the MPTS guidance document on the use of video link and telephone link for evidence at MPT hearings. Dr Shali’s attention was drawn in particular to paragraphs 17 and 18 which state:

“Doctors whose cases are the subject of the tribunal’s inquiry who wish to give evidence, are expected to attend the hearing. There may, however, be exceptional circumstances where it may be appropriate for a tribunal to hear the doctor’s evidence via a video link or a telephone link. For example, a
terminally ill doctor or one with severe mobility problems, who wishes to give evidence, may only be able to do so via a video link or a telephone link.”

“It is not intended that video links or telephone links should be used to enable a doctor to take part in a hearing as an alternative to attending a hearing other than in exceptional circumstances.”

4. Dr Shali responded the same day to enquire as to whom he should make his application, and asking whether or not there was a pro forma he could use. The MPTS responded on 25 July 2016 explaining that there was no pro forma and advising Dr Shali to put his request in writing to the GMC solicitor. On 28 July 2016 Dr Shali wrote to the GMC solicitor stating “I make my application for the permission to videolink and telephonelink for the hearing to give evidence. Kindly oblige for the same.”

5. On the first day of the hearing the Tribunal made enquiries through the GMC solicitor as to whether Dr Shali wished to state any exceptional circumstances in support of his application. He responded by stating “circumstances will allow for cross examination and my clear explanation and present the case in gist[sic]”.

6. The Tribunal determined that Dr Shali was asked repeatedly to provide further information and set out any exceptional circumstances. He did not do so, and in the absence of evidence of any exceptional circumstances, the Tribunal refused Dr Shali’s application. It indicated that should Dr Shali make a further application and provide new information, the Tribunal would consider it accordingly. This decision was communicated to Dr Shali via the GMC solicitor.

Proceeding in absence

7. You drew the Tribunal’s attention to correspondence from Dr Shali submitted prior to the hearing. On 14 July 2016 Dr Shali contacted the GMC confirming his non-attendance and non-representation at the hearing and indicating he had sent his defence bundles to be presented in his absence.

8. You submitted that Dr Shali was clearly aware of the hearing date and of the potential for the hearing to go ahead in his absence. You submitted that Dr Shali had not made an application to adjourn and had produced a defence bundle for the Tribunal to consider in his absence. You informed the Tribunal that Dr Shali’s hearing had previously been adjourned in 2015 and that it was not in the public interest to adjourn once more. You submitted that one of the GMC witnesses had indicated that they would be reluctant to attend on a future date if this hearing were to be adjourned. You submitted that the GMC should not be disadvantaged by a further adjournment and that the allegation was now of some age and needed to be considered as soon as possible. You invited the Tribunal to proceed in Dr Shali’s absence, in the public interest and in the interest of fairness.
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9. The Tribunal bore in mind that the discretion to proceed in Dr Shali’s absence
was to be exercised with the utmost care and caution. In light of correspondence
from Dr Shali, the Tribunal was satisfied that he was made aware of the hearing and
the fact that it might proceed in his absence. The Tribunal noted that he had not
sought an adjournment. In light of this, the Tribunal was of the view that an
adjournment would not be likely to secure Dr Shali’s attendance.

10. The Tribunal had specific regard to the issue of fairness to Dr Shali, as well as
fairness to the GMC and its duty to ensure the proper and expeditious discharge of
its regulatory function in the public interest. The Tribunal noted that one of the
witnesses would be reluctant to give evidence at a later hearing. It was of the view
that the expeditious disposal of this case was in the public interest, and that this
outweighed Dr Shali’s own interests. For all these reasons, the Tribunal concluded
that it was in the interests of justice to proceed in Dr Shali’s absence, under Rule 31.
The Tribunal reminded itself that it may draw no adverse inferences from Dr Shali’s
absence.

Decision to adjourn this hearing

12. XXX The Tribunal invited submissions from you on whether or not to adjourn
the hearing before closing submissions on facts XXX

14. The Tribunal determined that it should not go on to hear your concluding
submissions on facts and make its determination at the factual stage because XXX

Admission of further evidence

16. Following the oral evidence of Dr H, you made an application to adduce
further documentary evidence in the form of email correspondence with Dr Shali.
The Tribunal applied the dual test of whether the evidence was relevant and
whether it would be fair to admit it and concluded that the answer to both these
questions was yes. Although Dr Shali had not been sent these documents in advance
of the hearing, the Tribunal was content that they would be emailed to Dr Shali
during the period of the adjournment. This would afford Dr Shali the opportunity to
provide any comments on the documents that he wished to.

