

**Record of Determinations –
Medical Practitioners Tribunal**

PUBLIC RECORD



Date: 22/02/2017

Medical Practitioner's name: Dr Benjamin OGBONNA

GMC reference number: 2976396

Primary medical qualification: MB BS 1975 University of Nigeria

Type of case

Outcome on impairment

Review - Deficient professional performance

Impaired

Summary of outcome

Erasure

Tribunal:

Legally Qualified Chair	Mr Paul Moulder
Lay Tribunal Member:	Mrs Katriona Crawley
Medical Tribunal Member:	Dr Paul Divall

Tribunal Clerk:	Ms Jean Gleeson
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Attendance and Representation:

Medical Practitioner:	Not present and not represented
Medical Practitioner's Representative:	NA
GMC Representative:	Ms Louise Kitchin, Counsel

Attendance of Press / Public

The hearing was all heard in public.

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Determination on Service and Proceeding and Impairment - 22 February 2017

Ms Kitchin:

1. Dr Ogbonna is neither present nor represented at today's hearing. The Tribunal has considered your submission that notification of this hearing has been properly served upon him.
2. You provided the Tribunal with a copy of a service bundle which included the General Medical Council ('GMC') Information Letter, dated 9 January 2017 which was sent by Special Delivery, to Dr Ogbonna's registered address. It was delivered on 14 January 2017.
3. You also provided the Tribunal with a copy of the Medical Practitioners Tribunal Service ('MPTS') Notice of Hearing, dated 9 January 2017 which was sent to Dr Ogbonna's registered address by Special Delivery. It was delivered on 13 January 2017
4. You drew the Tribunal's attention to the letter dated 11 November 2016 which Dr Ogbonna emailed to the GMC on 15 November 2016 in response to an email reminding him of today's hearing. In this letter he stated:

'In response to your attached mail informing me about the review hearing scheduled for 22nd February, 2017, I wish to inform you that I will not be able to attend for the hearing.'
5. You submitted that it is clear that Dr Ogbonna has received notice of and is aware of this hearing.
6. Having had regard to the information provided, the Tribunal was satisfied that the Notice of Hearing and Notice of Allegation for this hearing has been properly served upon Dr Ogbonna in accordance with the General Medical Council's (Fitness to Practise) Rules 2004 ('the Rules').

Proceeding in absence

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7. Having been satisfied that notice of this hearing has been properly served upon the doctor, the Tribunal went on to consider whether to exercise its discretion to proceed with the case in Dr Ogbonna's absence.

8. You submitted that it was fair to proceed in Dr Ogbonna's absence as he was aware of this hearing and voluntarily absented himself.

9. The Tribunal noted that Dr Ogbonna had stated in his letter that his decision not to attend the hearing was based on a number of factors and stated:

'In addition to my not coming for obvious reasons, most important being financial constraint, there will be no legal representation

I am currently in a financial dire-straight [sic] caused by my suspension and consequently have not fully met my financial commitments to my Counsel A as promised. It will therefore be insensitive of me to get her involved with this case any longer.'

10. The Tribunal has borne in mind that its discretion to proceed in the doctor's absence should be exercised with the utmost care and caution. It also bore in mind the need to balance Dr Ogbonna's interests with the public interest in the case being heard in a timely manner.

11. The Tribunal was satisfied that Dr Ogbonna is aware of these proceedings. The Tribunal was of the view that Dr Ogbonna has been given ample opportunity to attend this hearing. Dr Ogbonna has cited 'obvious reasons' and chiefly financial constraints for not providing legal representation. It noted that Dr Ogbonna had not requested an adjournment of this hearing and the Tribunal had no information that granting an adjournment would be likely to secure the doctor's attendance on a date in the near future. It also noted that this is a review of a sanction which is due to expire which is a matter affecting the public interest. Further the doctor has not provided any written representations beyond his letter dated 11 November 2016. In all the circumstances, the Tribunal determined that Dr Ogbonna has chosen not to engage in these proceedings beyond the submission of his letter and he has waived his right to attend.

12. The Tribunal has therefore determined that it is appropriate to proceed with the hearing in Dr Ogbonna's absence. It considers that it is in the public interest to hear this case without further delay and that no useful purpose would be served by an adjournment.

