Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 14/10/2019 - 17/10/2019
Medical Practitioner’s name: Dr Anuroop GOGI
GMC reference number: 6039413
Primary medical qualification: MB BS 2000 Bangalore
Type of case
New - Misconduct

Outcome on impairment
Not Impaired

Summary of outcome
No action (warning not considered)

Tribunal:
Legally Qualified Chair: Mr David Clark
Medical Tribunal Member: Mrs Anjali Ahluwalia
Medical Tribunal Member: Dr Paul Nolan
Tribunal Clerk: Mr David Salad

Attendance and Representation:
Medical Practitioner: Not present and not represented
Medical Practitioner’s Representative: N/A
GMC Representative: Mr Ciaran Rankin, 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 Facts - 17/10/2019**

**Background**

1. Dr Gogi qualified in Bangalore, India in 2000 and gained full registration with the GMC in January 2005. He was granted a licence to practise in November 2009, but relinquished this in November 2013 as he had taken a post in India. In July 2018, at the time of the events leading to the Allegation, Dr Gogi was working in India. He made an application to the GMC Registrations Directorate to have his licence to practise reinstated on the basis that he intended to seek locum work in the UK.

2. The Allegation which has led to Dr Gogi’s hearing is that on 24 July 2018, as part of his application to reinstate his licence to practise, he dishonestly submitted a Certificate of Good Standing (‘the Certificate’) to the GMC purporting to be from Karnataka Medical Council (‘KMC’) which he knew was falsified.

3. It is also alleged that, when the GMC contacted him with an email relating to the verification of the Certificate, Dr Gogi acted dishonestly by responding with an email which included information which he knew to be untrue.

4. It is further alleged that, in October 2018, Dr Gogi dishonestly submitted a chain of emails to the GMC purporting to be between him and Ms A, which he knew had been falsified.

**The Outcome of Applications Made During the Facts Stage**

5. The Tribunal granted the GMC’s application, made pursuant to Rules 15 and 40 of the General Medical Council (Fitness to Practise Rules) 2004 as amended (‘the Rules’) on day one of the hearing that it should determine that service of the notice of the hearing has been effected. It also granted the GMC’s application, made pursuant to Rule 31 of the Rules, to proceed with the hearing in Dr Gogi’s absence. The Tribunal’s full decision is set out at Annex A.

6. Mr Rankin, Counsel, acting on behalf of the GMC, indicated that he did not intend to call either of the GMC’s witnesses, Ms B and Ms A. This was because Dr Gogi had not said that he challenged any of their evidence. The Tribunal discussed this with Mr Rankin and it became clear that it would be beneficial to hear some oral evidence from both witnesses in order to clarify aspects of their statements and
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related documentation. The Tribunal granted the GMC’s application, made pursuant to Rule 34 (13) and (14) of the Rules, that the witnesses give evidence via video or telephone link. The Tribunal was satisfied that it was in the interests of justice, having heard submissions from Mr Rankin, to hear the evidence of both witnesses by telephone link. In making this decision it took into account the work commitments of Ms B and Ms A and the expected brevity of their evidence. It also bore in mind that they were both professional witnesses, giving evidence of their business dealing with Dr Gogi. They were not eye witnesses to a disputed factual scenario.

7. The Tribunal granted the GMC’s application, made pursuant to Rule 34 (1) of the Rules on day two of the hearing, to admit further evidence of emails between Dr Gogi and the GMC. The Tribunal’s full decision is set out at Annex B.

The Allegation and the Doctor’s Response

8. The Allegation made against Dr Gogi is as follows:

1. On 24 July 2018, as part of your application to re-instate your licence to practise, you submitted a Certificate of Good Standing (‘the Certificate’) to the GMC purporting to be from Karnataka Medical Council (‘KMC’). To be determined

2. The Certificate you submitted was a falsified document. To be determined

3. You knew the Certificate was a falsified document. To be determined

4. Your actions described at paragraphs 1 and 2 were dishonest by reason of paragraph 3. To be determined

5. On 27 July 2018 at 16:11, you emailed the GMC stating; ‘That was the only one I was given which I have posted’ (‘your Response’), when responding to an email relating to the verification of the Certificate. To be determined

6. Your Response contained information that was untrue. To be determined

7. You knew that your Response contained information that was untrue. To be determined

8. Your actions as described at paragraphs 5 and 6 were dishonest by reason of paragraph 7. To be determined
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9. On 9 October 2018, you submitted a chain of emails dated between 8 July 2017 and 4 August 2017 to the GMC, purporting to be between yourself and Ms A (‘the Emails’). **To be determined**

10. The Emails you submitted were falsified. **To be determined**

11. You knew that the Emails were falsified. **To be determined**

12. Your actions described at paragraphs 9 and 10 were dishonest by reason of paragraph 11. **To be determined**

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct. **To be determined**

**Factual Witness Evidence**

9. The Tribunal received oral evidence on behalf of the GMC from the following witnesses:

- Ms B, Revalidation Manager at the GMC, by telephone link and day one of the hearing and in person on day two; and

10. Ms B gave oral evidence to support the witness statement of Ms C, Voluntary Erasure, Restoration and Licensing (‘VERL’) Applications Manager at the GMC. Ms C provided a witness statement but was unable to appear at the hearing to give evidence. The Tribunal was satisfied that Ms B could properly give the evidence on behalf of her colleague. She was of equivalent seniority within the GMC and her evidence (as was that of Ms C) was based on the GMC’s business records.

