FITNESS TO PRACTISE PANEL
26 JULY – 12 AUGUST 2010
7th Floor, St James's Buildings, 79 Oxford Street, Manchester, M1 6FQ

Name of Respondent Doctor:	Dr Abid HUSSAIN
Registered Qualifications:	MB BS 1986 University of Peshawar
Area of Registered Address:	Dublin
Reference Number:	6111299
Type of Case:	New case of impairment by reason of: misconduct and deficient professional performance
Panel Members:	Mr J Donelly, Chairman (Lay) Ms E Tessler (Lay) Mr B Treanor (Lay) Dr C Bharucha (Medical)
Legal Assessor:	Ms S Breach
Secretary to the Panel:	Ms M Edwards

Representation:
GMC: Mr Russell Davies, Counsel, instructed by Field Fisher Waterhouse LLP, represented the GMC

Doctor: Present and represented by Mr Jeremy Barnett, Counsel, instructed by Irwin Mitchell LLP

ALLEGATION
"That being registered under the Medical Act 1983 (as amended):

1. Between 6 October 2008 and 6 January 2009 you were employed as a locum Staff Grade doctor at the Bucknall Hospital, Stoke-on Trent, Staffordshire ["Bucknall Hospital"] by the North Staffordshire Combined Healthcare NHS Trust; **Admitted and found proved**

2. During the course of your employment at Bucknall Hospital you

   a. prescribed intravenous ("IV") antibiotics for a patient but failed to provide any information in relation to their ~~reconstruction~~ reconstitution or infusion, **Found proved**

   b. prescribed IV fluids for a patient but failed to

i. advise of the volume and time scale for administering the fluids, **Found proved**

ii. make an accurate note on the patient's prescription chart; **Found proved**

c. failed to complete patients' blood cards, **Found proved**

d. could not be located when there was a major incident during your shift and said that

i. you were in the doctors room, **Found proved**

ii. you were on the other side of the ward, **Found proved**

iii. your bleep did not work; **Found proved**

e. did not adequately explain the medical issues of a 'DNAR' (do not attempt resuscitation) to the relatives of a patient, **Found proved**

f. did not actively participate in the Consultant ward rounds,**Found proved**

g. attempted to feed a patient who was "Nil by Mouth", **Found proved**

h. were reluctant to re-site a difficult venflon, **Found proved**

i. failed to carry out adequate infection control whilst on the ward; **Found proved**

3. Your conduct set out at 2(d) was

a. dishonest **Found not proved**

b. misleading; **Found proved**

4. Between 12 January and around 23 January 2009 you were employed as a locum Specialist Registrar at the Antrim Area Hospital, Antrim ["Antrim Hospital"]; **Admitted and found proved**

5. a. On 14 January 2009, Patient A presented to Antrim Hospital and underwent an urgent CT brain scan which showed there was an area of high attenuation; **Found proved**

b. You

i. did not disseminate the accurate result of Patient A's CT scan, **Found proved**

ii. incorrectly informed your junior colleagues that the CT scan result was 'normal' or words to that effect, **Found proved**

iii. failed to note the result of Patient A's CT scan, **Admitted and found proved**

iv. did not arrange for Patient A to be urgently transferred to neurosurgery; **Found proved**

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

a. misconduct

b. deficient professional performance."

Determination on facts

"Dr Hussain

The following paragraphs have previously been admitted and announced as found proved:

Paragraph 1:

"Between 6 October 2008 and 6 January 2009 you were employed as a locum Staff Grade doctor at the Bucknall Hospital, Stoke-on Trent, Staffordshire ["Bucknall Hospital"] by the North Staffordshire Combined Healthcare NHS Trust;"

Paragraph 4:

"Between 12 January and around 23 January 2009 you were employed as a locum Specialist Registrar at the Antrim Area Hospital, Antrim ["Antrim Hospital"];"

Paragraph 5b iii:

[You]

"iii. failed to note the result of Patient A's CT scan."

