Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 25/02/2019 - 04/03/2019
Medical Practitioner's name: Dr Omar AZIZ
GMC reference number: 3225833
Primary medical qualification: MB ChB 1971 University of Mosul

Type of case
New - Misconduct

Outcome on impairment
Not Impaired

Summary of outcome
Warning

Tribunal:

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<th>Role</th>
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<td>Legally Qualified Chair</td>
<td>Mr Julian Weinberg</td>
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<tr>
<td>Lay Tribunal Member:</td>
<td>Mrs Christine Curbishley</td>
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<td>Medical Tribunal Member:</td>
<td>Dr Elizabeth Ball</td>
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<td>Tribunal Clerk:</td>
<td>Ms Chloe Ainsworth</td>
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Attendance and Representation:

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<td>Medical Practitioner:</td>
<td>Present and represented</td>
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<td>Medical Practitioner’s Representative:</td>
<td>Mr Ranald Davidson, Counsel, instructed by RadcliffesLeBrasseur</td>
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<td>GMC Representative:</td>
<td>Ms Rosalind Emsley-Smith, 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.

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
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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 - 28/02/2019

Background

1. Dr Aziz qualified in 1971 and prior to the events which are the subject of the hearing, he held a series of locum Consultant Dermatologist positions between 2002 and 2014. In February 2013, Dr Aziz was appointed as a full time NHS Consultant Dermatologist at St Mary’s Hospital, Isle of Wight ('the Hospital') and was included in the GMC Specialist Register for Dermatology in April 2016. At the time of the referral to the GMC, Dr Aziz had reduced his workload and was undertaking five clinical sessions a week at the Lighthouse Clinic and occasionally seeing inpatients at the Hospital.

Patient A

2. In February 2016, Dr Aziz began working as a Community Dermatologist for About Health. Throughout his employment in this role, Dr Aziz was assisted by Ms B, a Health Care Assistant ('HCA'). On 28 October 2016, Dr Aziz, assisted by Ms B, was removing a lesion from Patient A’s right breast. At the conclusion of the procedure, Dr Aziz noticed that he had dropped the needle used for the suture and did not know where it was. Patient A was asked to remain in the room whilst the needle was located and Dr Aziz and Ms B spent approximately ten minutes trying to locate it. It is agreed that Dr Aziz bent down, picked an item up from the floor and took it over to the sharps bin. Ms B alleges that Dr Aziz stated ‘I’ve got it’ when doing this. Patient A was then told that she could leave the room and shortly thereafter Ms B found the needle on the floor.

Patient C

3. On 3 October 2016, Dr Aziz performed a shave excision on a mole on the front of Patient C’s left ear. Dr Aziz was satisfied, having examined Patient C with a dermatoscope, that the specimen presented as benign and therefore did not send the specimen for histological examination. The GMC alleges that Dr Aziz failed in his duty to send the specimen to histology.

The Allegation and the Doctor’s Response

4. The Allegation made against Dr Aziz is as follows:

Patient A
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1. On 28 October 2016 you performed a surgical procedure on Patient A during which a needle (‘the Needle’) was lost, and you:
   a. purported to pick the Needle up from the floor and put it in the sharps bin;
   b. reported to Ms B that you had found the Needle;
   c. failed to record that the Needle was missing.

To be determined in its entirety

2. Your actions described at paragraphs 1a and 1b were:
   a. untrue;
   b. known by you to be untrue.

To be determined in its entirety

3. Your actions described at paragraphs 1 and 2:
   a. were dishonest;
   b. put Patient A at risk of harm;
   c. put Ms B at risk of harm.

To be determined in its entirety

Patient C

4. On 3 October 2016 you removed a pigmented lesion from Patient C and you failed to submit it for histological analysis.

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

- Ms B, former Senior Healthcare Assistant at About Health Healthcare Group, in person.

6. The Tribunal also received evidence on behalf of the GMC in the form of a witness statement from the following witness who was not called to give oral evidence:

- Patient A.

