Meeting of the s.40A Panel to consider the case of Mr Muhammad Basim Rajab Hamzeh Alhejazi (2817000)
Held on 18 November 2021.

Panel members present

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

In attendance

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 (as amended) (‘the Act’).

The relevant decision

2. The Principal Legal Adviser confirmed that the decision was a relevant decision for the purposes of s.40A of the Act. The decision was a decision under s.35D giving a direction for suspension, within the meaning of s.40A(1)(a)(i).

Consideration

3. The Panel considered the record of the MPT’s determination and the legal advice in detail.
The Panel was concerned by Mr Alhejazi’s behaviour in prescribing medication inappropriately, in excessive amounts and failing to adequately assess the patients. The Panel was also concerned that the Tribunal did not direct a review when they were not satisfied there had been full insight and remediation.

Nevertheless, the Panel noted that a three month suspension was not an insignificant outcome and would remain on Mr Alhejazi’s record for 10 years. They also felt that as there was no evidence that Mr Alhejazi had repeated the behaviour since 2018, there was limited public safety risk and a review may not substantially increase public protection.

Based on their assessment of all the relevant information, the Panel were satisfied that the outcome was sufficient to protect the public and public confidence in the medical profession.

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

2 December 2021

Charlie Massey (Chair) Dated

Background

This case concerns the determination of an MPT, which concluded on 26 October 2021, considering the matter under Part 4 of the 2004 Rules.

Mr Alhejazi is a Consultant General Surgeon. At the hearing before the MPT, Mr Alhejazi faced the following allegation of impairment by reason of his misconduct: between December 2017 and March 2018, Mr Alhejazi consulted with 16 patients and failed to provide good clinical care. It was alleged that Mr Alhejazi prescribed medication inappropriately, prescribed medication in excessive amounts, failed to adequately assess some of the patients and failed to refer some of the patients to an appropriate physician.

By way of background, the patients were foreign nationals, whom Mr Alhejazi had consulted with privately at the request of a local pharmacy; the prescriptions were for repeat medications for which the patients had prescriptions from their overseas medical practitioner, but required a UK prescription in order for the pharmacy to be dispense the medication. The patients were not seeing Mr Alhejazi in relation to
surgical complaints but on the basis he was a registered medical practitioner who could ‘transcribe’ their overseas repeat prescription and issue them with a UK prescription; the prescriptions were for controlled drugs alprazolam or bromazepam.

Facts

11 Mr Alhejazi did not make any admissions except that he did, as a matter of fact, consult with the patients and issue prescriptions. He denied that he ought to have refused to consult with the patients due to a lack of experience on the basis that he wasn’t diagnosing any conditions, or prescribing the medication for the first time, but simply considering, in the context of there being a repeat prescription in place already, whether it was appropriate for the medication to continue in the interim, whilst the patients were unable to consult their own doctor or use their existing prescriptions.

12 The MPT found the following proved:

12.1 Failing to undertake adequate assessment and/or take an adequate history and/or discuss further investigation in respect of eight patients whose histories and presenting symptoms required fuller assessment.

12.2 Failing to decline the referral of a patient with insomnia; and failing to decline the referral and direct to an appropriate physician a patient with depression. The Tribunal distinguished these cases from the cases of other patients with general anxiety in respect of whom it found it was not unreasonable to accept referral.

12.3 Prescribing excessive amounts of controlled drugs to 14 patients without establishing the length of the patients’ stay in the UK and/or without knowing when the patients would next see their doctor at home.

13 The facts not found proven related to Mr Alhejazi’s failure to decline the referrals (four patients), failure to direct the referrals to another physician (three patients), not establishing whether the patients were receiving the medication from their own doctors (13 patients) and not arranging a follow up (11 patients). Allegations of failure to adequately assess two patients by not carrying out a medical examination were also found not proved.

Impairment

14 In its determination on impairment, the MPT stated that Mr Alhejazi had “some insight” into his misconduct. As to remediation, it found that there was evidence he had kept up to date in his area of practice, but the only evidence in relation to prescribing practice was a single e-module on prescribing in pregnancy, and it would have been helpful to have further evidence of reflection on his prescribing practices in order to demonstrate that he had insight and had fully remediated.

15 In assessing the risk of repetition, the MPT noted that Mr Alhejazi had an unblemished career and no similar issues had been raised since 2018. It found that there was not a significant risk of repetition, but the reason for this was not so much
because of insight and remediation but rather because of “recognition by [the doctor] that it was his prescription of controlled drugs that had resulted in these proceedings”. The MPT referred specifically to the doctor’s statement that he now stays away from prescribing controlled drugs.

16 The MPT concluded that, whilst it was not satisfied that there was full insight and remediation, “there was not a significant risk of repetition such as to give rise to any future patient safety concerns”. Nonetheless, it held that a finding of impairment was required to promote and maintain public confidence and standards and conduct for the profession.

Sanction

17 In its determination on sanction, the MPT identified various mitigating factors, including “genuine remorse”; “some insight in relation to the issue of prescribing” in that “he understands what went wrong, how he should have acted differently and has indicated what he can do in the future to avoid recurrence”; and “he has taken steps to remediate in that he has stated that the avoids this type of work and has ceased prescribing drugs of the type which were the subject of the misconduct found proved”.

18 In terms of aggravating factors the MPT stated (emphasis added): “Whilst the Tribunal has determined that Mr Alhejazi has insight into the inappropriate prescribing, it was concerned that his insight into his failure to adequately examine patients was limited. It was of the view that there is no evidence to suggest he understands why he should have conducted the examinations that Mr Peel [the GMC expert] had stated were appropriate. There had been limited remediation in respect of his prescribing practice in so far as Mr Alhejazi had undertaken one course in relation to prescribing. There had not been any evidence of remediation in respect of the failure to examine patients or the failure to decline referrals.”

19 Notwithstanding the above observations, in determining that suspension was the appropriate sanction, the MPT stated that the proceedings had been a “salutary lesson” for the doctor and repeated its finding that there was “not a significant risk of repetition”.

20 The MPT determined to suspend Mr Alhejazi’s registration for a period of three months on public interest grounds, and that a period longer than three months would be disproportionate.

21 The MPT did not direct a review, noting it had already determined that there was not a significant risk of repetition and there would be no value in a review hearing at the end of this ‘relatively short period of suspension’.

The General Medical Council’s power to appeal pursuant to s.40A
22 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.

23 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”).

24 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”).

25 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:

25.1 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?

25.2 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.

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

25.4 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).