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Background

13. Dr Ogbonna's case was first heard before Fitness to Practise Panel in September and October 2014. At that hearing the Panel ('2014 Panel') found that between February and December 2012, whilst working as a Locum Consultant Gynaecologist at Salford Royal NHS Foundation Trust, the care that Dr Ogbonna provided to six patients amounted to deficient professional performance ('DPP'). The 2014 Panel noted that Dr Ogbonna took an old fashioned approach to medicine; made premature judgements (albeit based on some consideration of clinical presentation) and that he overlooked relevant matters and there was a pattern of DPP. The 2014 Panel determined to place an order of conditions on Dr Ogbonna's registration for a period of 12 months to allow him to engage in a programme of remediation. This order included a condition that he undertake a Performance Assessment.

14. A GMC performance assessment was carried out on 26-28 May, 9 July 2015 and 22-23 August 2015. Dr Ogbonna scored above the set standard mark in the Knowledge test but his professional performance was found to be 'Unacceptable' in relation to Relationships with Patients. The Assessors found 'Cause for Concern' in relation to his Assessment, Clinical Management and Record Keeping.

15. The Assessment was carried out at the standard of a middle grade doctor rather than consultant. This also included 12 Objective Structured Clinical Examinations ('OSCEs') and Dr Ogbonna scored at or above the median in only one of these stations, he was below the median but within the interquartile range in two and below the 25th percentile in nine. The Assessment team concluded that his standard of his professional performance was deficient but that he was fit to practise on a limited basis. The team suggested that he undertake additional training in:

- Communication skills with patient;
- CTG ('Cardiotocography') Interpretation;
- Emergency Obstetric Skills.

16. The Assessment team also made recommendations regarding Dr Ogbonna's future practice including that his practice should be reassessed in 18 months to 2 years.

17. A Fitness to Practise Panel hearing in November 2015 ('2015 Panel') convened to review Dr Ogbonna's case. At that hearing the Panel acceded to his request for an

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adjournment to allow him further time to read and analyse the Performance Assessment Report. The 2015 Panel determined to extend the order of conditions on his registration for a further period of three months.

18. A Medical Practitioners Tribunal convened to review Dr Ogbonna's case in February 2016 ('2016 Tribunal'). That hearing heard live evidence from the Performance Assessment Team that conducted his Performance Assessment in 2015 and from Dr Ogbonna.

19. That Tribunal also heard that Dr Ogbonna had to be contacted by the GMC in December 2014 to remind him of the importance of absolute adherence to the conditions placed on his registration after he had failed to notify the GMC of short term locum positions he had taken up. The 2016 Tribunal also found that for six months after the 2014 hearing Dr Ogbonna did not have an Educational Supervisor even though he stated that he did have one and reported to his Workplace Reporter that he had spoken to his Educational Supervisor. The 2016 Tribunal found that such actions constituted a further breach of Dr Ogbonna's conditions.

20. The 2016 Tribunal found that there was no evidence that Dr Ogbonna had undertaken fortnightly record reviews and case based discussions as recommended by the Assessment Team. It also found that there was limited evidence presented that he had undertaken training directly associated with the findings of the 2014 Panel. It concluded that the training that Dr Ogbonna had undertaken was 'superficial' and 'wholly insufficient'. The Tribunal noted that Dr Ogbonna had apologised for his deficient professional performance however incidents of alleged poor performance had been repeated in 2015 in two different hospitals. The Tribunal also heard that further concerns regarding Dr Ogbonna's communication skills had been raised and had led to the termination of his work in one hospital.

21. The 2016 Tribunal determined that there was a lack of insight on Dr Ogbonna's behalf and found that he had provided disjointed and incomplete evidence to the Tribunal. It also noted a complete absence of testimonial evidence from professional colleagues. In all the circumstances it found that Dr Ogbonna's fitness to practise remained impaired by reason of DPP.

22. The 2016 Tribunal determined that conditional registration was no longer workable or appropriate in Dr Ogbonna's case as he lacked insight into the deficiencies in his practice, put his own needs before those of patients and had only made some limited attempts to remediate his practice. Although the Performance

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Assessment team had found that Dr Ogbonna was fit to practice on a limited basis the 2016 Tribunal noted that they had not been in possession of the full details of the 2014 Panel and were not aware of the continued lack of insight he had demonstrated and his lack of remediation since the conclusion of the Assessment.

23. The Tribunal further found that Dr Ogbonna was culpable for breaching the conditions imposed on his registration. However, the 2016 Tribunal was of the view that Dr Ogbonna had the potential to remediate if he was prepared to undergo an appropriate and sufficiently robust rehabilitation or retraining programme. It further found that he was still capable of developing adequate insight and remediating the concerns raised and that his actions were not incompatible with continued registration. It determined to suspend his registration for a period of 12 months to allow time for Dr Ogbonna to gain fuller insight into his deficient performance and undertake acceptable training.

