Meeting of the s40A Panel to consider the case of Dr Talal Jabar (5203067)

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

Jacqui Eden, 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 the dishonesty in this case. The Panel agreed that Dr Jabar’s actions, in forging his supervisors’ signature on documents in support of his CESR application, was a serious incident. However, the Panel noted that Dr Jabar was not falsifying his qualification or amending facts, but taking a shortcut potentially to avoid embarrassment.

5 The Panel noted that the MPT did not fully set out their reasoning as to why they felt that Dr Jabar’s insight and remediation was incomplete, and what more he should do. The Panel was concerned that because no review was directed there was no assurance that Dr Jabar had completed his process of insight and remediation. The Panel was also concerned about the credit given to Dr Jabar for his admission only after detection.

6 However, the Panel noted that a finding of dishonesty and a suspension was not insignificant, particularly at Dr Jabar’s stage of career, and that while a one-month suspension could be considered at the lesser end for dishonesty, Dr Jabar’s actions could also be considered at the lower end of the spectrum of allegations of dishonesty which come before an MPT. Based on their assessment of all the relevant information, the Panel did not note any errors of fact or principle in the MPT’s decision which would give rise to grounds of appeal, such that they were satisfied that the outcome was sufficient to protect the public.

7 The Panel therefore decided not to appeal the MPT’s decision pursuant to section 40A Medical Act 1983.

3 December 2020

Charlie Massey (Chair) Dated

Background

8 This case concerns the determination of an MPT, which concluded on 23 October 2020, considering the matter under Part 4 of the General Medical Council (Fitness to Practise) Rules 2004 (‘the Rules’). The outcome was that Dr Jabar’s fitness to practise
was found impaired and a sanction of 1-month suspension was imposed and a review was not directed.

9 At the time of the allegations Dr Jabar was practising as a Locum Consultant in Urology at the Aneurin Bevan University Health Board (‘the Board’); it is understood that Dr Jabar had an offer of permanent employment if he were to obtain specialist registration but he failed to obtain that before his fixed term contract came to an end.

10 The allegations arose in the context of Dr Jabar’s application to the GMC for specialist registration via the Certificate of Eligibility for Specialist Registration (‘CESR’) route. On 17 September 2018, Dr Jabar submitted his application to the GMC and on 13 November 2018, after Dr Jabar had left his locum post with the Board, the GMC confirmed that 6 years’ worth of operating history required validation. Dr Jabar subsequently forged the signature of Dr A, his supervisor, on Dr Jabar’s eLogbook, which amounted to 147 pages (the content of the documents were genuine, save for the signature). The documents were printed on 15 November 2018 and submitted on 3 December 2018 which gave a period of approximately two weeks for Dr Jabar to have considered his position before submitting forged documents.

Facts / Impairment

11 Dr Jabar admitted the allegations including dishonesty.

12 Dr Jabar, via his Counsel in submissions, admitted that his fitness to practice was impaired. In finding misconduct, the MPT observed that Dr Jabar was attempting to expedite his CESR application without attending the various hospitals for verification of his documents. It was noted that most of the documents had previously been verified by Dr A and his equivalent at a previous hospital. The MPT took the view that at the time of the events Dr Jabar had felt embarrassed that his fixed term contract had been ended by the Board and that he may have perceived that he had let Dr A down, as Dr A had previously been supportive of him, and that this may have affected Dr Jabar’s ability to ask for any further assistance from Dr A and led in part to him forging Dr A’s signature.

13 However, the MPT observed that Dr Jabar had had time to consider his position between printing the documents and their submission to the GMC, yet he spent a considerable amount of time forging Dr A’s signature.

14 In finding impairment of Dr Jabar’s fitness to practise, the MPT considered that Dr Jabar’s actions were ‘reckless and impulsive, rather than seeking to intentionally deceive anyone by submitting his CESR application’ noting that Dr Jabar had admitted his dishonesty shortly after its detection. The MPT were satisfied that Dr Jabar had demonstrated some insight into his misconduct and had taken steps to remediate, noting the completion of a professional boundaries course, apology to Dr A and full engagement with the regulatory process. However, they determined that the process of gaining insight and remediation ‘remains incomplete’.

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The MPT determined that Dr Jabar’s dishonest conduct would negatively impact the public’s confidence in the profession and the proper professional standards of the profession.

Sanction/ Review

The MPT determined that the dishonesty, although it occurred over several hours, was isolated and that the risk of repetition was low. The MPT considered erasure and determined that it would be disproportionate.

In determining the length of the suspension, the MPT stated that one month was sufficient to mark the seriousness as it would ‘emphasise the proper standards of behaviour...and would be an appropriate response to the level of misconduct’.

In deciding not to direct a review, the MPT noted that there were no clinical or health concerns and that due to the length of suspension a review would be ‘unnecessary and disproportionate’.

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

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.

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”).

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”).

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:

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?
22.2 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.

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

22.4 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).