

## PUBLIC RECORD

Dates: 15/11/2021 - 17/11/2021

Medical Practitioner's name: Dr Adelina-Cosmina BADICI

GMC reference number: 7590118

Primary medical qualification: Doctor - Medic 2012 Universitatea de Medicina si Farmacie din Craiova

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Impaired

**Summary of outcome**

Erasure

Immediate order imposed

**Tribunal:**

Legally Qualified Chair	Mr Jetinder Shergill
Medical Tribunal Member:	Professor Alastair McGowan
Medical Tribunal Member:	Dr Ronan Brennan

Tribunal Clerk:	Ms Lauren Duffy
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**Attendance and Representation:**

Medical Practitioner:	Not present and not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Ms Harriet Tighe, Counsel

## Attendance of Press / Public

In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held partly in public and partly in private.

## Overarching Objective

Throughout the decision making process the tribunal has borne in mind the statutory overarching objective as set out in s1 Medical Act 1983 (the 1983 Act) to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

## Determination on Facts - 15/11/2021

1. Dr Badici qualified in 2012 from Universitatea de Medicina si Farmacie din Craiova in Romania.
2. The Allegation that has led to Dr Badici's hearing can be summarised as follows: between 19 March and 31 May 2019, whilst working as a Health Care Assistant at the Manor Care Home ('the Care Home'), Dr Badici exchanged numbers with Patient A, a vulnerable resident. It is alleged that on one or more occasion between 15 and 16 July 2019, following Dr Badici's dismissal from the Manor Care Home, she telephoned Patient A and asked her for financial help.
3. The initial concerns were raised with the GMC by Ms B, the Clinical Care Manager at the Care Home. Ms B called the GMC and was advised to make a referral on behalf of Windsor Care Ltd. The referral was made by email on 17 July 2019.

## The Outcome of Applications Made during the Facts Stage

4. The Tribunal accepted the GMC's submissions, made pursuant to Rules 15 and 40 of the General Medical Council (Fitness to Practise) Rules 2004 (as amended) ('the Rules'), that notice of this hearing had properly been served on Dr Badici. It also granted the GMC's application, made pursuant to Rule 31 of the Rules, that this hearing should proceed in her absence. The Tribunal's full decision on these applications is included at Annex A.

## The Allegation and the Doctor's Response

5. The Allegation made against Dr Badici is as follows:

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

1. At all material times Patient A was a vulnerable service user resident at the Manor Care Home (the 'Care Home'). **To be determined**
2. Whilst working as a Health Care Assistant at the Care Home between 19 March 2019 and 31 May 2019, you exchanged numbers with Patient A. **To be determined**
3. Following your dismissal from the Care Home, on one or more occasion between 15 and 16 July 2019 you telephoned Patient A and asked her:
  - a. to transfer money into your bank account or words to that effect; **To be determined**
  - b. for her financial help, or words to that effect. **To be determined**

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct. **To be determined**

### **Witness Evidence**

6. The Tribunal received evidence on behalf of the GMC in the form of witness statements from the following witnesses who were not required to give oral evidence:
  - Patient A, resident of the Care Home, statement dated 9 December 2019;
  - Ms C, Registered Manager at the Care Home, statement dated 10 December 2019;
  - Ms D, Training Co-ordinator at the Care Home, statement dated 15 January 2020; and
  - Ms E, Health Care Assistant at the Care Home, statement dated 22 January 2020.

### **Documentary Evidence**

7. The Tribunal had regard to the documentary evidence provided by the GMC which included amongst others:
  - Screenshot of Dr Badici's mobile contact number on the Care Home system, undated;
  - Screenshots of Patient A's phone call log, dated between 2 June and 16 July 2019;
  - Incident Form completed by the Care Home, dated 16 July 2019;
  - The Care Home policies; and
  - Text messages exchanged between Dr Badici and Ms E, dated between 31 May and 8 June 2019.

### **The Tribunal's Approach**

8. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Badici does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e. whether it is more likely than not that the events occurred.

