

**COUNCIL FOR HEALTHCARE REGULATORY EXCELLENCE**

**CASE MEETING OF COUNCIL MEMBERS**

**ON 12<sup>th</sup> April 2005**

**AT 11 THE STRAND, LONDON WC2**

**RE: DR MOHAMED BAHGAT SHAR (FORMERLY MOHAMED BAHGAT ALI EL SHARKAWY) AND THE DECISION OF THE FITNESS TO PRACTISE PANEL OF THE GENERAL MEDICAL COUNCIL MADE ON 28<sup>TH</sup> FEBRUARY 2005**

PRESENT: Peter North (Lay member, in the Chair)  
Michael Copland-Griffiths (Regulatory Member)  
Sally Williams (Lay member)

IN ATTENDANCE: Julie Stone (Deputy Director)  
Michael Andrews (Fitness to Practise Manager)  
Briony Mills (Fitness to Practise Officer)  
Elisa Pruvost (Policy Manager)  
Christian Dingwall (Legal Adviser, Bevan Brittan)  
Charles Atkins (Legal Adviser, Bevan Brittan)

**The Fitness to Practise Panel's Decision**

- 1 Dr Mohamed Bahgat Shar (Dr Shar) is a 55 year old medical practitioner. He appeared before the Fitness to Practise Panel (the FTP panel) of the General Medical Council (GMC) on 21<sup>st</sup>-25<sup>th</sup> and 28<sup>th</sup> February 2005 in relation to a charge of serious professional misconduct.
- 2 The FTP panel heard the case in accordance with transitional arrangements under the Medical Act 1983 and the General Medical Council Preliminary Proceedings Committee

and Professional Conduct Committee (Procedure) Rules 1988 (“the 1988 Rules”). The heads of charge and their findings against Dr Shar were:

<b>Head</b>	<b>Finding</b>
1.a.At the relevant times you were the senior partner in the GP practice at Saddleton Road, Whitstable, Kent, .....	Admitted and found proved
b.Ms A was a patient at the practice, on your list, .....	Admitted and found proved
c.Ms B was a receptionist at the practice, but was not a patient on your list; .....	Admitted and found proved
2.a.On or around 21 December 1999 Ms A consulted you about two medical complaints which were a bowel problem and a recent injury to her right foot, .....	Found proved
b.At your request to examine her abdomen, Ms A lowered her trousers and lay on the couch, .....	Found not proved
c.After examining Ms A’s abdomen, you pulled her trousers down further, exposing her low line knickers, .....	Found not proved
d.You placed your fingers inside Ms A’s knickers, pulled them away from her body and then towards her legs,.....	Found proved
e.There was no clinical need for you to move Ms A’s knickers in this way, .....	Found not proved
f.You did not seek Ms A’s informed consent to move her knickers in this way, .....	Found proved
g.Your behaviour was,	
i.indecent,.....	Found not proved
ii.inappropriate;.....	Found not proved
3.a.You asked Ms A about her back problems and commenced examination of her back, .....	Found proved
b.At your request, Ms A lay on her left side, facing the wall, .....	Found proved
c.Ms A did not adjust her trousers, so they remained below her knees, .....	Found proved
d.You stood behind Ms A, .....	Found proved
e.You placed your right arm between Ms A’s legs just above the knees and proceeded to bend and straighten	Found proved

<b>Head</b>	<b>Finding</b>
her right leg with your right arm while your left hand remained touching Ms A's back, .....	
f.You did not,	
i.explain the reason for the manoeuvre,.....	Found proved
ii.seek Ms A's informed consent to the manoeuvre, .....	Found proved
g.Your actions as described in head 3.e. above were inappropriate insofar as you did not seek informed consent before commencing the manoeuvre; .....	Found proved
4.a.As you bent Ms A's right knee with your right arm, you placed the outside of your right hand directly into her crotch/vulva area,.....	Found proved
b.You slid your hand upwards with some pressure then back down again, .....	Found proved
c.You repeated your actions at 4.b. above,.....	Found proved
d.Your behaviour as outlined in heads 4.a. to 4.c. above was,	
i.indecent,.....	Found proved only in relation to Dr Shar's behaviour found to be proved under 4.c above
ii.inappropriate;.....	Found proved only in relation to Dr Shar's behaviour found to be proved under 4.c above
5.a.Following the examination described within heads 3. and 4. above, Ms A submitted a complaint against you to the East Kent Health Authority on 21 December 1999, .....	Found proved
b.Following the Health Authority's notification to you of the complaint, you attended at the home address of Ms A on 20 January 2000, .....	Found proved
c.You asked Ms A's partner if you could speak to Ms A, .....	Found proved
d.On being told she was not in, you left a letter for her with her partner, .....	Found proved
e. On 21 January 2000, you telephoned Ms A at her	Found proved only to the extent

**Head**

place of work and tried to speak to her about the complaint,.....

f.You had been specifically advised by the Health Authority not to make any direct approach to Ms A, .

