**FITNESS TO PRACTISE PANEL**
**17 – 21 OCTOBER 2011**
7th Floor, St James's Buildings, 79 Oxford Street, Manchester, M1 6FQ
Room 7

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|---|---|
| Name of Respondent Doctor: | Dr Abdool Majid Vahdani |
| Registered Qualifications: | Doctor - Medic 1995 Carol Davila |
| Area of Registered Address: | Romania |
| Reference Number: | 6163737 |
| Type of Case: | New case of impairment by reason of: misconduct and deficient professional performance |
| Panel Members: | Mrs F Barnett, Chair (Lay)<br>Mr D Smith (Lay)<br>Dr G Hanlon (Medical) |
| Legal Assessor: | Mr T Bradbury |
| Specialist Performance Adviser: | Dr A Brown |
| Secretary to the Panel: | Ms C Beard |

## Representation:

GMC: Mr Chris Hamlet, Counsel, instructed by GMC Legal

Doctor: Not present and not represented

## ALLEGATION

"That being registered under the Medical Act 1983, as amended:

1. Between 24 August 2009 and 1 October 2009 you were employed as a locum SHO at the Causeway Hospital, Coleraine, Northern Ireland (the 'Causeway');
**Found proved.**

2. On or about the following dates you submitted a curriculum vitae to Surgi-Call locum agency which referred to your employment at the Causeway as a "Staff Grade Obs & Gynae Causeway Hospital 24/8/2009-2/10/2009 5 weeks"

a. 3 December 2009, **Found proved.**

b. 28 January 2010; **Found proved.**

3. On 13 October 2010, you undertook a GMC assessment of your competence; **Found proved.**

4. Your performance in the Objective Structured Clinical Examinations (the 'OSCEs') was unacceptable in the following areas

a. Providing or arranging treatment, **Found proved.**

b. Good clinical care, **Found proved.**

c. Relationships with patients; **Found proved.**

5. Your performance in the OSCEs was a cause for concern in the area of assessing your patients' condition; **Found proved.**

6. On 11 November 2010, during a period of interim suspension from the medical register, you presented a private prescription to Boots Pharmacy, Belsize Park, London; **Found proved.**

7. Your conduct as described at paragraphs 2 and 6 was

a. dishonest, **Found proved.**

b. misleading. **Found proved.**

And that by reason of the matters set out above your fitness to practise is impaired because of

a. your misconduct, **Found proved.**

b. your deficient professional performance." **Found proved.**

## Determination on facts

Mr Hamlet:

## Service and proceeding in the doctor's absence

At the start of the proceedings, as Dr Vahdani is neither present nor represented, the Panel first considered whether notice of this hearing has been properly served upon him in accordance with Rule 40 of the General Medical Council (Fitness to Practise) Rules 2004 (as amended).

The Panel has received evidence which showed that the Notice of Hearing, dated 2 September 2011, was delivered to, and signed for by Dr Vahdani at his registered address on 5 September 2011, via Fedex Express, in accordance with Rule 40.

The Panel was satisfied that all reasonable efforts had been made to serve the notice of hearing upon Dr Vahdani in accordance with Rule 31. It next considered under Rule 31 whether it should proceed with this case in the absence of Dr Vahdani.

It bore in mind that it has a discretion to do so, though this discretion is to be exercised with caution and with the overall fairness of the proceedings in mind. The notice of hearing sent on 2 September 2011 informed Dr Vahdani that the Panel had the power to proceed in his absence.

The Panel has noted the email from Dr Vahdani to the GMC Solicitor, dated 6 October 2011, in which he stated that he did not intend to attend the hearing. No application was made by him to adjourn the case.

In the light of this evidence, the Panel formed the opinion that Dr Vahdani has voluntarily absented himself from these proceedings. It had no evidence before it to suggest that if it were to adjourn the hearing, Dr Vahdani would attend. The Panel took account of the fact that adjourning the case could cause inconvenience to witnesses who had been scheduled to attend, and could impact on their recall of relevant events. It considered the risk of reaching an improper conclusion on the merits of the case in the absence of any explanations from the doctor, and the risk of drawing adverse inferences from the doctor's absence. The Panel concluded that it was in the public interest to hear the case without further delay and that, as a professional and experienced Panel, it would ensure that these proceedings were conducted in a fair manner and it would not draw any adverse inference from his non-attendance.

