Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 08/05/2019 - 09/05/2019

Medical Practitioner’s name: Dr Sikander ARSHAD

GMC reference number: 3018905

Primary medical qualification: MB BCh 1985 University of Wales

Type of case
New - Misconduct

Outcome on impairment
Impaired

Summary of outcome
Suspension, 3 months.

Tribunal:

<table>
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<tr>
<th>Legally Qualified Chair</th>
<th>Mrs Laura Paul</th>
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<tr>
<td>Lay Tribunal Member:</td>
<td>Mr Robert McKeon</td>
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<tr>
<td>Medical Tribunal Member:</td>
<td>Dr Matthew O'Meara</td>
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</tbody>
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Tribunal Clerk: Mr Stuart Peachey

Attendance and Representation:

<table>
<thead>
<tr>
<th>Medical Practitioner:</th>
<th>Present and represented</th>
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<tr>
<td>Medical Practitioner’s Representative:</td>
<td>Mr Paul Spencer, Counsel/QC, instructed by BLM</td>
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<tr>
<td>GMC Representative:</td>
<td>Mr Rob Dudley, 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 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 and Impairment - 08/05/2019

(1) THE FACTS

1. At the outset of these proceedings, Mr Paul Spencer, Counsel, on Dr Arshad’s behalf, admitted the entirety of the Allegation. The Tribunal therefore announced the Allegation as admitted and found proved.

2. The admitted facts of Dr Arshad’s case are as follows:

   1. In or around March 2016, Mrs A assisted you in a minor operations clinic (‘Clinic’) with the removal of a contraceptive coil (‘Coil’) and:

      a. you rinsed the equipment used to remove the Coil under tap water and then re-used the equipment to remove another patient’s Coil; **Admitted and found proved**

      b. when challenged by Mrs A about your actions as described at paragraph 1a, you said that that area of the body was not sterile so you did not need to be using a sterile one for each removal, or words to that effect. **Admitted and found proved**

   2. On another occasion when Mrs A assisted you with the removal of a Coil in a Clinic, you suggested that you could use forceps which had been inadequately stored, in that they had come directly from a drawer and not from a sterile pack. **Admitted and found proved**

   3. On one or more occasions you reused single-use:

      a. sponge holders for removing Coils; **Admitted and found proved**
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b. cauterisation equipment when carrying out minor operations; 
   **Admitted and found proved**
   on multiple patients.

4. In 2016 or 2017, Miss B spoke with you about the potential spread of 
infection or disease by reusing single-use equipment but you continued 
to:
   a. reuse single-use equipment on multiple patients; 
      **Admitted and found proved**
   b. carry out minor operations without adequately sterilising 
instruments. **Admitted and found proved**

5. In or around mid-2017, you stored a pair of sponge holders covered in 
dry blood in a drawer in your room at Waterhayes Surgery in 
Chesterton. **Admitted and found proved**

6. On 28 July 2017 you asked Miss B to tell the patients who had been 
affected by a cold chain incident (‘the Incident’) that it had been 
caused by a transportation error, or words to that effect, which was 
untrue. **Admitted and found proved**

7. You knew that the Incident had not been caused by a transportation 
error. **Admitted and found proved**

8. Your actions as described at paragraph 6 were dishonest by reason of 
paragraph 7. **Admitted and found proved**

9. On or around 18 August 2017, in response to a complaint made by Mrs 
C to NHS England on 7 August 2017, you prepared a handwritten draft 
letter which stated that Miss B had told Mrs C that the Incident was 
most likely caused ‘during transportation’, which was untrue. 
**Admitted and found proved**

10. You knew that Miss B had not told Mrs C that the Incident was most 
likely caused during transportation. **Admitted and found proved**

11. Your actions as described at paragraph 9 were dishonest by reason of 
paragraph 10. **Admitted and found proved**
12. On 1 September 2017, ahead of a meeting with Public Health England about the Incident, you asked Miss B if the fridge record sheets could be re-written or words to that effect. **Admitted and found proved**

13. You knew that re-writing the fridge record sheets would lead to incorrect information being provided to Public Health England. **Admitted and found proved**

14. Your actions as described at paragraph 12 were dishonest by reason of paragraph 13. **Admitted and found proved**

**(2) IMPAIRMENT**

3. Having announced the facts admitted and found proved, in accordance with Rule 17(2)(k) of the General Medical Council (‘GMC’) (Fitness to Practise Rules) 2004 as amended (‘the Rules’), the Tribunal then considered whether, on the basis of the facts which it has found proved, Dr Arshad’s fitness to practise is currently impaired by reason of misconduct.