24. The 2016 Tribunal indicated that it would be assisted by receiving the following:

- evidence that he has developed full insight into the nature of the deficiencies identified in his practice by the 2014 Panel and the Assessment Team involved in producing the Performance Assessment report of October 2015;
- evidence that he has addressed these deficiencies in his practice. This should include evidence of his attendance at appropriate, accredited, structured training courses;
- evidence that he has kept his medical knowledge and skills up to date;
- evidence of a further performance assessment if he is invited to undertake one by the GMC during the period of his suspension;
- testimonials and references, and any other evidence which he thinks may assist the reviewing Tribunal.

Evidence received at today's hearing

25. The Tribunal received a bundle of documents at this hearing which contained the determinations of the previous Tribunals as well as communications between the MPTS, the GMC and Dr Ogbonna. These communications included a letter dated 5 May 2016 from the GMC inviting Dr Ogbonna to undertake a further Assessment of his Professional Performance and enclosing documents to complete. An email enclosing this letter was also sent to Dr Ogbonna on the same day. Dr Ogbonna did not respond to this letter and the GMC sent a further letter dated 6 June 2016

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requesting that he return the completed documents by 27 June 2016. The GMC also emailed him on 6 June 2016 stating:

*'It is now important that we hear from you by no later than **27 June 2016**. Failure to reply by this date may mean that there will be insufficient time to arrange a further assessment in preparation for your review hearing on 22-24 February 2016.'*

26. On 1 November 2016 the GMC wrote to Dr Ogonna requesting the provision of information for this review hearing, this letter was also emailed to him. On 15 November 2016 Dr Ogonna emailed a letter to the GMC. In this letter he outlined his reasons for not attending today's hearing and stated:

'I consider it an exercise in futility since I have not practiced since 19th February, 2016 when I was suddenly and unexpectedly suspended from practice for one year'

He expressed concern that the 2016 Tribunal did not take into account the information that he had provided for the last hearing such as:

'...courses I attended, Testimonials and references from senior colleagues, feedback from patients and colleagues and a host of other supporting documents...

The panel did not take into consideration the comments about my practice made by staff members, including midwives, in the 2 hospitals they visited. The GMC can now revisit and go through these comments'

Dr Ogonna also expressed concern that the Performance Assessment team:

'...appeared to be on a vendetta for whatever reason'

He explained that he was under financial constraints and this was:

'...responsible for my not getting involved in clinical activities during the period of suspension. I have however been reading to keep my knowledge up to date. '

Submissions on behalf of the GMC

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27. In summary you submitted that Dr Ogbonna's fitness to practise remains impaired. You submitted that Dr Ogbonna had provided no evidence to this Tribunal save for his letter dated 11 November 2016. You submitted that Dr Ogbonna has not demonstrated any insight and had not provided any evidence of reflection on his practice. He has also failed to demonstrate any steps that he had undertaken to remediate and has continued to have limited contact with the GMC since he was suspended. He has not responded to requests for him to undertake a further Performance Assessment or provide further documentation.

The Tribunal's Decision

28. In deciding whether Dr Ogbonna's fitness to practise is impaired, the Tribunal bore in mind the statutory overarching objective, which is the protection of the public and which includes protecting, promoting and maintaining the health, safety and wellbeing of the public, maintaining public confidence in the profession, and promoting and maintaining proper professional standards and conduct. The Tribunal bore in mind that the purpose of fitness to practise proceedings is not to punish a doctor for past wrongdoing but to maintain proper standards in the profession and to protect the public. The Tribunal must look forward, not back, but in order to determine whether a doctor is fit to practise without restriction today it must take into account the way in which a doctor has acted, or failed to act, in the past.

29. Whilst the Tribunal has borne in mind the submissions made, the decision as to whether Dr Ogbonna's fitness to practise remains impaired is one for it to determine exercising its own judgement.

30. In determining whether a finding of current impairment of fitness to practise is necessary, the Tribunal took into account the issues of insight, remediation, the risk of repetition together with the overarching objective and all other relevant considerations.

31. The Tribunal noted that Dr Ogbonna has not submitted any of the information requested by the previous Tribunals. It has received no current testimonials and no evidence that he has kept his clinical skills and knowledge up to date. In his letter of 11 November 2016 he has confirmed that he has not practised since he was suspended in February 2016 and that he has not been involved in any clinical activities. He stated that he has kept up to date by reading although he has not provided evidence of this. The Tribunal has received no evidence from Dr Ogbonna

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that he has reflected on his DPP and/or demonstrated remediation of his practice. In fact he has sought to go behind the findings of the 2014 and requested that:

'the GMC reviews every aspect of his case , including the clinical issues that brought me to the GMC in the first instance'.