**Documentary Evidence**

11. The Tribunal had regard to the documentary evidence provided by the GMC. This evidence included, but was not limited to:

- an email chain submitted to the GMC by Dr Gogi which he stated was correspondence between him and Ms A, JCJ Doctors recruitment agency, between 8 July 2017 and 4 August 2017;
- email correspondence, primarily in 2016, between staff at Holt Doctors recruitment agency (principally Ms A - née A) and Dr Gogi;
- Dr Gogi’s application to the GMC, dated 6 July 2018, to restore his licence to practise;
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- email correspondence, 13 July 2018 - 4 August 2018, between Dr Gogi and GMC Registrations Directorate staff including the document which Dr Gogi stated was a Karnataka Medical Council Certificate of Good Standing;
- a sample Karnataka Medical Council Certificate of Good Standing produced from a database held by the GMC;
- email correspondence, 24 September 2018 - 5 April 2019, between Dr Gogi and GMC Fitness to Practise Directorate staff; and
- a letter dated 11 March 2019 to Dr Gogi from the GMC’s Assistant Registrar (‘the Rule 7 letter’).

The Tribunal’s Approach

12. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Gogi does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e. whether it is more likely than not that the events occurred.

13. In its deliberations on paragraphs 4, 8 and 12, which allege dishonesty, the Tribunal applied the test set out by Lord Hughes in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 (‘Ivey’). It bore in mind that it should first ascertain the actual state of Dr Gogi’s knowledge or belief as to the facts and should then decide whether his conduct was honest or dishonest by applying the objective standards of ordinary decent people.

14. A significant proportion of the GMC’s case against Dr Gogi was based on hearsay evidence. This is defined in the Civil Evidence Act 1985 as “a statement made otherwise than by a person while giving oral evidence in the proceedings which is tendered as evidence of the matters stated”. The Tribunal reminded itself that hearsay evidence can be used in these proceedings provided it is fair and relevant to admit the evidence, in accordance with Rule 34(1) of the Rules.

15. Some of the significant hearsay evidence in this case included:

- the emails from KMC regarding the status of the Certificate;
- the business records of the GMC;
- the emails sent by Dr Gogi giving his account of the events, including the email dated 5 April 2019 which the GMC submitted was an admission;
- evidence from Ms A regarding her understanding of the history of JCJ Doctors, to the extent that this was not based on her own personal knowledge.

16. There were no issues about the admissibility of this evidence. However, the Tribunal was careful to assess the weight it should attach to the various pieces of hearsay evidence. In particular, the Tribunal examined whether there were any
features or characteristics of the evidence which pointed towards or away from its reliability.

17. The Tribunal was concerned that the investigation carried out by the GMC appeared to be lacking in depth in some respects. The Tribunal was fully aware that its role as a committee of inquiry can require it to act more proactively than a judge might act in civil proceedings. Therefore, the Tribunal took the opportunity to ask a number of questions of Ms B and Ms A; some of these questions may have resulted in answers which assisted the GMC, although other questions led to evidence which tended to weaken the GMC’s case.

**The Tribunal’s Analysis of the Evidence and Findings**

18. The Tribunal has considered each paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts. The Tribunal was of the view that it was useful to approach the paragraphs of the Allegation by categorising them into three groupings:

- paragraphs 1 - 4 which deal with the Certificate received by the GMC on 24 July 2018;
- paragraphs 5 - 8 which deal with Dr Gogi’s email to the GMC of 27 July 2018; and
- paragraphs 9 - 12 which deal with the chain of emails submitted by Dr Gogi to the GMC on 9 October 2018.

19. The Tribunal therefore dealt with each of these groupings in turn. However, it considered that there was one piece of evidence before it which had a potential impact on all of its decisions on facts. On 5 April 2019, Dr Gogi emailed the GMC stating the following:

> Dear [GMC Investigation Officer]

> I am deeply ashamed. And, I’ve let a lot of people down. I’ve let myself down.

> I accept whatever decision is coming my way.