**Background**

4. The following is a brief summary of this case.

5. At the time of the relevant events, Dr Arshad was practising at R J Mitchell Medical Centre (‘the main Surgery’) and at the Waterhayes Surgery (‘the Branch Surgery’). In January 2016, two Partners retired and Dr Arshad stated that he was ‘single-handedly’ in charge of the Practice.

6. During the relevant time period covered by the Allegation (March 2016 to mid-2017), Dr Arshad performed minor surgery clinics together with Coil insertions and removals.

7. In March 2016, Mrs A, a Practice Nurse at the Practice assisted Dr Arshad in a Clinic with the removal of a Coil. Dr Arshad rinsed the equipment to remove the Coil with tap water and then re-used the equipment to remove another patient’s Coil. When challenged by Mrs A about his actions, Dr Arshad said that the area of the body was not sterile so he did not need to be using sterile forceps for each removal.

8. On another occasion Mrs A assisted Dr Arshad with the removal of a Coil at the Surgery. Dr Arshad suggested that he could use forceps which had been inadequately stored, in that they had come directly from a drawer and not from a sterile pack.

9. On one or more occasions between 2016 and 2017, Dr Arshad re-used equipment designed for single-patient use on multiple patients.
10. Miss B later found a sponge holder that Dr Arshad had stored in his drawer, which was covered in dry blood.

11. In 2016 or 2017, Miss B, a Practice Nurse at the Practice, spoke with Dr Arshad about the potential for a spread of infection or disease by re-using single-patient use equipment. He continued this practice re-using such equipment on multiple patients and carrying out minor operations without adequately sterilising instruments.

12. In July 2017, an incident occurred at the Practice. It was discovered that fridges designed to store vaccines had been exposed to temperatures higher than the recommendations allow for safe storage of vaccines. This is known as the ‘Cold Chain Incident’.

13. On 28 July 2017, following the Incident, Dr Arshad dishonestly asked Miss B to tell patients who had been affected by the Incident that it had been caused by a transportation error which was untrue and he knew this to be untrue.

14. On or around 18 August 2017, in response to a complaint made by Mrs C, a Patient at the Practice, to NHS England on 7 August 2017, Dr Arshad dishonestly prepared a handwritten draft letter which stated that Miss B had told Mrs C that the Incident was most likely caused ‘during transportation’ which was untrue. Further, Dr Arshad knew that Miss B had not told Mrs C that the Incident was most likely caused during transportation.

15. On 1 September 2017, ahead of a meeting with Public Health England about the Incident, Dr Arshad asked Miss B if she could re-write the fridge record sheets, knowing that it would lead to incorrect information being provided to Public Health England.

The Evidence

16. The Tribunal had regard to all the documentary evidence adduced during the course of these proceedings, which included, but was not limited to:

- Witness statements of:
  - Miss B, Practice Nurse at Audley Health Centre, dated 11 May 2018; and a supplemental statement dated 6 February 2019;
  - Mrs A, Practice Nurse at Mid Cheshire Hospitals NHS Foundation Trust, dated 14 May 2018;
  - Ms D, Practice Manager at the Surgery, dated 18 July 2018; and a supplemental statement, dated 6 February 2019;
  - Ms E, Health Care Assistant, signed but undated;
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  o  Dr F, Dr Arshad’s Responsible Officer, dated 13 March 2019.
    • Email correspondence from Public Health England, dated 24 May 2018;
      and

17.  Dr Arshad provided a witness statement, dated 9 April 2019 and a supplemental statement, dated 12 April 2019.

Submissions

18.  The submissions made by both Counsel at the close of the impairment stage are a matter of record and the following is a non-exhaustive synopsis of those submissions.

Submissions on behalf of the GMC

19.  Mr Rob Dudley, Counsel, submitted that Dr Arshad’s fitness to practice is currently impaired by reason of his misconduct. He submitted that Dr Arshad’s admissions were not immediate during the investigation and that he has demonstrated a catalogue of behaviour which has undermined the public’s trust in the medical profession and that of his colleagues.

20.  Mr Dudley submitted that Dr Arshad is an experienced GP and was informed by the Practice Nurses at the time of the events that his conduct was wrong. Further he stated that Dr Arshad’s misconduct is compounded by the fact he asked the Practice Nurses to lie to the mother of a patient.