~~g.Your actions at heads 5.b. to 5.e. above had the potential to harass Ms A,~~

h.Your behaviour as outlined in heads 5.b. to 5.e. was inappropriate; .....

6.a.On an evening in or around December 2000 you were working at the Candoc out of hours GP service where Ms B also worked as a receptionist,.....

b.As Ms B handed you details of a call which had been received late in the evening, you pulled her towards you in a hug,.....

c.You kept your arm around her shoulders as she went to move away, .....

d.Your behaviour as outlined in heads 6.a. to 6.c. was inappropriate; .....

7.a.The day after the events outlined at head 6. above, you were working with Ms B in your GP practice at Saddleton Road, .....

b.You referred to the call details Ms B had given you the previous evening at Candoc, saying to her that she had made you late home in giving you that job,.....

c.You said to Ms B “I will have to punish you for this”,

d.Later that day you said to Ms B “I am going to have to smack you”, .....

e. Later still that day, you asked Ms B where she wanted you to smack her, .....

f.You slapped Ms B on the bottom whilst she was crouched down with her back to you gathering some notes, .....

**Finding**

that on 21 January 2000, Dr Shar telephoned Ms A at her place of work and tried to speak to her

Found not proved

Withdrawn by the GMC prior to the opening of the inquiry

Found proved

Found proved

Found proved

Found proved

Found not proved

Found proved

Found proved

Found proved

Found proved

Found proved

Found proved

<b>Head</b>	<b>Finding</b>
g. Your conduct in speaking to and smacking Ms B, as outlined in heads 7.c. to 7.f. above, was,	
i. indecent, .....	Found not proved
ii. inappropriate; .....	Found proved
8.a. On 27 March 2001 Ms B said she was suffering pain in her right leg, .....	Found proved
b. You undertook an examination of Ms B, during which you touched her,	
i. breasts,	
ii. left nipple,	
iii. clitoris, .....	Heads 8(b)(i), 8(b)(ii) and 8(b)(iii) have been found proved but the allegation that such matters occurred during the course of an examination has not been found proved.
c. You subsequently apologised for your conduct during the examination; .....	Found proved the following extent "You subsequently apologised for your conduct."
9.a. Some time after the examination and your apology, but still on 27 March 2001, when Ms B was filing notes, you	
i. hugged Ms B,	
ii. pushed yourself against Ms B,	
iii. squeezed Ms B to you, .....	Heads 9(a)(i), 9(a)(ii) and 9(a)(iii) have been found proved subject to the stem reading "Later, but still on 27 March 2001, when Ms B was filing notes, you"
b. Your behaviour as outlined in heads 8.a. to 8.c. and 9.a. above was,	
i. indecent .....	Found not proved
ii. inappropriate; .....	Found not proved
10.a. On 29 and/or 30 March 2001 you made several telephone calls to Ms B, .....	Found proved

**Head****Finding**

~~b. Your actions in making the unsolicited telephone calls had the potential to harass Ms B,~~

Withdrawn by the GMC prior to the opening of the inquiry

c. Your behaviour in making those telephone calls was inappropriate. ....

Found not proved

- 3** In respect only of their finding of indecent behaviour to Ms A, the FTP panel found Dr Shar guilty of serious professional misconduct. They decided that neither a reprimand nor conditions would be appropriate. They suspended Dr Shar from the Medical Register for a period of 4 months. They decided that neither immediate suspension nor a hearing for resumed consideration was necessary.

**Documents**

- 4** The following documents were before the meeting:

- (1) Determination of the FTP panel.
- (2) Transcript of hearing 21<sup>st</sup>-25<sup>th</sup> and 28<sup>th</sup> February 2005.
- (3) Exhibits before the FTP panel.
- (4) The GMC's Indicative Sanctions Guidance
- (5) Lawyers' report by Bevan Brittan LLP prepared 7<sup>th</sup> April 2005.
- (6) Letter dated 15 March 2005 from Messrs Harman and Harman, solicitors for Ms A and Ms B
- (7) Section 29 Process and Guidelines (November 2004)

**Conflicts of Interest**

- 5** Save that Mr North declared that he is a lay assessor for the GMC but had no involvement in Dr Shar's case, the members declared no conflicts of interest and none was apparent.