> Regards,

20. At the conclusion of his submissions on facts, Mr Rankin told the Tribunal that it was the GMC’s case that this email was Dr Gogi’s response to the GMC’s ‘Rule 7’ letter, dated 11 March 2019. The GMC sent the Rule 7 letter to Dr Gogi attaching a copy of the draft Allegation and a bundle of supporting documents, and invited his comments. Mr Rankin submitted that the Tribunal was entitled to treat Dr Gogi’s email of 5 April 2019 as an admission to the Allegation.
21. The Tribunal considered that it was clear that Dr Gogi had expressed shame in his email of 5 April 2019. However, it was of the view that it was by no means clear either what this shame related to or that Dr Gogi was making an admission to the contents of the Allegation. In the email he referred neither to any specific part of the Allegation nor to the Rule 7 letter. The Tribunal was not provided with any other evidence which could have helped its understanding of the context of Dr Gogi’s email of 5 April 2019.

22. The Tribunal concluded that, given the lack of context and specificity as to why Dr Gogi expressed his shame, it could attach very limited weight to the contents of the email as part of its deliberations on each of the paragraphs of the Allegation. The Tribunal did not share Mr Rankin’s assessment that the email amounted to an admission to the Allegation.

Paragraphs 1 – 4: the Certificate

Paragraph 1

23. The Tribunal noted that paragraph 1 alleges that on 24 July 2018, as part of his application to restore his licence to practise, Dr Gogi submitted a Certificate of Good Standing (‘the Certificate’) to the GMC purporting to be from Karnataka Medical Council (‘KMC’).

24. In its consideration of this paragraph, the Tribunal used the definition of the word ‘purport’ from the Oxford Dictionary of English (Third Edition) which is as follows:

   *Appear to be or do something, especially falsely*

25. The Tribunal considered that this definition did not confer an imperative for the Certificate to *false*ly appear to be something, only for it to appear to be a Certificate of Good Standing from the KMC. The Tribunal noted that paragraph 2 alleges specifically that the Certificate was falsified. It therefore interpreted paragraph 1 as a potential fact which, if found proved, served only to establish narrative context for the Allegation.

26. The GMC provided the Tribunal with a copy of the Certificate along with the cover sheet attached to it. The cover sheet is not signed, but includes Dr Gogi’s full name and GMC registration number along with the title ‘Application to restart licence to practise’. The cover sheet has been stamped as received by the GMC with the date received, which the Tribunal heard was their usual practice when receiving documents by post. The received date in this case was 24 July 2018. The Tribunal noted that there was nothing on the document which definitively confirmed Dr Gogi had sent it. However, it took into account the context of the receipt of the
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document. Email correspondence between Dr Gogi and the GMC provided evidence that Dr Gogi stated he would post a KMC certificate to the GMC on 14 July 2018, and that the GMC responded via email on 27 July 2018 confirming that they had received a certificate which they believed to be a copy document. Further, Dr Gogi referred in a subsequent email of 27 July 2018 (which is the subject matter of paragraph 5 of the Allegation) that he had posted the certificate.

27. In these circumstances the Tribunal was satisfied that, on the balance of probabilities, Dr Gogi had submitted the Certificate to the GMC purporting to be from the KMC. It therefore found paragraph 1 proved. As set out above, the Tribunal considered this to be a contextual fact only, and in itself it implied no impropriety on Dr Gogi’s part.

Paragraph 2

28. The Tribunal noted that paragraph 2 alleges that the Certificate was a falsified document. The Tribunal was provided with a copy of the Certificate along with a sample KMC Certificate of Good Standing (‘CGS’) from the GMC’s records dated 24 November 2016.

29. In her oral evidence, Ms B stated that when the GMC receives a CGS which is not in the same format as the sample that they have on record, they seek to verify it with the issuing regulator. It is clear that the two CGS documents provided to the Tribunal have a different format, and show a different postal address for the KMC, although they both contain many of the same details such as the name and signature of the KMC Registrar, Dr D, and words to the effect that no disciplinary action has been initiated or is in progress regarding the doctor named on the certificate.

30. The GMC provided the Tribunal with evidence of attempts made by its Registrations Directorate staff to verify the Certificate with the KMC. The GMC emailed the KMC on 27 July 2018 with text as follows:

Dear Sir / Madam

Dr Anuroop Gogi (GMC: 6039413 | KMC: 61048) has applied for a licence to practise in the UK.

As part of their application we’ve received the attached certificate and I’d be grateful if you could reply to this email to confirm you issued it.

We really appreciate your help with this. If you need any more information please let us know; we’ll be happy to help.
31. The KMC responded by email on 28 July 2018 with the following text:

Sir/Madam, Date: 28th July 2018.

The Enquiry regarding issuance of Good Standing Certificate (enclosed by you) to Dr. Anuroop Gogi (KMC Reg.No.61048) was verified with our records. As per our records, the said doctor has not been issued Good Standing Certificate.

This is for your kind information.

Regards,

Sd/-
Registrar,
Karnataka Medical Council

32. Later in its investigation, the GMC emailed the KMC once more on 29 January 2019 with text as follows:

Dear Registrar

Dr Anuroop Gogi (KMC Reg No. 61048), GMC reference number 6039413 has applied for a licence to practise in the UK.

As part of their application we’ve received confirmation from you on 28 July 2018 that you had not issued a certificate of good standing (CGS) we received from the doctor (attached). As we are unable to use this invalid evidence, please can you reply to this email to confirm?