The Panel has given consideration to all the written and oral evidence adduced in this case and has taken account of the submissions made by Mr Davies, on behalf of the General Medical Council (GMC), those made by Mr Barnett, on your behalf, and the advice of the Legal Assessor. It has borne in mind that the burden of proof rests on the GMC and that the standard of proof required is that used in civil proceedings, namely the balance of probabilities. This means that a Panel is satisfied, on the evidence, that the event is more likely to have occurred than not.

In this case, there has been significant conflict between your evidence and that given by the witnesses called by the GMC. Having examined all the evidence, and having observed the manner in which it has been given, the Panel found that the key witnesses called by the GMC were consistent, credible and reliable. In contrast, it found that aspects of your own evidence were confusing and lacking in credibility.

The Panel has now considered each of the remaining paragraphs of the allegation separately and has made the findings detailed below.

Paragraph 2 of the allegation

Many of the sub-paragraphs within paragraph 2 relate to alleged failings by you to carry out basic clinical tasks, and in this respect they are broadly similar. The Panel notes that you deny all of these alleged failings and that the records of patient ML, which are the only medical records from Bucknall Hospital available to the Panel, demonstrate examples of when you had completed and properly recorded such tasks. The Panel notes the absence of documentary evidence relating to the alleged incidents. It attaches significant weight to the evidence of Nurse A, Ward Manager, corroborated by her note of 31 October 2008.

The stem of paragraph 2 and paragraph 2a:

"During the course of your employment at Bucknall Hospital you

a. prescribed intravenous ("IV") antibiotics for a patient but failed to provide any information in relation to their ~~reconstruction~~ reconstitution or infusion,"

have been found proved

Nurse A stated that, on occasions, you failed to provide all the information required by nursing staff regarding intravenous antibiotics and fluids. She told the Panel that nurses had to return to you and ask that you complete the prescriptions properly. She accepted, however, that your practice improved over time.

Paragraph 2b, in its entirety:

"b. prescribed IV fluids for a patient but failed to

i. advise of the volume and time scale for administering the fluids,

ii. make an accurate note on the patient's prescription chart;"

has been found proved

Nurse A told the Panel that you did not always record the regime for intravenous fluids on the patient's prescription chart. She stated that you did not provide complete instructions, which led to problems for nurses.

Paragraph 2c:

"c. failed to complete patients' blood cards,"

has been found proved

Nurse A stated that you did not always complete blood cards and that you often had to be chased by nursing staff.

Paragraph 2d, in its entirety:

"d. could not be located when there was a major incident during your shift and said that

i. you were in the doctors room,

ii. you were on the other side of the ward,

iii. your bleep did not work;"

has been found proved

The Panel prefers the account of Nurse A and found your evidence to be confused, contradictory and lacking in credibility. In particular, the Panel does not accept your assertion that you were not on duty. The Panel takes the view that, if you had not been on duty, you would have mentioned it at the time. The Panel is satisfied that you did not do this.

Paragraph 2e:

"e. did not adequately explain the medical issues of a 'DNAR' (do not attempt resuscitation) to the relatives of a patient,"

has been found proved

The Panel notes the difficulties you have in communicating verbally and which have been acknowledged on your behalf. The Panel accepts the evidence of Nurse A that your communication of DNAR issues to relatives was inadequate and not fully understood.

Paragraph 2f:

"f. did not actively participate in the Consultant ward rounds,"

has been found proved

The Panel accepts the evidence of Dr B that you did not make positive contributions at ward rounds. She also told the Panel that your contribution did not improve following the meeting held between the two of you in November 2008. Additionally, you told the Panel that you did not wish to play a more proactive role in ward rounds as you were more experienced than Dr B and did not wish to undermine her position.

Paragraph 2g:

"g. attempted to feed a patient who was "Nil by Mouth","

has been found proved

The Panel notes the evidence of Nurse A that you attempted to feed patient ML. The Panel accepts your explanation that you were assessing the patient.

