Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

**Dates:** 29/04/2019 - 03/05/2019

**Medical Practitioner’s name:** Dr Hamdi HAMAD

**GMC reference number:** 4160418

**Primary medical qualification:** MB ChB 1980 University of Mosul

**Type of case**
New - Misconduct

**Outcome on impairment**
Not Impaired

**Summary of outcome**
Case concluded

**Tribunal:**

<table>
<thead>
<tr>
<th>Role</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legally Qualified Chair</td>
<td>Mr Nicholas Flanagan</td>
</tr>
<tr>
<td>Lay Tribunal Member</td>
<td>Mrs Christine Curbishley</td>
</tr>
<tr>
<td>Medical Tribunal Member</td>
<td>Dr Barry Adams-Strump</td>
</tr>
</tbody>
</table>

**Tribunal Clerk:** Mr David Salad

**Attendance and Representation:**

<table>
<thead>
<tr>
<th>Role</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical Practitioner</td>
<td>Present and represented</td>
</tr>
<tr>
<td>Medical Practitioner’s Representative</td>
<td>Mr Anthony Haycroft, Counsel, instructed by Hempsons Solicitors</td>
</tr>
<tr>
<td>GMC Representative</td>
<td>Mr Tim Grey, Counsel</td>
</tr>
</tbody>
</table>

**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.
Record of Determinations –
Medical Practitioners Tribunal

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 - 03/05/2019

Background

1. Dr Hamad gained his primary medical qualification from the University of
Mosul, Iraq in 1980. He moved to the UK in 1987, working and training in the
specialties of dermatology and genitourinary medicine. At the time of the events
leading to the Allegation, Dr Hamad's principal post was as a Consultant
Dermatologist at the Royal Wolverhampton Hospitals NHS Trust, a position he took
up in September 2005. For some five to six years before the events in August 2017
which led to the Allegation, Dr Hamad also undertook some work during his annual
leave as a locum consultant at the dermatology clinic based at Warrington Wolves,
Martin Dawes Stadium, Warrington ("the Clinic").

2. The Allegation that has led to Dr Hamad’s hearing involves concerns which arose
following his treatment of Patient A at a consultation at the Clinic which took place on
23 August 2017 ("the Consultation"). Patient A had been diagnosed with a melanoma on
the inside of her left thigh in 2012, for which she had undergone surgery to remove the
melanoma and some lymph nodes in case the cancer had spread. The Consultation was
one of several regular check-ups Patient A had subsequently attended with
dermatologists at the Clinic since her surgery. This was the first consultation she had
with Dr Hamad.

3. It is alleged that during the Consultation, Dr Hamad physically examined Patient
A’s genital area when this was not clinically indicated, whilst failing to wear gloves,
obtain consent, or record either that he had undertaken the examination or obtained
consent. It is alleged that Dr Hamad’s physical examination of Patient A’s genital area
whilst failing to wear gloves was sexually motivated.

4. It is further alleged that Dr Hamad failed to visually examine or palpate lymph
nodes on Patient A’s right groin and a scar on her left groin, and that he failed to
palpate a scar on her left thigh. It is alleged that Dr Hamad failed to introduce himself to
Patient A.

5. Later on the day of the Consultation, Patient A telephoned the Clinic and spoke to
a member of staff, Nurse B. The content of this conversation was unclear but the result
was that Patient A was advised with regard to the location of lymph nodes and informed her that if she had a complaint she could contact the Patient Advice and Liaison Service (‘PALS’). After discussing the matter with a member of her family, Patient A reported her concerns to Cheshire Police the same evening. She provided a recorded interview to the police on 29 August 2017. Cheshire Police subsequently interviewed Dr Hamad with regard to the matter on 13 October 2017. Shortly afterwards, the police confirmed that they would not be taking any action against him. The GMC carried out its own investigation into the matters, leading to a referral to this Medical Practitioners Tribunal.

The Outcome of Applications Made during the Facts Stage

6. The Tribunal granted the application of Mr Haycroft, Counsel, made on Dr Hamad’s behalf, pursuant to Rule 34(1) of the General Medical Council (Fitness to Practise Rules) 2004 as amended (‘the Rules’), to adduce witness statements taken from Ms C and Nurse B, both employees at the Clinic at the time of the events leading to the Allegation. Mr Grey, Counsel, acting on behalf of the GMC, did not object to the application. The Tribunal determined that the witness statements were relevant to the case before it and that it would therefore be fair to admit them, with any weight to be attached to them being a matter for it at the relevant stage of the hearing.