17. Accordingly, the hearing is now adjourned and is expected to resume for four
days on 16-19 January 2017.
Mr Coxhill:

1. This hearing adjourned part-heard in August 2016 XXX. This hearing reconvened on 17 January 2017 and Dr Shali was neither present nor represented at these proceedings.

Submissions

2. XXX Dr Shali had also been given a conditional job offer at West Suffolk NHS Trust following a Skype interview on 2 September 2016, but the offer had been withdrawn subsequently. Dr Shali made further unsuccessful attempts to obtain a visa, XXX.

3. You submitted that there had been no application from Dr Shali to adjourn this hearing and that there was no indication of when the visa issue might be resolved. You submitted that Dr Shali made an application to attend this hearing remotely, but that XXX.

6. You submitted that the GMC were neutral on the matters raised, but that if an adjournment was sought, approximately six months would be a suitable length of time.

The Tribunal’s decision

7. The Tribunal found it necessary to take a holistic approach to the issues raised – whether to allow Dr Shali’s remote attendance, whether to proceed in his absence, XXX. The Tribunal noted from correspondence that Dr Shali was well aware that the hearing was taking place today. The Tribunal noted Dr Shali’s intention to attend the hearing and his attempts to enter the country to facilitate both this and XXX, and the fact that his non-attendance was beyond his control. He made attempts to attend this hearing, and there was evidence in the form of emails and attachments concerning the difficulties that he had experienced. The Tribunal took into account the need to balance fairness to Dr Shali with the public interest in proceeding with hearings expeditiously.

9. The Tribunal did not consider it necessary to reach a decision on the application for remote attendance because of its decision to adjourn. The Tribunal
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took into account Dr Shali’s continuing engagement, his difficulty in obtaining a visa, XXX. In these circumstances, and for the reasons that the Tribunal previously adjourned the case, the Tribunal determined that it should not proceed XXX.

10. XXX The Tribunal also wished to remind Dr Shali that, whether or not he participates in this hearing, he is free to submit evidence. XXX.

11. The Tribunal, in determining to adjourn, accepted your submission that an adjournment of approximately six months would be appropriate. It identified the dates of 24-27 July 2017 (four days). The hearing will therefore reconvene on those dates.

**Determination on Facts - 26/07/2017**

Mr Coxhill:

1. The Tribunal agreed, in accordance with Rule 41 XXX of the General Medical Council (GMC) Fitness to Practise Rules 2004, as amended, ('the Rules'), that XXX parts of the hearing XXX should be held in private.

2. This determination will, therefore, be read in private, but a redacted version will be published following the conclusion of this hearing, XXX.

**Proceeding in absence**

3. This case commenced in August 2016 and reconvened in January 2017. Dr Shali was neither present nor represented. An adjournment was granted XXX. As before, Dr Shali is neither present nor represented at these proceedings which reconvened on 24 July 2017. The Tribunal has seen evidence that Dr Shali was notified in a chain of emails, which included a response from him, that the hearing was due to reconvene on 24 July 2017.

4. The Tribunal considered whether or not to continue the case in Dr Shali’s absence.

5. On behalf of the GMC, you submitted that the Tribunal should continue to proceed in Dr Shali’s absence, in the interests of justice. You submitted that Dr Shali has not requested an adjournment. Although there is reference to arrangements being made for Dr Shali to attend remotely, no application from him was made.

6. The Tribunal noted that Dr Shali is aware of this hearing, as evidenced by his email to the GMC dated 20 July 2017. He stated that he was unable to obtain a visa to attend the hearing. He was invited to provide written submissions or make an application to attend the hearing via telephone or video-link. Dr Shali did not respond to this email, nor did he make any adjournment application. In light of this,
the Tribunal concluded that it was very unlikely that an adjournment would secure Dr Shali’s attendance or encourage him to engage further.

7. The Tribunal had specific regard to the issue of fairness to Dr Shali, as well as fairness to the GMC and its duty to ensure the proper and expeditious discharge of its regulatory function in the public interest. The Tribunal took into account the fact that parts of the allegation date back a considerable period. It concluded that these serious matters should be dealt with as expeditiously as possible. Further, it noted that the objective of Tribunal’s previous adjournment XXX had been fulfilled. The Tribunal concluded that, in weighing up Dr Shali’s interests and those of the GMC, it is in the interests of justice to proceed in Dr Shali’s absence. Accordingly, it determined to proceed.

