Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 29 May – 1 June 2018, 7 March 2019

Medical Practitioner’s name: Dr Bikash BHOJNAGARWALA

GMC reference number: 6058785

Primary medical qualification: MB BS 2000 Burdwan University

Type of case: New - Misconduct

Outcome on impairment: Impaired

Summary of outcome: No action

Tribunal:

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<td>Legally Qualified Chair</td>
<td>Mr Angus Macpherson</td>
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<td>Lay Tribunal Member:</td>
<td>Mr Inderjeet Gill</td>
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<td>Medical Tribunal Member:</td>
<td>Dr Vidhya Nagaratnam</td>
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<td>Tribunal Clerk:</td>
<td>Mr Michael Murphy</td>
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Attendance and Representation:

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<td>Medical Practitioner’s</td>
<td>Ms Wendy Hewitt, Counsel,</td>
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<td>Representative:</td>
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<td>GMC Representative:</td>
<td>Mr Stephen Grattage,</td>
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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.
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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 - 01/06/2018

Background

1. Dr Bhojnagarwala qualified in 2000 and, prior to the events which are the subject of the hearing, Dr Bhojnagarwala held a consultant post at University Hospitals Bristol NHS Foundation Trust. At the time of the events, Dr Bhojnagarwala was practising as a consultant in neonatal medicine at Chelsea and Westminster Hospital NHS Foundation Trust.

2. The allegation that has led to Dr Bhojnagarwala’s hearing can be summarised as submitting an essay for a postgraduate certificate which plagiarised the work of others. It is alleged that Dr Bhojnagarwala knew that this essay plagiarised the work of others and that his action in submitting this was dishonest.

3. The initial concerns were raised with the GMC on 31 July 2017 by Dr A of University College London (UCL).

The Outcome of Applications Made during the Facts Stage

4. The Tribunal granted the GMC’s application, with no objection from Ms Hewitt Dr Bhojnagarwala’s Counsel, to omit the documents provided in part one of the bundle at pages 66 to 76 as these were not relevant to the case.

5. The Tribunal agreed to hear parts of this case in private, in accordance with Rule 41XXX of the Rules, XXX.

6. Dr Bhojnagarwala, at the outset of the hearing, made an admission through his Counsel, Ms Hewitt, to paragraphs 1 to 3 of the allegation. Ms Hewitt formally applied to withdraw the admission in respect of paragraph 3, as it appeared from Dr Bhojnagarwala’s witness statement and other written material that he was saying that he did not know that he was plagiarising at the time he submitted the essay. The Tribunal permitted the change of plea.
7. The Tribunal granted Ms Hewitt’s application to provide new evidence to the Tribunal. GMC Counsel did not object to this.

The Allegation and the Doctor’s Response

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

1. On 19 June 2017, whilst registered with the Royal College of Physicians and University College London to carry out a Postgraduate Certificate in Medical Education, you submitted an essay entitled 'Critical Analysis of Case Based Discussions as an Assessment Tool for ST1-ST3 Paediatric Trainees’ (‘the Essay’).
   Admitted and found proved

2. The Essay referred to at paragraph 1 plagiarised the work of others.
   Admitted and found proved

3. You knew that the Essay referred to at paragraph 1 plagiarised the work of others.
   To be determined

4. Your actions as described at paragraphs 1 to 3 were dishonest.
   To be determined

The Admitted Facts

9. At the outset of these proceedings Dr Bhojnagarwala made admissions through his Counsel to some paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended (‘the Rules’). In accordance with Rule 17(2) (e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

The Facts to be Determined

10. In light of Dr Bhojnagarwala’s response to the Allegation made against him, the Tribunal is required to determine whether he knew that the essay referred to at paragraph 1 plagiarised the work of others and if his actions described at paragraphs 1 to 3 of the allegation were dishonest.

Factual Witness Evidence

11. The Tribunal received evidence on behalf of the GMC from the following witnesses:
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- Dr A, Deputy Director of UCL Medical School and Lead for Post Graduate programmes, in person;
- Dr B, Co Programme Director of the Royal College of Physicians (RCP) and Academic Leader for UCL Medical School year five undergraduate programmes, in person.