7. Dr Aziz provided his own witness statement (undated), and also gave oral evidence at the hearing.

**Expert Witness Evidence**

8. The Tribunal also received evidence from two expert witnesses. Professor F, who was called by the GMC, is a Consultant Dermatologist and prepared a report for this hearing, dated 4 September 2017. He also prepared a supplementary report, dated 4 April 2018. Dr G is a Consultant Dermatologist, who was called by Dr Aziz’s representatives. He prepared a report for this hearing, dated 16 January 2019. The two experts met on 10 February 2019 and prepared a joint report establishing the areas of agreement and disagreement between them.

**Documentary Evidence**

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

- Primary Care Dermatology Society – Skin Surgery Guidelines (‘the Guidelines’);
- Incident Risk Assessment Form.

**The Tribunal’s Approach**

10. The Tribunal accepted the advice of the Legally Qualified Chair. 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 Aziz 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

11. 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.

**Patient A**

1. On 28 October 2016 you performed a surgical procedure on Patient A during which a needle (‘the Needle’) was lost, and you:

   a. purported to pick the Needle up from the floor and put it in the sharps bin; **Determined and found proved**

12. Dr Aziz identified that he had dropped a needle and that it needed to be found. By Dr Aziz’s own account and the account of Ms B, Dr Aziz bent down to pick up what he thought to be the needle. He accepted that in doing so he said ‘I’ve found it’ or words to that effect, he then walked to the sharps bin to dispose of the item he picked up. In his oral evidence, Dr Aziz stated that when he bent down to pick the item up, he realised that it was not the needle, but in fact a suture. Given that the sole purpose of the search was to find the missing needle, the Tribunal considered it a proper inference to be drawn that in stating that he had ‘found it’ he was referring to the needle and not a suture. The Tribunal did not consider it credible that if he had simply found suture material and not the needle, that he would not have said so and request that the search continued. In all the circumstances, the Tribunal determined that Dr Aziz’s actions gave the impression to Ms B that the needle had been located.

13. Accordingly the Tribunal found sub-paragraph 1(a) proved.

   b. reported to Ms B that you had found the Needle; **Determined and found proved**

14. During Dr Aziz’s oral evidence, he accepted that whilst he and Ms B were searching for the needle, he stated ‘I’ve found it’ or something similar. This was supported by the oral evidence of Ms B. Considering the context of this statement, as set out above, the Tribunal inferred that the ‘it’ he was referring to must have been the needle and determined that this was the proper conclusion for Ms B to draw.

15. Accordingly the Tribunal found sub-paragraph 1(b) proved.
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c. failed to record that the Needle was missing.
   Not proved

16. The Tribunal first considered whether Dr Aziz had a duty to report that the needle had been misplaced and subsequently found. The Tribunal noted the agreed position between the expert witnesses that where a needle cannot be located, ‘this should be clearly documented in the records’. The Tribunal noted that it had not been presented with any protocol or guidance dealing with the recording of missing needles where they have subsequently been found in circumstances such as in this case.

17. The Tribunal took account of the report by Professor F, dated 4 September 2017:

‘I am not aware of any health and safety guidance available with regard to missing needles from minor surgical procedures. Most guidelines refer to missing needles with open procedures where the needle may have remained within the body cavity…I could not criticise any service for failing to find a missing needle that was clearly not left within a patient’s body cavity or surgical wound.’

The Tribunal also noted the oral evidence of Dr G, who stated that in these circumstances, where the needle had subsequently been located, there was no obligation on the doctor to record that the needle had been missing and had subsequently been found.