21.  Mr Dudley submitted that Dr Arshad’s behaviour had serious consequences for Mrs A and Miss B, both of whom resigned from their roles and were also referred to the NMC, although no further action was taken against them.

Submissions on behalf of Dr Arshad

22.  Mr Spencer submitted that Dr Arshad has accepted that his actions amount to misconduct and that his fitness to practise is currently impaired by reason of that misconduct. However, Mr Spencer stated that it is a decision for the Tribunal to make.

23.  Mr Spencer submitted that in relation to the NMC investigation, there had been a dispute between the Senior Practice staff and the Nurses (Mrs A and Miss B). He submitted that Dr Arshad had no part in the referral of Mrs A and Miss B to the NMC.
The Relevant Legal Principles

24. In approaching its decision, the Tribunal was mindful of the two-stage process to be adopted: first, whether the facts as found proved amounted to serious misconduct and secondly, whether the doctor’s fitness to practise is currently impaired by reason of that serious misconduct.

25. At both stages of the process, the Tribunal was mindful of the overarching objective of the GMC set out in section 1 of the Medical Act 1983 (as amended) to:

   a. Protect, promote and maintain the health, safety and well-being of the public,

   b. Promote and maintain public confidence in the medical profession, and

   c. Promote and maintain proper professional standards and conduct for members of that profession.

26. The Tribunal was assisted by the guidance provided by Dame Janet Smith in the Fifth Shipman Report adopted by the high court in CHRE v NMC and Paula Grant [2011] EWHC 297 (Admin). In particular, the Tribunal considered whether its findings of fact showed that Dr Arshad’s fitness to practise is impaired in the sense that he:

   a. ‘Has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or

   b. Has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or

   c. Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

   d. Has in the past acted dishonestly and/or is liable to act dishonestly in the future.’

27. The Tribunal bore in mind that it must determine whether Dr Arshad’s fitness to practise is currently impaired by reason of misconduct, taking into account his conduct at the time of the events and any other relevant factors such as any development of insight, whether the matters are remediable or have been remedied and the likelihood of repetition.

28. The Tribunal also bore in mind the guidance in Grant (above) at paragraph 71, ‘it is essential when deciding whether fitness to practise is impaired, not to lose sight of fundamental considerations […] namely the need to protect the public and
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the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession; and as enshrined in the three elements of the overarching objective.

Misconduct

29. In determining whether Dr Arshad’s fitness to practise is currently impaired by reason of misconduct, the Tribunal first considered whether the facts as admitted and found proved amounted to misconduct by reference to the rules and standards ordinarily required to be followed by a medical practitioner. It went on to consider whether that misconduct was serious misconduct capable of impairing Dr Arshad’s fitness to practise.

30. The Tribunal took account of Dr Arshad’s admissions and concessions made at the outset of these proceedings. Ultimately the decision as to whether the actions and omissions of Dr Arshad as set out in the Allegation amounted to serious misconduct is a matter for the Tribunal. Therefore, it considered these paragraphs based on guidance and standards outlined in GMP and Dr G’s Expert Report.

31. The Tribunal considered the paragraphs of GMP which set out the standards that a doctor must continue to meet throughout their professional career. The Tribunal had particular regard to paragraphs 1, 12, 25(b), 35, 65 and 68 of Good Medical Practice (2013 Edition) (‘GMP’) which state:

1 ‘Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law.’

12 ‘You must keep up to date with, and follow, the law, our guidance and other regulations relevant to your work.’

25 ‘You must take prompt action if you think that patient safety, dignity or comfort is or may be seriously compromised.

…

b. If patients are at risk because of inadequate premises, equipment or other resources, policies or systems, you should put the matter right if that is possible. You must raise your concern in line with our guidance11 and your workplace policy. You should also make a record of the steps you have taken.’

35 ‘You must work collaboratively with colleagues, respecting their skills and contributions.’
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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 applied these standards to the facts found proved.

32. In relation to Dr Arshad’s re-use of equipment, Dr G stated:

‘... most concern is that Dr Arshad reused forceps on multiple Patients without appropriate sterilisation and also that he continued to reuse this equipment despite being advised against this by his colleagues. Contraceptive coil insertion and removals can lead to bleeding and as such significant risk of instrument contaminated [sic] with body fluids such as blood and vaginal discharge.