In the circumstances, the Panel determined to exercise its discretion and proceed with the hearing in the absence of Dr Vahdani. In reaching this decision, it balanced the need for fairness to the doctor, including his right to be present, with the public interest in proceeding with this case.

**Amending the allegation**

Following this, you made an application, on behalf of the General Medical Council (GMC), to make a number of amendments to the allegation, the practical effect of which was to delete one paragraph which alleged a further incident of dishonesty. The Panel was satisfied that these amendments could be made without injustice and acceded to your application. The allegation has been amended accordingly.

**Hearing evidence via video link**

During the course of the proceedings, you made an application to hear the evidence of a witness, namely Dr A, the Lead Assessor in the GMC assessment of Dr Vahdani's competence, via video link. In reaching its decision on your application, the Panel noted Rules 34(1) and 34(2) of the General Medical Council (Fitness to Practise) Rules 2004 and sections 51 and 51(7) of the Criminal Justice Act (2003).

The Panel first considered under Rule 34(2) whether such evidence would be admissible in criminal proceedings. It concluded that pursuant to section 51 of the Criminal Justice Act (2003), that the evidence would be admissible in criminal proceedings. It determined that it was in the interests of the efficient and effective administration of justice for Dr A to give evidence in the proceedings through a live video link.

In reaching this decision, the Panel noted that Dr A wished to give evidence to the Panel but was unable to attend the hearing in person due to clinical commitments. It was of the view that she need not attend the hearing in person when suitable facilities were available for her to give evidence via a video link. As the Lead Assessor in the GMC assessment of Dr Vahdani's competence, the Panel considered Dr A's evidence to be central to the allegation. The Panel earlier considered the risks associated with the absence of the doctor and his inability to challenge the GMC evidence. It did not consider that the provision of evidence by video link would increase any such risk.

Accordingly, the Panel concluded that the evidence would have been admissible in criminal proceedings. Further, even if it were not, the Panel was satisfied that its duty of making due inquiry into the case made the admission of the evidence desirable and, therefore, accepted it should be admitted by way of video link.

In any event, the Panel considered that the evidence would have been fair and relevant to the case before it, whether or not such evidence would be admissible in a court of law under Rule 34(1).

**The facts**

In reaching its decision on the facts, the Panel gave consideration to all the evidence adduced in this case, both oral and documentary, and has taken account of your submissions, on behalf of the GMC.

The Legal Assessor advised the Panel that the burden of proof rests on the GMC and that the standard of proof to be applied is the civil standard, which is the balance of probabilities. The civil standard means that a fact will be found proved if the Panel considers it more likely than not to have happened.

In respect of dishonesty, the Legal Assessor advised the Panel to ask itself the following two questions:

1. Was what the doctor did dishonest by the ordinary standards of reasonable and honest people? In this regard, the Panel must form its own judgment of what those standards are.

2. Must the doctor, himself, have realised that what he was doing would be regarded as dishonest by those standards?

In deciding the second question, the Panel must consider the doctor's state of mind at the time.

If, after taking into account all of the evidence, the Panel is satisfied that the answer to both of these questions is yes, then the element of dishonesty is proved. If the Panel is not so satisfied, the element of dishonesty is not proved.

The Panel is aware that it is entitled to draw reasonable inferences from the evidence presented and to give such weight to the evidence as it considers appropriate.

The Panel has not drawn any adverse conclusions from Dr Vahdani's absence. At all times, it has sought to identify those parts of the evidence which may be of assistance to the doctor.

The Panel has considered each paragraph of the allegation separately. It has made the following findings on the facts:

**Paragraph 1:**

> "1. Between 24 August 2009 and 1 October 2009 you were employed as a locum SHO at the Causeway Hospital, Coleraine, Northern Ireland (the 'Causeway');"

**has been found proved.**

The Panel has accepted the evidence of Dr B, Consultant Obstetrician and Gynaecologist, and Mrs C, Human Resources Medical Staffing Manager, at the Causeway. They were both clear that the position Dr Vahdani was recruited for was that of a short term locum SHO. This was supported by the human resources documentation from the Causeway and documentation from the locum agency.

**Paragraphs 2(a) and 2(b):**

> "2. On or about the following dates you submitted a curriculum vitae to Surgi-Call locum agency which referred to your employment at the Causeway as a "Staff Grade Obs & Gynae Causeway Hospital 24/8/2009-2/10/2009 5 weeks"
>
> a. 3 December 2009,

b. 28 January 2010;"

**have been found proved.**

The Panel has accepted the evidence of Mr D, Director of Surgi-Call locum agency, that Dr Vahdani submitted CVs to the agency on the dates alleged referring to his employment at the Causeway as a "Staff Grade Obs & Gynae..." His evidence was supported by Dr Vahdani's CVs and screenshots of the locum agency file for Dr Vahdani.