12. The Tribunal also received evidence on behalf of the GMC in the form of witness statements from Dr A and Dr B.

13. Dr Bhojnagarwala provided his own witness statement dated 20 April 2018 and also gave oral evidence at the hearing.

Documentary Evidence

14. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included, but was not limited to, correspondence from UCL Medical School, a full report of the Breach of Examination Regulations Panel, testimonials, an appraisal form for 1 April 2017 to 31 March 2018, and continuing professional development (CPD) certificates.

The Tribunal’s Approach

15. 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 Bhojnagarwala 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.

The Tribunal’s Analysis of the Evidence and Findings

16. The Tribunal found all the live witnesses, Dr A, Dr B and Dr Bhojnagarwala, to be credible and concerned to assist the Tribunal when giving evidence.

17. The Tribunal has considered each outstanding paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts.

Paragraph 3

You knew that the Essay referred to at paragraph 1 plagiarised the work of others.

18. In considering this paragraph of the allegation the Tribunal bore in mind that the student was expected to conduct his own critical analysis of case based discussions using the published literature available. His tutor, Mr C, had drawn his attention to the fact that there were a number of articles which had been published relating to the topic of his essay. Moreover, the published guide for the use of
examiners identifies the criteria which the examiner should consider when marking the essay. These emphasise the importance of the student’s independent analysis. It is apparent that Dr Bhojnagarwala was expected to demonstrate his own thought processes and how he reached conclusions concerning the subject of his essay.

19. It was Dr Bhojnagarwala’s evidence that he had thoroughly absorbed, in particular, two papers: the Williamson and Osborne, and the Performance in assessment: Consensus statement and recommendations from the Ottawa conference (the ‘Consensus statement’). His process for writing the essay started with noting on a piece of paper those portions of the papers on which he wished to rely. He then typed the relevant material onto his computer and marshalled the material into the form of an essay. At some point he changed the references relied upon in the articles to follow the Harvard referencing system. In doing so, he did not provide citations for the articles upon which he himself had relied. He contended that he did express in his initial computer draft of the essay his own thoughts expressed in his own language. However, when he came to complete the essay and needed to reduce the word count, he chose to rely upon the most apposite expressions of his views. These were for the most part the form of words used in the publications that he had transcribed onto his computer and had not cited in the process of doing so.

20. When considering Dr Bhojnagarwala’s evidence the Tribunal had regard to a particular point which he raised in his defence. This was that he had little experience in writing an academic essay, in that context it noted that Dr Bhojnagarwala in fact cited some 18 references in the essay, most if not all of which, he had taken from the main articles or papers which he had been reading. He thereby demonstrated that he did not understand that those citations should have been referenced via the main articles/papers. It also showed that he was willing to cite references in his work. Moreover he did not cite the references for the articles which he had read. The Tribunal did not consider that he failed to do so on account of any intention to plagiarise. It considered that this wholly inappropriate approach to the citation of references supported his contention of lack of experience in writing an academic essay. It also considered that it lent credibility to his explanation for how it came about that he presented plagiarised material in the essay.

21. In order to consider paragraph 3 of the allegation the Tribunal has considered certain passages in the essay. In two paragraphs under the heading ‘FEASIBILITY OF CBD AS AN ASSESSMENT TOOL’, the colour coded version of the essay shows that the entirety of this section was copied verbatim from three different publications. In the first paragraph Dr Bhojnagarwala expresses an opinion and concludes the paragraph with a citation. The citation relates to the last sentence only. The colour coding reveals that the preceding sentences are in fact the opinion of the authors of the Consensus statement, and not his own.
22. The same thing happens at paragraph two of this section. Dr Bhojnagarwala expresses an opinion and follows this with a citation. This citation relates solely to the preceding sentence. The sentence before that appears to express Dr Bhojnagarwala’s own opinion but the colour coding reveals that it is the form of words used by Williamson and Osborne. Moreover, he concludes this paragraph after the citation with a sentence which again appears to express his own view, when in fact it has likewise been taken from the Williamson and Osborne article.

23. The Tribunal also took into account page 10 of his essay. Under the heading ‘REFLECTION OF MY ROLE AS A CBD ASSESSOR FOR ST1-ST3 NEONATAL TRAINEES’, Dr Bhojnagarwala has simply substituted himself when expressing the conclusions reached by Williamson and Osborne. He has not expressed any original views of his own.

24. The Tribunal found that Dr Bhojnagarwala would have been able to recognise sentences which he had composed himself. In these circumstances he must have known that, when he was choosing the more apposite expressions of his views, he chose language crafted by others rather than by himself. He therefore must have known that he was presenting other person’s words as though they were his own as defined in the UCL handbook.