Paragraph 2h:

"h. were reluctant to re-site a difficult venflon,"

has been found proved

The Panel notes that the siting of this venflon was considered to be difficult by all involved. The Panel accepts that your reluctance might have been understandable in these circumstances.

Paragraph 2i:

"i. failed to carry out adequate infection control whilst on the ward;"

has been found proved

The Panel accepts the evidence of Nurse A, who was also Infection Control Nurse, that your infection control was inadequate and a cause for concern.

The stem of paragraph 3 and paragraph 3a:

"Your conduct set out at 2(d) was

a. dishonest"

have been found not proved

The Legal Assessor advised the Panel that, when considering the issue of dishonesty, it should go through the two-stage process as set out by the Privy Council in the case of Ghosh, 75 Cr.App. R. 154. The two-stage test to be applied is:

1. Was what the doctor did dishonest by the ordinary standards of reasonable and honest people?

2. Did the doctor realise that what he was doing was dishonest by those standards?

The Panel does not consider that your conduct meets the criteria for dishonesty.

Paragraph 3b:

"b. misleading;"

has been found proved

The Panel is satisfied that the three explanations you offered were misleading.

Paragraph 5a:

"a. On 14 January 2009, Patient A presented to Antrim Hospital and underwent an urgent CT brain scan which showed there was an area of high attenuation;"

has been found proved

The Panel has noted the radiology report, dated 16 January 2009, which records under 'Findings' that "… there is some subtle linear high attenuation in the posterior inferior aspect …"

Paragraphs 5b i and ii:

"b. You

i. did not disseminate the accurate result of Patient A's CT scan,

ii. incorrectly informed your junior colleagues that the CT scan result was 'normal' or words to that effect,"

have been found proved

The Panel accepts the evidence of Dr C and Dr D, Senior House Officers. Dr C stated that you had been telephoned with the results of the scan and subsequently informed her that the patient was fine. She recalled that you did not seem concerned having received the scan result and that you referred to discharging the patient. In addition, Dr D told the Panel that you had informed him twice that the result of the scan was normal.

Paragraph 5b iv:

"iv. did not arrange for Patient A to be urgently transferred to neurosurgery;"

has been found proved

The Panel is satisfied that it was Dr C who arranged the emergency transfer.

Having reached findings on the facts, the Panel will now invite Mr Davies and Mr Barnett to adduce any further evidence and make submissions as to whether, on the basis of the facts found proved, your fitness to practise is impaired."

Determination on impaired fitness to practise

"Dr Hussain:

The Panel has considered under Rule 17(2) (k) of The General Medical Council (Fitness to Practise) Rules Order of Council 2004 ('the Rules'), on the basis of the facts found proved, whether your fitness to practise is impaired by reason of your deficient professional performance and/or misconduct. In considering this, the Panel has taken into account all of the evidence presented and has carefully considered Mr Davies' submissions on behalf of the General Medical Council (GMC) and those made by Mr Barnett on your behalf.

Mr Davies submitted that your fitness to practise is impaired. He stated that the incident in which you could not be located during an emergency and afterwards misled Nurse A as to your whereabouts was serious and could reach the threshold for misconduct. However, it was a matter for the Panel to assess. He submitted that the Panel is entitled to look at the accumulation of evidence from October 2008 to January 2009 and conclude that, taken together, it amounts to deficient professional performance. He submitted that, of these, the incident at Antrim Hospital was the most serious.

Mr Barnett submitted that this case does not demonstrate serious departures from good medical practice and thus your fitness to practise is not impaired. He submitted that, in the main, poor communication is at the root of the events in question. Mr Barnett submitted that, in the light of the facts found proved, there is no pattern of behaviour which can be described as a serious or irresponsible departure from acceptable standards. He further submitted that these clinical issues were flagged up by the nurses on your arrival at Bucknall Hospital, but that they were not substantial and continuing, or sufficiently serious to amount to impairment.