- The doctor, Anuroop Gogi (KMC Reg No. 61048) is still currently registered with you.
- Whether the doctor is currently in good standing
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- Date his registration started and if there is an end date attached to his registration.

- Whether you intend to take any action with the doctor regarding the forged document presented by to [sic] the GMC?

We really appreciate your help with this and a reply is now urgent.

If you need any more information please let us know. We’ll be happy to help.

[GMC Applications Adviser]

33. The KMC responded via email with the following text (although the date of the email is not shown on the copy provided to the Tribunal):

With reference to your above email dated 29-1-2019, Karnataka Medical Council would like to inform you that the Good Standing Certificate of Dr Anuroop Gogi (KMC Reg No. 61048), GMC reference number 6039413 submitted by you is not issued by the Karnataka Medical Council. This is a Forged document.

This is for your kind information.

Regards,

Sd/-
Registrar,
Karnataka Medical Council

34. In its consideration of these emails, the Tribunal took into account that the GMC’s emails were sent to a generic KMC email inbox rather than to a named individual such as the Registrar and the replies were received from the same inbox. It noted that Ms B confirmed in her evidence that the GMC held the name of the Registrar of the KMC, Dr D, on its database. This name did not appear on the email replies from the KMC. Rather, they were set out as shown above: ‘Sd/- Registrar, Karnataka Medical Council’ with no actual signature or name provided.

35. The Tribunal could not be satisfied that the emails from the KMC had been sent either by the Registrar or from a person in a position of authority to act on their behalf. It considered that ‘Sd/-’ could be an abbreviation of signed, an attempt to indicate that the email was signed by the Registrar. However, no electronic signature or name is present. Further, it reminded itself that the KMC emails were hearsay
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evidence – the emails have been provided with no witness statement or oral evidence from the KMC to support their content.

36. Ms B confirmed that the GMC followed up with the KMC in an attempt to have all of the questions included on its email of 29 January 2019 answered, but it received no further response. The Tribunal was of the view that this lack of a response negatively affected the weight it could attach to the KMC evidence provided. The Tribunal noted that Dr Gogi had suggested that the KMC was in a degree of turmoil at the time of the events of the Allegation and this repeated lack of response from them to the GMC could support this assertion, although Ms B was not aware of any information to confirm or refute Dr Gogi’s comments.

37. The Tribunal noted that the KMC was provided with a copy of the Certificate by the GMC attached to its first email of 27 July 2018. In its reply on 28 July 2018, the KMC did not state that the Certificate had been falsified. It was only in its subsequent response to the GMC’s email of 29 January 2019 that it stated that the Certificate was forged. The Tribunal noted that this statement appeared only after the GMC had referred to the document as forged in its questions. The KMC provided no explanation as to why it believed the document to be forged other than it had not been issued by the KMC. The Tribunal was of the view that this lack of explanation again limited the weight it could place on the KMC emails.

38. For the reasons set out above, the Tribunal concluded that it could place only limited weight on the email responses from the KMC. It reminded itself that the burden of proving the Allegation lies with the GMC. With regard to paragraph 2, the Tribunal was not satisfied that the GMC had discharged that burden. It therefore found paragraph 2 of the Allegation not proved.

Paragraphs 3 and 4

39. The Tribunal noted that paragraph 3 alleges that Dr Gogi knew that the Certificate was a falsified document. As set out above, the Tribunal found at paragraph 2 that it was not proved that the Certificate was a falsified document. It followed therefore that there was no basis to support an allegation that Dr Gogi knew the document was falsified. The Tribunal therefore found paragraph 3 not proved.

40. Paragraph 4 alleges that Dr Gogi’s actions in submitting the Certificate to the GMC were dishonest in that the Certificate was a falsified document and he knew this to be the case. As the Tribunal found not proved both that the Certificate was falsified and that Dr Gogi knew that it was falsified, it followed that his actions in submitting the Certificate to the GMC could not be dishonest when assessed against the objective standards of ordinary decent people. It therefore found paragraph 4 not proved.
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Paragraphs 5 – 8: Dr Gogi’s email to the GMC of 27 July 2018

Paragraph 5

41. The Tribunal noted that paragraph 5 alleges that when the GMC contacted Dr Gogi with an email relating to the verification of the Certificate, he responded with an email dated 27 July 2018 which stated ‘That was the only one I was given which I have posted.’

42. The Tribunal interpreted paragraph 5 as a potential fact which, if found proved, served only to establish narrative context for the Allegation. It was provided with the relevant email exchange between the GMC and Dr Gogi. In reply to an enquiry from Dr Gogi as to the status of his application, the GMC emailed Dr Gogi on 27 July 2018 as follows:

Dear Dr Gogi

Thank you for your email regarding your current application.

We asked you to post your original certificate of good standing to us. However the certificate which we received is a copy. Consequently this evidence needs to be verified, so I have sent this request via email and copied you into this correspondence for your reference. Once this has been received we will notify however it may help expedite your application if you can remind Karnataka Medical Council that this is outstanding.