25. The Tribunal therefore found paragraph 3 of the allegation proved.

**Paragraph 4**

Your actions as described at paragraphs 1 to 3 were dishonest.

**Paragraph 4 in relation to paragraph 1 -3**

26. When considering whether Dr Bhojnagarwala was dishonest in respect of the matters found proved in paragraphs 1 to 3 of the allegation, the Tribunal bore in mind that the issue is to be decided on the balance of probabilities, taking into account the probability of a professional person behaving dishonestly as alleged. It noted that the course on which he had embarked was not essential to his career. He was already a consultant neonatologist. He had been interested in the course to improve his skills as an educator. In that context it considered that he had very little, if any, motive to behave in a dishonest fashion. Further it noted that he was of good character. It reminded itself of his defence that he had little experience in writing an academic essay, something demonstrated by his inappropriate citations.

27. Dr Bhojnagarwala’s defence, in relation to dishonesty, was that he was not using the work of others to demonstrate that he had undertaken appropriate research or that he had reached certain conclusions. Rather his explanation for the plagiarism is that whilst he had done sufficient and relevant research and had reached the conclusions expressed in his essay, he expressed them in words not originally his own. Upon being telephoned by Dr B and upon receipt of an email
received from him on 12 July 2017 concerning his alleged plagiarism, he set out his explanation for the way in which his work was presented in an email in reply. He writes:

'I can honestly tell you that I was not aware that I could not present information from these articles in this way...I acknowledge that I did not read information in module 1 present in Moodle and neither the notes in handbook about plagiarism which is again a mistake as it was my duty to be aware of all these information. Now knowing all this facts that I had made such a big mistake I am really sorry that this had happened...This was my first ever experience of writing an article or an essay...I do understand that I have completely misunderstood the way of writing the essay for the course. I include the list of articles for which I have taken information and from which my writing was influenced. I had included references quoted in these article but failed to mention some of these papers with no intention of hiding them. '

The Tribunal found Dr Bhojnagarwala’s explanation to be credible.

28. The Tribunal’s obligation is to consider what Dr Bhojnagarwala’s state of mind was when he came to submit the essay. Although it has found in respect of paragraph 3 of the allegation that he will have known that he was relying upon the words of other persons, by reason that it accepts that he was endeavouring to express his own thoughts, it does not find that he was acting dishonestly. It has considered whether in these particular circumstances this would be regarded as dishonest applying the standards or ordinary decent people. It has decided that it would not. It recognises that his actions would have been dishonest had his intention been to adopt the words of others to make out that he had formulated ideas and thoughts which were not his own, but that is not the Tribunal’s finding in this case.

29. The Tribunal has found that Dr Bhojnagarwala’s actions at paragraphs 1 - 3 of the allegation were not dishonest and has therefore determined that Paragraph 4 of the allegation is not proved.

The Tribunal’s Overall Determination on the Facts

30. The Tribunal has determined the facts as follows:

1. On 19 June 2017, whilst registered with the Royal College of Physicians and University College London to carry out a Postgraduate Certificate in Medical Education, you submitted an essay entitled ‘Critical Analysis of Case Based Discussions as an Assessment Tool for ST1-ST3 Paediatric Trainees’ (‘the Essay’).

Admitted and found proved
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2. The Essay referred to at paragraph 1 plagiarised the work of others. **Admitted and found proved**

3. You knew that the Essay referred to at paragraph 1 plagiarised the work of others. **Determined and found proved**

4. Your actions as described at paragraphs 1 to 3 were dishonest. **Not proved**

**Determination on Impairment** - 07/03/2019

1. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved as set out before, Dr Bhojnagarwala’s fitness to practise is impaired by reason of misconduct.

**The Evidence**

2. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary.

**Submissions**

3. On behalf of the GMC, Mr Grattage submitted that it is a matter for the Tribunal to determine if Dr Bhojnagarwala’s fitness to practise is impaired by reason of misconduct. He reminded the Tribunal to consider its overarching objective during its deliberations.

4. On behalf of Dr Bhojnagarwala, Ms Hewitt submitted that the facts found proven do not amount to a serious professional failing so as to amount to misconduct. She reminded the Tribunal that a finding of dishonesty was not made and submitted that Dr Bhojnagarwala made a genuine mistake which fellow practitioners would not find deplorable.