Facts

8. The Tribunal has given consideration to all the evidence adduced in this case, both oral and documentary, and the submissions you made on behalf of the General Medical Council (GMC).

9. The burden of proof rests on the GMC and the standard of proof to be applied is the civil standard, namely on the balance of probabilities.

Amendments to the allegation

10. At the outset of the hearing, you made an application to amend paragraph 1 of the allegation due to a typographical error; replacing the word “Case” with “Cause”.

11. The Tribunal had regard to Rule 17(6) of the Rules:

   “Where, at any time, it appears to the Medical Practitioners Tribunal that –

   (a) the allegation or the facts upon which is based and of which the practitioner has been noticed under rule 15, should be amended; and

   (b) the amendment can be made without injustice,

   it may, after hearing the parties, amend the allegation in appropriate terms.”

12. The Tribunal determined that the amendment, correcting a typographical error, could be made without injustice to Dr Shali. Accordingly, paragraph 1 now reads:

   “On 4 February 2013 you submitted a document entitled “An Unusual Case Cause of Dyspnoea – Mural Thrombus” (filename Mural Thrombus-case
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manuscript.docx) (Document 1) to Dr H, the Editor in Chief of the International Journal of Clinical Skills, for publication.”

XXX

Background

20. The GMC alleges that Dr Shali acted in a misleading and dishonest manner in relation to his request for two articles to be published. The GMC evidence sets out how, on 4 February 2013 Dr Shali sent an email to the Editor in Chief of the International Journal of Clinical Skills (IJOCS), Dr H. Attached to this email were two documents referred to as Document 1, in which Dr Shali named himself as lead author, and Document 2, in which Dr Shali was named as co-author. Dr H then discussed with Dr Shali his options for publication; either a paid “rapid peer review” to enable a quick publication, or a free publication service. The outcome was that the articles went into the free publication stream, as per Dr Shali’s email dated 10 February 2013. Dr H later became aware of issues with the submitted articles. Having checked the abstract for Document 1 against the PubMed database, he became aware that it had already been published in 2010 and that the authors were named differently and did not include Dr Shali. After raising his concerns with Dr Shali, Dr H asked Dr Shali if he could provide contact details for the other authors listed in Document 2. Dr Shali provided Dr H with the email address of Dr F, lead author of Document 2. In response to Dr H, Dr F stated that she recognised Document 2 but denied having submitted the article to IJOCS. She added that it had been published in another journal previously and that Dr Shali had not co-authored the article with her.

The Tribunal’s findings

21. The Tribunal considered each paragraph of the allegation separately and made the following findings:

That being registered under the Medical Act 1983 (as amended):

Paragraph 1

On 4 February 2013 you submitted a document entitled “An Unusual Case Cause of Dyspnoea – Mural Thrombus” (filename Mural Thrombus-case manuscript.docx) (Document 1) to Dr H, the Editor in Chief of the International Journal of Clinical Skills, for publication. Found proved

22. The Tribunal heard evidence from Dr XXX (Dr H in the allegation), who explained how he received Document 1 attached to an email sent by Dr Shali on 4 February 2013. Dr H produced copies of both the email and Document 1 which bears the title set out above. Accordingly, the Tribunal found paragraph 1 proved.
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Paragraph 2

In Document 1 you:

a. named yourself as lead author; **Found proved**

23. The Tribunal noted that Document 1 lists *Mohammed S Shali MBBS FAGE* as the first author. Accordingly, the Tribunal found paragraph 2a proved.

b. gave a name similar to that of Dr A as co-author; **Found proved**

24. The Tribunal noted that *XXX MBBS MRCP* (Dr A) is listed as the second and only other author of Document 1, whilst Dr A’s name is *XXX*. Accordingly, the Tribunal found paragraph 2b proved.

c. used the text from a published article entitled “Symptomatic Thoracic Aorta Mural Thrombus” authored by Dr B, Dr C and Dr D (Article 1). **Found proved**

25. The Tribunal has seen Article 1, published on Medscape.com, authored by *XXX, XXX, and XXX* (Drs B, C, and D, respectively) dated 2010. It noted that the original article appears to match, word for word, Document 1 submitted by Dr Shali. Accordingly, the Tribunal found paragraph 2c proved.