**Paragraphs 3, 4 and 5:**

"3. On 13 October 2010, you undertook a GMC assessment of your competence;

4. Your performance in the Objective Structured Clinical Examinations (the 'OSCEs') was unacceptable in the following areas

a. Providing or arranging treatment,

b. Good clinical care,

c. Relationships with patients;"

5. Your performance in the OSCEs was a cause for concern in the area of assessing your patients' condition;"

**have been found proved.**

The Panel has noted the evidence of Dr A, the Lead Assessor in the GMC assessment of Dr Vahdani's competence, and the Assessors' Report to the GMC.

**Paragraph 6:**

"6. On 11 November 2010, during a period of interim suspension from the medical register, you presented a private prescription to Boots Pharmacy, Belsize Park, London;"

**has been found proved.**

The Panel has accepted the documentary evidence which clearly indicates that Dr Vahdani was suspended by the GMC Interim Orders Panel (IOP) on 4 November 2010. It has noted the prescription which is signed, and dated, by Dr Vahdani, and the evidence of Mr E, Healthcare Assistant, that this prescription was presented to him by Dr Vahdani.

Dr Vahdani accepted in his email to the GMC, dated 25 November 2010, that he presented that prescription.

**Paragraph 7:**

"8. Your conduct as described at paragraphs 2 and 6 was

a. dishonest,

b. misleading."

**Paragraph 7(a) in relation to paragraph 2 has been found proved.**

The Panel has already found that Dr Vahdani was recruited and employed at the Causeway as a locum SHO and that he submitted CVs to Surgi-Call locum agency referring to his employment there as a Staff Grade. In these circumstances, the Panel was satisfied that Dr Vahdani's conduct, in referring to himself as a "Staff Grade" doctor when he was not, would be regarded as dishonest by the ordinary standards of reasonable and honest people.

The Panel then went on to consider whether Dr Vahdani himself realised that what he was doing was dishonest by those standards. It noted that English is not Dr Vahdani's first language and that there had been communication difficulties at times. It has also borne in mind that there may have been some confusion on Dr Vahdani's behalf as to the terminology used regarding staff grading. Nevertheless, the Panel has inferred from the facts that the locum agency must have made the nature of the role clear to him at the time of recruitment. In addition, both Dr B and Mrs C were clear that they were only recruiting for SHOs at that time. Further, Dr Vahdani himself completed and signed human resources documentation at the commencement of his employment in which he inserted his role as "SHO". The Panel concluded that had there been any misunderstanding on Dr Vahdani's behalf, regarding his grade when he commenced employment, this would have been resolved when after around ten days of employment he was told that he was being taken off the second on call rota as he required more supervision. Further, the Panel heard that Dr B clearly told Dr Vahdani that she would not change his pay grade to that of a Registrar when he asked her to do so.

Having considered all the evidence, the Panel was satisfied on a balance of probabilities, that Dr Vahdani knew that he was not employed as a Staff Grade at the Causeway. In these circumstances, the Panel was satisfied that in referring to himself as he did on his CV, Dr Vahdani himself would have realised that what he was doing was dishonest by the ordinary standards of reasonable and honest people. Dr Vahdani was knowingly making a false representation as to his experience to obtain work.

**Paragraph 7(b) in relation to paragraph 2 has been found proved.**

The Panel was satisfied that Dr Vahdani's conduct was misleading. This was evidenced by the fact that the locum agency later attempted to re-recruit Dr Vahdani to the Causeway as a Registrar.

**Paragraph 7(a) in relation to paragraph 6 has been found proved.**

In accordance with the advice of the Legal Assessor, the Panel asked itself firstly, on a balance of probabilities, whether Dr Vahdani was prohibited from presenting the prescription and secondly whether he knew that he was so prohibited.

The Panel noted that Dr Vahdani was not present, or represented, at the IOP on 4 November 2010 when his registration was suspended. It has noted the letter from the GMC to the doctor at his registered address, dated 4 November 2010, which notified him of the IOP's decision. The Panel has been presented with documentary evidence which indicates that this was delivered on 8 November 2010 but was signed for by someone other than Dr Vahdani. The Panel has noted that in his email of 25 November 2010 to the GMC, Dr Vahdani stated that he was not aware that he had been suspended. Having considered all the evidence, the Panel was not satisfied that Dr Vahdani knew that he had been suspended by the GMC.

