Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 21/10/2019 - 23/10/2019
Medical Practitioner’s name: Dr Magdy EL WAHAB
GMC reference number: 2765354
Primary medical qualification: MB BCh 1972 Cairo
Type of case: New - Misconduct
Outcome on impairment: Not Impaired

Summary of outcome
No action (warning not considered) Case concluded

Tribunal:

<table>
<thead>
<tr>
<th>Legally Qualified Chair</th>
<th>Mr Patrick Cox</th>
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<tbody>
<tr>
<td>Medical Tribunal Member:</td>
<td>Dr Meenakshi Verma, Dr Keith Dunnett</td>
</tr>
<tr>
<td>Tribunal Clerk:</td>
<td>Mrs Rachel Horkin 21 and 23 October 2019. Mrs Jacqueline Kramer (22 October 2019 only)</td>
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</tbody>
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Attendance and Representation:

<table>
<thead>
<tr>
<th>Medical Practitioner:</th>
<th>Not present and not represented</th>
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<tbody>
<tr>
<td>Medical Practitioner’s Representative:</td>
<td>N/A</td>
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<tr>
<td>GMC Representative:</td>
<td>Mr Paul Williams, 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. 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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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 - 23/10/2019

Background

1. In 2017 Dr El Wahab was contracted for service through DRC Locums. In April 2017 DRC Locums sent a non-compliance form (known as a REV6 form) to the GMC in respect of Dr El Wahab. This stated that Dr El Wahab was ‘not sufficiently engaging with your local processes and is not meeting the requirements for their revalidation’. On two different dates in 2017, Dr El Wahab provided information to the GMC and to his responsible officer regarding compliance with revalidation. Also, in December 2017, he provided information to DRC Locums in relation to their request for a reflective statement with regard to an incident at Blackpool Victoria Hospital.

The Outcome of Applications Made during the Facts Stage

2. The Tribunal determined that service of the Notice of Hearing and Notice of Allegation had been effected in accordance with Rules 15 and 40 of the General Medical Council (Fitness to Practise Rules) 2004 as amended (‘the Rules’). It granted the GMC’s application, made pursuant to Rule 31 of the Rules, to proceed with the hearing in Dr El Wahab’s absence. The Tribunal’s full reasons for this decision on the application is included at Annex A.

The Allegation and the Doctor’s Response

3. The Allegation made against Dr El Wahab is as follows:

1. On 13 April 2017 you informed Mr A at the General Medical Council during a telephone call that your mother had died in January 2017, or words to that effect. To be determined

2. On 4 May 2017 you sent an email to your Responsible Officer Dr B stating that your mother had died in Egypt around Christmas time. To be determined
3. On 8 December 2017 you sent an email to Ms C at DRC Locums stating that you were in Cairo attending the funeral of your mother. To be determined

4. On one or more occasion:
   a. your statements as described at paragraphs 1 to 3 included information that was untrue; To be determined
   b. you knew that the statements as described at paragraphs 1 to 3 included information that was untrue. To be determined

5. On one or more occasion your actions as described at paragraphs 1 to 3 and 4 a. were dishonest by reason of paragraph 4 b. 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

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

   • Dr B, Dr El Wahab’s Responsible Officer (RO) in person;
   • Ms C, Head of Group Quality and Compliance within the Doctors and Nurses Division at DRC Locums in person;
   • Mr A, Contact Centre Adviser at the GMC in person;

Documentary Evidence

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

   • REV6 ‘Request to send a non-engagement concern letter to a doctor’ form from DRC Locums dated 10 April 2017;
   • Email from the GMC to Dr El Wahab dated 11 April 2017;
   • Note of telephone call between Dr El Wahab and Mr A date 13 April 2017;
   • Emails from Dr El Wahab to Dr B and Ms C dated 04 May to 08 December 2017;
   • REV9 ‘Confirming the effect of a non-engagement concern letter’ form dated 11 May 2017;
   • Email between Mr D at DRC Locums and Blackpool Victoria Hospital dated 29 September 2017;
   • Emails between Dr El Wahab and Ms C dated 29 September 2017, 08 December 2017 and 14 December 2017;
GMC Submissions

6. Mr Williams submitted that the position in relations to paragraphs 1, 2 and 3 was clear. The written and oral evidence adduced in support of these paragraphs of the allegation had not been challenged or undermined in any way. He submitted therefore, that the assertions contained within those paragraphs were clearly made out. In relation to paragraph 4 a. he stated that the three statements comprising paragraphs 1, 2 and 3 cannot all be true. He stated that they are ‘mutually exclusive’. Whilst the GMC cannot prove which of the statements are false and which are true (if any), the Tribunal can be satisfied that at least one of them is false. It followed naturally that if one of those statements was false, Dr El Wahab must have known that that statement was false.