To reuse these instruments without adequately sterilising them would put a Patient at risk of cross infection, in particular blood borne infection and as such due to the seriousness of this allegation and that Dr Arshad allegedly continued to carry out this Practice despite colleague advice, overall I consider this care to fall seriously below the standard expected of a reasonably competent General Practitioner’

33. The Tribunal noted that there were several instances where Dr Arshad re-used single-use equipment. Whilst there is no evidence before the Tribunal that Dr Arshad’s actions directly caused any harm to patients, his re-use of single-patient use equipment exposed patients to the risk of serious harm from infections.

34. The Tribunal had regard to Dr Arshad’s dishonesty, which included attempting to persuade colleagues to be untruthful and him being untruthful to a patient’s mother.

35. The Tribunal had regard to the dishonest nature of Dr Arshad’s actions in relation to the Cold Chain Incident. It noted Dr Arshad’s handling of the situation was not conducted in an open and honest way.

36. The Tribunal was of the view that doctors occupy a position of trust in society and are expected to uphold proper standards of conduct. Members of the public are entitled to place complete reliance upon doctors’ honesty. The relationship between the profession and the public is based on the expectation that medical practitioners will act at all times with absolute integrity. Dishonesty, even where it does not result
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in direct harm to patients, is particularly serious because it can undermine trust and public confidence in the medical profession.

37. On the basis of Dr G’s evidence and Dr Arshad’s own admissions and acceptance of the evidence, the Tribunal determined that some aspects of his conduct fell seriously below the standards expected of a reasonably competent GP and brought the profession into disrepute in respect of the Allegation.

38. Therefore, the Tribunal concluded that Dr Arshad’s failings in this regard amounted to misconduct.

Impairment by reason of Misconduct

39. Having found that the facts admitted and found proved amounted to misconduct, the Tribunal went on to consider whether, as a result of this, Dr Arshad’s fitness to practise is currently impaired by reason of his misconduct.

40. In determining whether a finding of current impairment of fitness to practise is necessary, the Tribunal looked for evidence of insight and remediation, and the likelihood of repetition, balanced against the three elements of the overarching statutory objective. The Tribunal considered that insight is important in order for a doctor to recognise areas of their practice and behaviour that require improvement and to take appropriate and relevant steps to address them, thus reducing the likelihood of repetition.

41. The Tribunal was presented with evidence from Dr Arshad, which it accepted, and was persuaded that he has started to gain insight and reflect on his actions and conduct. It noted that he has undertaken various CPD courses. The Tribunal had regard to Dr Arshad’s witness statement where he stated:

‘... I accept that my infection control standards during 2016 and 2017 had lapsed and were poor and inadequate. I am deeply sorry to have caused distress to Mrs A as a result of my inadequate standards...

I am also very sorry that on reflection I can now see that my actions increased the risk of infection for any of the patients concerned. I have attended further training in relation to this ...

I do recall Miss B speaking to me about the potential spread of infection. I do recall improving my practice at this point [in 2017], but I accept that I continued to reuse single-use cauterisation tips...

I accept that I did not properly manage the situation when the practice had a cold chain incident in mid-2017...
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I immediately regretted my decision to give inaccurate information to the patients mother [Mrs C] and on the following day 3 August, I spoke to the practice manager, assistant practice manager and the two nurses, Mrs A and Miss B to say that Mrs C should be told the truth …

I asked Miss B if she could arrange for the staff to rewrite those fridge record sheets so that the amendments would not show…”

42. The Tribunal considered that Dr Arshad has attempted to be candid and has acknowledged that his conduct and practise was wrong during these regulatory proceedings. In his statement, Dr Arshad has expressed remorse for his actions. It noted that Dr Arshad has made changes to his practice by reviewing relevant guidance and undertaking numerous courses (February 2018 to March 2019).

43. The Tribunal found that by his actions, Dr Arshad put patients at unwarranted risk of harm. He brought the profession into disrepute and breached fundamental tenets of the profession by acting dishonestly. The Tribunal acknowledged that dishonesty is difficult to remediate.

44. The Tribunal went on to consider whether a finding of impairment was necessary 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.

45. The Tribunal is of the view that honesty is a cornerstone of the profession. It considered that patients expect doctors to be honest. It had regard to the serious concerns about the re-use of single-patient use equipment. The Tribunal determined it would not be in the public interest to find that Dr Arshad is not currently impaired, he had breached the fundamental tenets of the profession on a number of occasions, specifically with regard to paragraphs 1, 12, 25(b), 35, 65 and 68 of GMP.

