Date: 16/04/2019

Medical Practitioner's name: Dr Hafed HAMZA

GMC reference number: 6156424

Primary medical qualification: MD 1988 Faculté de Médecine et de Pharmacie de Tunis

Type of case Review - Misconduct Review - Determination by other regulator

Outcome on impairment Not Impaired Not Impaired

Summary of outcome Suspension to expire

Tribunal:

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<tr>
<th>Legally Qualified Chair</th>
<th>Mr Tim Smith</th>
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<tr>
<td>Medical Tribunal Member:</td>
<td>Dr Julius Parker</td>
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<td>Medical Tribunal Member:</td>
<td>Dr Meenakshi Verma</td>
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</tbody>
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Tribunal Clerk: Dr Joshua Kirby

Attendance and Representation:

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<th>Medical Practitioner:</th>
<th>Present and represented</th>
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<tr>
<td>Medical Practitioner's Representative:</td>
<td>Mr Stephen Brassington, Counsel, instructed by RadcliffesLeBrasseur</td>
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<tr>
<td>GMC Representative:</td>
<td>Mr Gerard Doran, Counsel</td>
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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.
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Determination on Impairment - 16/04/2019

1. The Tribunal has convened to review Dr Hamza’s case in accordance with Rule 22 of the General Medical Council’s (‘GMC’) (Fitness to Practise) Rules 2004, as amended (‘the Rules’).

Background

2. The Tribunal has been informed of the background to Dr Hamza’s case, which was first considered by a Medical Practitioners Tribunal in July 2018 (‘the 2018 Tribunal’). Dr Hamza was present and represented at the hearing in July 2018, as he is today. This is the planned review of Dr Hamza’s case, and the Tribunal does not intend to rehearse the background to it beyond the following summary.

Facts

3. Dr Hamza qualified in Tunisia in 1988. Between 1989 and 1997 he underwent specialist training in France in the field of Cosmetic, Aesthetic and Plastic surgery and he also received an equivalent qualification in Tunisia. Dr Hamza relocated to France in 2003 and he joined the GMC’s Specialist Register in 2009 so that he could practise professionally in the UK. At the time of the events considered by the 2018 Tribunal Dr Hamza was practising in a number of private clinics in London where he carried out outpatient clinics and operative procedures.

4. Dr Hamza admitted, and the 2018 Tribunal found proved, that on 11 December 2014 the Chambre Disciplinaire de Première Instance de l’Ordre des Médecins d’Île-de-France determined that Dr Hamza had acted in breach of the Code de la Santé Publique and imposed a ban on him practising medicine for a period of three months, of which two months were suspended. Dr Hamza also admitted, and the 2018 Tribunal found proved, that on 16 December 2016 the Chambre Disciplinaire Nationale de l’Ordre des Médecins determined that Dr Hamza had acted in breach of the Code de la Santé Publique and to impose a ban on him practising medicine for a period of 12 months. Dr Hamza admitted, and the 2018 Tribunal found proved, that he had failed to disclose these two determinations of the French regulator to the GMC.

5. The 2018 Tribunal found that when submitting his Medical Appraisal Forms to his appraiser in both 2015 and 2016, Dr Hamza ‘ticked’ the statement ‘I have nothing to declare’ “In relation to suspensions, restrictions on practice or being subject to an investigation of any kind since my last appraisal” on the forms. The 2018 Tribunal found that Dr Hamza knew this to be untrue by virtue of the investigation and findings of the French regulator, and that his actions in ticking these sections of the appraisal forms were dishonest.

Misconduct
6. The 2018 Tribunal concluded that Dr Hamza’s failure to disclose the determinations of the French regulator to the GMC and his subsequent dishonesty about those determinations on his appraisal forms in 2015 and 2016 would be considered deplorable by fellow members of the medical profession. It considered that these were serious failures on Dr Hamza’s part which were contrary to principles contained in ‘Good Medical Practice’ and the advice of his appraiser, and fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to serious misconduct.

Impairment - Misconduct

7. Having determined that the facts found proved amounted to serious misconduct, the 2018 Tribunal considered whether or not Dr Hamza’s fitness to practise was impaired by reason of his misconduct. In so doing, it accepted that dishonesty and/or matters of probity are not easily remediated. The 2018 Tribunal took account of Dr Hamza’s partial admissions at the hearing in July 2018, and his apology for his actions. It also took account of Dr Hamza’s acceptance that he should have acted differently, in relation to telling both the GMC and his appraiser. The 2018 Tribunal concluded that Dr Hamza had insight, which was limited, but was developing. As such, it could not be satisfied that Dr Hamza was unlikely to act dishonestly in the future.