18. Accordingly the Tribunal found sub-paragraph 1(c) not proved.

2. Your actions described at paragraphs 1a and 1b were:

   a. untrue; Determined and found proved

19. The Tribunal noted it had already found proved that Dr Aziz purported to pick the needle up from the floor and place it in the sharps bin, and reported to Ms B that he had found the needle when he had not. Therefore the Tribunal found that Dr Aziz’s actions as alleged were untrue and as such found sub-paragraph 2(a) proved.

   b. known by you to be untrue. Determined and found proved

20. The Tribunal noted its previous findings. The Tribunal determined that if Dr Aziz purported to pick the needle up from the floor and place it in the sharps bin,
and reported to Ms B that he had found the needle when he had not, then it follows that he must have known this to be untrue.

21. Accordingly the Tribunal found sub-paragraph 2(b) proved.

3. Your actions described at paragraphs 1 and 2:

   a. were dishonest; **Determined and found proved**

22. The Tribunal has taken into account Dr Aziz's good character and the evidence adduced by him attesting to his honesty and integrity.

23. The Tribunal considered what Dr Aziz's state of mind was at the time of the incident. It noted that it has found Dr Aziz knew his actions, in purporting to pick the needle up from the floor and place it in the sharps bin and in reporting to Ms B that he had found the needle, were untrue. It was therefore satisfied that this was Dr Aziz’s belief at the time.

24. The Tribunal next considered whether ordinary, decent people would find Dr Aziz’s actions were dishonest. It determined that ordinary, decent people would find that in purporting to pick the needle up and place it in the sharps bin and in reporting that he had found the needle whilst knowing this to be untrue, Dr Aziz’s actions were dishonest.

   b. put Patient A at risk of harm; **Determined and found proved**

25. The Tribunal noted that both experts were in agreement that Dr Aziz’s actions did put Patient A at risk of harm, but that the risk was minimal:

   ‘AW and WH agree that if Patient A had not been informed that the needle was missing, then should[sic] would be at risk, but overall they agreed that the risk to Patient A would be minimal’

26. The Tribunal had regard to the oral evidence of Dr Aziz. He stated that he did not warn Patient A that the needle had not been located after he had purported to put the needle in the sharps bin. The Tribunal has had regard to the joint statement of the expert witnesses, which states ‘if after an adequate search the needle remains missing, the patient should be informed as to what has happened so as to be vigilant and protect themselves.’ The Tribunal noted that Patient A was not so advised by the time she was permitted to leave the room.
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27. The Tribunal determined that by creating the false impression that he had found the needle when he had not by the time Patient A had left the room, Dr Aziz had put Patient A at risk of harm, albeit a minimal risk, as jointly identified by the expert witnesses.

28. Accordingly the Tribunal found sub-paragraph 3(b) proved.

29. The Tribunal had regard to joint expert report, dated 10 February 2019:

‘AW and WH agree, that in theory, Ms B may have been put at risk of harm. However, on balance, the needle was most likely on the floor in any event, and the biggest risk was therefore her standing on the needle. The risk of a needle used in skin surgery penetrating footwear is negligible.’

The Tribunal noted that Ms B thought the needle had been disposed of, but it had not. It determined that it followed that if there was a risk of harm to Patient A then there also must be a risk of harm to Ms B. It noted that this risk of harm would be negligible should the needle be found on the floor. However, during the period from when Dr Aziz purported to pick the needle up from the floor and place it in the sharps bin, to Ms B locating the needle, there was a short period when Ms B was put at risk, particularly as the Tribunal accepted that Ms B was wiping down a number of surfaces after the procedure.

30. Accordingly the Tribunal found sub-paragraph 3(c) proved.

Patient C

4. On 3 October 2016 you removed a pigmented lesion from Patient C and you failed to submit it for histological analysis. Not proved

31. The Tribunal noted that the two expert witnesses were not in agreement on this matter. As such, it first gave careful consideration to whose evidence it preferred. The Tribunal found Professor F’s oral evidence to be clear and consistent throughout. It also found Dr G’s evidence to be consistent and credible. It was clear to the Tribunal that both practitioners are very experienced in the field of dermatology.