## **Jurisdiction**

- 6 The members noted that the purpose of the meeting was to decide whether to exercise its statutory discretion to refer to the High Court under Section 29 of the NHS Reform and Health Care Professions Act 2002 ("the 2002 Act") the FTP panel's decision in respect of Dr Shar.
- 7 It was agreed that the CHRE had the power to refer this case under Section 29 (4) (a) of the 2002 Act if they considered that the decision of the FTP panel was unduly lenient and it was desirable so to refer for the protection of members of the public.

## **Matters noted by the meeting**

- 8 At the time of the matters alleged Dr Shar was a principal general practitioner and senior partner in the GP practice at Saddleton Road, Whitstable, Kent (the GP practice). He also worked at a local out of hours service, Candoc.
- 9 The heads of charge against him were in summary that:
  - On 21 December 1999 at the GP practice he examined a patient, Ms A, during which he failed to seek informed consent and his behaviour was indecent and inappropriate, in particular when he twice touched her crotch / vulva area. Subsequently he inappropriately attempted to make contact with Ms A.
  - In December 2000 at Candoc he inappropriately hugged his receptionist Ms B and on the following day at the GP practice he indecently and inappropriately slapped her bottom. On 27 March 2001 at the GP practice he examined Ms B during which his behaviour was indecent and inappropriate, in particular he touched her breasts, left nipple and clitoris. Shortly afterwards he indecently and inappropriately hugged, pushed himself against and squeezed Ms B. Subsequently he inappropriately attempted to telephone Ms B.
- 10 They received evidence on behalf of the GMC from
  - Ms A - a patient of Dr Shar
  - Ms Maria O'Shea - acting complaints manager of the former East Kent Health Authority
  - Mr Robert Howard - Ms A's partner (statement read)

- Ms B - Dr Shar's receptionist
- Ms Sarah Goldsmith – Dr Shar's receptionist
- Dr Paul Garrod – Ms B's GP
- Dr Lisa Johnson – Dr Shar's GP practice partner
- Mr Andrew Shaw – Ms B's partner

and on behalf of Dr Shar from

- Dr Shar himself
- Dr Stephen Hicks – expert witness
- Mrs Deborah Pemberton – Dr Shar's practice manager
- Ms Pauline Myerscough – Dr Shar's nurse practitioner
- Mr Richard Privett – Dr Shar's solicitor (statement read)
- Ms Janet Critchley – Dr Shar's receptionist (statement read).

- 11** The FTP panel found Ms A to be a reliable and credible witness. By their findings in respect of Ms A's complaint, they accepted her evidence and rejected Dr Shar's.
- 12** The FTP panel understood from Ms A's evidence that the first time Dr Shar touched her crotch/vulva area, he might have done so accidentally, but when he did so again, she was certain it was deliberate. They found that his behaviour to Ms A was indecent and inappropriate in deliberately touching her crotch/vulva area the second time and amounted to serious professional misconduct.
- 13** The FTP panel found that his actions were inappropriate in failing to obtain her consent to examine her back and subsequently attempting to contact Ms A. The findings did not support the finding of serious professional misconduct. They found that Dr Shar was not inappropriate or indecent in moving her knickers when he examined her. Although they found that Dr Shar failed to obtain Ms A's consent to move her knickers, his failure was not indecent or inappropriate.
- 14** The FTP panel also heard evidence that Ms A was a vulnerable person whom Dr Shar had referred for counselling about one month previously on 15 November 1999.
- 15** The FTP panel heard evidence from Dr Shar, Mrs Pemberton and Ms Myerscough that Ms B's behaviour to Dr Shar was flirtatious with sexual overtones:

- Ms B on a number of occasions made comments to Dr Shar that were of a sexual nature. (The meeting noted that there was also evidence that the culture of the surgery was one of frequent banter, but Ms B's flirting and innuendo was much greater than any of her colleagues'.)
- Dr Shar examined a bruise on Ms B's thigh and a blemish on her leg. (The meeting noted that Dr Johnson gave evidence that she too had examined the bruise on Ms B's thigh.)
- Ms B herself denied that she was flirtatious or that she had been advised or warned to modify her behaviour, but the FTP panel heard evidence to the contrary from Mrs Pemberton and Ms Myerscough. (The meeting noted that Dr Shar agreed that he had not advised Ms B about her behaviour.)

**16** The meeting noted that Dr Shar had supplied false accounts to the Preliminary Proceedings Committee and an Employment Tribunal about the incident on 27 March 2001.