He has also expressed concern that the Performance Assessment team were on a vendetta against him indicating that he still does not accept its findings. The Tribunal has found his attitude in relation to this case as demonstrated by the contents of the letter concerning and indicate a continued lack of insight.

32. The Tribunal was also concerned by Dr Ogbonna's lack of engagement with the GMC and this regulatory process as well as his lack of response to the GMC's requests for him to undergo a Performance Assessment. The Tribunal were of the opinion that if he considered that the findings of the 2015 Performance Assessment were not indicative of his practice then he could have undertaken this further Assessment.

33. In view of the absence of any evidence from Dr Ogbonna demonstrating that he has addressed the original concerns in this case or the concerns raised by the Performance Assessment and the 2016 Review Tribunal and no evidence that he has developed any insight into his deficiencies or that he has kept his medical knowledge and skills up to date, the Tribunal considers that there would be a risk to patient safety were he to be allowed to return to unrestricted practice. It also considers that public confidence in the profession would be undermined if a finding of impairment were not to be made in the circumstance of this case.

34. Accordingly, the Tribunal determined that Dr Ogbonna's fitness to practise remains impaired by reason of his deficient professional performance.

Determination on Sanction - 22/02/2017

Ms Kitchin:

1. Having determined that Dr Ogbonna's fitness to practise is impaired by reason of his Deficient Professional Performance ('DPP'), the Tribunal has now considered what action, if any, it should take with regard to his registration.

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2. In so doing, it has taken account of all the evidence adduced as well as the submissions made by you on behalf of the General Medical Council ('GMC').

GMC Submissions

3. In summary you invited the Tribunal to erase Dr Ogbonna's name from the medical register. You said that this was the only means to maintain public confidence in the profession. You reminded the Tribunal that previously Dr Ogbonna had not complied with conditions that had been placed on his registration. You submitted that suspension was no longer appropriate as Dr Ogbonna had demonstrated a persistent lack of insight into his deficiencies and had undertaken no training or remediation since he was suspended in February 2016. You reminded the Tribunal that he had also failed to undergo a further Performance Assessment as requested by the GMC. You said that Dr Ogbonna has no immediate intention to remediate and his comments regarding his financial situation indicate that he no longer wishes to engage with the GMC and this regulatory process.

4. You drew the Tribunal's attention to relevant paragraphs of the current version of Good Medical Practice ('GMP') and areas of the Sanctions Guidance (July 2016) ('the SG') which deal with review hearings.

The Tribunal's Decision

5. In reaching its decision, the Tribunal has taken account of the SG. It has borne in mind that the purpose of sanctions is not to be punitive, but to protect patients and the wider public interest, although they may have a punitive effect.

6. Throughout its deliberations, the Tribunal has applied the principle of proportionality and balanced Dr Ogbonna's interests with the public interest. It has also borne in mind the statutory overarching objective, which is the protection of the public and which includes protecting, promoting and maintaining the health, safety and wellbeing of the public, maintaining public confidence in the profession, and promoting and maintaining proper professional standards and conduct.

No action

7. In coming to its decision as to the appropriate sanction, if any, to impose in Dr Ogbonna's case, the Tribunal first considered whether to conclude the case by taking no action.

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8. The Tribunal has received no new evidence from Dr Ogbonna in relation to any insight, reflection or remediation undertaken in respect of the issues raised in this case. Neither does the Tribunal have before it any new testimonials or other evidence apart from the letter that he submitted in November 2016. Accordingly the Tribunal determined that it would not be neither sufficient, proportionate, nor in the public interest, and it would not protect patients, to conclude this case by taking no action.

Conditions

9. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Ogbonna's registration. It has borne in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable.

10. The Tribunal was of the view that conditions were not appropriate in this case, where the doctor has not demonstrated insight into the deficiencies in his practice, has not remediated these deficiencies and is not engaging with his regulator. The Tribunal also noted that Dr Ogbonna has in the past breached conditions which were placed on his registration. The Tribunal concluded that it could not formulate conditions which were appropriate, proportionate, workable or measurable and that conditional registration would not therefore sufficiently address the serious concerns raised.