Nevertheless, the Panel has noted that Dr Vahdani was present at an earlier IOP hearing on 12 March 2010 when his registration was made subject to an order of conditions, which included him not being able to undertake any private practice. In the Panel's view, this includes prescribing to others otherwise than in the course of NHS employment.

In these circumstances, the Panel was satisfied that Dr Vahdani was prohibited from presenting a private prescription, even if he was unaware of the suspension.

Having considered all the evidence, the Panel was satisfied that Dr Vahdani's conduct, in presenting the private prescription when he was prohibited from doing so, would have been regarded as dishonest by the ordinary standards of reasonable and honest people, and that Dr Vahdani realised that what he was doing would be regarded as dishonest by those standards. Even if Dr Vahdani did not know of his suspension, he must have known that he was prohibited from prescribing under the earlier interim order conditions.

**Paragraph 7(b) in relation to paragraph 6 has been found proved.**

Having reached its findings in relation to paragraph 7(a) in relation to paragraph 6, the Panel was satisfied that presenting himself as someone who was entitled to present a private prescription, when he was not entitled to do so, was misleading.

Having reached its findings on the facts, the Panel invites you to adduce any further evidence and make any further submissions as to whether, on the basis of the facts found proved, Dr Vahdani's fitness to practise is impaired by reason of his misconduct and/or his deficient professional performance.

## Determination on impaired fitness to practise

Mr Hamlet: At this stage of the proceedings, the Panel must decide, under Rule 17(2)(k) of the General Medical Council's (Fitness to Practise) Rules 2004, whether, on the basis of the facts found proved, Dr Vahdani's fitness to practise is impaired by reason of his misconduct and/or his deficient professional performance.

The Panel has given consideration to all the evidence adduced in this case. It has taken account of your submissions, on behalf of the General Medical Council (GMC).

You invited the Panel to find Dr Vahdani's fitness to practise to be impaired by reason of his misconduct and his deficient professional performance. You drew to the Panel's attention the case of Cheatle v GMC [2009] EWHC 645 and the case of Calhaem v General Medical Council [2007] EWHC 2606 (Admin); [2008] LS Law Medical 26, and to those parts of the evidence which supported your submissions.

Whilst the Panel has noted the submissions made, the question of impairment is a matter for this Panel to determine exercising its own judgment.

In approaching its task, the Panel has accepted the advice of the Legal Assessor. He reminded the Panel that a finding of impairment involves two elements: firstly the Panel must determine whether the facts found proved amount to misconduct and/or deficient professional performance. Secondly, if they do, the Panel must decide whether, in the light of all the circumstances of the case, the doctor's fitness to practise is impaired by reason of that misconduct and/or deficient professional performance.

Throughout its deliberations, the Panel has borne in mind its responsibility to protect the public interest. The public interest includes not only the protection of patients but also the maintenance of public confidence in the profession, and the declaring and upholding of proper standards of conduct and behaviour.

In reaching its decisions, the Panel has borne in mind the duties of a doctor registered with the GMC as set out in Good Medical Practice (2006 edition). In particular, this guidance states on the inside cover that:

> "Patients must be able to trust doctors with their lives and health. To justify that trust you must show respect for human life and you must:
>
> - Make the care of your patient your first concern
> - Provide a good standard of practice and care
>  - Keep your professional knowledge and skills up to date
>  - Recognise and work within the limits of your competence
>
> ...
> - Be honest and open and act with integrity"

Good Medical Practice further states in paragraphs 56 and 57 that:

> "Probity means being honest and trustworthy, and acting with integrity: this is at the heart of medical professionalism.
>
> ...You must make sure that your conduct at all times justifies your patients' trust in you and the public's trust in the profession."

**Misconduct**

The Panel first considered whether the facts found proved in Dr Vahdani's case amounted to misconduct.

In summary, the Panel has found that Dr Vahdani's conduct was dishonest and misleading, in that:

- On two occasions, he knowingly made a false representation on his curriculum vitae as to his experience; and
- He had presented a private prescription at a pharmacy when he was prohibited from doing so by a GMC interim order.