46. The Tribunal found that it was necessary to make a finding of impairment in order to:

- Protect, promote and maintain the health, safety and well-being of the public;
- Promote and maintain public confidence in the medical profession; and
- Promote and maintain proper professional standards and conduct for members of that profession.

47. Therefore, the Tribunal determined that Dr Arshad’s fitness to practise is currently impaired by reason of his misconduct.
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Determination on Sanction - 09/05/2019

1. Having determined that Dr Arshad’s fitness to practise is impaired by reason of his misconduct, the Tribunal moved to consider what sanction, if any, it should impose with regard to Dr Arshad’s registration.

The Evidence

2. The Tribunal had regard to all of the documentary evidence adduced during the course of these proceedings. It noted a bundle of character references produced by Dr Arshad at the sanction stage, which included numerous testimonials attesting to his good character.

Submissions

3. The submissions made by both Counsel at the close of the sanction stage are a matter of record and the following is a non-exhaustive synopsis of those submissions.

Submissions on behalf of the GMC

4. Mr Dudley submitted that the appropriate sanction in Dr Arshad’s case would be an order of suspension in order to protect patients and uphold public confidence in the medical profession. He directed the Tribunal’s attention to the guidance set out in GMP and the Sanctions Guidance (February 2018 edition)(“SG”) when making its determination.

5. Mr Dudley submitted that GMP states that registered doctors should be honest and trustworthy and make sure their conduct justifies the public trust in them and the wider profession as a whole. He stated that Dr Arshad’s dishonesty was demonstrated on three separate occasions in relation to the Incident.

6. Mr Dudley submitted that the GMC has not received any complaints of similar concerns since the events.

7. Mr Dudley referred to the Tribunal’s findings that Dr Arshad had put patients at risk and had brought the profession into disrepute by breaching a number of the fundamental tenets of the profession in relation to his dishonesty.

8. Mr Dudley submitted that it would not be appropriate in this case for the Tribunal either to take no action or impose an order of conditions on Dr Arshad’s registration. However, he submitted that if it was not for the matter of Dr Arshad’s dishonesty, the appropriate sanction could have been conditions due to the scope of Dr Arshad’s insight and remediation. Mr Dudley submitted that Dr Arshad has
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undertaken some courses and reflected on his conduct since the events referred to in the Allegation.

9. Mr Dudley submitted that the sanction of erasure from the Medical Register is not necessary in this case.

Submissions on behalf of Dr Arshad

10. Mr Spencer submitted that the appropriate sanction in Dr Arshad’s case would be an order of suspension. He directed the Tribunal to the numerous testimonials attesting to Dr Arshad’s good character when making its determination.

11. Mr Spencer noted the Tribunal’s facts and impairment determination and confirmed that Dr Arshad has fully accepted and acknowledged the Tribunal’s assessment and conclusions on his conduct. Further, he submitted that Dr Arshad is clear that he doesn’t seek to excuse himself from the mistakes that he made.

12. Mr Spencer submitted that Dr Arshad’s actions were a course of conduct over a relatively small period of time.

13. Mr Spencer submitted that these issues occurred 18 months ago and there have been no complaints about his conduct since. Dr Arshad was informed of the Allegation against him around March 2018. He submitted that no conditions were imposed on Dr Arshad’s practice and to date he has carried on seeing patients. On Monday afternoons, Dr Arshad undertakes his minor operations clinics at the Practice and has undertaken approximately 50 procedures since becoming aware of allegations against him in March 2018.

14. Mr Spencer submitted that there were two options open to the Tribunal:

- a period of suspension; or
- erasure from the Medical Register.

Mr Spencer stated that Dr Arshad ‘is fearful’ that the latter option is one that the Tribunal would be considering given the circumstances of this case. In his witness statement, Dr Arshad stated that he wishes to return to practise but has recognised that these are exceptionally serious allegations.

15. Mr Spencer submitted that a short suspension would be appropriate. However, he stated that the issue of sanction as a whole, is a matter for the Tribunal.
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The Relevant Legal Principles

16. The decision as to the appropriate sanction is a matter for this Tribunal’s own independent judgement. In reaching its decision, the Tribunal took into account the SG and the statutory overarching objective, which includes:

   a. Protect, promote and maintain the health, safety and well-being of the public,

   b. Promote and maintain public confidence in the medical profession, and

   c. Promote and maintain proper professional standards and conduct for members of that profession.