7. On day two of the hearing at the close of the case for the GMC, Mr Grey made an application to withdraw sub-paragraphs 2d and 2e of the Allegation. Mr Haycroft did not object to the application. The Tribunal took into account Patient A’s oral evidence as to Dr Hamad’s explanations to her of the reasons for the consultation and the nature of the examination he would undertake. In addition, it noted the oral evidence of the GMC’s expert Professor G, that on Patient A’s oral account of these explanations and taking into account this was a review appointment for an examination of a type which she had experienced numerous times, Dr Hamad had provided explanations of an acceptable standard. The Tribunal considered that the application could be allowed without injustice and deleted sub-paragraphs 2d and 2e from the Allegation under Rule 17(6).

The Allegation and the Doctor’s Response

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

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

1. On 23 August 2017, during your consultation with Patient A you physically examined Patient A’s genital area when this was not clinically indicated. **To be determined**

2. You failed to:
Record of Determinations – Medical Practitioners Tribunal

a. visually examine the:
   i. lymph nodes on her right groin; To be determined
   ii. scar on her left groin; To be determined

b. palpate the:
   i. lymph nodes on her right groin; To be determined
   ii. scar on her left groin; To be determined
   iii. scar on her left thigh; To be determined

c. introduce yourself to Patient A; To be determined

d. explain the reasons for the consultation; Withdrawn following application by the GMC

e. explain the nature of the examination you would undertake. Withdrawn following application by the GMC

3. For the examination described at paragraph 1, you failed to:
   a. wear gloves; To be determined
   b. record that you had undertaken the examination; To be determined
   c. obtain consent; To be determined
   d. record obtaining consent. To be determined
Record of Determinations –
Medical Practitioners Tribunal

4. Your conduct as described in paragraphs 1 and 3a above was sexually motivated. **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 evidence on behalf of the GMC from the following witnesses:

- Patient A, in person.

10. Dr Hamad provided his own witness statement, dated 14 March 2019 and also gave oral evidence at the hearing. In addition, the Tribunal received oral evidence from Nurse B, Staff Nurse at the Clinic at the time of the events leading to the Allegation, in person.

11. The Tribunal also received evidence on behalf of Dr Hamad in the form of witness statements from the following witnesses who were not called to give oral evidence:

- Ms C, Healthcare Assistant at the Clinic;
- Dr D, Consultant Dermatologist;
- Sister E, Sister in the Dermatology Department at New Cross Hospital, Wolverhampton;
- Sister F, Clinical Nurse Specialist in Dermatology, New Cross Hospital, Wolverhampton.

**Expert Witness Evidence**

12. The Tribunal also received evidence from Professor G, Consultant Dermatologist, an expert witness called by the GMC. Professor G gave oral evidence at the hearing in support of his report dated 17 December 2018 and supplemental witness statement dated 7 January 2019. His evidence was given with the aim of assisting the Tribunal in understanding the professional standards to be expected of a Consultant Dermatologist.

**Documentary Evidence**

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

- summary and transcript record of Patient A’s interview with Cheshire Police;
Record of Determinations –
Medical Practitioners Tribunal

- relevant extracts from Patient A’s medical records;
- photographs and sketch diagram of the examination room in which the Consultation took place (provided by Ms C);
- Dr Hamad’s initial written statement, and supplementary statement, provided for Cheshire Police at interview on 13 October 2017;
- guidance leaflet: ‘How to check your lymph nodes’;
- testimonial letters provided on Dr Hamad’s behalf.

The Tribunal’s Approach

14. 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 Hamad 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.

15. The Tribunal has heard that Dr Hamad is of good character. It reminded itself that good character is not, in itself, a defence to the Allegation. However, the Tribunal noted that evidence of good character may assist Dr Hamad in two ways. Firstly, in supporting his credibility and is something it may take into account in determining whether it accepts his evidence. Secondly, good character evidence may mean it is less likely that Dr Hamad has committed the acts alleged. The weight that the Tribunal applies to good character evidence is a matter for it to decide, taking into account everything it has heard about Dr Hamad.

The Tribunal’s Analysis of the Evidence and Findings

16. 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 1

17. The Tribunal noted that paragraph 1 of the Allegation alleges that Dr Hamad physically examined Patient A’s genital area when this was not clinically indicated. It was agreed with the parties that this required intentional touching of Patient A by Dr Hamad.