The Panel has accepted the comprehensive advice of the Legal Assessor, who drew its attention to pertinent case law.

Throughout its deliberations, the Panel has exercised its own independent judgement. It has borne in mind its duty to protect the interests of patients and the public interest. The public interest includes the protection of patients, the maintenance of public confidence in the profession, and the declaring and upholding of proper standards of conduct and behaviour.

In reaching its decision the Panel has had regard to the background to this case. The Panel heard that, between 6 October 2008 and 6 January 2009, you were employed as a locum staff grade doctor at the Bucknall Hospital, Staffordshire. It has been found proved that you failed to complete basic clinical tasks, that aspects of your communication were inadequate, that you did not actively participate in ward rounds and that your infection control was inadequate. You also misled a nursing colleague as to your whereabouts during a major incident. The Panel also heard that, between 12 January and around 23 January 2009, you were employed as a locum specialist registrar at the Antrim Area Hospital, Antrim. It has been found proved that, following an urgent CT scan of patient A on 14 January 2009, you did not disseminate the accurate result of the scan, incorrectly described the scan as normal, or words to that effect, failed to note the result and did not arrange for the patient to be urgently transferred to neurosurgery.

- Deficient Professional Performance

In its approach to considering whether your fitness to practise is impaired by reason of your deficient professional performance, the Panel has addressed the following:

- whether your actions amount to deficient professional performance;
- whether you have remedied any deficient professional performance;
- the likelihood of recurrence of any deficient professional performance;
- whether the deficient professional performance was serious enough to support a finding of impairment.

The Panel has considered the events at both hospitals where you were employed between 2008 and 2009. The Panel considers that your omissions at Antrim are a cause for real concern. The Panel heard evidence that, following receipt of the scan result over the telephone, you incorrectly informed two junior colleagues that the result was normal, or words to that effect. This failure by you could have resulted in serious adverse consequences for patient A, who was displaying symptoms of a

potentially life threatening condition. It is fortunate that Dr C, Senior House Officer, acting on her own initiative, contacted Dr E, Consultant Radiologist, interpreted the clinical presentation as potentially serious and arranged an urgent transfer to neurosurgery.

The Panel has had regard to paragraph 77 of the report by Dr F, GMC expert witness, which states:

> "… If it is true, as Dr C and Dr D claim, that Dr Hussain took the initial call from the Radiologist and interpreted that report as normal then his standard of care fell well below accepted practice in that he failed to document those findings and failed to act upon them leaving others to action the patient's care."

The Panel is satisfied that your actions at Antrim were a serious failure and amount to deficient professional performance.

The Panel has also considered the series of events which occurred at Bucknall Hospital. The Panel is of the view that, whilst individually not all of the incidents are serious, they demonstrate a pattern of unacceptable clinical practice which cumulatively amounts to deficient professional performance. It is particularly concerned about your failure to carry out adequate infection control whilst working on a geriatric ward. This could present a major risk to the ward's elderly and frail patients and the Panel regards this, even in isolation, as a cause for concern.

Although the Panel has received no evidence or submissions regarding remediation, it has considered this issue. It accepts that you improved in respect of some of your clinical failings whilst at Bucknall Hospital, after advice from nursing staff, but it does not regard this as sufficient to amount to remediation.

The Panel notes that you have not worked as a medical practitioner since February 2009 and it has not been informed of any steps you may have taken since then to address the areas of deficiency. Consequently, the Panel cannot be satisfied that your failings will not be repeated in the future.

In the light of the above, the Panel has determined that your fitness to practise is impaired by reason of your deficient professional performance. In reaching this conclusion the Panel has not taken account of the incidents when you fed a patient who was nil by mouth, in order to assess her, and were reluctant to re-site a difficult venflon. It takes the view that, in the circumstances, these did not amount to clinical failings.