17. The Tribunal recognised that the purpose of a sanction is not to be punitive, although it may have a punitive effect. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Arshad’s interests with the public interest.

18. The Tribunal has already provided a detailed determination on Facts and Impairment and it has taken those matters into account during its deliberations on sanction.

The Tribunal’s Determination on Sanction

Aggravating and Mitigating Factors

Aggravating Factors

19. The Tribunal had regard to the following aggravating factors in Dr Arshad’s case:

   • the dishonest nature of his actions;
   • the failure to work collaboratively with colleagues when challenged about infection control practice and also in dealing with the Incident;
   • the repeated clinical incidents, not an isolated situation; and
   • the risk to patients was repeated.

Mitigating Factors

20. The Tribunal balanced those aggravating factors, with the mitigating factors present in Dr Arshad’s case:

   • his dishonesty took place over a relatively short time period;
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- there is no evidence of issues before or since the relevant events and he has continued to practise unrestricted;
- he has demonstrated remorse and insight;
- he has made attempts to address and/or remediate his misconduct;
- he has kept his knowledge and skills up to date and taken steps since the relevant events to improve his practice;
- he was under a significant amount of pressure at the time of the relevant events and is now part of a larger Practice with colleagues whom he has told about the relevant events;
- the numerous character references attesting to his good character;
- he admitted the Allegation in its entirety at the outset of these proceedings; and
- his engagement with an objective mentoring programme and his commitment to continue with this.

21. The Tribunal considered 25(a)(b)(c), 26(d)(e), 31, 42(a)(b), 46(a)(b)(c) of the SG are engaged in this case.

22. Whilst it is difficult to prove remediation for dishonesty, the Tribunal placed weight upon the character references provided by Dr Arshad. The Tribunal accepted that although Dr Arshad had acted dishonestly, it would appear to be out of character and within a set of circumstances at a time when he was under extreme pressure at work.

The Tribunal’s Decision

23. In deciding what sanction, if any, to impose, the Tribunal reminded itself that it must consider each of the sanctions available, starting with the least restrictive, to establish which, if any, is appropriate and proportionate in this case.

No Action

24. The Tribunal first considered whether to conclude the case by taking no action.

25. The Tribunal was satisfied that there were no exceptional circumstances in Dr Arshad’s case which could justify it taking no action. It determined that given the seriousness of Dr Arshad’s misconduct, taking no action would be inappropriate, inadequate and would not be in the public interest.

26. The Tribunal considered that Dr Arshad demonstrated insight through his understanding of his actions but that his misconduct required a proportionate sanction.

Conditions
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27. The Tribunal considered whether imposing an order of conditions on Dr
Arshad’s registration would be appropriate. It bore in mind that any conditions
imposed should be appropriate, proportionate, workable and measurable.

28. Given the serious nature and gravity of Dr Arshad’s misconduct, the Tribunal
could not envisage being able to formulate workable conditions to address the issue
of his dishonesty. The Tribunal accepted Mr Dudley’s submission that conditions may
have been workable if the circumstances of this case solely related to Dr
Arshad’s clinical failings.

29. The Tribunal concluded that a period of conditional registration would not be
appropriate as it would not adequately address all of the concerns raised in Dr
Arshad’s case.

Suspension

30. The Tribunal next considered whether a period of suspension would be an
appropriate and proportionate sanction to impose on Dr Arshad’s registration. The
Tribunal noted the SG, specifically paragraphs 91 and 92 which it considered are
relevant in this case:

91 ‘Suspension has a deterrent effect and can be used to send out a signal to
the doctor, the profession and public about what is regarded as behaviour
unbefitting a registered doctor. Suspension from the medical register also has
a punitive effect, in that it prevents the doctor from practising (and therefore
from earning a living as a doctor) during the suspension, although this is not
its intention.’

92 ‘Suspension will be an appropriate response to misconduct that is so
serious that action must be taken to protect members of the public and
maintain public confidence in the profession. A period of suspension will be
appropriate for conduct that is serious but falls short of being fundamentally
incompatible with continued registration (ie for which erasure is more likely to
be the appropriate sanction because the tribunal considers that the doctor
should not practise again either for public safety reasons or to protect the
reputation of the profession).’