### **The Tribunal's Analysis of the Evidence and Findings**

9. The Tribunal has considered each outstanding paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts.

#### Paragraph 1

10. It is alleged that, at all material times, Patient A was a vulnerable service user resident at the Care Home.

11. The Tribunal had regard to Patient A's witness statement in which she stated:

*'I am a full time resident at the Manor Care Home (the 'Care Home') where Adelina worked as a carer.*

*I have been at the Care Home for around a year. I require daily care. I am in poor health and unable to walk. In around 2014 I had to have my hip removed and had several washouts due to infection. I was left with a 2inch leg length discrepancy. As a result I now can't walk and I am bedbound. If I want to leave the bed, I have to be hoisted into my wheelchair. I can't steer the wheelchair so I can't go out alone. I can't sit for longer than a couple of hours in my chair as I become sore and uncomfortable. I also have a catheter which requires emptying regularly throughout the day and the carers assist me with this.'*

12. The Tribunal also had regard to the statement of the Registered Manager of the Care Home, Ms C, in which she stated:

*'My Main concern was to safeguard Patient A. Anyone who is in 24 hour care, regardless of their mental capacity is potentially vulnerable. Patient A is an elderly lady who is a resident that has chronic respiratory failure requiring continuous positive airway pressure. She suffers with anoxia, diabetes and is a bariatric patient meaning she is unable to mobilise.'*

13. The Tribunal also noted the statements of two further employees of the Care Home, Ms D and Ms E, who make reference to Patient A being a patient at the Care Home.

14. The Tribunal accepted all the evidence showed that Patient A was a patient at the Care Home. Further, the Tribunal accepted Patient A's and Ms C's description of Patient A's health condition. It was satisfied that Patient A's situation led to a level of dependence on

others which rendered her vulnerable. The Tribunal was also mindful of the fact that Patient A was an ‘elderly lady’ and was of the view that her age, coupled with her health condition, likely amplified her vulnerability.

15. Accordingly, the Tribunal found paragraph 1 of the Allegation proved.

#### Paragraph 2

16. It is alleged that, whilst working as a Health Care Assistant at the Care Home between 19 March 2019 and 31 May 2019, Dr Badici exchanged numbers with Patient A.

17. The Tribunal had regard to Patient A’s statement, in which she stated:

*‘I don't recall [the] exact date but a couple of days before she left, Adelina and I exchanged contact numbers. I think that she suggested this so that we could keep in touch. I wished her well and said I hoped to hear from her. I didn't save her name into my phone.’*

18. The Tribunal accepted the evidence of Patient A that, at some point before Dr Badici left, she had exchanged contact numbers with her. It was consistent with the evidence of Patient A receiving calls on her phone from a number which cross-referenced to the home’s administration records as Dr Badici’s number.

19. Accordingly, the Tribunal found paragraph 2 of the Allegation proved.

#### Paragraph 3

20. It is alleged that, following her dismissal from the Care Home, on one or more occasion between 15 and 16 July 2019 Dr Badici telephoned Patient A.

21. The Tribunal first considered the screenshots of Patient A’s mobile phone which display her call records from 15 and 16 July 2019. It noted that the screenshots demonstrate Patient A was called twice on 16 July 2019 and a telephone number is displayed. The Tribunal went on to consider the records of the Care Home. Dr Badici’s employment records included details of her mobile telephone contact number. The Tribunal was satisfied that the call records from Patient A’s mobile phone from 16 July 2021 correlate to Dr Badici’s mobile number held by the Care Home. It was clear that two calls had been received by Patient A from Dr Badici’s number.

22. The Tribunal also noted there were three missed calls on 15 July 2019. Whilst no telephone number appears on the screenshot the tribunal was satisfied it was likely to have been Dr Badici as claimed by Patient A.

23. Accordingly, the Tribunal was satisfied that, on one or more occasion between 15 and 16 July 2019, Dr Badici telephoned Patient A.