7. In relation to paragraph 5, Mr Williams submitted that Dr El Wahab’s actions in making those statements were inherently dishonest. He submitted that there is no sensible or innocent explanation for Dr El Wahab to have made a dishonest statement or statements and that therefore a reasonable and objective member of the public would find his actions to have been dishonest.

The Tribunal’s Approach

8. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests with the GMC and it is for the GMC to prove the Allegation. Dr El Wahab 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.

9. The Legally Qualified Chair provided the advice as outlined below in paragraphs 10 to 24 and invited Mr Williams to make such submissions as he felt appropriate in relation to that advice.

10. So far as paragraphs 1 to 3 are concerned, it is for the GMC to prove on the balance of probabilities that each of those paragraphs are made out.

11. So far as 4 a. is concerned, the GMC’s position is that it does not say that they have evidence to prove that any of the statements in paragraphs 1 to 3 are untrue. Instead the GMC’s position is that, as a matter of logic, at least one if not two of them must be untrue. So, they assert as follows:
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(a) The statement that Dr El Wahab’s mother died ‘around Christmas’ made on 4 May 2017 cannot be true if a statement that Dr El Wahab’s mother died in January 2017 made on 13 April 2017 is true – and vice versa;

(b) The statement that Dr El Wahab’s mother died ‘around Christmas’ made in May 2017 cannot be true if a statement that he was in Cairo attending the funeral of his mother made on 8 December 2017 is true – and vice versa;

(c) The statement that Dr El Wahab’s mother died in January 2017 made on 13 April 2017 cannot be true if a statement that Dr El Wahab was in Cairo attending the funeral of his mother made on 8 December 2017 is true – and vice versa.

12. In general, it can be said that in respect of some pairs of statements, if one is true, the other cannot be true. So, if Person X states to Person Y that he (Person X) was in Manchester at 5pm on 21 October 2019 and if Person X states to Person Z that he (Person X) was in Liverpool at 5pm on 21 October 2019, then at least one of those statements is false. Person X cannot be in two places at the same time.

13. Pairs of statements of this nature will be called category A.

14. However, some statements need more context in order to determine if they are mutually exclusive. For instance, if Person X said to Person Y that he (Person X) was in Canada at 5pm on 21 October 2019 and Person X said to Person Z that he (Person X) was in America at 5pm on 21 October 2019, the question of whether or not those statements are mutually exclusive depends on context – what does Person X mean by ‘America’ – does Person X mean the continent of America or does Person X mean the United States of America?

15. Another example is if Person X said to Person Y ‘my mother lives in Manchester’ and Person X says to Person Z ‘my mother lives in Liverpool’ then those statements might both be true if Person X is adopted, because his birth mother might live in Manchester and his adoptive mother might live in Liverpool.

16. In relation to legal proceedings, in the first case, the prosecutor would have to show, on the balance of probabilities, that what the person making the statement meant by ‘America’ was the United States of America. In the second case, the prosecutor would have to show, on the balance of probabilities, that the person making those two statements was not adopted.

17. Pairs of statements of this nature will be called category B.

18. Finally there are some pairs of statements that are clearly not mutually exclusive – for instance Person X said to Person Y ‘I was in Manchester on 21
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October 2019’ and Person X said to Person Z ‘I was in Liverpool on 22 October 2019’.

19. Pairs of statements of this nature will be called category C.

20. So, in this case, the Tribunal should first decide into which category each pair of statements belong. If the Tribunal finds these statements are in category A or C, then that decides the matter. If the Tribunal decides they are in category B then it has to decide if the GMC has satisfied it, on the balance of probabilities, in relation to the matter(s) which would make them mutually exclusive. Finally, it is not necessary for the Tribunal to find that all three pairs of statements are ‘mutually exclusive’, but it must identify that at least one pair of statements are mutually exclusive and it must identify which one(s).

21. In relation to 4 b. the Tribunal would then have to be satisfied on the balance of probabilities that Dr El Wahab knew those statements to be untrue.

22. In relation to 5 the Tribunal would then have to be satisfied that, in relation to the statements, Dr El Wahab acted dishonestly.