Doctors occupy a position of privilege and trust in society and are expected to uphold proper standards of conduct. Members of the public are entitled to place complete reliance upon doctors to be honest. 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 in direct harm to patients, is particularly serious because it undermines the trust the public place in the medical profession and the declaring and upholding of proper standards of conduct and behaviour.

Patient safety is of paramount importance. Any employer is entitled to receive full and honest information about a doctor's career history in order to assess their level of knowledge and experience. A chemist has the right to assume that a doctor who presents a private prescription is entitled to do so.

Although the Panel has not received evidence to suggest that that there were any adverse clinical consequences arising out of Dr Vahdani's dishonest and misleading behaviour, it is particularly concerned that patient safety could have been compromised had Dr Vahdani obtained a Staff Grade position, for which he was not competent, by misrepresenting his level of experience. Patient safety could similarly have been comprised by his issuing and presenting a private prescription when the GMC had prohibited him from doing so by an interim order made on the grounds of concerns raised as to his performance.

The Panel was of the view that Dr Vahdani's actions demonstrated a pattern of dishonest behaviour over a period of time. This was aggravated by the fact that these incidents occurred during the course of his professional practice, and by the

fact that one of the findings arises from his deliberate attempt to ignore the restriction placed on him by his Regulator.

Individually, these incidents amount to serious breaches of the GMC's guidance in relation to professional standards. Cumulatively, these breaches constitute a serious abuse of a doctor's position of trust, which has undermined public confidence in the profession and brought the profession into disrepute. Dr Vahdani's conduct fell far below the standards expected of all registered medical practitioners.

In all the circumstances, the Panel is satisfied that the facts found proved constitute misconduct, and that it is serious.

The Panel went on to consider whether Dr Vahdani's fitness to practise is impaired by reason of his misconduct.

It considered the judgment of Cheatle v GMC, where at paragraph 22, Cranston J. stated:

> "In my judgment this means that the context of the doctor's behaviour must be examined. In circumstances where there is misconduct at a particular time, the issue becomes whether that misconduct, in the context of the doctor's behaviour both before the misconduct and to the present time, is such as to mean that his or her fitness to practise is impaired. The doctor's misconduct at a particular time may be so egregious that, looking forward, a Panel is persuaded that the doctor is simply not fit to practise medicine without restrictions, or maybe at all. On the other hand, the doctor's misconduct may be such that, seen within the context of an otherwise unblemished record, a Fitness to Practise Panel could conclude that, looking forward, his or her fitness to practise is not impaired, despite the misconduct."

The Panel is of the view that Dr Vahdani's misconduct is sufficiently serious for it to conclude that his fitness to practise is presently impaired. The Panel nonetheless went on to consider the issue of remediation. In the Panel's view, dishonesty, by its very nature, is not easily remediable, and in any event, Dr Vahdani has produced no evidence of any steps taken to remediate his behaviour. The Panel has borne in mind that he has not, at any time, acknowledged that his conduct was dishonest and misleading. In the Panel's view, there is no evidence from which it can conclude that he has any insight into his misconduct.

Having considered the nature of Dr Vahdani's misconduct, the lack of evidence of any remediation and his lack of insight, the Panel is satisfied that there remains a risk of repetition of such behaviour in the future.

In all the circumstances, the Panel has determined that Dr Vahdani's fitness to practise is impaired by reason of his misconduct.

**Deficient professional performance**

The Panel next considered whether the facts found proved in Dr Vahdani's case amounted to deficient professional performance.

In so doing, the Panel has noted the case of Calhaem v General Medical Council, where Jackson J states that:

> ""Deficient professional performance"... is conceptually separate both from negligence and from misconduct. It connotes a standard of professional performance which is unacceptably low and which (save in exceptional circumstances) has been demonstrated by reference to a fair sample of the doctor's work."

In reaching its decision, the Panel has noted the evidence of Dr A, the Lead Assessor in the GMC assessment of Dr Vahdani's competence, and the Assessors' Report to the GMC.

Dr A acknowledged that there had been some limitation to the assessment, in that the Assessment Team (the Team) had not been instructed to carry out a full performance assessment by the GMC. Nevertheless, she emphasised that where the Team had recorded a definite judgment, they felt that they had sufficiently powerful evidence to do so.

The Team found that Dr Vahdani's performance in the Objective Structured Clinical Examinations (the "OSCEs") was "acceptable" in the area of working with colleagues. This was the only area tested in which the Team found Dr Vahdani's performance to be acceptable.