8. The 2018 Tribunal concluded that Dr Hamza’s dishonesty and his failure to disclose the determinations of the French regulator to the GMC had undermined public confidence in the profession and that a finding of impairment by reason of misconduct must be made in order to uphold public confidence in the profession and to uphold proper professional standards and conduct for the profession. The 2018 Tribunal therefore determined that Dr Hamza’s fitness to practise was impaired by reason of misconduct.

Impairment – Determination by another Regulator

9. Having found that the determination of the Chambre Discipline Nationale de l’Ordre des Médecins dated 16 December 2016 amounted to a determination by another regulator, the 2018 Tribunal went on to consider whether, as a result of that determination, Dr Hamza’s fitness to practise was impaired.

10. Having had regard to the determination of the Chambre Discipline Nationale de l’Ordre des Médecins, the 2018 Tribunal considered that the nature of that determination raised similar probity and integrity issues to the 2018 Tribunal’s findings that Dr Hamza had acted dishonestly when completing his appraisal forms. The 2018 Tribunal again concluded that a finding of impairment by reason of a determination by another regulator must be made in order to uphold public confidence in the profession and to uphold proper professional standards of conduct.
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for the profession. The 2018 Tribunal therefore determined that Dr Hamza’s fitness to practise was impaired by reason of a determination of another regulator.

Sanction

11. Having determined that Dr Hamza’s fitness to practise was impaired by reason of his misconduct and also by reason of a determination of another regulator, namely the Chambre Disciplinaire Nationale de l’Ordre des Médecins in France, the 2018 Tribunal went on to consider what sanction, if any, to impose on his registration.

12. The 2018 had already identified Dr Hamza’s insight as being limited, but developing. It had not received any evidence which suggested that remediation was unlikely to be successful in this case, and it accepted that Dr Hamza intended to remediate. The 2018 Tribunal considered that, in the circumstances, Dr Hamza did not pose a significant risk of repeating his behaviour which led to his referral to the GMC, as there had not been any suggestion of a repetition of his dishonesty since his completion of the 2016 appraisal form.

13. In all the circumstances, the 2018 Tribunal concluded that the suspension of Dr Hamza’s name from the medical register would be an appropriate and proportionate sanction and that erasing his name from the register would be disproportionate. The Tribunal concluded that imposing a suspension for a period of nine months would be sufficient for it to meet its overarching objective and to allow Dr Hamza to develop further insight.

14. The 2018 Tribunal determined to direct a review of Dr Hamza’s case. It stated that at a review hearing the onus would be on Dr Hamza to demonstrate how he has developed insight. The 2018 Tribunal suggested that it may therefore assist the reviewing Tribunal if Dr Hamza were to provide:

- evidence demonstrating that he fully appreciated the gravity of his misconduct and the determination in France;
- evidence that he has maintained his skills and knowledge during the period of his suspension; and
- any other information that he considered would assist the Tribunal.

Today’s Review Hearing

15. This Tribunal must consider, under Rule 22(1)(f) of the Rules, whether Dr Hamza’s fitness to practise is currently impaired by reason of his misconduct and by reason of a determination by another regulator.

The Evidence
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16. The Tribunal has taken into account all the documentary evidence adduced by the parties. This included, but was not limited to:

- the determinations of the 2018 Tribunal;
- an undated document by Dr Hamza entitled ‘General Reflections’;
- Dr Hamza’s reflections on an ethics course and developing insight;
- notes of Dr Hamza’s discussion with his mentor regarding insight and reflection;
- Dr Hamza’s personal development plan (‘PDP’); and
- Dr Hamza’s continuing professional development (‘CPD’) certificates and certificates of his attendance at various courses and conferences.

