Meeting of the s40A Panel to consider the case of Dr Abdulkhaled AHMED (6152547)

Held on 18 November 2020.

Panel members present

Charlie Massey, Chief Executive (in the Chair)
Colin Melville, Medical Director, Education and Standards
Anthony Omo, General Counsel and Director of Fitness to Practise

In attendance

Jennifer Richardson, Senior Legal Adviser
Jim Percival, Principal Legal Adviser and Deputy General Counsel
Iona Twaddell, Office of the Chair and Chief Executive (Panel Secretary)

Purpose of this note

1. This meeting note records a summary of the Members’ consideration of the relevant decision of the Medical Practitioners Tribunal (‘MPT’) which considered the Doctor’s case (“the decision”), and the Panel’s decision on behalf of the General Medical Council as to whether or not to exercise the power to appeal the decision pursuant to section 40A Medical Act 1983.

The relevant decision

2. The Principal Legal Adviser confirmed that the decision was a relevant decision for the purposes of s.40A. The decision was a decision under s35D giving a direction for suspension, within the meaning of s40A(1)(a)(i) Medical Act 1983.
Consideration

3 The Panel considered the record of the MPT’s determination and the legal advice in detail.

4 The Panel was concerned by Dr Ahmed’s repeated incidences of inappropriate behaviour which appeared to become more serious over time – from Dr Ahmed inappropriately contacting Patient B in 2014 (and claiming to have sent similar messages to colleagues previously) to sending a Facebook request to Patient A (a 14-year-old child) in 2015. The Panel felt that it was wholly inappropriate to look up Patient A on Facebook, regardless of whether the actual friend request was accidental.

5 The Panel was also concerned by the lack of insight. They felt that Dr Ahmed showed a lack of understanding that his actions were not acceptable. The reflective statement sent just before the sanction decision continued to show a lack of insight (for example, suggesting that GMC policy should be clearer instead of acknowledging his own failings in professional judgement). The Panel were not persuaded that the reflective statement evidenced Dr Ahmed’s genuine remorse. The Panel noted that the MPT also concluded that Dr Ahmed continued to demonstrate a lack of insight but his insight was ‘developing’. The Panel felt that this was a generous assessment.

6 The Panel noted that the MPT had considered the interim suspension when determining the two-month suspension for Dr Ahmed, in effect as ‘time served’. However, the Panel felt the MPT had given undue weight to the interim order, as the purpose of interim suspension and suspension is different. The Panel felt there did not seem to be sufficient evidence of developing insight during the period of interim suspension to warrant a reduction of the suspension to two months. The Panel also expressed concern that a review hearing was not directed, despite the fact that insight was incomplete.

7 The Panel felt that the MPT had not given due regard to the sanctions guidance, and did not fully explain their conclusion that erasure would be disproportionate. The Panel felt that the MPT’s strong descriptions of Dr Ahmed’s behaviour (eg ‘appalling’) did not align with the short period of suspension. They felt the MPT may have been overly focused on the burden on the GMC to prove his actions were deliberate without using wider judgement as to the seriousness of this case and the risk the doctor’s actions posed to the protection of the public. The Panel felt that there were sufficient errors of principle in the MPT’s decision such that the outcome was not sufficient to protect the public.

8 The Panel therefore decided to appeal the MPT’s decision pursuant to section 40A Medical Act 1983.
Background

9 This case concerns the determination of an MPT, which concluded on 22 October 2020, considering the matter under Part 4 of the General Medical Council (Fitness to Practise) Rules 2004 (‘the Rules’).

Facts/impairment

10 Following a consultation with Patient A on 8 February 2015, Dr Ahmed located Patient A’s account on Facebook and sent a friend request to her. Patient A was a child and vulnerable patient. The Tribunal accepted that Dr Ahmed’s actions in sending a friend request may have been accidental, but noted that if Dr Ahmed had not inappropriately attempted to look at Patient A’s Facebook profile he would never have been in a position to send a friend request, either inadvertently or deliberately.

11 It was also found that during a consultation with Patient A on 25 April 2015, Dr Ahmed failed to carry out an adequate assessment of Patient A, including failing to arrange for an x-ray of Patient A’s hip, administering medication that was neither adequate nor sufficient and failing to keep an adequate record. Further, Dr Ahmed failed to ensure that Patient A’s father, as her chaperone, had a full view of the consultation. The MPT did not find Dr Ahmed’s fitness to practise to be impaired in relation to the (limited) clinical allegations found proved on the basis that Patient A’s was a complex case and it was a single incident for an otherwise competent clinician.