32. Professor F referred the Tribunal to the Guidelines produced by two GPs. Under the heading ’Shave Excisions’ it states ‘the sample must always be sent for
Under the heading ‘Histology’ the Guidelines state ‘all samples should be sent for histology’. It was Professor F’s opinion that these guidelines applied to practitioners in a primary care setting. It was important because only a histology report could unequivocally confirm whether the material was malignant or benign. Notwithstanding Dr Aziz’s conviction that the growth was benign, he considered that there was always the possibility that a diagnosis might be wrong. In addition, if a patient suffered further difficulties with a growth in the future, the failure to send the excised material for histology might prejudice any future diagnosis. He further stated that even though Dr Aziz was a Consultant Dermatologist, he should nevertheless have complied with the Guidelines.

Dr G took a different view. He stated that the Guidelines applied to ‘the lowest common denominator’ and were applicable to GPs with a special interest in dermatology. However, Dr Aziz was an experienced Consultant Dermatologist, he had conducted an entirely appropriate examination and he had correctly diagnosed that the growth was benign. Given his experience and expertise, he stated that Dr Aziz was entitled to conclude that a referral for a histology report would not be required. This he felt was particularly the case given that Dr Aziz would have been entitled not to have excised the lesion and because it was only removed for symptomatic rather than diagnostic reasons. He concluded that in the circumstances, there was no obligation on Dr Aziz to submit the lesion for histological analysis.

The Tribunal accepted Dr G’s evidence that it should take into account Dr Aziz’s experience and knowledge. Whilst it accepted that it might have been good practice to submit the lesion for histological analysis, in the circumstances, the Tribunal concluded that there was no obligation on Dr Aziz to do so.

Accordingly the Tribunal found paragraph 4 not proved.

The Tribunal’s Overall Determination on the Facts

The Tribunal has determined the facts as follows:

Patient A

1. On 28 October 2016 you performed a surgical procedure on Patient A during which a needle (‘the Needle’) was lost, and you:

   a. purported to pick the Needle up from the floor and put it in the sharps bin; **Determined and found proved**
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b. reported to Ms B that you had found the Needle;
Determined and found proved

c. failed to record that the Needle was missing.
Not proved

2. Your actions described at paragraphs 1a and 1b were:

a. untrue;

b. known by you to be untrue.

Determined and found proved in its entirety

3. Your actions described at paragraphs 1 and 2:

a. were dishonest;

b. put Patient A at risk of harm;

c. put Ms B at risk of harm.

Determined and found proved in its entirety

Patient C

4. On 3 October 2016 you removed a pigmented lesion from Patient C and you failed to submit it for histological analysis.
Not proved

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

Determination on Impairment - 04/03/2019

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 Aziz’s fitness to practise is impaired by reason of misconduct.

The Outcome of Applications Made during the Impairment Stage
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2. The Tribunal granted Dr Aziz’s application, made pursuant to Rule 34(13) of the General Medical Council (Fitness to Practise Rules) 2004 as amended (‘the Rules’), that it hear the character evidence of two witnesses, Dr E and Dr D, by telephone. Mr Davidson submitted that the witnesses are based in the Isle of Wight and it would be a lengthy journey to make. Further, he submitted there is no extra merit in seeing the demeanour of the witnesses as they are character witnesses. Ms Emsley-Smith did not object to the application. The Tribunal considered the availability of the witnesses, given their professional commitments, the need for the witnesses to attend in person, the importance of the witnesses’ evidence to the proceedings and fairness to all parties. The Tribunal determined that it was in the interests of justice to hear the evidence of the witnesses by telephone.

The Evidence

3. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary. In addition, the Tribunal received further evidence as follows:

- Dr E, Clinical Director for Lighthouse Medical Limited, by telephone link;
- Dr D, Consultant Dermatologist, by telephone link.

4. The Tribunal also received in support of Dr Aziz a number of testimonials, with the redaction applied at the first stage of the hearing removed, from colleagues and employers, all of which it has read.