23. In considering the issue of dishonesty, the test in Ivey v Genting Casinos (UK) Ltd 2017 UKSC 67 is to be applied which can be summarised as follows:

(a) The Tribunal must determine the facts as the doctor believed them to be;

(b) The Tribunal must then determine whether or not in light of that, the doctor’s actions would be regarded by reasonable people as dishonest.

24. The full Ivey direction is as follows: ‘When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.’

25. In response to this advice Mr Williams made the submission that he considered all the pairs of statements to be in category A although it could be suggested that the pair of statements in paragraph 11 (a) of this determination (i.e. paragraphs 1 and 2 of the Allegation) were in category B.

The Tribunal’s Analysis of the Evidence and Findings
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26. 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

27. The Tribunal considered the telephone note dated 13 April 2017 written by Mr A at the GMC. It stated that Dr El Wahab had informed Mr A that his mother had died in January. In his oral evidence before the Tribunal, Mr A confirmed that it was Dr El Wahab who had telephoned the GMC and that his note was written contemporaneously.

28. The Tribunal was satisfied that Dr El Wahab had made that statement to the GMC.

Paragraph 2

29. The Tribunal noted the email dated 4 May 2017 sent by Dr El Wahab to Dr B. It stated that his mother had died in Egypt ‘around Xmas time’. The Tribunal noted that the email address used by Dr El Wahab was the same one he had provided to the GMC for them to correspond with him.

30. The Tribunal was satisfied that Dr El Wahab had sent that email to Dr B.

Paragraph 3

31. The Tribunal noted the email dated 8 December 2017 sent by Dr El Wahab to Ms C at DRC Locums in which he stated that he was in Cairo attending the funeral of his mother.

32. The Tribunal was satisfied that Dr El Wahab had sent that email to Ms C.

Paragraph 4 a.

33. In accordance with the advice from the Legally Qualified Chair, the Tribunal paired the statements found proved and decided which category they fell into.

Statements 1 and 2

34. The Tribunal considered whether the two statements made by Dr El Wahab, being that his mother had died in January and that his mother had died around Christmas time were ‘mutually exclusive’ i.e. that if one is true the other cannot be.

35. The Tribunal concluded that statements 1 and 2 fall into category B, in that further evidence is required in order to determine whether those statements are
mutually exclusive. There was no evidence before the Tribunal to indicate that when Dr El Wahab stated ‘around Xmas time’ he meant to exclude any date after 31 December 2016. In other words, the statement ‘around Xmas time’ might well mean a date in early January 2017. As there was no evidence to show that Dr El Wahab could not have meant early January 2017 when using the term ‘around Xmas time’, the Tribunal cannot say that those statements were mutually exclusive.

**Statements 1 and 3**

36. The Tribunal considered whether the statement on 13 April 2017 made by Dr El Wahab that his mother had died in January and the email statement on 8 December 2017 that he was in Cairo at his mother’s funeral were mutually exclusive.

37. The Tribunal concluded that statements 1 and 3 fell into category B in that further evidence was required in order to determine whether those statements were mutually exclusive. It considered that it was possible that Dr El Wahab might have regarded more than one person as his mother. It noted that within the transcript of Dr El Wahab’s XXX, he stated:

   “My mother died on the date where it is mentioned here, but really I have an aunty who brought me up and in my country we look at her as my mother as well, so this is the one I was attending for terminal illness and preparing for a funeral ...”.

38. The Tribunal bore in mind that the GMC had not provided any evidence to show that Dr El Wahab’s reference to his mother in statements 1 and 3 was a reference to the same person.

39. In summary, having determined that statements 1 and 3 fall into category B, the Tribunal considered that further evidence was required in order to determine whether these statements were mutually exclusive. As there was no such evidence, it cannot say that those statements were mutually exclusive.

**Statements 2 and 3**

40. The Tribunal took the view that the logic it applied when determining whether statements 1 and 3 were mutually exclusive also applied to determining whether statements 2 and 3 were mutually exclusive.

41. The Tribunal therefore concluded that it cannot say that statements 2 and 3 were mutually exclusive.

*Paragraph 4b*
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42. As the Tribunal has found that none of the statements made by Dr El Wahab were mutually exclusive and therefore could not be found to be untrue, it follows that it is not possible to state that Dr El Wahab knew that any of this information was untrue. The Tribunal therefore found paragraph 4b not proved.