d. failed to reference or acknowledge Article 1. **Found proved**

26. The Tribunal has seen the email chain between Dr Shali and Dr H. Dr Shali makes no reference to, or acknowledgement of, the original document, Article 1. The Tribunal noted IJOCS’ publication policy for referencing which states that “the name and initials of the source of information should be given”. The Tribunal was of the view that this stipulated Dr Shali’s duty. Further, it was self-evident to the Tribunal that such a duty exists. In these circumstances, the Tribunal concluded that Dr Shali’s actions amounted to a failure to carry out that duty. Accordingly, the Tribunal found paragraph 2d proved.

Paragraph 3

You submitted Document 1 for publication:

a. knowing that you had not authored the content of Document 1; **Found proved**
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27. The Tribunal, having found at paragraph 2c and 2d that Dr Shali submitted someone else’s document but failed to reference or acknowledge it, concluded that Dr Shali must have been aware that he had not authored the content. Further the Tribunal noted that Dr Shali never challenged the assertion that he was not the original author. Accordingly, the Tribunal found paragraph 3a proved.

   b. knowing that you were not entitled to name yourself as first author; **Found proved**

28. Having made its finding at 3a that Dr Shali knew he was not the author, the Tribunal concluded that it must follow he was not entitled to name himself as the first author, and that he must have known this to be the case. Accordingly, the Tribunal found paragraph 3b proved.

   c. without Dr A’s permission to submit a document bearing his name (or a version of his name) as co-author; **Found proved**

29. The Tribunal noted Dr A’s witness statement. Dr A confirms he never gave permission for the submission. The Tribunal accepted his evidence. Accordingly, the Tribunal found paragraph 3c proved.

   d. without permission of the authors of Article 1 to reproduce the content of Article 1; **Found proved**

30. The Tribunal noted Dr B’s witness statement in which he confirms he had not given Dr Shali permission to reproduce the contents of the article. Accordingly, the Tribunal found paragraph 3d proved.

   e. with the intention of passing off Document 1 as your own original work. **Found proved**

31. Having submitted the document, showing himself to be the lead author, and without acknowledging the original authors, the Tribunal was satisfied that Dr Shali did intend to pass it off as his own original work. The Tribunal took into account Dr Shali’s letter of apology stating he felt “ashamed and guilty” for what he had done. Dr Shali did not specify what he had done wrong and offered the explanation that he had only sent the documents for “checking”, but his apology was addressed to Dr F, Dr A, Dr B, and Dr H. The Tribunal noted that no explanation was provided for his behaviour, particularly in relation XXX. Accordingly, the Tribunal found paragraph 3e proved.

**Paragraph 4**

On 4 February 2013 you submitted a document entitled “An Unusual Cause of Dyspnoea – Atrial Myxoma” (filename Atrial Myxoma-case manuscript.docx)
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(Document 2) to Dr H, the Editor in Chief of the International Journal of Clinical Skills, for publication. Found proved

32. The Tribunal noted Dr H’s evidence that the second article he received attached to the email from Dr Shali on 4 February 2013 was the document entitled *An Unusual Cause of Dyspnoea – Atrial Myxoma*. Accordingly, the Tribunal found paragraph 4 proved.

**Paragraph 5**

In Document 2 you:

a. named Dr F as lead author; Found proved

33. The Tribunal has seen Document 2 and noted that Dr XXX (Dr F) is named as the lead author. Accordingly, the Tribunal found paragraph 5a proved.

b. named Dr G as co-author; Found proved

34. The Tribunal has seen Document 2 and noted that Dr XXX (Dr G) is listed as co-author. Accordingly, the Tribunal found paragraph 5b proved.

c. named yourself as co-author Found proved

35. The Tribunal has seen Document 2 and noted that Dr Shali is named as co-author. Accordingly, the Tribunal found paragraph 5c proved.