5. The Tribunal also received:

- A Certificate of Attendance at the event: Clinical cases and Michael Feiwel lecture, dated 21 February 2019.

Submissions

6. On behalf of the GMC, Ms Emsley-Smith submitted that the Tribunal has heard evidence on the impact of its findings in this case on dermatological services. She submitted that this matter is not relevant at this stage of the hearing, but should be considered at the sanction stage of the hearing, if reached.

7. Ms Emsley-Smith submitted that the GMC accepts that Dr Aziz’s actions on 28 October 2016 were a moment of dishonesty based on the desire to move on with the surgery list and not delay the progress of the day’s work. She submitted that when Dr Aziz initially dropped the needle, he acted honestly and informed Ms B that he had done
so. Further, he was honest when Ms B subsequently found the needle. However, she submitted that Dr Aziz’s conduct has fallen seriously below the standard to be expected of a Consultant Dermatologist as it raises issues in relation to his probity.

8. Ms Emsley-Smith referred the Tribunal to the relevant paragraphs of Good Medical Practice 2013 (‘GMP’):

   ‘65 You must make sure that your conduct justifies your patients’ trust in you and the public’s trust in the profession.

   ...

   68 You must be honest and trustworthy in all your communication with patients and colleagues. This means you must make clear the limits of your knowledge and make reasonable checks to make sure any information you give is accurate.’

She submitted that Dr Aziz has breached these areas of GMP. Further, she submitted that both experts were in agreement that such conduct falls seriously below the standard expected.

9. Turning to the issue of impairment, Ms Emsley-Smith submitted that Dr Aziz’s fitness to practise is impaired because of his dishonesty. She submitted that the Tribunal cannot be convinced that Dr Aziz will not repeat his dishonesty because it follows from its findings that he has been dishonest before the Tribunal. She submitted that, although Dr Aziz’s dishonesty on 28 October 2016 can be described as ‘short-lived’, his conduct brought the profession into disrepute and breached a fundamental tenet of the medical profession. She submitted that Dr Aziz had put a patient at risk of harm, albeit the risk was minimal.

10. Ms Emsley-Smith submitted that the public interest demands a finding of impairment and that a finding of impairment is necessary to protect the reputation of the medical profession and uphold the standards of the medical profession as a whole. She submitted that there is an absence of insight and reflection and that as such a finding of impairment is inevitable.

11. Ms Emsley-Smith submitted that, given the minimal risk of harm Dr Aziz’s actions posed, she does not submit that a finding of impairment is required on public protection grounds.

12. On behalf of Dr Aziz, Mr Davidson submitted that Dr Aziz accepted the findings of the Tribunal at the facts stage and further that his behaviour amounted to misconduct.
13. With reference to *GMC v Chaudhary [2017] EWHC 2561 (Admin)* Mr Davidson submitted a finding of dishonesty does not always lead to a finding of impairment.

14. Mr Davidson submitted that Dr Aziz graduated from in 1971 in Iraq. He submitted that Dr Aziz has worked in Iraq, Sweden and the United Kingdom ("UK") for 38 years without issue. Further, he submitted that Dr E and Dr D have provided insight into Dr Aziz’s probity and integrity throughout their professional relationships over a number of years and submitted that clearly Dr Aziz’s actions represent a departure from his usual good character. Mr Davidson submitted that this was a one off event, not premeditated and there is no suggestion of personal gain or advantage to Dr Aziz. He submitted that the dishonesty lasted at most a few minutes. Whilst Mr Davidson acknowledged that there was a risk of harm created, he submitted that this has been described as ‘minimal’ and ‘negligible’. Mr Davidson also submitted that there is no question regarding Dr Aziz’s clinical ability.