Paragraph 5

43. Given the Tribunal’s findings at paragraph 4a, that it could not be satisfied that any of statements 1 to 3 were untrue the Tribunal could not find that Dr El Wahab’s actions were dishonest. The Tribunal therefore found paragraph 5 not proved.

The Tribunal’s Overall Determination on the Facts

44. The Tribunal has determined the facts as follows:

1. On 13 April 2017 you informed Mr A at the General Medical Council during a telephone call that your mother had died in January 2017, or words to that effect. Found proved

2. On 4 May 2017 you sent an email to your Responsible Officer Dr B stating that your mother had died in Egypt around Christmas time. Found proved

3. On 8 December 2017 you sent an email to Ms C at DRC Locums stating that you were in Cairo attending the funeral of your mother. Found proved

4. On one or more occasion:
   a. your statements as described at paragraphs 1 to 3 included information that was untrue; Found not proved
   b. you knew that the statements as described at paragraphs 1 to 3 included information that was untrue. Found not proved

5. On one or more occasion your actions as described at paragraphs 1 to 3 and 4a. were dishonest by reason of paragraph 4b. Found not proved

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

45. The Tribunal bore in mind that the Rules state that if any facts are found proved it should progress to stage two and consider the matter of impairment. The
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Tribunal will therefore provide the GMC with the opportunity to consider this determination and to decide if it wishes to make submissions on misconduct and impairment.

46. The GMC indicated they did not wish to make any submissions on misconduct or impairment.

47. The Tribunal considered the facts that have been proved. The Tribunal decided that the facts proved did not amount to misconduct. Therefore, the issue of impairment of Fitness to Practise does not arise. This therefore concludes the case.

Confirmed
Date 23 October 2019

Mr Patrick Cox, Chair
Determination on service and proceeding in the doctor’s absence

1. In relation to Dr El Wahab’s registered address, the Tribunal was provided with a screenshot of the GMC’s software (Siebel) which showed Dr El Wahab’s registered address to be XXX.

2. In relation to Dr El Wahab’s email address, the Tribunal was provided with a screenshot from Siebel which appeared to show his e-mail address to be: XXX. As there was room for doubt in relation to that email address (because the entire email address could not be displayed on the screen) the Tribunal was also provided with an additional screenshot showing the entire email address was indeed XXX. On 27 July 2018, Dr El Wahab confirmed, by way of email to a GMC Investigations Officer, that the correct email address to be used for correspondence was the one that he was using. All email correspondence to Dr El Wahab that the Tribunal was provided with (including the email correspondence referred to below) was to that email address.

3. In relation to the Notice of Allegation required under Rule 15, the Tribunal was provided with evidence to show that the letter containing the information required by Rule 15 had been posted by special delivery and also sent by email. The evidence showed that the letter had not actually been delivered to Dr El Wahab’s registered address as the delivery company could not locate that address. However, there was confirmation of delivery of the email and its attachment containing the information required in relation to the Notice of Allegation, dated 23 August 2019. The Tribunal was therefore satisfied that service of the Notice of Allegation was proved in accordance with Rule 40.

4. In relation to the Notice of Hearing required under Rule 15, the Tribunal was provided with evidence to show that the letter containing the information required by Rule 15 had been posted by special delivery and also sent by e-mail. The Tribunal was therefore satisfied that service of the Notice of Hearing was undertaken in accordance with paragraph 8 of Schedule 4 of the Act. The evidence showed that the letter had not actually been delivered to Dr El Wahab’s registered address as the delivery company could not make contact with Dr El Wahab. However, there was confirmation of delivery of the email and its attachment containing the information required of the Notice of Hearing, dated 05 September 2019. The Tribunal was therefore satisfied that service of the Notice of Hearing was proved in accordance with Rule 40.

5. The Tribunal went on to consider whether to proceed in Dr El Wahab’s absence in accordance with Rule 31.
6. The Tribunal bore in mind that its discretion to proceed in the practitioner’s absence must be exercised with caution and with regard to the overall fairness of the proceedings. The Tribunal has balanced the interests of the practitioner, including fairness to him, against the interests of the public in ensuring cases are dealt with expeditiously.

7. On the basis of the information provided, the Tribunal is satisfied that Dr El Wahab has voluntarily waived his right to be present and represented at this hearing and that he is aware that the Tribunal can proceed in his absence. It therefore determined that it is in the public interest to exercise its discretion and proceed with the case in Dr El Wahab’s absence. Having reached this decision, the Tribunal wishes to emphasise that it will not draw any adverse inference from Dr El Wahab’s non-attendance.