24. The Tribunal went on to consider the content of the calls. It had regard to Patient A's statement in which she stated:

*'Adelina called again three times on 15 July 2019. I still didn't have her name saved to my phone but I may have recognised her number on my screen or her voice when I answered. She was sobbing during these calls and saying something like 'help me, help me'. She was asking for money and I said something along the lines of [I can't] do nothing'. She phoned again the next minute saying something like 'I'll give you my bank details so you can put some money in' and something about either having to come back to England or going from England back to her county. She was saying something like 'I'll give you my details or you give me your details', meaning my bank details. She said something like 'I need help'. The calls went on like that, she was very tearful and she kept calling to try and persuade me to put money in her account.*

*The calls weren't long. I said there was nothing I could do. In the end I turned off my phone or I may have had a medical appointment and ended the calls. She never asked for a specific sum of money. I didn't disclose my bank details to her, or take her bank details from her.*

*She called again twice on 16 July 2019. I don't really recall the detail of these calls other than it just being more of the same with her crying a lot and asking something like 'are you going to help me or not?' and saying 'nobody helps me'. I just said sorry and that there was nothing I could do. When I saw her calling a second time I just cancelled the call and that was the end of it.'*

25. The Tribunal went on to consider the witness statement of Ms D in which she stated:

*'I became aware of concerns relating to Adelina after she had left the Manor Care Home, when a resident reported to me that Adelina had contacted her seeking money.*

*This occurred on the morning of 16 July 2019. The team had started the mornings personal care which means that staff had gone off in pairs or alone to assist with residents. My colleague, Ms D, came to find me and asked me to go with her a resident's room. The resident was Patient A.*

*I got the impression something was wrong; because I am a Team Leader and people report things to me I suspected something wasn't quite right. When we got to Patient A she looked a little concerned and so did Ms D.*

*At this stage when things are reported to us we're not to keep secrets (sic). I spoke to Patient A, who has full mental capacity, and I explained that whatever she told me, I*

*couldn't keep secret and would need to report it. Patient A confirmed she understood. I got the impression that Patient A wanted to take it further and I was the first step.*

*Patient A then told me that she had been receiving phone calls from Adelina that has been quite frequent. She said they had happened the night before and it played on her mind and she had problems sleeping so by the morning she knew she wanted to speak to someone. I thanked Patient A for reporting it to me and for trusting us to take it further to support her.*

*Patient A didn't say anything about the frequency of the calls. She said that Adelina was asking for her money and that she needed it as she was having family problems. She said that Adelina asked her if she could send her bank details and if Patient A would do a bank transfer. Patient A didn't say that any amount of money was mentioned.'*

26. The Tribunal noted that Ms D reported the incident to Ms C and Ms C completed an incident report form for safeguarding reasons which is dated 16 July 2021. In that incident form, the nature of the incident is described as, *'an ex dismissed member of staff has allegedly phoned resident Patient A requesting money and bank details.'*

27. The Tribunal also had regard to Ms E's statement where she herself confirms she had been asked by Dr Badici for money:

*'After she left the Manor Care Home in around June 2019, I received text messages from Adelina asking for money on 6 June 2019.'*

28. The Tribunal noted the screenshot of the text messages between Ms E and Dr Badici from 6 June 2019. Dr Badici messaged Ms E the following:

*'Can you transfer some money for 1-2 weeks please?'*

*'Can you please tell me if you can help me  
Sorry for disturb you'*

Those messages were sent some hours apart and she also provided her bank details to Ms E.

29. The Tribunal was satisfied that Patient A's account was credible and reliable. It was reported to staff and recorded as a safeguarding incident. The Tribunal considered that Patient A had reported the incident in a timely manner and noted that Ms D had informed Ms C who produced an incident report form on the same day.

30. The events complained of were consistent with what Ms E had reported of an unwarranted request for financial assistance from Dr Badici in June 2019. Ms E's written statement is corroborated by the screenshots of the text messages. The Tribunal considered that this lent further support to Patient A's account of the nature of the conversation she had

with Dr Badici. The Tribunal was satisfied that Dr Badici had asked Patient A for financial help and to transfer money into her bank account (or words to the effect).

31. Accordingly, the Tribunal found paragraph 3 of the Allegation proved in its entirety.

### **The Tribunal's Overall Determination on the Facts**

32. The Tribunal has determined the facts as follows:

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

1. At all material times Patient A was a vulnerable service user resident at the Manor Care Home (the 'Care Home'). **Determined and found proved**
2. Whilst working as a Health Care Assistant at the Care Home between 19 March 2019 and 31 May 2019, you exchanged numbers with Patient A. **Determined and found proved**
3. Following your dismissal from the Care Home, on one or more occasion between 15 and 16 July 2019 you telephoned Patient A and asked her:
  - a. to transfer money into your bank account or words to that effect; **Determined and found proved**
  - b. for her financial help, or words to that effect. **Determined and found proved**

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct. **To be determined**

### **Determination on Impairment - 16/11/2021**

1. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved earlier in this document, Dr Badici's fitness to practise is impaired by reason of misconduct.