Please let us know if you have any questions; we will do our best to help.

Yours sincerely,

[GMC Applications Adviser]

43. Dr Gogi responded via email later the same day with the following text:

Dear [GMC Applications Adviser],

I will head over to the KMC office on Monday and try again. That was the only one I was given which I have posted. It is quite difficult in the KMC office to get information.

If there will be a delay, I will re-apply for a certificate of good standing and send it over. Please keep my application open so that the licence can be restarted as soon as the certificate is received.

Thanks and regards,
44. Taking into account the content of these emails, the Tribunal found paragraph 5 proved on the basis that Dr Gogi was clearly responding to the GMC’s email and his reply included the text ‘That was the only one I was given which I have posted.’ The Tribunal concluded that this was a contextual fact only, and in itself implied no impropriety on Dr Gogi’s part.

Paragraph 6

45. The Tribunal noted that paragraph 6 alleged that Dr Gogi’s response to the GMC: ‘That was the only one I was given which I have posted’ was untrue. Mr Rankin submitted that Dr Gogi was never given the Certificate, that he knew ‘the game was up’ and that his email in response to the GMC was an effort to backtrack by offering to go to the KMC to source another CGS.

46. The Tribunal reminded itself that the burden of proof rests upon the GMC. The response from Dr Gogi does appear to be true to the extent that it refers to his posting the CGS.

47. The question for the Tribunal, therefore, is whether the GMC has adduced sufficient evidence to prove that Dr Gogi’s comment that this was the only certificate he had been given was in fact untrue. Given the Tribunal’s findings in relation to paragraph 2 above, and the absence of any other evidence to show that Dr Gogi had not been given the CGS which he posted, the Tribunal concluded that the GMC had not established that Dr Gogi’s statement, that the Certificate which he posted to the GMC was the only one he was given, was untrue. On the balance of probabilities it therefore found paragraph 6 not proved.

Paragraphs 7 and 8

48. The Tribunal noted that paragraph 7 alleged that Dr Gogi knew that his response to the GMC: ‘That was the only one I was given which I have posted’ was untrue. As set out above, the Tribunal found at paragraph 6 that it was not proved that Dr Gogi’s response to the GMC was untrue. It followed therefore that there was no basis to support an allegation that Dr Gogi knew that the response was untrue. The Tribunal therefore found paragraph 3 not proved.

49. Paragraph 8 alleged that Dr Gogi’s actions in submitting the Certificate to the GMC were dishonest in that his response to the GMC was untrue and he knew this was the case. As the Tribunal found not proved both that the response was untrue and that Dr Gogi knew that it was untrue, it followed that his actions in sending this response to the GMC could not be dishonest when assessed against the objective standards of ordinary decent people. It therefore found paragraph 8 not proved.

Paragraphs 9 - 12
Paragraph 9

50. The Tribunal noted that paragraph 9 alleged that, on 9 October 2018, Dr Gogi submitted a chain of emails dated between 8 July 2017 and 4 August purporting to be between he and Ms A (‘the Emails’), Ms A being Ms A (née A).

51. The Tribunal adopted the same approach to the use of the word purporting as in its deliberations on paragraph 1 above. It considered that the use of the word in paragraph 8 did not confer an imperative for the Emails to falsely appear to be between Dr Gogi and Ms A, only that they appeared to be between them.

52. Dr Gogi’s email to the GMC of 9 October 2018 was provided to the Tribunal. In the email, Dr Gogi explained to the GMC Investigation Officer as follows:

"...I have also attached the emails from JCJ Doctors. The Recruitment person who I was speaking with was Ms A..."

53. It was clear from Dr Gogi’s email that there was an attachment entitled ‘JCJemails.txt’. The Tribunal accepted that this attachment contained the Emails and the email was evidence they had been submitted to the GMC by Dr Gogi. The Tribunal therefore found paragraph 9 proved. The Tribunal was satisfied that this was a narrative contextual fact only, and in itself implied no impropriety on Dr Gogi’s part.

Paragraph 10

54. The Tribunal noted that paragraph 10 alleged that the Emails submitted by Dr Gogi were falsified. Mr Rankin submitted that Ms A’s evidence on this point supported a finding that Dr Gogi had fabricated the Emails.