31. The Tribunal has been presented with no evidence that Dr Arshad has
repeated his misconduct since the events. He has continued to work in unrestricted
practice. The Tribunal was satisfied that Dr Arshad has demonstrated insight and
reflected on his misconduct since he was made aware of the Allegation against him
in March 2018.
32. Although it is clear that Dr Arshad’s dishonesty was serious, the Tribunal had regard to the context of it, which was in an extremely pressured environment at the time. It had regard to the numerous testimonials from colleagues and peers who had stated that his misconduct was out of character. The Tribunal noted that Dr Arshad has engaged with mentoring and has undertaken significant CPD to address his clinical failings. Dishonesty is difficult to remediate, however, the Tribunal was persuaded that, given the support mechanisms Dr Arshad has put in place since the events, he would not repeat his misconduct.

33. In all the circumstances, the Tribunal considered suspension to be the appropriate sanction in this case. It is necessary in order to reflect the seriousness of Dr Arshad’s misconduct and to satisfy the requirements of the statutory overarching objective. No lesser sanction would adequately:

- Protect, promote and maintain the health, safety and well-being of the public;
- Promote and maintain public confidence in the medical profession; and
- Promote and maintain proper professional standards and conduct for members of that profession.

34. The Tribunal had regard to Mr Dudley’s submission that Dr Arshad’s conduct falls short of being fundamentally incompatible with continued registration. It was satisfied that Dr Arshad should be given the opportunity to practice medicine in the future, following a suspended registration, given that he has:

- demonstrated recognition of his wrong doing;
- put support mechanisms in place;
- kept his knowledge and skills up to date since the relevant events; and
- practised medicine without any issue since the relevant events.

Therefore, the Tribunal concluded that erasure from the Medical Register would not be appropriate and/or proportionate in this case.

**Length of Suspension**

35. In determining the length of suspension, the Tribunal considered that a period of 3 months is an appropriate period in all the circumstances of this case. It satisfies the requirements of the statutory overarching objective and will allow Dr Arshad time to reflect on his failings. This period of suspension reflects the gravity of Dr Arshad’s misconduct and will send out a clear signal to him, the profession and the wider public.
Review

36. Having determined that suspension is the appropriate and proportionate sanction in this case, the Tribunal went on to consider whether to direct a review hearing having considered paragraphs 163, 164 and 166 of the SG.

37. From the evidence presented to the Tribunal, it was satisfied that Dr Arshad had fully appreciated the gravity of the Allegation, he has not repeated his misconduct and he has maintained his skills and knowledge. The Tribunal is satisfied that Dr Arshad will manage his developing insight and continue with undertaking CPD to address his failings. There are no ongoing clinical concerns. Further, as outlined earlier in this determination, Dr Arshad is continuing to work in unrestricted practice and is now working within a larger practice with support mechanisms in place.

38. Therefore, the Tribunal determined that to direct a review hearing would not be necessary in this case.

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86. Having determined that Dr Arshad’s registration is to be suspended for a period of 3 months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether his registration should be subject to an immediate order.

Submissions

87. The submissions made by both Counsel at the close of the immediate order stage are a matter of record and the following is a non-exhaustive synopsis of those submissions.

88. On behalf of the GMC, Mr Dudley submitted that Dr Arshad has not been subject to an Interim Order and therefore an immediate order would not be necessary in this case.

89. On behalf of Dr Arshad, Mr Spencer endorsed the GMC’s submission.

The Tribunal’s Decision

90. In reaching its decision, the Tribunal has exercised its own judgement, and has taken account of the principle of proportionality. The Tribunal has borne in mind that it may impose an immediate order where it is satisfied that it is necessary for the protection of members of the public, is in the public interest, or is in the best interests of the practitioner. It has also borne in mind the guidance given in the relevant paragraphs of the SG relating to immediate orders.
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91. The Tribunal had regard to paragraph 178 of the SG. The 3 month suspension imposed by the Tribunal marks the seriousness of Dr Arshad’s dishonesty. The public interest does not require an immediate order of suspension; the substantive sanction is sufficient to satisfy the overarching objective.

92. The substantive direction for suspension will take effect 28 days from when the written notice is deemed to have been served upon Dr Arshad, unless an appeal is lodged in the interim.

93. That concludes this case.

Confirmed
Date 09 May 2019

Mrs Laura Paul, Chair