**Paragraph 6**

You supplied Document 2 for publication:

a. without obtaining Dr F’s permission to submit Document 2 for publication; Found proved

36. The Tribunal noted and accepted Dr F’s assertion in her witness statement that “I did not give Dr Shali permission to submit my article to this journal for publication.” Accordingly, The Tribunal found paragraph 6a proved.

b. without ascertaining whether the content of Document 2 had already been published; Found proved

37. The Tribunal could find no evidence that Dr Shali did ascertain, prior to his submission of it, whether the content of Document 2 had been published previously, which it had. On the balance of probabilities, the Tribunal was satisfied he did not
ascertain whether or not it had already been published. According, the Tribunal found paragraph 6b proved.

c. knowing that you were not entitled to name yourself as co-author. **Found not proved**

38. The Tribunal noted the statement of Dr F that she had given permission to Dr Shali to take co-authorship for the submission of this article to the British Journal of Medical Practitioners (BJMP). This was because he had made some amendments to the document when she had difficulty getting it published, and had been responsible for submitting it to the BJMP. Whilst Dr F stated that she had not intended permission to apply to other submissions, she was of the view that Dr Shali might have misunderstood this fact. The Tribunal was therefore not satisfied that Dr Shali was aware that he did not have permission to claim co-authorship when submitting the article to IJOCS. The Tribunal therefore found paragraph 6c not proved.

**Paragraph 7**

On 18 March 2013 you were notified by Dr F by email that Document 2 had already been published and you acknowledged that email on 20 March 2013. **Found proved**

39. The Tribunal noted Dr F’s statement: “the version of the article submitted by Dr Shali is the early version of the article that he had contribute [sic] to. It would appear that the submission of the article to IJOCS predated my email of 18 March 2013, when I made Dr Shali aware that the article had already been published. However Dr Shali did submit the article for publication without my permission on both occasions.” The Tribunal has seen the email referred to by Dr F. Dr Shali had been notified that the article had been published, and he acknowledged this notification. Accordingly, the Tribunal found paragraph 7 proved.

**Paragraph 8**

Following that notification you:

b. did not notify the Editor in Chief of the International Journal of Clinical Skills that Document 2 had already been published; **Found proved**

40. The Tribunal noted that some 18 months after Dr F notified Dr Shali that Document 2 had already been published, Dr H, the editor, was still unaware of this and sought information from Dr Shali concerning the other authors of the article. On the balance of probabilities, the Tribunal concluded that Dr Shali had not notified Dr H that Document 2 had already been published. Accordingly, the Tribunal found paragraph 8a proved.
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b. did not attempt to withdraw Document 2 from submission to the International Journal of Clinical Skills for publication. **Found proved**

41. Given the Tribunal’s findings in relation to paragraph 8a, it was satisfied that Dr Shali made no attempt during the 18 month period to withdraw the article and, indeed, engaged in further communication with Dr H regarding this publication. There is no evidence that Dr Shali ever attempted to withdraw Document 2 from submission to IJOCS for publication. Accordingly, the Tribunal found paragraph 8b proved.

**Paragraph 9**

On 19 October 2014 you were telephoned by Dr H and during this conversation you told Dr H that Document 1 was your own work, or words to that effect. **Found proved**

42. In Dr H’s witness statement, he sets out his telephone call with Dr Shali on 19 October 2017. He states that Dr Shali said words to the effect that he had not plagiarised the article. Dr Shali, in his written submissions, denies that this conversation took place. The Tribunal preferred the evidence of Dr H who gave a consistent, detailed account in his statement and oral evidence. Dr Shali, by contrast, was unable to provide much in the way of explanation. Accordingly, the Tribunal found paragraph 9 proved.

**Paragraph 10**

Your actions at paragraphs 1, 2, 3, 4, 5(c), 6, 8 and 9 were:

a. dishonest; **Found proved in relation to paragraphs 1, 2, 3, 4, 5(c), 6a, 6b, 8, and 9**

43. In considering dishonesty, the Tribunal applied the test as set out in **R v Ghosh [1982] EWCA Crim 2**. It concluded that Dr Shali’s actions, in passing off articles as original whilst knowing they were not, and claiming to be author/co-author when he was not, would be regarded as dishonest by the ordinary standards of reasonable and honest doctors.

XXX

45. The Tribunal concluded that Dr Shali must have known what he was doing at the time and would have realised that his own actions were dishonest by the ordinary standards of reasonable and honest doctors. Accordingly, the Tribunal found paragraph 10a, dishonest, proved in relation to paragraphs 1, 2, 3, 4, 5c, 6a,
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6b, 8, and 9. Paragraph 6c was found not proved and therefore there was no consideration of that paragraph in relation to paragraph 10a.

b. misleading. **Found proved in relation to paragraphs 1, 2, 3, 4, 5c, 6a, 6b, 8, and 9**

46. The Tribunal concluded that Dr Shali's actions, would, under the common sense definition, be seen as misleading as they led others to believe something to be true when it was not. Accordingly, the Tribunal found paragraph 10b, misleading, proved in relation to paragraphs 1, 2, 3, 4, 5c, 6a, 6b, 8, and 9. Paragraph 6c was found not proved and therefore there was no consideration of that paragraph in relation to paragraph 10b.