55. Ms A gave evidence to the Tribunal that she did not write the Emails. Her evidence was that she had worked for JCJ Doctors locum agency from 2001-2008 and began working at her present employer, another locum agency - Holt Doctors - in 2008. She set out that she would not have had access to a JCJ email account in 2017, that she believed JCJ had changed its name to Health Care Locum in 2010/2011, and that it no longer operated under its original JCJ name. She stated that her name had changed from Ms A to Ms A after she was married in 2016, and she would have been Ms A rather than Ms A in 2017, at the time of the emails that Dr Gogi provided, which show the name as Ms A. Further, she gave evidence that it was the doctor’s responsibility to source a CGS rather than that of a locum agency, and that ‘the doctor normally has this certificate and other documents when they come to an agency’.
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56. Ms A provided email correspondence and database contact notes from her files at Holt Doctors, which set out contact between staff at Holt Doctors recruitment agency (principally Ms A) and Dr Gogi which took place in 2016, although with some further contact with another member of Holt Doctors Staff in September 2017. The Tribunal accepted that the emails provided by Ms A were very similar in content to the Emails under scrutiny. Some of the wording was identical, for example references to a member of the Medical Staffing Team at a Hospital at which Dr Gogi had previously worked who had since left to work elsewhere. The Tribunal noted that, in some of this unchallenged correspondence, Ms A gave the impression that the agency may be able to help with obtaining documentation on behalf of the doctor.

57. However, the Tribunal was concerned about some aspects of this evidence. In both the allegedly false email chain and a Recruitment and Employment Confederation (‘REC’) complaint form completed by Dr Gogi, he included a postal address for JCJ Doctors. When that address was put to Ms A during her oral evidence, she stated that this was the address of her current employers, Holt Doctors. The Tribunal considered that it was possible that Ms A had become confused at this point in her evidence; however this was her answer and it caused the Tribunal to examine with particular care the other evidence it had received from the GMC to support the assertion that JCJ Doctors no longer existed.

58. The Tribunal heard evidence from Ms B that the GMC’s database held several records for JCJ Doctors that indicated that they were still active. The Tribunal was provided with no evidence from the GMC that they had attempted to contact JCJ as part of the investigation in this case to verify the status of the emails. The Tribunal considered that this apparent discrepancy between Ms B and Ms A about the current status of JCJ significantly reduced the weight the Tribunal could place on Ms A’s evidence that JCJ was no longer in operation.

59. The Tribunal noted from the email chain between Dr Gogi and the GMC that there was likely to have been a short window of time available for him to have falsified a whole chain of emails. The GMC emailed him on 8 October 2018 at 16:54 (which could have been as late as 22:24 Indian time) asking for further information with regard to his claim that JCJ Doctors had informed him that they would complete all paperwork and documents on his behalf. Dr Gogi replied on 9 October 2018 at 05:57 attaching the ‘JCJemails.txt’ file. The Tribunal considered that this was a limited time in which to fabricate a detailed chain of emails, if this had been done overnight in response to the GMC’s request.

60. The Tribunal found it significant that the GMC provided no evidence (for example a forensic analysis or similar) from an IT expert on the technical practicalities of falsifying the emails. The email chain was provided to the GMC in a ‘.txt’ file. It was clear that this was not a ‘.doc’ file created in an application such as Microsoft Word in which it is widely understood that text could be easily edited.
However, no further information was provided about this format or the significance of its use by Dr Gogi. The Tribunal found this lack of evidence reduced the weight it could place on the documentary evidence provided by the GMC as it was provided with no evidence of any substance on the technical difficulty posed by the alleged manipulation of the emails in this format.

61. Along with the email chain, Dr Gogi provided the GMC with a complaint form, dated 11 August 2018, which he stated he had filled in and sent to the Recruitment and Employment Confederation (‘REC’), a group which he informed the GMC oversees locum agencies. The form set out a complaint regarding JCJ’s lack of contact with him regarding issues arising with documents Dr Gogi stated they had sourced. The summary of his complaint on the form was as follows:

JCJ Doctors, a temporary staffing agency has applied to the Medical council in India on my behalf. They have forwarded a certificate of good standing from medical council. However, the medical council in Karnataka India states that the certificate is not valid. JCJ Doctors is not replying to my questions of where and how the certificate was obtained.

62. The Tribunal considered it highly significant that it had been provided with no evidence from the GMC that they had attempted to contact REC in order to verify whether it had received the complaint and what action it had taken. In these circumstances, the complaint document was, taken at face value, dated (11 August 2018) significantly earlier than the email in which the GMC had requested the further information from Dr Gogi regarding his contact with JCJ (8 October 2018). The Tribunal considered that the probability of Dr Gogi providing a complaint form in this manner which could be easily verified by the GMC and, potentially, shown to be untrue, was low. Further, with regard to timescales, if he had falsified the complaint form after receiving the GMC’s email on 8 October 2018, this was another task he would have had to have completed in the short period between the GMC’s email and his reply. The Tribunal was of the view that this required it to scrutinise with particular care the evidence which pointed towards falsification. In these circumstances, the Tribunal considered that the complaint form, unchallenged in evidence by the GMC, further compromised the evidence around the non-existence of JCJ at the material time.

63. In conclusion, the Tribunal considered that an accumulation of evidence reduced the weight it could place on Ms A’s evidence about the email chain and the status of JCJ Doctors. The Tribunal reminded itself again that the burden of proof rested with the GMC. It considered that the accumulation of evidence set out above meant that the weight it could place on the evidence of falsification was reduced to the extent that the GMC had not discharged the burden of proof. In these circumstances, the Tribunal found paragraph 10 not proved.