Submissions on Behalf of the GMC

17. In summary, Mr Doran submitted that the GMC is neutral on the question of Dr Hamza’s current fitness to practise. In making that submission, Mr Doran told the Tribunal that the GMC had considered in detail the remediation bundle submitted on behalf of Dr Hamza. Referring the Tribunal to Dr Hamza’s reflective statement, Mr Doran submitted that it contains evidence that Dr Hamza has a good level of insight and shows that he has expressed remorse for his actions. Mr Doran submitted that Dr Hamza’s reflective statement and his reflections on the courses he has attended show that his level of insight has increased since the last hearing. Mr Doran also submitted that the documents show that Dr Hamza has developed strategies to help him deal with similar situations in the future without resorting to dishonesty. In addition, Mr Doran submitted that Dr Hamza’s CPD evidence, and the fact that he has continued practising in France throughout the period of his suspension from the UK Medical Register, show that Dr Hamza has maintained his skills and knowledge throughout his suspension.

Submissions on Behalf of Dr Hamza

18. In summary, Mr Brassington submitted that Dr Hamza’s fitness to practise is no longer impaired. Referring the Tribunal to Dr Hamza’s reflective statement, Mr Brassington submitted that Dr Hamza’s reflections contained therein are ‘raw and heartfelt’ and that they are ‘open and honest’. Mr Brassington submitted that Dr Hamza’s reflections show that he has developed a proper understanding of the events which led to his suspension from the Medical Register in 2018. Mr Brassington went on to submit that Dr Hamza’s reflections explain not just his behaviour at the time of the events considered by the 2018 Tribunal, but his understanding of the consequences and impact of his actions on others. Mr Brassington submitted that Dr Hamza’s reflections amounted to ‘a brutal assessment of his own failings’ and that the Tribunal can be assured from them that Dr Hamza has ‘found peace within himself’ and that as a result he is a clearer, more thoughtful and more proactive practitioner.
19. Referring the Tribunal to Dr Hamza’s reflections on the courses he has attended, Mr Brassington submitted that they show an understanding on Dr Hamza’s part as to his ‘personal vulnerabilities’. He also submitted that they show a development of Dr Hamza’s understanding as to the gravity of his misconduct, namely in that when he started the ethics course he considered his misconduct to have been ‘my little administrative problem’ but that, by the end of the course, he fully appreciated the seriousness of his misconduct and how dishonesty such as that he exhibited in 2015 and 2016 impacts on public confidence in the profession. Mr Brassington submitted that since 1 April 2018 Dr Hamza has resumed his practice in France and that he has done so without any concerns about his probity or integrity being raised. In short, Mr Brassington submitted that this evidence shows that there has not been a repetition by Dr Hamza of any discreditable conduct since the events considered by the 2018 Tribunal.

20. Referring the Tribunal to the documentary evidence, Mr Brassington also submitted that it shows that Dr Hamza has been open and transparent not just with his Responsible Officer here in the UK, but also with his mentor and colleagues in France. In this regard, Mr Brassington drew the Tribunal’s attention to the fact that following the last hearing, Dr Hamza had not just informed the French regulator of the findings made by the 2018 Tribunal and the sanction they imposed on his registration, but that Dr Hamza had also proactively sought a meeting with the President of the French regulator to discuss his case. In a similar vein, Mr Brassington also drew the Tribunal’s attention to the regular meetings Dr Hamza has had with his mentor throughout his suspension, and the fact that his mentor is of the view that Dr Hamza has fully reflected, has an appropriate level of insight, and that he is confident that Dr Hamza will not be dishonest again.

The Relevant Legal Principles

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

22. The Tribunal must determine whether Dr Hamza’s fitness to practise is impaired today. The Tribunal bore in mind that at a review hearing there is a persuasive burden on the medical practitioner to demonstrate that the concerns of the previous Tribunal have been sufficiently addressed.

23. In considering whether the concerns of the previous Tribunal have been addressed, the Tribunal reminded itself that it should consider issues such as, for example, the level of Dr Hamza’s insight, whether there is likely to be any recurrence, whether he has taken steps to mitigate the concerns raised, and whether there is any evidence of him having remediated.
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24. Throughout its deliberations, the Tribunal bore in mind the need to protect the public. This is the Tribunal’s statutory overarching objective, which includes:

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

25. In approaching its task, the Tribunal had particular regard to paragraph 164 of the ‘Sanctions Guidance’ which states:

‘A review hearing is therefore likely to be necessary, so that the tribunal can consider whether the doctor has shown all of the following (by producing objective evidence):

a  they fully appreciate the gravity of the offence
b  they have not reoffended
c  they have maintained their skills and knowledge
d  patients will not be placed at risk by resumption of practice or by the imposition of conditional registration.’