XXX

**Determination on Impairment - 27/07/2017**

Mr Coxhill:

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 the hearing should be held in private.

2. This determination will, therefore, be read in private, but a redacted version will be published following the conclusion of this hearing, XXX.

3. The Tribunal has now considered whether, on the basis of the facts found proved, Dr Shali's fitness to practise is impaired by reason of misconduct XXX.

**Submissions**

4. You submitted that Dr Shali had departed from principles set out in Good Medical Practice (GMP) (2006) and GMP (2013).

5. You submitted that Dr Shali's conduct, as proved, particularly the dishonest conduct, breached fundamental tenets of the profession, fell far below the standards of behaviour expected of a medical practitioner and therefore amounted to misconduct.

6. You submitted that Dr Shali's fitness to practise is impaired by reason of his misconduct. You drew the Tribunal's attention to XXX

7. You submitted that although Dr Shali had apologised for his actions, he denied acting dishonestly and sought to blame his own XXX difficulties. You submitted that Dr Shali's apology appeared to suggest that his intentions in
submitting the articles were not self-motivated but were selfless and that he was not intending the articles to be published. You submitted that this did not accord with his expression of apology and regret. You submitted that limited insight increases the risk of repetition. Further, you submitted that 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 circumstances of this case.

8. For these reasons, you submitted that Dr Shali’s fitness to practise is impaired by reason of his misconduct.

XXX

The Tribunal’s approach

10. In considering the question of impairment, the Tribunal has taken account of all the evidence, both oral and documentary, and the submissions you made on behalf of the General Medical Council (GMC).

11. The issue of impairment is one for the Tribunal to determine exercising its own judgement. In reaching its decision, the Tribunal had regard to its statutory overarching objective of protecting the public, which involves the following:

- Protecting, promoting, and maintaining the health, safety and well-being of the public;
- Promoting and maintaining public confidence in the medical profession;
- Promoting and maintaining proper professional standards and conduct for members of that profession.

Misconduct

12. The Tribunal first considered whether Dr Shali’s actions amounted to misconduct.

13. The Tribunal was clear that Dr Shali’s behaviour, in holding himself out to be the lead author of one article he did not write and the co-author of another article, neither of which he had permission to submit, was serious. Dr Shali acted dishonestly in submitting the documents for publication and further compounded his dishonesty in his telephone conversation with Dr H in which he denied plagiarism.

14. The Tribunal had regard to the following paragraphs of Good Medical Practice (2006):

56 Probity means being honest and trustworthy, and acting with integrity: this is at the heart of medical professionalism.
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63 You must be honest and trustworthy when writing reports, and when completing or signing forms, reports and other documents.

65 You must do your best to make sure that any documents you write or sign are not false or misleading. This means that you must take reasonable steps to verify the information in the documents, and that you must not deliberately leave out relevant information.

15. The Tribunal also had regard to the following paragraphs of Good Medical Practice (2013) in relation to paragraph 9 of the allegation which occurred in 2014:

1 Patients need good doctors. Good doctors make the care of their patients their first concern: they 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.

68 You must be honest and trustworthy in all your communication with patients and colleagues. This means you must make clear the limits of your knowledge and make reasonable checks to make sure any information you give is accurate.

16. The Tribunal was of the view that Dr Shali departed from this guidance. It was in no doubt that his actions would be considered deplorable by fellow practitioners and amount to serious misconduct.

Impairment

17. The Tribunal next considered whether Dr Shali’s fitness to practise is currently impaired by reason of that misconduct. It was of the view that his actions indirectly risked harm to patients, because the duplication of an article would have the effect of bolstering the original and could lead to undue reliance on the original conclusion.

18. The Tribunal finds that Dr Shali’s actions had brought the profession into disrepute. He also misled Dr H with potential consequences for the reputation of the IJOCS journal. Further, his actions could have impacted the reputation of colleagues whose names he used in Document 1 and 2.