*Paragraphs 11 and 12*
64. The Tribunal noted that paragraph 11 alleged that Dr Gogi knew that the Emails were falsified. As set out above, the Tribunal found at paragraph 10 that it was not proved that the Emails were falsified. It followed therefore that there was no basis to support an allegation that Dr Gogi knew that the Emails were falsified. The Tribunal therefore found paragraph 11 not proved.

65. Paragraph 12 alleged that Dr Gogi’s actions in submitting the Emails were dishonest in that they were falsified and he knew that to be the case. As the Tribunal found not proved both that the Emails were falsified and that Dr Gogi knew that they were falsified, it followed that his actions in submitting the Emails to the GMC could not be dishonest when assessed against the objective standard of ordinary decent people. It therefore found paragraph 12 not proved.

The Tribunal’s Overall Determination on the Facts

66. The Tribunal has determined the facts as follows:

1. On 24 July 2018, as part of your application to re-instate your licence to practise, you submitted a Certificate of Good Standing (‘the Certificate’) to the GMC purporting to be from Karnataka Medical Council (‘KMC’). **Determined and found proved**

2. The Certificate you submitted was a falsified document. **Determined and found not proved**

3. You knew the Certificate was a falsified document. **Determined and found not proved**

4. Your actions described at paragraphs 1 and 2 were dishonest by reason of paragraph 3. **Determined and found not proved**

5. On 27 July 2018 at 16:11, you emailed the GMC stating; ‘That was the only one I was given which I have posted’ (‘your Response’), when responding to an email relating to the verification of the Certificate. **Determined and found proved**

6. Your Response contained information that was untrue. **Determined and found not proved**

7. You knew that your Response contained information that was untrue. **Determined and found not proved**

8. Your actions as described at paragraphs 5 and 6 were dishonest by reason of paragraph 7. **Determined and found not proved**
On 9 October 2018, you submitted a chain of emails dated between 8 July 2017 and 4 August 2017 to the GMC, purporting to be between yourself and Ms A (‘the Emails’). **Determined and found proved**

The Emails you submitted were falsified. **Determined and found not proved**

You knew that the Emails were falsified. **Determined and found not proved**

Your actions described at paragraphs 9 and 10 were dishonest by reason of paragraph 11. **Determined and found not proved**

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct. **To be determined**

The only facts found proved were paragraphs 1, 5 and 9. These were all paragraphs which the Tribunal found proved on the basis that they set out narrative context to the Allegation. No facts were proved which established any impropriety on Dr Gogi’s part.

The Tribunal noted however that the Rules state that if facts are found proved it should progress to stage two and consider the matter of impairment. It will therefore provide the opportunity for the GMC to read this determination and consider its position on whether it wishes to make submissions on misconduct and impairment.

**Determination on Impairment - 17/10/2019**

At the facts stage, the Tribunal found proved only paragraphs 1, 5 and 9 of the Allegation. These were all paragraphs which the Tribunal found proved on the basis that they set out narrative context to the Allegation. No facts were proved which established any impropriety on Dr Gogi’s part.

Taking this context into account, the Tribunal provided the GMC with the opportunity to consider whether or not it wished to make submissions on misconduct and impairment.

Mr Rankin, Counsel, acting on behalf of the GMC, confirmed that the GMC did not assert misconduct or that Dr Gogi’s fitness to practise was currently impaired. He said that it was a matter for the Tribunal exercising its own judgment.

In the absence of a positive case made on behalf of the GMC, the Tribunal therefore determined that, given that none of the facts proved established any impropriety on Dr Gogi’s part, there was no conduct on Dr Gogi’s part that could
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amount to misconduct. It follows therefore that his fitness to practise is not impaired.

5. XXX.

6. That concludes this case.

Confirmed
Date 17 October 2019 Mr David Clark, Chair
ANNEX A – 15/10/2019

Service of Notice of the hearing and Proceeding in the doctor’s absence

Service of Notice of the Hearing

1. Dr Gogi is neither present nor represented at this hearing.

2. Mr Rankin, Counsel, acting on behalf of the GMC, provided the Tribunal with documents regarding service of Notice of the Hearing on Dr Gogi. This included a GMC hearing information letter dated 2 September 2019 which was sent to Dr Gogi’s registered postal address in India by special delivery mail along with a copy of the Allegation. The Tribunal was provided with a document from the courier company, DX, which confirmed delivery and signed receipt of these items on 5 September 2019. The GMC also emailed Dr Gogi with notice of the Allegation on 30 August 2019 using the email address which Dr Gogi had previously provided.

3. In addition the Tribunal was provided with a copy of the Medical Practitioners Tribunal Service (MPTS) Notice of Hearing letter, dated 2 September 2019, which was sent to Dr Gogi’s registered postal address in India by special delivery mail, and was also sent to him via email on 2 September 2019.