**17** The FTP panel found that Dr Shar's and Ms B's relationship was flirtatious, which they took into account when reaching their findings of fact concerning the events in December 2000 and on 27 March 2001.

**18** The FTP panel found that in December 2000 Dr Shar had pulled Ms B towards him and kept his arm around her shoulders when she went to move away. Although they found not proved that his behaviour was inappropriate, their finding indicates that they accepted her evidence that she had resisted Dr Shar's approach. Dr Shar denied the allegation. His evidence was that he could not remember the incident but it may have happened.

**19** The FTP panel further accepted Ms B's evidence that on the next day in December 2000 Dr Shar had slapped her bottom and found that his behaviour in doing so was inappropriate but not indecent or serious professional misconduct. Again Dr Shar denied the allegation. His evidence was that he could not remember the incident but it may have happened.

**20** The FTP panel found that Ms B's evidence was not wholly reliable or credible that the events on 27<sup>th</sup> March 2001 were not consensual. They preferred Dr Shar's account that he was not carrying out a medical examination when he intimately touched Ms B. They found that Dr Shar became involved in a consensual sexual encounter and that they both got "carried away". They therefore concluded that his actions in touching Ms B were not indecent or inappropriate.

- 21** The FTP panel heard evidence in mitigation that included testimonials from a wide range of colleagues and patients, and indicated that Dr Shar is conscientious about continuing professional development.

### **Members' consideration**

- 22** The meeting considered that the case raised the issue of public protection both in terms of the extent to which Dr Shar's actions caused or could have caused direct or indirect harm to patients and in terms of maintaining the reputation of the profession and public confidence in regulation.
- 23** The meeting considered that the FTP panel's finding was reasonable that there was a clinical need for Dr Shar to move Ms A's knickers when he examined her abdomen.
- 24** The meeting considered that the FTP panel were manifestly wrong to find not proved that Dr Shar's failure to obtain Ms A's consent to move her knickers was inappropriate and serious professional misconduct.
- 25** The meeting considered that the FTP panel, having found that Dr Shar inappropriately failed to obtain Ms A's consent to examine her back, were manifestly wrong not to find that his failure was serious professional misconduct.
- 26** The meeting considered that the FTP panel wrongly understood from Ms A's evidence that when Dr Shar first touched Ms A's crotch/vulva area, he may have done so inadvertently. Their finding was manifestly inappropriate. It represented a misunderstanding of Ms A's evidence that until the second touching took place she believed that the first touching may have been a mistake. Once the second touching had taken place, the appropriateness of the first touching must immediately have been undermined. The only possible inference from the FTP panel's finding that the second touching was indecent and inappropriate was that the first touching similarly was not inadvertent. They should have found that he acted indecently and inappropriately both times that he touched her crotch/vulva area.
- 27** Dr Shar's behaviour when he slapped Ms B's bottom may have been indecent but the FTP panel's finding was not manifestly inappropriate.

- 28** The meeting considered that there was evidence that Ms B's behaviour was flirtatious, but inadequate evidence to find that Dr Shar's and Ms B's relationship was flirtatious. The FTP panel's finding to this effect in their determination was manifestly inappropriate.
- 29** When reaching their findings of fact concerning the events in December 2000 and 27 March 2001, the FTP panel were manifestly wrong to take account of Dr Shar's and Ms B's allegedly flirtatious relationship. Even if Ms B's behaviour was sometimes flirtatious, it was Dr Shar who instigated each incident of physical contact with Ms B about which the FTP panel heard evidence, apart from occasions when he medically examined her. There was no evidence (apart from Dr Shar's about the events on 27 March 2001) that Ms B consented to any physical contact outside medical examination.
- 30** The FTP panel wrongly placed weight on Dr Shar's evidence in determining that he did not medically examine Ms B on 27 March 2001 and that his sexual contact with Ms B was consensual. They failed to have proper regard to the false accounts that he had previously given to the Preliminary Proceedings Committee and an Employment Tribunal about the events on 27 March 2001. Additionally they did not take account of the evidence that Dr Shar may have attempted to mislead his partner Dr Johnson when he told her on 28<sup>th</sup> March 2001 (in response to her question) that there were no problems with either patients or anything else.
- 31** The FTP's finding was manifestly wrong that none of Dr Shar's behaviour on 27 March 2001 was inappropriate or indecent when the events took place during, or arose from, a medical examination of Ms B by Dr Shar, and in circumstances where Dr Shar was Ms B's employer and as such was in a relationship of power with her within which it was plainly inappropriate to carry out sexual acts such as those found proved. On Dr Shar's own account (and on Ms B's account) the sexual encounter began as a medical examination, which Dr Shar said was with a view to him having a look at the source of Ms B's pain and giving her his opinion. The encounter therefore represented a medical examination in which he was acting in his professional capacity, but which got out of hand. It took place in the surgery at a time when a member of the public could have walked in and observed what was happening. Dr Shar misused the medical examination to initiate sexual contact with Ms B. On Dr Shar's own evidence, he was the instigator of the intimate touching that Ms B did not reciprocate but instead terminated.
- 32** Even if the FTP panel correctly determined that the events on 27 March 2001 did not take place within a medical examination, their finding was manifestly inappropriate that Dr Shar's