19. The Tribunal concluded that not only had Dr Shali acted dishonestly, he had breached fundamental tenets of the profession as identified in his departures from Good Medical Practice.

20. The Tribunal was of the view that dishonesty is hard to remediate. It considered steps Dr Shali has taken towards remediation. In his submission entitled
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“apology letter” the Tribunal noted some expressions of regret but was of the opinion that these fell short of the appropriate level of insight relating to the impact of his actions on colleagues and the profession. The Tribunal noted that statement included in his apology letter that ‘I have not brought any disrespect to profession in the public (sic)’. His submissions continued to offer a distorted view of his actions and he continued to pass off what he had done as irrational thinking rather than a calculated attempt to claim authorship for the works of others. He maintained that he had merely submitted the documents to Dr H to enquire as to the feasibility of publication. While that may have been his original intention as suggested in his email of 2 February 2013, his subsequent actions went much further than that.

21. Dr Shali stated that he had since taken remedial action including undertaking reflective learning on the GMC website, XXX, and written an apology letter. However, he did not provide any reflection on his learning as a result of these activities. The Tribunal placed limited value on these activities given that Dr Shali appears unable to accept the fundamental aspects of his wrongdoing.

22. In light of Dr Shali’s insufficient remediation and limited insight, the Tribunal could not be satisfied that Dr Shali would not repeat dishonest behaviour in future. It may be that he would be unlikely to repeat the exact behaviour which brought him before his regulator, but there remains a risk of him repeating similar behaviour.

23. The Tribunal concluded that a finding of impairment is required to protect patients, maintain public confidence in the medical profession, and maintain proper professional standards and conduct for members of that profession.

24. Accordingly, the Tribunal determined that Dr Shali’s fitness to practise is currently impaired by reason of his misconduct.

Determination on Sanction - 27/07/2017

Mr Coxhill:

1. The Tribunal agreed, in accordance with Rule 41XXX of the General Medical Council (GMC) Fitness to Practise Rules 2004, as amended, (‘the Rules’), that XXX parts of the hearing XXX should be held in private.

2. This determination will, therefore, be read in private, but a redacted version will be published following the conclusion of this hearing, XXX.

3. Having determined that Dr Shali’s fitness to practise is impaired by reason of his misconduct, the Tribunal has considered the submissions you have made, on
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behalf of the GMC, regarding the appropriate sanction that should be imposed on Dr Shali’s registration.

GMC Submissions

4. You referred the Tribunal to relevant paragraphs of the Sanctions Guidance, dated 29 July 2016 (the guidance), which was applicable at the outset of this hearing on 1 August 2016.

5. In summary, you submitted that the Tribunal may consider that there are some mitigating features, including some evidence of insight, previous good character, that the events occurred fairly early in Dr Shali’s career and he has provided expressions of regret.

6. You also referred to aggravating features, including that Dr Shali has failed to accept that he acted dishonestly, that he maintained that the documents were authored by him, some 18 or so months after submitting them for publishing and the potential consequences of plagiarised clinical research documents in the public domain.

7. You submitted that taking no action, imposing conditions or a period of suspension would be inappropriate given the Tribunal’s finding of misconduct; the extent of departures from Good Medical Practice and the breach of a fundamental tenet of the profession were such that these sanctions would be disproportionate. You further submitted that Dr Shali’s persistent dishonesty is incompatible with continued registration and, given the Tribunal’s finding regarding the remaining risk of repeating of such behaviour, erasure is the appropriate sanction. Furthermore, there is no cogent evidence that Dr Shali has practised since 2012 which raises concerns that he may have become deskilled.

Tribunal’s Decision

8. The Tribunal is aware that the decision as to the appropriate sanction, if any, to impose on Dr Shali’s registration is a matter for this Tribunal exercising its independent judgment. In reaching its decision, the Tribunal has taken account of the guidance.

9. Throughout its deliberations, the Tribunal considered its overarching objective which is 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 of conduct for the medical profession. The Tribunal has also borne in mind that the purpose of a sanction is not to be punitive, but to protect patients and the public interest, although it may have a punitive effect.
Aggravating and Mitigating Factors

10. The Tribunal first considered the mitigating and aggravating factors in Dr Shali’s case. In mitigation it considered:

- His limited insight and the provision of a letter of apology;
- That he has taken some steps to remediate;
- His XXX personal and work issues at the material time;
- His previous good character, which is supported by positive testimonials and his e-portfolio.