Suspension

11. The Tribunal then went on to consider whether to suspend Dr Ogbonna's registration for a further period.

12. The Tribunal was mindful that Dr Ogbonna has already been suspended for 12 months. During this time, despite repeated requests, he has not provided any evidence which would suggest that he has made progress in addressing or acquiring insight into his deficient professional practice. As it has already outlined in its determination on impairment his recent interactions with his regulator demonstrate that he still does not accept the findings of the 2014 Panel and those of the 2015 Performance Assessment and seeks to go behind them. The Tribunal is concerned by his attitude as demonstrated in his letter dated 11 November 2016 where he expressed concern that the Performance Assessment team had a 'vendetta' against

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him and stated that the 2016 Tribunal did not take into account documentation that he had adduced at that hearing.

13. Furthermore, the Tribunal is aware that Dr Ogbonna has now not been in clinical practice for 12 months and has failed to provide any objective evidence which would indicate that he has kept his clinical skills and knowledge up to date during his period of suspension. There were patient safety concerns raised in relation to the 2014 Panel's findings and the 2015 Performance Assessment and this Tribunal finds no evidence that these have been addressed by the doctor. The Tribunal is concerned that these may have worsened during this period of time when he has been suspended.

14. It was the view of previous Panels and Tribunals that the index matters in this case were capable of remediation, however, Dr Ogbonna has not provided subsequent Tribunals with any evidence of attempts to remediate. The Tribunal considers that Dr Ogbonna has had ample time to reflect on the deficiencies in his practise and provide the information requested by previous Tribunals and Panels. He has not engaged in any meaningful way with his regulator and repeatedly failed to comply with the requests for documentation, requests for him to undertake a further Performance Assessment or the provision of information regarding his insight.

15. The Tribunal noted the 2016 Tribunal's determination to impose a period of suspension for 12 months should allow:

'sufficient time to complete appropriate, accredited, structured training as envisaged by the Performance Assessor and to address all the concerns raised the Assessors, the 2014 Panel and this Tribunal'

It was the view of this Tribunal that the doctor has not made use of this opportunity.

16. The Tribunal also had regard to paragraph 91 of the SG which demonstrated when suspension may be the appropriate sanction. It has determined that the following are not engaged in this case, indeed the contrary is the case:

!...

b In cases involving deficient performance where there is a risk to patient safety if the doctor's registration is not suspended and where the doctor demonstrates potential for remediation or retraining.

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...

e No evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor's unwillingness to engage.

...

g The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.'

17. The Tribunal also had regard to paragraph 124 of the SG which states

'A particularly important consideration in these cases is whether a doctor has developed, or has the potential to develop, insight into these failures. Where insight is not evident, it is likely that conditions on registration or suspension may not be appropriate or sufficient.'

18. The Tribunal is of the view that Dr Ogbonna's lack of meaningful engagement with the regulatory process, and the absence of sufficient evidence to demonstrate remediation show that Dr Ogbonna does not have adequate insight into the actions that brought him before his professional regulator.

19. The Tribunal has already noted that Dr Ogbonna has been provided with ample opportunity to engage with his regulatory body and to provide evidence of his insight and remediation. No evidence has been provided that he has remediated the actions that resulted in a finding of his fitness to practise being impaired by DPP. Therefore, the Tribunal has determined that suspension is no longer sufficient nor appropriate.

Erasure

20. The Tribunal has therefore concluded that erasure is the proportionate and appropriate sanction. In so doing it has had regard to paragraph 103 of the SG which outlines when erasure may be the appropriate sanction. It determined that the following features are engaged in this case:

'Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).

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c Doing serious harm to others (patients or otherwise), either deliberately or through incompetence and particularly where there is a continuing risk to patients ...

...

i Putting their own interests before those of their patients

j Persistent lack of insight into the seriousness of their actions or the consequences.'

21. This Tribunal noted the findings of the 2014 Panel that the doctor had caused serious harm to patients. It was the view of this Tribunal that the doctor appeared more concerned with his own position in relation to the regulatory proceedings than the question of the protection of patients and in addition had demonstrated a persistent lack of insight over the period following the original proceedings in 2014.

22. As a consequence the Tribunal is satisfied that erasure is the proportionate and appropriate sanction in this case and the minimum required to protect patients and the public interest. It is, in all the circumstances of the case, the only sanction that will address the concerns identified by the Tribunal.

23. The effect of this direction is that, unless Dr Ogbonna exercises his right of appeal, his name will be erased from the Medical Register with effect from 28 days from when written notice of this determination has been served upon him. The suspension currently in place on his registration will remain until the appeal period has ended, or in the event that Dr Ogbonna does appeal, that appeal is decided.

24. That concludes this case.

Confirmed

Date 22 February 2017

Mr Paul Moulder, Chair