- Misconduct

The Panel has considered the facts found proved and borne in mind relevant legal authorities. The Legal Assessor referred the Panel to Cheatle v GMC [2009] EWHC 645, where at paragraph 22, Cranston J. stated:

> "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 has taken account of your previously unblemished record and in considering the misconduct set out in this case it finds that your behaviour cannot be characterised as egregious. Accordingly, the Panel does not determine that your fitness to practise is impaired by reason of misconduct.

The Panel now invites submissions as to the appropriate sanction, if any, to be imposed on your registration. Submissions on sanction should include reference to the Indicative Sanctions Guidance (April 2009 edition, revised August 2009) where applicable."

Determination on sanction

"Dr Hussain:

Having determined that your fitness to practise is impaired by reason of your deficient professional performance, the Panel has now considered what action, if any, it should take with regard to your registration.

In so doing, the Panel has given careful consideration to all the evidence adduced, together with Mr Davies' submissions on behalf of the General Medical Council (GMC) and the submissions of Mr Barnett on your behalf.

Mr Davies submitted that the appropriate sanction in your case is one of suspension. He said that you have demonstrated a lack of insight both by your failings and in the evidence you gave before this Panel. Mr Davies said that the facts of this case indicate a pattern of behaviour of you delegating your responsibilities to others, including those more junior. He said that your failure to display insight into and to address your shortcomings means that you remain a risk to patients. Mr Davies said that it would be inappropriate for the Panel to take no action, that undertakings would be insufficient as they would remove you from close monitoring by the GMC and that conditions would be inappropriate in the absence of any insight into your clinical failings.

Mr Barnett submitted that Mr Davies had overemphasised your lack of insight and understated the issue of proportionality. He stated that you have demonstrated some insight through the admissions made and reminded the Panel that it had accepted some of your explanations. Mr Barnett said that poor communication skills were at the root of many of the issues in question. He invited the Panel to consider accepting

undertakings and submitted a list of 14 undertakings. You had signed and dated this list, indicating that you were prepared to adhere to them. Mr Barnett said that, if the Panel did not consider undertakings appropriate, a period of conditional registration would protect the public interest and provide you with an opportunity to develop your career as a medical practitioner. Mr Barnett said that suspending your registration would be disproportionate, considering the facts of this case.

However, the decision as to the appropriate sanction to impose, if any, in this case is a matter for this Panel exercising its own judgement.

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

Throughout its deliberations, the Panel has applied the principle of proportionality, balancing your interests with the public interest. The public interest includes, amongst other things, the protection of patients, the maintenance of public confidence in the profession, and the declaring and upholding of proper standards of conduct and behaviour.

In coming to its decision as to the appropriate sanction to impose, the Panel first considered whether to conclude the case by taking no action. The Panel determined that, in view of the serious and wide-ranging nature of the deficiencies identified, it would not be sufficient, proportionate or in the public interest to conclude the case by taking no action.

The Panel next considered whether it should accept your undertakings. In doing so the Panel considered the ISG, paragraphs 49 – 55, which set out the circumstances in which undertakings may be accepted. It has also considered the GMC's guidance 'Undertakings at FTP Panel hearings' (August 2009).

The Panel is concerned that, if it accepted undertakings, there would not be sufficient provision for monitoring and reviewing your subsequent progress. The Panel considers that a further review by a Fitness to Practise Panel is necessary in the public interest, as well as in your own interests. The Panel is of the view that it would be imprudent to relinquish jurisdiction over your case when you have failed to demonstrate that you understand the deficiencies in your practice. The Panel considered that you may not have sufficient insight to abide by the written undertakings. Accordingly, it has determined not to accept the proposed undertakings.

The Panel next considered whether it would be sufficient to impose conditions on your registration. It has borne in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable. The Panel has had regard to paragraph 57 of the ISG which states:

> "Conditions might be most appropriate in cases involving the doctor's health, performance or following a single clinical incident or where there is evidence

> of shortcomings in a specific area or areas of the doctor's practice. Panels will need to be satisfied that the doctor has displayed insight into his/her problems, and that there is potential for the doctor to respond positively to remediation/retraining and to supervision of his/her work."