5. Ms Hewitt submitted that Dr Bhojnagarwala did not demonstrate a significant departure from the expected standards and that the misconduct was not related to his clinical practice. She reminded the Tribunal that no patients have been exposed to any risk and stated that he has shown remorse for his actions and has learned so much from the hearing process that there is no prospect whatsoever of repetition. Ms Hewitt submitted that public confidence in the medical profession and the maintenance of proper professional standards would not be compromised if a finding of impairment were not made.
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The Relevant Legal Principles

6. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision of impairment is a matter for the Tribunal’s judgement alone.

7. In approaching the decision, the Tribunal was mindful of the two stage process to be adopted: first whether the facts as found proved amount to misconduct, and then whether the finding of that misconduct should lead to a finding of impairment.

8. The Tribunal must determine whether Dr Bhojnagarwala’s fitness to practise is impaired today, taking into account his conduct at the time of the events and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.

9. The Tribunal had regard to case law regarding misconduct and in particular Roylance v GMC (No.2) [2000] 1 AC 311 which states:

‘Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances’

10. The Tribunal also had regard to R (Remedy UK Ltd) v GMC [2010] EWHC 1245 (Admin) which states that the conduct must be ‘sufficiently serious that it can properly be described as misconduct going to fitness to practise’.

11. The Tribunal considered Dame Janet Smith’s 5th report for the Shipman Enquiry. She propounded a test for Tribunals when considering impairment of fitness to practise. This included a question in the following terms:

Do our findings of fact mean that the doctor has in the past acted or is liable in the future to act so as to:

- Put a patient at unwarranted risk of harm;
- Bring the profession into disrepute;
- Breach a fundamental tenet of the profession;
- Behave dishonestly.

12. The Tribunal had regard to Cohen v. GMC [2008] EWHC 581 (Admin) which states:
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'It must be highly relevant in determining if a doctor’s ftp is impaired that first his or her conduct which led to the charge is easily remediable, second that it has been remedied and third that it is highly unlikely to be repeated.'

13. It also considered the case of CHRE v. NMC and Grant [2011] EWHC 927 (Admin) in which Mrs Justice Cox states that the relevant panel 'should generally consider ... whether 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 particular circumstances.'

The Tribunal’s Determination on Impairment

Misconduct

14. The Tribunal bore in mind its findings of fact during its deliberations and particularly that it did not find Dr Bhojnagarwala’s actions to be dishonest, but did find that he knew the essay plagiarised the work of others.

15. The Tribunal considered that Dr Bhojnagarwala’s plagiarism, albeit not dishonest, eroded the principle of integrity which is integral in the profession of medicine, as it is in every profession. The context of the plagiarism in this case was the submission of an essay to obtain a Postgraduate Certificate in Medical Education. Had the plagiarism not been detected, Dr Bhojnagarwala might have been awarded the Certificate on a false basis. There is an absolute standard here, just as there is in medical research and medical publication. Transgression of that standard must amount to misconduct which is serious. The fact that Dr Bhojnagarwala did not intend to plagiarise does not detract from the seriousness of what he did. His obligation was to present an essay which was not plagiarised. He did not do so.

16. The Tribunal therefore found that the facts proved do amount to misconduct on the part of Dr Bhojnagarwala of sufficient seriousness as to go impairment.

17. The Tribunal accepts that Dr Bhojnagarwala has remediated that misconduct. He did not intend it; he has learnt from his mistake. Indeed he has even identified plagiarism on the part of one of his students and, in timely fashion, educated them about the error they were about to commit. It accepts Ms Hewitt’s submission that Dr Bhojnagarwala is extremely unlikely to repeat his misconduct. He has taken the determination at the facts stage to heart, and the Tribunal accepts has learnt from it. He is moreover contrite. He is a Doctor who has achieved a great deal in his profession; he was only embarking on the course for a Postgraduate Certificate to enhance his ability to teach. He was not doing it for reward.

18. However the Tribunal cannot lose sight of the public interest. He has breached an absolute obligation not to plagiarise. Having done so, necessarily he did not uphold proper standards of conduct and behaviour so as to maintain confidence in the profession. Following the principle expounded in Grant cited above, the Tribunal has
found that it has no alternative but to find that Dr Bhojnagarwala’s fitness to practise is impaired by reason of his misconduct.