18. The Consultation took place in an examination room at the Clinic. The Tribunal has been provided with photographs and a sketch diagram of the room by Ms C, a Health Care Assistant, who was acting as chaperone during the Consultation. The photographs and the sketch diagram show that the room is small, approximately 286cm x 294cm and is furnished with a trolley-style hospital bed, a handwashing sink, a desk with computer, chairs, bin, and some equipment storage. A curtain can be drawn across between the bed and the desk area.
Record of Determinations – Medical Practitioners Tribunal

19. Patient A stated that she had removed her trousers for the examination and was lying on the bed before Dr Hamad entered the room as she was used to being examined following her surgery in 2012. She confirmed that she left her top and underwear on throughout the examination and that Ms C was present in the room. Patient A accepted in her oral evidence that Dr Hamad had explained to her that he was going to check her scar, lymph nodes, moles, liver and spleen.

20. Patient A stated that, after Dr Hamad had looked at her scar, he asked Ms C to go and get some gel. The Tribunal heard that this would have been for use on the lens of a dermatoscope, an instrument used to assist clinicians to visualise areas of the body through magnification. The accounts of Patient A, Dr Hamad and Ms C concur in that the chaperone did not leave the room to get the gel at this point. Patient A stated that the curtain was drawn across the room and Ms C stepped the other side of it. Dr Hamad’s account was that, as the room was so small, once the door was locked, it was his practice to draw the curtain back during the examination, allowing more space, so it would have been open. Ms C set out in her witness statement that the curtain was ‘pulled around the bed’ during the examination.

21. In her written evidence, Ms C stated that the time she would have taken to get the gel from the desk in the room was short – approximately two seconds. In her GMC witness statement Patient A alleges that immediately after Ms C went to get the gel, Dr Hamad acted as follows:

   Dr Hamad put his middle finger and his index finger onto the upper half of my genitals and moved upwards in a rubbing motion towards my clitoris. This lasted for around 2 or 3 seconds. He did not say anything to me before, during or immediately after he touched my genitals. I can’t remember exactly how long the nurse was away getting the gel, but I don’t think it was more than a minute. Dr Hamad was not wearing gloves at any point during the examination.

22. Dr Hamad denies that he touched Patient A’s genitals in this manner. Ms C confirmed in her witness statement that she could not remember if Dr Hamad had asked her to get anything for him during the appointment, but that all of the examination rooms have dermatoscopes in them and these are kept on the desk along with the gel with which they are used. She stated that the room is so small it would have been ‘...a couple of strides from the bed to retrieve them from the desk and bring them back within two seconds.’

23. The Tribunal noted that Patient A stated that, although Dr Hamad touched her genitals, he did not touch the scars on her left thigh and groin, or the lymph nodes on her right groin. Dr Hamad maintained that he conducted a thorough examination in line with his usual practice, visualising and palpating her scars, lymph nodes, liver and spleen, and also checking Patient A for moles.

**MPT: Dr HAMAD**
24. In light of the direct contradiction in the evidence of Patient A and Dr Hamad, the Tribunal considered the evidence of both in terms of content and credibility.

25. The Tribunal noted that Patient A’s evidence was marked by a number of inconsistencies between her written and oral accounts of the events of the Consultation, given at various stages of the police and GMC investigation process and at this hearing. Whilst the Tribunal accepted that memories of events inevitably degrade over time leading to some inconsistencies, it considered that the evolving nature of Patient A’s evidence on three specific areas was significant and reduced the weight it could place on her evidence.

26. Firstly, the Tribunal considered that Patient A’s evidence with regard to the use (or not) of the gel altered through her various accounts. In her police interview, Patient A was initially unsure whether Dr Hamad had used the gel once it had been retrieved by Ms C. Later in the interview she stated that the gel may have been used to examine her toes. However, in her GMC witness statement of 1 May 2018, she set out clearly that Dr Hamad did not use the gel at all. The Tribunal considered that this change in her evidence was significant, as this version suggested that Dr Hamad may have used the obtaining of the gel purely as an excuse to ensure the chaperone was away from the bed.

27. Secondly, in her Police interview of August 2017, Patient A twice stated that Dr Hamad had checked her back for moles. In her GMC witness statement, she again stated that he had checked her back for moles, before checking her liver and spleen as set out in Dr Hamad’s account. However, in her oral evidence at this hearing, when asked if Dr Hamad had checked her upper body for moles and axillary (armpit) lymph nodes (in line with his contemporary note of the Consultation that he had examined her ‘trunk’), Patient A set out that Dr Hamad had not done so as she had been wearing clothes on her upper body, which precluded such an examination.

28. Finally, the Tribunal considered it particularly significant that Patient A’s evidence was inconsistent on whether or not Ms C left her position at the bottom of the bed, and if so, for how long. In her police interview, which took place six days after the Consultation, a point at which her recollection of the events could be expected to be most clear, she stated that she did not know where Ms C was after Dr Hamad requested her to get the gel and at the point at which she alleges Dr Hamad touched her genitals. The police asked about this point carefully and Patient A confirmed she did not know where Ms C was. However, in her GMC statement, Patient A set out that Ms C had left for up to a minute. Her oral evidence at the hearing differed again, as she asserted Ms C had left her position for two to three seconds.