The Panel is of the view that a period of conditional registration would not adequately address the serious nature of the deficient performance found.

The Panel is particularly concerned about the lack of insight you have displayed into the clinical failings highlighted at both Bucknall and Antrim Hospitals. You have made no concessions that your practice was deficient, other than one admission in respect of noting the scan result, and instead you have sought to justify your behaviour. You have provided no evidence to demonstrate to the Panel that you have taken steps to address your areas of deficiency or continued with your professional development. The Panel has considered the references and testimonials provided. It finds them of limited assistance because they are not recent, ranging in date from 2000 to 2007. Consequently, the individuals who wrote them were not aware of these proceedings.

In addition, the Panel noted your difficulties in respect of verbal communication, which were apparent when you gave evidence. The Panel accepts that your poor communication skills were not part of the allegation, but it was acknowledged by your counsel as being at the root of your problems.

The Panel is not satisfied that workable and appropriate conditions could be devised at the current time, given the level of supervision it considers you would require on your initial return to practice. The Panel has, therefore, determined that it would not be sufficient to direct the imposition of conditions on your registration.

The Panel then went on to consider whether suspending your registration would be appropriate and proportionate. The Panel has borne in mind paragraph 70 of the ISG, which states:

> "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..."

The Panel has considered the submissions of Mr Barnett, who told the Panel that you have developed increasing insight into your failures, for example, you have taken on board the criticisms made by Dr F, GMC expert witness. The Panel is of the view that you need to reflect further upon the facts of this case and the failings which have been found proved. It has been told that you have not worked as a medical practitioner since February 2009 and considers that, before you are able to return to clinical practice, you need to show that you understand your deficiencies and that you have taken some action to remedy them. Furthermore, you need to demonstrate that you have kept your medical knowledge up-to-date. The Panel cannot be satisfied you are not a risk to patient safety at this time.

The Panel has determined to suspend your registration for six months. It considers this to be a proportionate response in all the circumstances. Such a period will allow sufficient time for you to be proactive in addressing your failings and to collate objective evidence to demonstrate this.

Shortly before the end of the period of suspension your case will be reviewed by a Fitness to Practise Panel. A letter will be sent to you about the arrangements for the review hearing. At this next hearing, the Panel reviewing your case will wish to be assured that you have addressed your deficiencies. The Panel will be assisted by receiving the following:

- Evidence of insight into your previous failings
- Evidence that you have kept your medical knowledge up-to-date
- Evidence that you have taken steps to address your poor communication skills
- Any other information you feel is relevant

Having reached this decision, the Panel now invites submissions as to whether an immediate order of suspension is necessary."

Determination on immediate sanction

"Dr Hussain:

Having determined that your registration be suspended for a period of six months the Panel has now considered, in accordance with Section 38 (1) of the Medical Act 1983 as amended, whether to impose an immediate order on your registration.

On behalf of the General Medical Council (GMC), Mr Davies submitted that any order of suspension ought to be immediate, given the Panel's finding that there is a risk to patient safety.

Mr Barnett made no submissions on your behalf.

The Panel has borne in mind the submissions made and considered the advice of the Legal Assessor 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 nature of its findings on impairment, the Panel has determined that it is necessary to impose an immediate order of suspension for the protection of members of the public and in the public interest.

This means that your registration will be suspended immediately, from the date upon which written notice of this decision is deemed to have been served upon you.

The direction for substantive suspension, 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 you, unless you lodge an appeal in the interim. If you do lodge an appeal, the immediate order of suspension will remain in force until the substantive direction takes effect.

The interim order currently imposed on your registration is hereby revoked.

That concludes your case."

Confirmed

12 August 2010 Chairman