The Tribunal’s Determination on Impairment

26. It was clear to the Tribunal that Dr Hamza has reflected at length throughout the period of his suspension. The Tribunal noted that Dr Hamza has provided it with not just a general reflective statement, but also several other pieces of reflection relating to specific courses he has undertaken (notably the ethics course he undertook in November 2018). Having had regard to all of the reflective pieces composed by Dr Hamza and presented to it, the Tribunal was satisfied that Dr Hamza now fully appreciates not just the seriousness of his misconduct, but also its consequences. The Tribunal was struck, for example, by Dr Hamza’s honesty that when he first attended the ethics course he considered his failings to have been ‘my little administrative problem’ and that he had attended the course at the behest of his legal representative. It was clear to the Tribunal from his reflections on that course, however, that Dr Hamza had undergone something of a sea change in his attitude as a result and that he now fully appreciates the gravity of his dishonesty and its consequences. The Tribunal also noted that as part of this course Dr Hamza had to share the details of his misconduct with other attendees which was not easy for him, but which helped him to appreciate its seriousness.
27. The 2018 Tribunal considered that Dr Hamza had insight but that his insight was at that time developing. This Tribunal is satisfied that Dr Hamza’s insight has developed appropriately during his suspension. It noted, for example, that when reflecting on what caused him to act dishonestly, Dr Hamza considered that ‘the satisfaction of [his] patients and the development of [his] clientele certainly contributed to [his] belief that [he] was above the rules’. The Tribunal also noted from the documentary evidence that it was clear that Dr Hamza understands that reflection and the development of insight is an ongoing process. It considered that Dr Hamza’s insight and reflections have been extensive thus far and that they are meaningful and not superficial. Having paid particular regard to Dr Hamza’s reflective statement, for example, the Tribunal was satisfied that Dr Hamza appreciates the consequences of his misconduct not just on himself, but on the wider public’s confidence in the medical profession. It also noted that Dr Hamza appreciates that his suspension has impacted patients in three countries, namely the UK, France, and Tunisia.

28. The Tribunal noted that Dr Hamza has met with his mentor on four occasions during the period of his suspension and that they have discussed his misconduct and the importance of insight and reflection. It noted that Dr Hamza’s mentor states, in his letter of 6 March 2019, that it is ‘clear’ that Dr Hamza has insight, that he understands what he did wrong, that he has learnt from his experiences, and that his mentor does not have any concerns about his integrity and probity.

29. Dr Hamza’s suspension by the French regulator was lifted on 1 April 2018 and he resumed his practice in France thereafter. The Tribunal has seen evidence as to the nature of the work Dr Hamza has undertaken in France since last April, and it was satisfied that Dr Hamza has worked in France without any concerns about his integrity and probity being raised or any other ‘untoward incidents’.

30. Having had regard to the evidence of Dr Hamza’s CPD, the Tribunal accepted that he has taken great steps to ensure that his medical skills and knowledge have been maintained during the period of his suspension. Dr Hamza has attended a number of course and conferences. He has also facilitated a number of congresses and conferences and has also been a speaker at such events. In addition, Dr Hamza has also produced an academic paper during the period of his suspension.

31. The 2018 Tribunal noted, and this Tribunal accepts, that there have never been any patient safety issues in this case and that Dr Hamza is a competent and skilled clinician in his field. Having had regard to all the evidence before it, the Tribunal was satisfied that Dr Hamza has maintained his skills and knowledge during the period of his suspension. The maintenance of his skills and knowledge, coupled with his level of insight, reflection, and the steps he has taken to remediate, means that the Tribunal was satisfied that any risk of Dr Hamza repeating his misconduct is very low.
32. In light of the CPD Dr Hamza has undertaken and his continued practising in France without concerns being raised, the Tribunal was satisfied that Dr Hamza’s fitness to practise is no longer impaired by reason of his misconduct or by reason of the determination of the French regulator. It was satisfied that Dr Hamza is now fit to return to unrestricted practice.

33. Dr Hamza’s registration is currently suspended until 9 May 2019. As the 2018 Tribunal imposed a nine month suspension of Dr Hamza’s registration in order to mark the seriousness of his misconduct and to satisfy the public interest, the Tribunal determined that Dr Hamza’s suspension should remain in place until it expires on 9 May 2019.

34. That concludes this case.

Confirmed
Date 16 April 2019

Mr Tim Smith, Chair