15. Mr Davidson submitted that whilst Dr Aziz has departed from GMP, the overarching objective can be met in this case without a finding of impairment being made against him. He submitted that the Tribunal’s findings have had a ‘humbling and chastening’ effect on Dr Aziz and that he will have to live with the stigma and shame associated. He submitted that a finding of no impairment still leaves the Tribunal with the option to impose a warning on his registration and that this would remain on the GMC register for five years, which would encompass the remainder of Dr Aziz’s professional working life.

**The Relevant Legal Principles**

16. 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.

17. In approaching the decision, the Tribunal was mindful of the two stage process to be adopted: first whether the facts as found proved amounted to misconduct, and that the misconduct was serious, and then whether the finding of that misconduct which was serious, could lead to a finding of impairment.

18. The Tribunal must determine whether Dr Aziz’s fitness to practise is impaired today, taking into account Dr Aziz’s 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.

**The Tribunal’s Determination on Impairment**
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Misconduct

19. The Tribunal noted that the expert witnesses were in agreement that Dr Aziz’s conduct fell far below the standard expected of a medical practitioner. The Tribunal determined that Dr Aziz’s actions raise issues regarding his probity.

20. The Tribunal gave careful consideration to the following paragraphs of GMP:

‘65 You must make sure that your conduct justifies your patients’ trust in you and the public’s trust in the profession.

...  

68 You must be honest and trustworthy in all your communication with patients and colleagues. This means you must make clear the limits of your knowledge and make reasonable checks to make sure any information you give is accurate.’

The Tribunal noted that Dr Aziz’s dishonest actions took place within a clinical setting and determined that they amounted to a serious departure from GMP.

21. The Tribunal considered the context of Dr Aziz’s dishonest behaviour. It noted that Dr Aziz had initially identified that the needle was missing and informed Ms B of this from the outset. Nevertheless, when Dr Aziz purported to pick up the needle from the floor and place it in the sharps bin and when he stated ‘I’ve found it’ or words to that effect, he misled Ms B into assuming that the needle had been located. Dr Aziz’s actions were neither transparent nor truthful.

22. The Tribunal recognised that Dr Aziz’s dishonesty was short-lived as the needle was found shortly thereafter. It took the view that Dr Aziz’s dishonesty was an impulsive, isolated incident and not indicative of a general attitudinal issue. However, the Tribunal viewed Dr Aziz’s dishonesty as a serious failure.

23. The Tribunal therefore has concluded that Dr Aziz’s conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct.

Impairment
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24. Having found that the facts found proved amount to misconduct, the Tribunal went on to consider whether, as a result of that misconduct, Dr Aziz’s fitness to practise is currently impaired.

25. The Tribunal accepted that honesty is a fundamental characteristic to be expected of every medical practitioner. It goes to the heart of what it means to be a professional. However, it was conscious that dishonesty exists on a spectrum and took into account the individual circumstances in this case.

26. The Tribunal determined that Dr Aziz’s dishonesty was an impulsive, isolated and short-lived incident. The dishonesty was neither sustained nor repeated. The Tribunal noted that Dr Aziz had disclosed that the needle was missing in the first place. It determined that if Dr Aziz had a propensity to be dishonest then it was open to him not to disclose that the needle had even been lost. It determined that there was no personal benefit to Dr Aziz in acting as he did other than it enabling the patient to leave without delay and for him to move onto the next patient and continue with the surgeries for the day.

27. The Tribunal noted the evidence of the expert witnesses that any risk of harm to Ms B or Patient A was ‘minimal’ or ‘negligible’.

28. The Tribunal first considered the level of Dr Aziz’s insight. Whilst the Tribunal was not presented with any evidence to demonstrate insight into his actions or the impact that they may have had on the medical profession, Dr Aziz accepts the Tribunal’s finding of dishonesty and does not seek to go behind it.

29. The Tribunal was of the view that dishonesty is particularly difficult to remediate, but not impossible. It considered that it is difficult for Dr Aziz to demonstrate remediation because of the circumstances in which the misconduct took place. That being said, it noted Dr Aziz had accepted its findings. Further, the Tribunal noted that it had a number of testimonials before it and took account of the oral evidence of Dr E and Dr D, both of whom currently work with Dr Aziz, spoke highly of his probity, integrity and clinical skills as a practitioner. Given their evidence, the Tribunal was satisfied that Dr Aziz’s actions were out of character.