29. Having heard Dr Hamad’s oral evidence, the Tribunal determined that he had no independent memory of the Consultation. This was one consultation amongst approximately 30 that he would have conducted on 23 August 2017 and around 90
Record of Determinations – Medical Practitioners Tribunal

in the three days he worked at the Clinic that week. The Tribunal noted that Dr Hamad was only informed of the allegations some weeks afterwards. It was therefore unsurprising that he had no specific recollection of the events. It found that Dr Hamad consistently responded to questions by relying on his usual practice, explaining not what he did, but what he ‘would have done.’ However, the Tribunal found it to be significant that he was able to describe in detail exactly why and how he conducted his examinations, down to the order in which he would examine parts of the body (this order being different, but no less valid than Professor G’s own manner of proceeding).

30. The Tribunal considered that Dr Hamad’s good character supported his evidence to some extent. It was clear from the material provided to it by his colleagues that he is a very experienced consultant, who has been frequently involved in intimate examinations and was noted by his colleagues as being sensitive to the needs of patients and very aware of privacy and consent issues.

31. The Tribunal noted, aside from on the matter of whether or not the curtain was drawn across the room, Dr Hamad’s account was largely supported by Ms C’s witness statement, including in terms of the examination he conducted. The Tribunal took fully into account that Ms C was unable to attend the hearing and that the contents of her statement had therefore not been tested through cross examination or Tribunal questioning. It therefore proceeded with caution with regard to the contents of the witness statement. It nonetheless considered that it could place some weight upon her evidence in support of Dr Hamad’s account, particularly due to Ms C’s memory of specific details of the Consultation. For example, she had a clear recollection of the type and colour of underwear that Patient A was wearing, as well as Patient A’s physicality. Moreover, Ms C had been appraised of concerns raised by Patient A on the day and had provided a consistent account in the form of a police statement. Although Ms C could not remember if she had left the end of the bed to retrieve the gel, she did specifically recall that Dr Hamad had palpated Patient A’s groin and scar.

32. Having balanced the evidence available to it, the Tribunal considered that the GMC had not satisfied the burden of proving that Dr Hamad physically examined (by intentional touching) Patient A’s genital area when this was not clinically indicated. It found that, if Ms C had left her position at the bottom of the bed at all, it was only for two to three seconds whilst she collected the gel. For Dr Hamad to have deliberately touched Patient A as she described in such a timeframe would have been an extremely opportunistic and risky action for him to take, particularly as he could not have predicted how Patient A would have responded or when Ms C would have returned to the bedside.

33. In all the circumstances the Tribunal found paragraph 1 not proved.
34. Taking into account the evidence of Professor G, and Dr Hamad’s own acceptance in his evidence, the Tribunal was satisfied that, in light of Patient A’s previous melanoma and subsequent surgery, Dr Hamad had a duty to visually examine Patient A’s lymph nodes on her right groin and the scar on her left groin. Dr Hamad also had to palpate the lymph nodes on her right groin, and the scars on her left groin and thigh to detect if any cancer had recurred.

35. With regard to the visual examination of Patient A’s lymph nodes on her right groin and the scar on her left thigh (sub-paragraph 2a), the Tribunal found that this was an inherently difficult sub-paragraph to find proved. Unless Dr Hamad was looking in a completely different direction throughout the examination, away from Patient A’s body, it would be very difficult for her to say with any degree of certainty that he had not visually examined the areas of the lymph nodes and scar. In addition, Patient A stated that she had closed her eyes during part of the examination so would have been unable to see where Dr Hamad was looking. Dr Hamad stated that he visually examined these areas in line with his usual practice and this is supported by the witness statement of Ms C. In the circumstances before it, the Tribunal preferred the evidence called on behalf of the clinician to that of Patient A.

36. In relation to the palpation of the lymph nodes on Patient A’s right groin, and the scars on her left groin and left thigh (sub-paragraph 2b), the Tribunal balanced Patient A’s evidence with that of Dr Hamad and the contents of both Ms C’s witness statement and Dr Hamad’s contemporaneous note of the consultation and the letter he dictated later the same day. The Tribunal has already stated its view that Dr Hamad has no independent recollection of the consultation. However, he was able to set out very clearly the consistent routine of his usual practice and why he normally acted as he did, even where his method diverged from that of Professor G. For instance, he was able to state that he systematically checks the axilla (armpits) of patients as he had personal experience of a patient who had developing metastasising cancer in this area which had made him more cautious in subsequent checks. Ms C set out that he palpated the indicated areas.

