Meeting of the s40A Panel to consider the case of Dr Raiied Haris

Held on 29 November 2019.

Panel members present

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

In attendance

Kate Takes, Senior Legal Adviser
Mark Swindells, Assistant Director, Corporate Directorate (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.

2 As part of the MPT hearing took place in private, where appropriate, this meeting note has also been redacted for publication.

The relevant decision

3 The Senior Legal Adviser confirmed that the decision was a relevant decision for the purposes of s.40A.
Consideration

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

5 The Panel noted the MPT found proven that Dr Haris had intimately examined two separate patients without clinical indication in either case (and in one of the cases had specifically recorded that no intimate examination had taken place). In both cases, the Panel noted that Dr Haris failed to obtain consent and failed to record his actions. In addition, he had initially denied both cases at the MPT hearing.

6 The Panel considered the MPT’s findings regarding the doctor’s action not being sexually motivated and noted that this finding relied upon the submission of XXX. The Panel felt that the MPT had placed too much weight on the testimony of XXX.

7 In addition, the Panel also felt that the MPT placed too much weight on the testimony of XXX.

8 Whatever the explanation, the panel was concerned that a doctor could have acted in such a way from both a patient safety perspective, and the GMC’s role to uphold public confidence in the profession. Even if these actions were not sexually motivated, the impact on the patients is a substantial violation by a professional in a position of great trust.

9 The Panel focussed on whether the MPT had adequately taken into consideration Dr Haris’ remediation, and the risk of repetition of his actions. The MPT considered the likelihood of repetition was low, but it did not appear to link this with Dr Haris maintaining a different account of events in his own reflection statement. Given that, the Panel considered that the MPT was incorrect in assessing Dr Haris’ insight as “mature”, especially when the MPT acknowledged that “it may be too early for it to conclude that he has completely remediated”. The Panel felt that Dr Haris’ reflection statement does not directly confront the fact that these were intimate examinations that were not clinically indicated.

10 In addition, the Panel felt that the MPT’s consideration of whether to suspend Dr Haris was inadequate. The Panel found the MPT’s reference to the public “not being vengeful” and that public interest is “a two-way street” odd, and not relevant to the guidance, and hence found that the MPT’s reasoning appears to be inadequate. The Panel did not feel that the MPT had properly addressed the severity and gravity of Dr Haris’ misconduct or the public interest test.

11 The panel also considered the MPT’s findings regarding XXX. The Panel could not conclude that the MPT had sufficiently considered whether XXX is likely to affect his fitness to practise or pose a risk to patient safety in the future.
12 Ultimately therefore, the Panel did not believe that the MPT outcome is sufficient to protect the public or public confidence, and therefore decided to appeal the MPT’s decision pursuant to section 40A Medical Act 1983.

Charlie Massey (Chair)  
Dated 6/1/20

Background

13 This case concerns the determination of an MPT, which concluded on 6 November 2019, considering the matter under Part 4 of the General Medical Council (Fitness to Practise) Rules 2004 (‘the Rules’).

14 The allegations relate to Dr Haris, a GP who predominantly worked in out of hours services, and that in 2017 he performed intimate examinations on two patients (A & B) which were not clinically indicated and were alleged to be sexually motivated.

15 On 23 February 2017 Patient A attended an out of hours (OOH) service with stomach pain, which had previously been suspected to be gall stones. Patient A’s mother was also in attendance during the consultation (but had her back to the examination). Dr Haris asked if he could examine Patient A and she lay on the examination couch and pulled her top up, exposing her midriff. Dr Haris asked Patient A to lower her trousers, which she did, and then he moved Patient A’s underwear below her pubic hair and began pressing above her pubic area/at the top of her thighs. Patient A alleged that Dr Haris then moved his hand to her vagina and touched her labia. Patient A complained to the OOH service about the examination the next day.

16 On 5 March 2017 Patient B presented at an Accident and Emergency Department having suffered a fall the previous day during which she had blacked out. She was experiencing pain in her upper back and had a single bruise on her buttock. Dr Haris was working as a GP in the Minor Injuries Unit and saw Patient B. Patient B’s husband was also in attendance during part of the consultation (although, due to his location within the room, could not see the doctor’s actions). Patient B alleged that whilst examining the bruise on her buttock, Dr Haris caressed both her buttocks, moved her underwear further than she had already moved it and from behind touched her
vagina/labia for approximately three seconds. Patient B also describes that Dr Haris 'groped' her left breast (at this stage a nurse was in the consultation room in place of Patient B's husband but, due to her location within the room, could not see the doctor's actions). Patient B complained to the hospital about the examination the next day.