30. The Tribunal was satisfied that by acting dishonestly Dr Aziz had breached a fundamental tenet of the profession, but, noting that his dishonest behaviour was an isolated event within a single procedure and has not been repeated, accepted that Dr Aziz has not had a propensity to be dishonest or have a deep-seated attitudinal
problem in a career spanning 38 years. The Tribunal determined that this was of particular significance given the absence of demonstrable evidence of insight.

31. The Tribunal considered the likelihood that Dr Aziz would repeat his misconduct. The Tribunal took into account Dr Aziz’s unblemished career of 38 years. Further, it noted that he has been working as a Consultant Dermatologist for over two years since the event without further incident. The Tribunal considered Dr Aziz’s oral evidence. It found that Dr Aziz appeared to take the incident seriously and that he had initially searched for the needle. The Tribunal noted that the other consultants working alongside him are satisfied that he is working without there being any issues as to his probity. The Tribunal therefore concluded that it was highly unlikely that Dr Aziz would repeat his misconduct.

32. The Tribunal noted that a finding of dishonesty does not in itself necessitate a finding of impairment. The Tribunal considered whether public confidence in the profession and in the GMC would be undermined if a finding of impairment were not made. The Tribunal accepted that in a case where a doctor fails to demonstrate insight into his actions that a finding of impaired fitness to practise would ordinarily follow. However, the circumstances of this case are unusual in that it relates to a serious failing in relation to circumstances which might not have arisen had it not been for Dr Aziz’s initial honesty in declaring the needle missing in the first place. It has balanced its concerns about Dr Aziz’s limited demonstration of insight and remorse against the out of character and short-lived nature of the dishonesty and the fact that his actions posed a minimal risk of harm. Further, but for this event, Dr Aziz is considered to be otherwise honest and trustworthy.

33. In all the circumstances, the Tribunal determined that a finding of impairment is not necessary in this case to uphold public confidence in the medical profession.

34. The Tribunal has therefore determined that Dr Aziz’s fitness to practise is not impaired either on public protection or public interest grounds.

**Determination on Warning - 04/03/2019**

1. As the Tribunal determined that Dr Aziz’s fitness to practise is not impaired it considered whether in accordance with s35D(3) of the 1983 Act, a warning was required.

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

Submissions

3. On behalf of the GMC, Ms Emsley-Smith submitted that a warning is necessary as there has been a significant departure from GMP, specifically paragraphs 65 and 68.

4. Referring the Tribunal to the Guidance on Warnings, February 2018 (the Guidance), she submitted that cases of dishonesty should result in a warning. She submitted particularly so in this case where there was found to be a resulting risk to patients and where it took place in a clinical setting. Ms Emsley-Smith submitted that a warning will operate as a necessary deterrent and will send a message to Dr Aziz, the rest of the profession and the public as to the consequences of such behaviour.

5. On behalf of Dr Aziz, Mr Davidson submitted that he had no positive submission to make. He referred the Tribunal to the Guidance, specifically the test for issuing a warning, the factors that the Tribunal must take into consideration, paragraph 24 which deals with dishonesty and the mitigating factors.

The Tribunal’s Determination on Warning

6. In reaching its decision as to whether a warning would be appropriate, the Tribunal has taken account of the circumstances of Dr Aziz’s case and the submissions received. It has also taken account of the Guidance, with particular reference to paragraphs 16 and 20 which state:

‘16 A warning will be appropriate if there is evidence to suggest that the practitioner’s behaviour or performance has fallen below the standard expected to a degree warranting a formal response by the GMC or by a MPTS tribunal. A warning will therefore be appropriate in the following circumstances:

• there has been a significant departure from Good medical practice, or
• there is a significant cause for concern following an assessment of the doctor’s performance.