4. The Tribunal has been provided with documents from DX which confirmed delivery and signed receipt of the Notice of Hearing letter at Dr Gogi’s registered postal address on 5 September 2019.

5. Mr Rankin submitted that there was evidence of delivery of the relevant notice and of the documentation to be used in this case demonstrating that Notice of the Hearing had been effected.

6. The Tribunal noted that the DX information proved that the Notice of Hearing letter had been signed for at Dr Gogi’s registered postal address. Having considered the documentary evidence provided, the Tribunal was satisfied that notice of the hearing had been served in accordance with Rules 15 and 40 of the General Medical Council (Fitness to Practise Rules) 2004 as amended (‘the Rules’) and paragraph 8 of Schedule 4 to the Medical Act 1983, as amended.

Proceeding in Dr Gogi’s absence

7. The Tribunal went on to consider whether it would be appropriate to proceed with this hearing in Dr Gogi’s absence pursuant to Rule 31 of the Rules. The Tribunal was conscious that the discretion to proceed in the absence of a doctor should be exercised with appropriate care and caution, balancing the interests of the doctor with the wider public interest.
8. Mr Rankin submitted that, in the absence of any material to the contrary, Dr Gogi has wilfully absented himself. He stated that Dr Gogi clearly knows about the date and venue of the hearing. He submitted that an adjournment would achieve nothing in the circumstances of the case, as Dr Gogi has shown very little interest in engaging in the process. He told the Tribunal that it was in everyone’s interests to proceed in a timely fashion and that it was in the interests of justice that the case proceeds today in Dr Gogi’s absence.

9. The Tribunal considered that there is no definitive evidence before it that Dr Gogi knows about the specific date and venue of the hearing. The Notice of hearing was signed for at his registered address, but it is clear from the delivery notes that it is not Dr Gogi who signed for receipt. However, the Tribunal was satisfied that the GMC and the MPTS have taken all reasonable efforts within the legal framework in order to effect service of the hearing and inform Dr Gogi of the necessary details.

10. The Tribunal has received no application from Dr Gogi for an adjournment of the hearing, and could see no value in directing an adjournment. There is no evidence that Dr Gogi has engaged in the process since his email of 5 April 2019 and the Tribunal could not be satisfied that an adjournment would result in Dr Gogi’s attendance on a future hearing date. The Tribunal considered that there is a degree of prejudice to Dr Gogi in proceeding in his absence in that he will not be attending the hearing and cannot therefore present his case in person or cross examine witnesses. However, it balanced any prejudice with the specific circumstances of this case. Any prejudice to Dr Gogi is outweighed by the public interest in the case being heard expeditiously.

11. The Tribunal took into account the various emails between Dr Gogi and the GMC which indicated that Dr Gogi was aware that the GMC had opened an investigation into his contact with the GMC Registrations Directorate. The Tribunal considered that the GMC and MPTS provided Dr Gogi with every opportunity to engage in these proceedings if he wished to, but he has not done so. In all of the circumstances, it determined that it was both fair and in the interests of justice to proceed in Dr Gogi’s absence under Rule 31.
Application on Admission of Evidence

1. On day two of the hearing, Mr Rankin made an application pursuant to Rule 34 (1) of the GMC (Fitness to Practise) Rules 2004 ("the Rules"). He asked the Tribunal to admit an email sent by Dr Gogi to the GMC attaching the chain of emails referred to at paragraph 9 of the Allegation. Mr Rankin submitted that the document had been served on Dr Gogi as part of the bundle of documents attached to the ‘Rule 7 letter’ sent to Dr Gogi and so it was a document that he had seen before, although he accepted that it had been an oversight not to include it in the material for this hearing.

2. The Tribunal reminded itself that Rule 34 (1) of the Rules states as follows:

34.

(1) The Committee or a Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law.

3. The Tribunal was of the view that the email was relevant to the case before it as it provided evidence on the method used by Dr Gogi to provide the chain of emails to the GMC. With regard to fairness, the Tribunal was satisfied that it was fair to admit the email as, although it had not appeared in the final hearing bundle, it was sent to Dr Gogi as part of the bundle of documents provided by the GMC at the ‘Rule 7’ stage. The email originated from Dr Gogi, so he was certainly aware of it, and he was also informed that it was part of the GMC’s case at a point when he was still engaging with them.

4. Further, the GMC took steps on day two of the hearing to notify Dr Gogi that it intended to use the document at the hearing and had given him the opportunity to respond. This contact included sending him an email regarding the additional evidence, and speaking to him by telephone. During that telephone conversation, Dr Gogi said that he would respond in 30 minutes. No further contact was received from Dr Gogi, despite efforts to contact him again being made by the GMC. In addition, the GMC provided other documentary material to the Tribunal which placed the email referred to above in a context which could be said to be favourable to Dr Gogi.

5. The Tribunal determined that the matters as set out above sufficiently mitigated any unfairness to Dr Gogi in admitting the email into evidence. It therefore granted Mr Rankin’s application.