In the area of assessing his patients' condition, the Team felt that there was some evidence that the standard of Dr Vahdani's practice in this regard was below the standard to be expected of his peers, but as the evidence was limited, it applied the "cause for concern" judgment.

Dr Vahdani's performance was judged as "unacceptable" in relation to the following areas:

- **Providing or arranging treatment**
  - The Team noted concerns in relation to the areas of surgical technique, including Dr Vahdani tying a "granny" knot instead of a "surgeon's" knot. He failed to satisfactorily repair an episiotomy. They also noted concerns regarding his basic life support skills, in that he showed no competence in assessment or resuscitation;
- **Good clinical care**
  - The Team noted that within the limitations of the evidence available they felt that Dr Vahdani's lack of awareness of his limited ability to communicate in English made his performance unacceptable; and

- **Relationships with patients**
  - The Team acknowledged that Dr Vahdani's communication difficulties may arise from the fact that his first language is not English. Nevertheless, the Panel was concerned at the Team's finding that Dr Vahdani's grasp of English was so poor that he was unable to follow simple instructions for the OSCEs, was unable to convey appropriate information to patients, and could not answer their questions. In addition, Dr Vahdani seemed apparently unaware of the requirements for patient confidentiality and open communication. It was noted that despite patients being clearly distressed, Dr Vahdani ended two consultations with "have a nice day" and "Happy?".

The Panel has also noted, in particular, that Dr Vahdani had been unaware of a black eye during a domestic violence station, waved needles about carelessly, and frightened rather than reassured a patient on one occasion.

The Panel has noted that Dr Vahdani performed poorly in the Tests of Knowledge and scored very poorly in a number of the OSCEs. During her evidence, Dr A confirmed that Dr Vahdani had scored zero in two of the OSCEs. She stated that in the ten performance assessments she had carried out for the GMC, she had never encountered previously a score of zero.

The Team reported that despite the clear distress he caused the role players during the OSCEs, Dr Vahdani told them that he had perceived no difficulties with communication and that his English was satisfactory.

The Specialist Performance Adviser, Dr Alan Brown, confirmed to the Panel, by reference to Dr Vahdani's CV, that a doctor of his qualification and experience would be expected to pass the assessment without difficulty.

It is clear to the Panel that Dr Vahdani's professional performance has fallen below the standards expected of a doctor of his level of qualification and experience. The standard of his performance was unacceptably low during the assessment and this was demonstrated by reference to a fair sample of his work. The areas examined by the Team are fundamental to the day to day practice of any doctor.

In all the circumstances, the Panel has determined that the facts found proved amount to deficient professional performance.

The Panel then went on to consider whether Dr Vahdani's fitness to practise is impaired by reason of his deficient professional performance.

At the time of the assessment, in October 2010, the Team was of the opinion that Dr Vahdani was not fit to practise at all. In formulating their opinion, the Team took into account the fact that Dr Vahdani had not acknowledged any short comings in his practice. They also noted that there was no indication that Dr Vahdani had taken any steps to improve his practice. There had been concerns raised about his

surgical abilities since as far back as July 2009, but he had apparently ignored well meant advice to work under supervision and continued to represent himself as a middle grade doctor.

They recommended that in order to practise safely in the UK, Dr Vahdani would:

- require intense coaching in English and non-verbal communication;
- need to demonstrate an adequate comprehension of and ability to communicate in English; and
- require training in basic surgical skills such as choice of suture, suturing and knotting techniques and the safe handling of sharps.

However, they noted that in order to benefit from any of this, Dr Vahdani would first need to acknowledge the limitations in his practice.

The Panel has borne in mind that the Team felt that there was no scope for improvement in Dr Vahdani's practice until he accepted his limitations.

The Panel has noted the reference made by Dr Vahdani in his email of 25 November 2010 to the GMC to his having attended an endoscopy course earlier that month. Save for this, the Panel has not received any evidence to suggest that since the assessment, Dr Vahdani has taken any of the steps needed to remedy his deficient professional performance. Furthermore, the Panel has borne in mind that Dr Vahdani has not, at any time, acknowledged his shortcomings. Indeed, at the conclusion of the assessment Dr Vahdani expressed the view that the tests had been fine and that he had perceived no problems in taking histories or talking to patients. The Panel considers that Dr Vahdani's response demonstrates a complete lack of insight into the matters which have brought him before it. The Panel is of the view that there is no evidence of any change in circumstances since the assessment was carried out in October 2010.