It considered the following as aggravating features:

- The seriousness and nature of the allegation found proved;
- That his dishonesty was for personal gain and sustained.

Taking no action

11. The Tribunal considered whether to conclude Dr Shali’s case and take no action. This is an exceptional outcome. It determined that taking no action on Dr Shali’s registration would be neither proportionate nor appropriate, given the seriousness of its findings in relation to his misconduct.

Conditions

12. The Tribunal next considered whether it would be appropriate to impose a period of conditions on Dr Shali’s registration. It has borne in mind that any conditions must be appropriate, proportionate, workable and measurable.

13. The Tribunal considers that it would not be possible, in the circumstances of this case, to formulate appropriate and practical conditions. Moreover, the Tribunal finds that a conditions order would not be sufficient to reflect the seriousness of the case and protect the public interest. The Tribunal has therefore determined that conditions would not be a sufficient, appropriate or a proportionate response.

Suspension

14. The Tribunal has already determined that Dr Shali’s dishonest conduct constituted a departure from Good Medical Practice, would be considered deplorable by fellow practitioners and has brought the profession into disrepute. However, it noted that Dr Shali has attempted to undertake remedial action and apologised for
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his actions. It considered that whilst the dishonesty was sustained, the initial conduct was isolated to two documents, submitted at the same time. Furthermore, the Tribunal took into account Dr Shali’s XXX personal circumstances at the material time and the nature of his dishonesty.

15. The Tribunal has borne in mind that the misconduct found concerns attempts by Dr Shali to reproduce in their entirety previously published articles falsely claiming authorship for himself. It is satisfied that these were factual publications which did not exploit patients.

16. Having considered all the evidence, the Tribunal was satisfied that suspension is the fair and proportionate sanction in the circumstances of this case. The Tribunal concluded that erasure would be disproportionate. It is satisfied that Dr Shali is of previous good character, he has emerging insight, he has offered an apology for his misconduct and has demonstrated a willingness to remediate. In the circumstances the Tribunal considered that it would be in the public interest for Dr Shali to be afforded an opportunity to demonstrate the necessary level of insight and remediation with a view to returning to practice at a future date.

17. The Tribunal has determined to suspend Dr Shali’s registration for a period of 12 months which it considered was the necessary period in order to mark the seriousness of Dr Shali’s misconduct and to allow him sufficient time for him to take the necessary action to demonstrate further insight and remediation. It would also be sufficient to declare and uphold proper standards of conduct and behaviour and to maintain confidence in the medical profession.

18. A Tribunal will review Dr Shali’s case at a hearing to be held before the end of the period of suspension. It will then consider whether it should take any further action in relation to his registration. Dr Shali will be informed of the date of that hearing, which he will be expected to attend. The Tribunal would be assisted at the review hearing by the following:

- A reflective piece demonstrating an appropriate level of insight into his misconduct and consequences of that misconduct for others;
- A diary of continuing professional development (CPD) activities undertaken by Dr Shali to maintain and develop his medical skills, with reflective notes to demonstrate learning;
- Testimonials from employers or other persons of standing attesting to his honesty and integrity;
- Any other evidence which Dr Shali considers will assist a reviewing Tribunal.
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19. The effect of this direction is that, unless Dr Shali exercises his right of appeal, this decision will take effect 28 days from when written notice of this determination is deemed to have been served upon him. A note explaining Dr Shali’s right of appeal will be provided to him.

Determination on Immediate Order - 27/07/2017

Mr Coxhill:

1. Having determined that Dr Shali’s registration be suspended the Tribunal has now considered, in accordance with Section 38 of the Medical Act 1983 as amended, whether to impose an immediate order on his registration.

2. You submitted, on behalf of the GMC, that an immediate order is necessary, in the public interest, given the multiple examples of dishonesty.

3. The Tribunal has noted that it may impose an immediate order where it is satisfied that it is necessary for the protection of members of the public, or is in the public interest or is in the best interests of the practitioner.

4. The Tribunal has determined that, given its findings on misconduct, it is necessary, in the public interest, to suspend Dr Shali’s registration forthwith.

5. The order of immediate suspension will take effect when notice is deemed to have been served upon Dr Shali. If he lodges an appeal, the immediate order for suspension will remain in force until the appeal is determined.

6. That concludes this hearing.

Confirmed
Date 27 July 2017

Mr Andrew Gell, Chair