...

20 The decision makers should take account of the following factors to determine whether it is appropriate to issue a warning.
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a There has been a clear and specific breach of Good medical practice or our supplementary guidance.

b The particular conduct, behaviour or performance approaches, but falls short of, the threshold for the realistic prospect test or in a case before a tribunal, that the doctor’s fitness to practise has not been found to be impaired.

c A warning will be appropriate when the concerns are sufficiently serious that, if there were a repetition, they would likely result in a finding of impaired fitness to practise. Warnings may be an appropriate response to any type of allegation (subject to the comments in paragraph 7 regarding cases solely relating to a doctor’s health); the decision makers will need to consider the degree to which the conduct, behaviour or performance could affect patient care, public confidence in the profession or the reputation of the profession. If the decision makers consider that a warning is appropriate, the warning should make clear the potential impact of the conduct, behaviour or performance in question, accordingly.

d There is a need to record formally the particular concerns (because additional action may be required in the event of any repetition).

7. The Tribunal had regard to the statutory over-arching objective, as well as the principle of proportionality, weighing the interests of the public with Dr Aziz’s interests.

8. The Tribunal has borne in mind its determinations on facts and impairment and the conclusions which it reached regarding impairment.

9. With reference to paragraph 33 of the Guidance, the Tribunal considered the mitigating factors in this case. The Tribunal noted Dr Aziz’s acceptance of the Tribunal’s findings, his previous good character and the supporting evidence he provided of being a respected doctor. The Tribunal also noted that the misconduct was an isolated incident, that there has been no repetition since and that it to be highly unlikely that Dr Aziz would repeat his misconduct. Although the Tribunal noted that there is limited evidence of insight, it determined that the circumstances overall did not warrant a finding of current impairment. However, it determined that it was necessary for it to highlight to Dr Aziz, the public, and the wider profession, that his conduct was serious and unacceptable and had the potential to bring the profession into disrepute. The Tribunal determined that it was necessary to reinforce the importance of maintaining proper professional conduct and behaviour.
10. The Tribunal therefore imposed the following warning on Dr Aziz’s registration:

‘On 28 October 2016, Dr Aziz, assisted by Ms B, was removing a lesion from Patient A’s right breast. At the conclusion of the procedure, Dr Aziz noticed that he had dropped the needle used for the suture and did not know where it was. Patient A was asked to remain in the room until the needle was located and Dr Aziz and Ms B spent approximately ten minutes trying to locate it. Dr Aziz bent down, picked an item up from the floor and took it over to the sharps bin and stated ‘I’ve got it’ whilst doing this. Patient A was then told that she could leave the room. Shortly thereafter Ms B found the needle on the floor. The Tribunal has made a finding of fact that Dr Aziz’s conduct in purporting to pick up the needle from the floor and put it in the sharps bin and in reporting to Ms B that he had found the needle was dishonest and amounted to misconduct.

This conduct does not meet with the standards required of a doctor. It risks bringing the profession into disrepute and it must not be repeated.

In this case Dr Aziz breached the required standards set out in Good medical practice and associated guidance, namely:

65 You must make sure that your conduct justifies your patients’ trust in you and the public’s trust in the profession.

68 You must be honest and trustworthy in all your communication with patients and colleagues. This means you must make clear the limits of your knowledge and make reasonable checks to make sure any information you give is accurate.

Whilst the Tribunal has found that a finding of impaired fitness to practise is not required for the reasons set out in the determination, it is necessary in response to issue this formal warning.’

11. This warning will be published on the medical register in line with our publication and disclosure policy, which can be found at www.gmc-uk.org/disclosurepolicy.

12. Dr Aziz has not been the subject of an interim order.

13. That concludes this case.
Record of Determinations –
Medical Practitioners Tribunal

Confirmed
Date 04 March 2019

Mr Julian Weinberg, Chair