In the light of the serious, fundamental and wide-ranging deficiencies found in Dr Vahdani's practice, and the lack of evidence as to insight and remediation, the Panel is satisfied that there remains a risk of repetition of this deficient professional performance in the future.

In all the circumstances, the Panel has determined that Dr Vahdani's fitness to practise is impaired by reason of his deficient professional performance.

The Panel now invites you to adduce any further evidence, and make any further submissions, as to the appropriate sanction, if any, to be imposed on Dr Vahdani's registration. Submissions on sanction should include reference to the Indicative Sanctions Guidance (dated April 2009 and updated in August 2009), using the criteria set out in the guidance to draw attention to the issues which appear relevant in this case.

**Determination on sanction**

Mr Hamlet: Having determined that Dr Vahdani's fitness to practise is impaired by reason of his deficient professional performance and his misconduct, the Panel has now considered what sanction, if any, should be imposed upon his registration.

The Panel has given consideration to all the evidence adduced in this case. It has taken account of your submissions, on behalf of the General Medical Council (GMC).

You submitted that the necessary and appropriate sanction is that of erasure. You drew the Panel's attention to those parts of the evidence and the Indicative Sanctions Guidance which supported your submissions.

Whilst the Panel has noted your submissions, it has exercised its own judgment in considering the appropriate sanction, if any, to impose in Dr Vahdani's case.

In reaching its decision, the Panel has taken account of the GMC's Indicative Sanctions Guidance (dated April 2009 and updated in August 2009). It has borne in mind that the purpose of a sanction is not to be punitive, but to protect patients and the public interest, although it may have a punitive effect.

Throughout its deliberations, it has applied the principle of proportionality, balancing Dr Vahdani's interests with the public interest. The public interest includes not only the protection of patients but also the maintenance of public confidence in the profession, and the declaring and upholding of proper standards of conduct and behaviour.

The Panel first considered whether to conclude the case by taking no action. It has determined that, in view of the serious nature of its findings, it would not be sufficient, proportionate, nor in the public interest to conclude this case by taking no action.

The Panel next considered whether it would be sufficient to impose conditions on Dr Vahdani's registration. Any conditions imposed would need to be appropriate, proportionate, workable and measurable.

The Panel was of the view that no conditions could be formulated to address the dishonest and misleading behaviour which gave rise to its finding of misconduct. In any event, a period of conditional registration would not be sufficient to adequately reflect the serious nature of Dr Vahdani's misconduct, nor would it be sufficient to protect the reputation of the profession and to declare and uphold proper standards of conduct and behaviour. Further, in the light of the serious, fundamental and wide-ranging deficiencies found in Dr Vahdani's practice, and the lack of evidence as to his insight into those deficiencies, the Panel was of the opinion that conditions would be neither workable nor appropriate.

The Panel next considered whether it would be sufficient to suspend Dr Vahdani's registration. In so doing, the Panel has noted paragraphs 69 and 70 of the Indicative Sanctions Guidance, which state that:

> "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 medical practitioner. Suspension from the 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 period of suspension. Suspension will be an appropriate response to misconduct which is sufficiently serious that action is required in order to protect patients and maintain public confidence in the profession. However, a period of suspension will be appropriate for conduct that falls short of being fundamentally incompatible with continued registration and for which erasure is more likely to be the appropriate response (namely conduct so serious that the Panel considers that the doctor should not practise again either for public safety reasons or in order to protect the reputation of the profession). This may be the case, for example, where there may have been acknowledgement of fault and where the Panel is satisfied that the behaviour or incident is unlikely to be repeated. The Panel may wish to see evidence that the doctor has taken steps to mitigate his/her actions...
>
> Suspension is also likely to be appropriate in a case of deficient performance in which the doctor currently poses a risk of harm to patients but where there is evidence that he/she has gained insight into the deficiencies and has the potential to be rehabilitated if prepared to undergo a rehabilitation programme..."

It has also taken into account the relevant factors set out in the Indicative Sanctions Guidance at paragraph 75.

In relation to misconduct, the Panel has already noted its concern that patient safety could have been compromised by Dr Vahdani's dishonest and misleading behaviour. The Panel also found that, cumulatively, Dr Vahdani's dishonest and misleading behaviour constituted a serious abuse of a doctor's position of trust, which has undermined public confidence in the profession and brought the profession into disrepute. Dr Vahdani's conduct fell far below the standards expected of all registered medical practitioners.