**MPT hearing**

17 The MPT hearing commenced on 14 January 2019 but was adjourned on 25 January, after the facts determination had been handed down XXX. The hearing recommenced on 31 October 2019.

**Facts**

18 Dr Haris denied having undertaken the actions and intimate examinations alleged. Dr Haris gave evidence during the facts stage of the proceedings and the facts determination noted that XXX the MPT had 'formed the impression that he was defensive at times' and 'some of Dr Haris' explanations for his actions were contradictory and did not make sense.'

19 The MPT noted that it found both Patients A and B to be impressive witnesses and the determination details how they preferred the evidence of the two patients over that of Dr Haris.

20 The MPT found proven that Dr Haris had pulled down Patient A's underwear and examined her vagina which was not clinically indicated and without having obtained informed consent; stared at her pubic area; failed to wear gloves when examining Patient A's vagina and also that he had failed to record obtaining consent and that he had undertaken a vaginal examination.

21 The MPT found proven that Dr Haris had examined Patient B's buttocks, breast and vagina and that the examinations were not clinically indicated; failed to obtain informed consent for a breast or vaginal examination; failed to wear gloves or offer a chaperone for the vaginal examination and also that he had failed to record obtaining consent and that he had undertaken a breast and vaginal examination.

22 The MPT did not find that Dr Haris' actions were sexually motivated. In considering this matter, the MPT had regard to XXX.

23 XXX.

24 The MPT also had regard to the evidence of Dr Haris' XXX.

25 XXX.
26 The MPT found that whilst Dr Haris’ acts towards Patients A & B could reasonably be perceived as overtly sexual, based on the evidence, the actions were not for Dr Haris’ own sexual gratification XXX and, therefore, were not sexually motivated.

Impairment

27 XXX.

28 The MPT found that overall Dr Haris’ ‘conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct.’

29 During the hearing, the MPT had regard to Dr Haris’ ‘reflective piece’, which XXX had given him a chance to reflect on his approach to consultations.

30 The MPT found that Dr Haris had demonstrated insight, apologised and had undertaken substantial remediation including ‘reading appropriate material/attended courses to improve his communication with patients’ and ‘actively changed his working patterns so he is no longer isolated.’ Overall the MPT found that the risk of repetition was low but ‘that it may be too early for it to conclude that he has completely remediated [his failings].’

31 However, the MPT noted their concern about that the case involved findings of inappropriate intimate examinations on female patients, which would concern a well informed and reasonable member of the public. Therefore, the MPT found ‘a finding of impairment would be necessary to promote and maintain public confidence in the medical profession and uphold professional standards.’

Sanction

32 The GMC’s submission was for a sanction of suspension.

33 With regard to sanction, the MPT noted the aggravating features to be Dr Haris’:

33.1 misconduct during the examinations had been distressing for both Patient A and Patient B, particularly since such actions are generally perceived as sexually motivated; and

33.2 actions could be perceived as an abuse of his position of trust towards patients in a vulnerable position by not explaining his actions or obtaining informed consent;

34 The mitigation considered by the MPT included Dr Haris’:

34.1 significant degree of insight and exhibition of remorse;

34.2 advanced remediation and engagement with the MPT proceedings; and
34.3 positive references, testimonials and patient feedback.

35 XXX.

36 The MPT stated that whilst it had considered suspension, it had been 'more persuaded by [the defence] submissions that such a member of the public would not be 'vengeful' and that the public interest was a 'two-way street' in that the public interest would also acknowledge the benefit of keeping an otherwise competent doctor in practice so as to serve that public.' The MPT determined that a 12 month period of conditions was the necessary and proportionate sanction in the case.

37 The MPT directed an immediate order. The MPT also directed a review of Dr Haris' case.

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

38 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.

39 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").

40 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").

41 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:

41.1 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?

41.2 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.

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

41.4 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).