behaviour was neither indecent nor inappropriate. They were manifestly wrong to find that the events were consensual. They failed to have proper regard to Ms B's evidence that she trusted Dr Shar as her employer and as a doctor, her distress after the events on 27 March 2001, her consistent account of the events to Ms Goldsmith, Mr Howard and Mrs Pemberton, and what Dr Shar said to Ms B in a subsequent telephone conversation, in particular his statement, "I just got carried away. I'm just a man. I'm just a man." Even if Ms B's behaviour was sometimes flirtatious, she was entitled to be protected from sexual contact.

**33** The FTP's decision to impose only a four month suspension without directing a resumed hearing was manifestly inappropriate and unduly lenient. The findings which the FTP ought to have made, as set out above, would have led to the conclusion that the protection of the public and maintenance of confidence in the medical profession required that Dr Shar be erased. In any event, and on the findings made by the FTP:

- (1) The FTP found the Dr Shar touched Ms A in an indecent manner. This could only have been for a sexual motive. This took place within the context of the doctor/patient relationship involving an abuse of the special position of trust which a doctor occupies. As indicated by the Indicative Sanctions Guidance, this should ordinarily lead to erasure (para 27).
- (2) The breach was particularly striking given that only approximately a month earlier Dr Shar had referred Ms A for counseling and he was therefore aware that she was to some extent vulnerable at the time.
- (3) Moreover, the following features were aggravating factors to which the FTP panel should have attached significance:
  - (a) Dr Shar's response to this breach was on numerous occasions to attempt to contact Ms A which the FTP found to be inappropriate. This provides evidence of a lack of insight on the part of Dr Shar.
  - (b) Dr Shar continued at the hearing before the FTP to deny that the indecent touching took place. Accordingly, he could not be said to have any insight into his wrongdoing, nor to have reduced the risk of re-occurrence of the indecency found proved. This was not considered by the FTP in any way.
  - (c) Dr Shar's behaviour as regards Ms B indicated a general encouragement of sexual innuendo within his surgery. The FTP found proved that smacking

Ms B was inappropriate, and that is further indicative of a lack of insight by Dr Shar as to appropriate treatment of women within professional relationships.

- (d) Dr Shar had lied in his response to the GMC Preliminary Proceedings Committee and had lied in a statement to go before an employment tribunal.
  - (e) Ms A was clearly greatly upset by her experience with Dr Shar.
  - (f) Ms B consulted a doctor as a direct result of the sexual conduct of Dr Shar.
- (4) In all the circumstances Dr Shar's conduct was a serious departure from relevant professional standards, harmed both Ms A and Ms B, was a serious abuse of his position of trust involving a patient whom he knew to be vulnerable, and he responded to the GMC with dishonesty. Moreover, the GMC had no basis upon which to determine that the risk posed by Dr Shar had been reduced in any way.
- (5) Given the above, erasure was the only proper penalty that would have provided appropriate protection to patients and the public.

## **Conclusions**

- 34** Dr Shar represents a danger to the public.
- 35** The FTP panel's decision was unduly lenient as to their findings of fact, their finding of serious professional misconduct and the sanction that they imposed.
- 36** The only appropriate sanction should have been erasure. However, even if suspension was appropriate (which the meeting did not believe to be the case) then the FTP panel were unduly lenient in failing to direct resumed consideration of the case before Dr Shar's suspension would otherwise expire.
- 37** It is desirable for protection of members of the public for the Council to refer the case to the High Court under Section 29(4)(a) of the 2002 Act.
- 38** The meeting concluded that the case should be referred to the High Court. If the GMC agree that the FTP panel's decision was unduly lenient, then subject to agreement of appropriate terms, it may be appropriate to invite the High Court to direct that the case should be remitted for redetermination by a FTP panel.

.....

**Dated** .....**2005**

**Peter North (Chair)**

Time of commencement of meeting: 15.30

Time of conclusion of meeting: 17.00