In relation to performance, the Panel has borne in mind that Dr Vahdani has not, at any time, acknowledged his shortcomings. Indeed, at the conclusion of the performance assessment, Dr Vahdani expressed the view that the tests had been fine and that he had perceived no problems. The Panel considered that Dr Vahdani's response demonstrated a complete lack of insight at that time.

To date, Dr Vahdani has not, at any time, acknowledged fault, or provided evidence as to steps taken to mitigate his dishonest and misleading behaviour. Further, since

the performance assessment, he has not demonstrated any insight into the deficiencies in his performance, nor shown the potential or willingness to undergo a rehabilitation programme. There has, in fact, been no change since the Assessment Team formed the opinion that he was not fit to practise at all.

Having considered the nature of Dr Vahdani's misconduct, the serious, fundamental and wide-ranging deficiencies found in Dr Vahdani's practice, the lack of evidence of any remediation and his complete lack of insight, the Panel was satisfied that there remains a risk of repetition of his misconduct and deficient professional performance. In the view of the Panel, there is no realistic prospect that a period of suspension would result in a remediation of the deficiencies identified.

In all the circumstances, the Panel has determined that a period of suspension would not be sufficient, proportionate nor in the public interest.

The Panel has noted paragraph 82 of the Indicative Sanctions Guidance, which states that erasure may well be appropriate when the behaviour involves **any** of the following factors:

- Particularly serious departure from the principles set out in Good Medical Practice i.e. behaviour fundamentally incompatible with being a doctor.

- A reckless disregard for the principles set out in Good Medical Practice and/or patient safety.
- Abuse of position/trust (see Good Medical Practice paragraph 57 "you must make sure that your conduct at all times justifies your patients' trust in you and the public's trust in the profession").

- Putting own interests before those of patients (see Good Medical Practice – "Make the care of your patient your first concern"

- Persistent lack of insight into seriousness of actions or consequences.

In the light of all the evidence presented to it, the Panel has concluded that each of the factors set out above is present in Dr Vahdani's case, as reflected in the Panel's determination on impairment.

In all the circumstances, the Panel has concluded that Dr Vahdani's misconduct and deficient professional performance are fundamentally incompatible with him continuing to be a registered medical practitioner.

Accordingly, the Panel has determined to erase Dr Vahdani's name from the Medical Register. It recognises that this will deprive Dr Vahdani of his opportunity to work as a doctor. However, it is satisfied that in view of its findings, the public interest, that is the need to protect patients, declare and uphold proper standards of conduct and behaviour, and to maintain public confidence in the profession, weighs more

heavily than the doctor's own interests in this case. The Panel considers that erasure is a necessary and proportionate response.

The effect of this direction is that, unless Dr Vahdani exercises his right of appeal, his name will be erased from the Medical Register 28 days from when written notice of this determination has been served upon him. A note explaining his right of appeal will be sent to him.

Having determined that Dr Vahdani's name be erased from the Medical Register, the Panel now invites you to make submissions on the issue of an immediate order.

**Determination on immediate sanction**

Mr Hamlet: Having determined that Dr Vahdani's name be erased from the Medical Register, the Panel has now considered, in accordance with Section 38 of the Medical Act 1983, as amended, whether his registration should be suspended immediately.

The Panel has given consideration to all the evidence adduced in this case. It has taken account of your submissions, on behalf of the General Medical Council (GMC).

In reaching its decision, the Panel has also taken account of the GMC's Indicative Sanctions Guidance (dated April 2009 and updated in August 2009). In particular, it has noted paragraph 122 which states that:

> "The Panel may impose an immediate order where it is satisfied that it is necessary for the protection of members of the public, or is in the public interest, or is in the best interests of the practitioner."

In view of the serious nature of its findings, the Panel has determined that it is necessary for the protection of members of the public, in the public interest and is in the best interests of the practitioner, to make an order immediately suspending Dr Vahdani's registration.

This means that Dr Vahdani's registration will be suspended immediately, from the date upon which written notice of this decision is deemed to have been served upon him.

The direction for erasure, as already announced, will take effect 28 days from the date upon which written notice of this decision is deemed to have been served upon Dr Vahdani, unless he lodges an appeal in the interim. If he does lodge an appeal, the immediate order of suspension will remain in force until any appeal is decided.

The interim order currently imposed on Dr Vahdani's registration will be revoked on the date upon which written notice of this immediate order is deemed to have been served upon him.

That concludes this case.

Confirmed

21 October 2011 Chairman