37. In the light of this evidence and taking into account Dr Hamad’s high degree of experience and good character, the Tribunal considered it improbable that he would not have properly palpated the areas indicated. He would have been fully aware of the significant risks for Patient A if he had not completed a proper check and missed an important clinical indication.

38. In these circumstances, the Tribunal considered that the GMC had not satisfied the burden of proving that Dr Hamad had failed to visually examine and...
palpate the areas specified in sub-paragraphs 2a and 2b. It therefore found both of these sub paragraphs not proved.

Sub-paragraph 2c

39. The Tribunal noted that sub-paragraph 2c alleges that Dr Hamad did not introduce himself to Patient A at the consultation. Patient A was clear on this point in her oral evidence. In his own evidence, Dr Hamad set out that he had introduced himself to Patient A. The Tribunal has already determined that Dr Hamad has no independent memory of the Consultation. However, as set out above, it placed weight on his evidence with regard to the clear and consistent routine he follows with each patient. The Tribunal found it notable that Dr Hamad was clear under cross examination that he ‘always’ introduces himself to patients as part of this routine. Further, from his oral evidence, the Tribunal noted that Dr Hamad speaks softly, quickly, and with an accent. It is accepted that he had spoken to Patient A about the examination that he was about to undertake. The Tribunal considered it more likely that Dr Hamad introduced himself to Patient A at the initial stage of the Consultation, but that she had missed it or simply forgotten that he had done so.

40. The Tribunal noted that a supporting element of the GMC’s case on this sub-paragraph was the point that when Patient A spoke to Nurse B by telephone later on the day of the Consultation, she had to ask for Dr Hamad’s name as she did not know it. The Tribunal did not accept that this was necessarily an indication that Dr Hamad had failed to introduce himself in the first place. Rather, as set out above, he may have done so, but she had missed it or forgotten it and therefore needed to ask Nurse B for his name.

41. In these circumstances, the Tribunal considered that the GMC had not satisfied the burden of proving that Dr Hamad had failed to introduce himself to Patient A. It therefore found sub-paragraph 2c not proved.

Paragraphs 3 and 4

42. The Tribunal noted that paragraph 3 alleges that Dr Hamad undertook the intimate physical examination alleged in paragraph 1 whilst failing to obtain and record consent for undertaking the examination, failing to wear gloves, and failing to record that he had undertaken the examination. It further noted that paragraph 4 alleges that Dr Hamad’s conduct in carrying out the intimate examination and failing to wear gloves was sexually motivated conduct.

43. The Tribunal has already found paragraph 1 not proved; namely that Dr Hamad carried out an intimate examination on Patient A. In these circumstances, it follows that, in the absence of an intimate examination taking place, there was no requirement for Dr Hamad to wear gloves, obtain and record consent and record that he had undertaken an intimate examination. Further, in the absence of an
Record of Determinations –
Medical Practitioners Tribunal

intimate examination taking place in the manner alleged, it follows that Dr Hamad’s
court cannot have been sexually motivated.

44. The Tribunal therefore found paragraphs 3 and 4 not proved in full.

The Tribunal’s Overall Determination on the Facts

45. The Tribunal has determined the facts as follows:

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

1. On 23 August 2017, during your consultation with Patient A you physically
examined Patient A’s genital area when this was not clinically indicated.
Found not proved

2. You failed to:

a. visually examine the:

i. lymph nodes on her right groin; Found not proved

ii. scar on her left groin; Found not proved

b. palpate the:

i. lymph nodes on her right groin; Found not proved

ii. scar on her left groin; Found not proved

iii. scar on her left thigh; Found not proved

c. introduce yourself to Patient A; Found not proved

d. explain the reasons for the consultation; Withdrawn following
application by the GMC
Record of Determinations –
Medical Practitioners Tribunal

e. explain the nature of the examination you would undertake.  
Withdrawn following application by the GMC

3. For the examination described at paragraph 1, you failed to:

   e. wear gloves; Found not proved

   f. record that you had undertaken the examination; Found not proved

   g. obtain consent; Found not proved

   h. record obtaining consent. Found not proved

4. Your conduct as described in paragraphs 1 and 3a above was sexually motivated. Found not proved

   And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct. Not impaired

46. As the facts have been found not proved in full it therefore follows that Dr Hamad’s fitness to practise is not impaired.

XXX

XXX.

Confirmed
Date 03 May 2019 Mr Nicholas Flanagan, Chair