12 In relation to Patient B, the MPT found proven that, following a consultation with Patient B in November 2014 at Salford NHS Trust, Dr Ahmed used Patient B’s medical records to obtain her personal details to send her a friend request on Facebook and WhatsApp messages to her mobile telephone. The Tribunal determined that Dr Ahmed’s messages to Patient B were of a sexual nature, encouraging Patient B to meet with him, and that Dr Ahmed sought to engage in a sexual relationship with Patient B.

13 Patient B was a nurse, but the MPT were satisfied that Patient B was Dr Ahmed’s patient at time he instigated a personal relationship with her and did not accept that they could reasonably be considered as colleagues. The Tribunal determined that when Dr Ahmed used Patient B’s personal information to contact her, he was in
pursuit of a sexual or improper emotional relationship with a current patient. Under the circumstances it was entirely unacceptable for Dr Ahmed to exploit his position of power as a doctor to use information obtained in the consultation as a means to contact her the very same day, in pursuit of sexual relationship.

14 When considering impairment, the Tribunal found that Dr Ahmed shows little evidence of having achieved insight or remediated this mindset at the current time, despite attending professional boundaries courses. It determined that a finding of impairment was necessary to maintain public confidence. In relation to Patient A, it noted that Dr Ahmed had invaded a patient’s privacy and sought to, in effect, secretly investigate her personal life. The public would find this breach of trust appalling, particularly in the case of a minor.

15 In regard to Patient B the Tribunal’s opinion was that the public would be appalled by Dr Ahmed’s behaviour in seeking to engage in an improper emotional relationship with a patient owing to sexual motivations. Seeing patients as potential sexual targets would likely be considered deplorable and this was compounded by his attitude towards colleagues despite having undertaken professional boundaries courses.

Sanction

16 At the sanction stage, the MPT received a Reflective Statement form Dr Ahmed dated 20 October 2020, but he did not give further evidence. The MPT considered Dr Ahmed’s insight to be developing. It determined that, given Dr Ahmed’s remediation and his progress in developing insight, it was satisfied that an order of suspension would address all three limbs of the overarching objective. It was of the view, particularly in the present circumstances that while, members of the public would find the historic actions of Dr Ahmed worthy of censure there is also a strong public interest in returning competent doctors to the workplace.

17 A two-month suspension was imposed with no review.

The General Medical Council’s power to appeal pursuant to s.40A

18 With effect from 31 December 2015, the General Medical Council acquired the power to appeal to the High Court (or equivalent courts in Scotland and Northern Ireland where relevant) against relevant decisions of a Medical Practitioners Tribunal (“MPT”) if it considers that the decision is not sufficient (whether as to a finding or a penalty or both) for the protection of the public.

19 The basis upon which the GMC will consider whether or not to exercise this power to appeal is described in “Appeals by the GMC pursuant to s.40A of the Medical Act 1983 (“s.40A appeals”) – Guidance for Decision-makers” (“the Guidance”).

20 Decisions concerning the exercise of the s40A power to appeal were originally delegated by the Council to the Registrar. However, following recommendations from
Sir Norman Williams’ Review Council agreed that decision-making in prospective appeals involving decisions of Medical Practitioners Tribunals be delegated to a three person Executive Panel comprising: the Chief Executive and Registrar as Chair; the Medical Director and Director of Education and Standards; and the Director of Fitness to Practise (or their nominated Deputies if not available) (“the Panel”).

21 As the Guidance makes clear, when considering whether to bring a s.40A appeal in a particular case, it will be necessary to consider the following questions:

21.1 Based on their assessment of all of the information held, and in the particular circumstances of the case, and having regard to the factors set out in the Guidance, does the Panel consider that the MPT’s decision is not sufficient to protect the public?

21.2 If the Panel is of the view, on its assessment of all the information held, in the particular circumstances of the case, that there are grounds to consider that the MPT’s decision is not sufficient, it will consider whether exercising the power of appeal would further, rather than undermine, the achievement of the over-arching objective.

21.3 If the answer is yes, then the GMC may exercise its power of appeal.

21.4 In considering that question the Panel will be required to consider and weigh a number of competing factors (including its assessment of the prospects of success of the appeal, and the nature and importance of the issues which would be aired).