19. The Tribunal has therefore determined that Dr Bhojnagarwala’s fitness to practise is impaired by reason of misconduct.

**Determination on Sanction - 07/03/2019**

1. Having determined that Dr Bhojnagarwala’s fitness to practise is impaired by reason of misconduct, the Tribunal now has to decide in accordance with Rule 17(2)(n) of the Rules on the appropriate sanction, if any, to impose.

**The Evidence**

2. The Tribunal has taken into account evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction.

**Submissions**

3. On behalf of the GMC, Mr Grattage submitted that it would not be appropriate to take no action or to impose conditions in this case. He submitted that an appropriate sanction in this case would be one of suspension which would have a deterrent effect and send a signal to the medical profession and to the public that the misconduct displayed in this hearing is not acceptable.

4. On behalf of Dr Bhojnagarwala, Ms Hewitt submitted that the Tribunal should take no further action in this case as Dr Bhojnagarwala has demonstrated complete insight and remorse. She submitted that there are exceptional circumstances in this case as he had never submitted an essay in this format before and did not understand how to do it correctly. Ms Hewitt reminded the Tribunal that Dr Bhojnagarwala did not act dishonestly.

5. Ms Hewitt submitted that conditions would not be appropriate in this case as Dr Bhojnagarwala has fully remediated. She went on to submit that a sanction of suspension would be completely disproportionate and would deprive the public of Dr Bhojnagarwala’s services.

**The Tribunal’s Determination on Sanction**

6. This is a case in which the need to uphold proper professional standards and public confidence in the profession warranted findings of misconduct and impairment. The finding of impairment was not on the ground that Dr Bhojnagarwala had no insight into his misconduct; nor was it on the basis that he had not remediated that misconduct. The GMC made no submissions supporting findings of misconduct and impairment.
7. The Tribunal regarded the following factor as aggravating the seriousness of the misconduct:

   As a consultant, Dr Bhojnagarwala should have known to avoid plagiarising the work of others.

8. The Tribunal regard the following as factors which mitigate the seriousness of the misconduct:

   a. Dr Bhojnagarwala has insight into his shortcomings and has fully remediated them. Apart from the matters recited in the determination on impairment, the Tribunal has been made aware that he has appointed a mentor to assist him in scrutinising his written works to make sure he always stays on the side of propriety;

   b. Both the elements of plagiarism in this case which led to paragraph three of the allegation being found proved, namely his citation of the references in fact relied on by others whose articles Dr Bhojnagarwala had read, and his use of the words in those articles, were committed without intent on the part of Bhojnagarwala. He had left insufficient time to complete his essay and had become muddled when doing so. The Tribunal acknowledges however that Dr Bhojnagarwala should have left himself more time and approached the task of writing his essay more professionally.

   c. Dr Bhojnagarwala was seeking to obtain a qualification which would not further his career in medicine. He was already a consultant neonatologist. He was seeking the qualification in order to be better able to educate doctors in training.

9. Recognising that it must apply the principle of proportionality, the Tribunal first considered whether it should take no action. It considered that the following represent exceptional circumstances in the case:

   a. The finding of impairment was to reflect the public interest in declaring and upholding standards of conduct in the medical profession. It was not at all on the basis that there was any risk that Dr Bhojnagarwala would repeat his actions;

   b. Dr Bhojnagarwala did not intend to plagiarise the work of others;

   c. The fact that Dr Bhojnagarwala would not personally gain from obtaining the qualification in the sense of obtaining financial or professional reward.

10. The Tribunal consider that those factors are exceptional since they militate against the need to impose a sanction. Paragraph 92 of the Sanctions Guidance provides:
‘Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession.’

Since the sanction of conditions would not be an appropriate sanction in a case of this sort, suspension would be the next sanction to consider. The imposition of any suspension order is not appropriate to protect members of the public here since Dr Bhojnagarwala does not represent any danger to the public. Quite the reverse as it is in the public interest that he be allowed to continue in practice. The imposition of a short period of suspension would not add anything to the finding of impairment which the Tribunal has made to mark the seriousness of the misconduct. Further it would not be appropriate to suspend a doctor whose contribution to medicine in his own field and in educating others is exemplary, on account of a mistake which he inadvertently made.

11. The Tribunal has therefore determined to take no further action.

12. That concludes the case.

Confirmed
Date 07 March 2019 Mr Angus Macpherson, Legally Qualified Chair