### **The Evidence**

2. The Tribunal has taken into account all the evidence received during the facts stage of the hearing.

### **Submissions**

3. On behalf of the GMC, Ms Tighe submitted that Dr Badici’s fitness to practise is impaired by reason of misconduct. She reminded the Tribunal of the two-stage process to be adopted. First, whether the facts found proved amount to misconduct and secondly, whether Dr Badici’s fitness to practise is currently impaired by reason of her misconduct.

4. Ms Tighe referred the Tribunal to Good Medical Practice (2013 edition) (‘GMP’) and submitted that Dr Badici had breached paragraph 65 (set out further below).

5. Ms Tighe reminded the Tribunal of the chronology to Dr Badici’s case. She submitted that Dr Badici had first asked a member of staff at the Care Home, Ms E, for money. When this was unsuccessful, Dr Badici asked Patient A for financial help, having swapped numbers with her before Dr Badici’s employment was ended. Taking into account Patient A’s vulnerabilities, Ms Tighe submitted that Dr Badici had deliberately targeted Patient A and attempted to exploit their relationship by asking Patient A for financial help. Ms Tighe submitted that Dr Badici’s actions amounted to misconduct that was serious.

6. Ms Tighe referred the Tribunal to the case of *Grant* (set out below) and submitted that Dr Badici has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm, has in the past brought and/or is liable in the future to bring the medical profession into disrepute and has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession.

7. Ms Tighe submitted that Dr Badici’s engagement with her regulator had been ‘*non-existent*.’ Dr Badici had denied making the phone calls when Ms C rang her to tell her not to contact Patient A; and Ms Tighe submitted that there is no indication that Dr Badici has progressed from that position. Further, it was submitted that there had been no expression of remorse, no evidence of insight and no evidence that Dr Badici has attempted to remediate her misconduct. Therefore, Ms Tighe submitted that there remains a risk of repetition in this case.

8. Ms Tighe referred to the overarching objective and concluded that a finding of impairment was necessary to protect the public and to maintain public confidence in the medical profession.

### **The Relevant Legal Principles**

9. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision of impairment is a matter for the Tribunal’s judgement alone.

10. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved amounted to misconduct, and that the misconduct was serious; and then whether the finding of that serious misconduct, could lead to a finding of impairment.

11. The Tribunal reminded itself that misconduct has been defined as ‘*a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*’ The Privy Council went on to say that, ‘*the standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances*’, per Lord Clyde in *Roylance v GMC (No.2) [2000] 1 AC 311*).

12. The Tribunal must determine whether Dr Badici’s fitness to practise is impaired today, taking into account Dr Badici’s conduct at the time of the events and any relevant factors since then such as whether the matters are remediable/have been remedied, whether she has shown insight and any likelihood of repetition.

13. Whilst there is no statutory definition of impairment, the Tribunal was assisted by the guidance provided by Dame Janet Smith in the *Fifth Shipman Report*, as adopted by the High Court in *CHRE v NMC and Paula Grant [2011] EWHC 297 Admin*. In particular, the Tribunal considered whether its findings of fact showed that Dr Badici’s fitness to practise is impaired in the sense that she:

*‘a. Has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*

*b. Has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*

*c. Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

*d. ...’*

## The Tribunal’s Determination on Impairment

### Misconduct

14. The Tribunal first considered whether Dr Badici’s actions amounted to misconduct.

15. The Tribunal had regard to the principles set out in GMP. It was mindful of the general principle, ‘*maintaining trust.*’ This is expressly reaffirmed under paragraph 65 of GMP which the Tribunal considered was engaged in this case:

*‘65 You must make sure that your conduct justifies your patients’ trust in you and the public’s trust in the profession.’*

16. The Tribunal noted that Dr Badici had exchanged telephone numbers with Patient A, who was a vulnerable patient at the Care Home. Patient A says in her statement that the two of them ‘*spoke as friends*’ and went on to say:

*'I don't recall that exact date but a couple of days before she left, Adelina and I exchanged contact numbers. I think that she suggested this so that we could keep in touch. I wished her well and said I hoped to hear from her. I didn't save her name into my phone.'*

17. The evidence does not support a degree of mutual friendship between the two because it appeared Dr Badici instigated matters. Patient A did not store the telephone details and indicated to Dr Badici that she *'hoped to hear from her.'* It may well have only been a pleasantry and the Tribunal puts the matter no higher. However, the context of how Dr Badici came about Patient A's number is relevant in two contexts: first, in terms of assessing the misconduct, and then further in the determination when dealing with references made to *'exploit'* in the GMC's submissions.

18. The Tribunal has found that Dr Badici called Patient A on several occasions and when she managed to speak with Patient A, asked for financial help. That was only possible because Dr Badici acted contrary to her employer's protocols about data protection and maintaining boundaries with care home residents. The Tribunal had regard to the witness statement of Ms D who stated:

*'It's part of a policy at the care home not to share data with residents or have that kind of relationship with the residents and there would be no need to take mobile numbers from residents...Adelina was made aware of confidentiality, professional relationships and boundaries during her training and has access to all available policies and procedures...'*

19. The Tribunal was satisfied that this level of professionalism and professional detachment was akin to what is required by GMP. Furthermore, the Tribunal was satisfied that whilst Dr Badici's caring role did not require GMC medical registration, she was working in a clinical environment and with vulnerable people. The Tribunal had regard to the context in which Dr Badici was working, the training she would have undertaken and the various policies within the Care Home. They were akin to what a patient facing registered medical practitioner would be familiar with and required to observe. The Tribunal was satisfied that there was a sufficient factual nexus with her caring role and her standing as a doctor given the nature of the work she was doing.

20. The Tribunal was satisfied that exchanging numbers with Patient A amounted to misconduct. The context in which this exchange of numbers took place with a vulnerable patient (paragraph 2 of the Allegation) brings this misconduct into the ambit of misconduct which is serious, though the real gravamen of the case is under paragraph 3 of the Allegation.

21. The Tribunal was in no doubt that phoning a vulnerable patient a number of times, even after the termination of employment, was inappropriate. The frequency of those calls on 15 and 16 July 2019 perhaps indicated a degree of desperation on the part of Dr Badici; but she should have been mindful of respecting Patient A's privacy inasmuch as Patient A did

not answer or return the calls. When she did finally speak with Patient A, she crossed a line as regards professionalism and sought financial assistance from Patient A, who despite no longer relying on Dr Badici for professional care, remained a vulnerable resident. Dr Badici's actions were inappropriate, unprofessional and would be considered deplorable by fellow medical practitioners. Dr Badici's request for financial assistance from Patient A amounted to misconduct which was serious.

22. In all the circumstances, the Tribunal concluded that Dr Badici's conduct was a sufficiently serious breach of the standards of conduct as set out in GMP as to amount to serious misconduct.

### Impairment

23. The Tribunal, having determined that the facts found proved amounted to misconduct, went on to consider whether, as a result of that misconduct, Dr Badici's fitness to practise is currently impaired.

24. The Tribunal had regard to the submissions and legal advice provided by the LQC. It took account of the well-rehearsed criteria set out in the *Grant* case, as set out above.

25. The Tribunal decided that the evidence relied on and findings made about Dr Badici's misconduct did not support a finding that she had in the past or was liable in the future to pose a clinical risk to patients.

26. Whilst Patient A does make reference to the phone calls causing distress, the Tribunal did not accept Ms Tighe's submission that Dr Badici had deliberately '*exploited*' Patient A. The Tribunal had regard to the chronology of events and noted that Dr Badici had asked her colleague, with whom she was friends, for financial help in June 2019. Her text messages to the colleague suggested Dr Badici XXX. The Tribunal inferred a degree of desperation in her then progressing matters and phoning Patient A to ask for money in July 2019. The Tribunal did not consider that her personal circumstances, however desperate, justified asking Patient A for financial assistance.

27. However, the circumstances of how that arose was unlikely to have been an attempt to '*exploit*' Patient A in the safeguarding sense of exploitation which is how the Tribunal understood the reference was made in submissions. The LQC had advised the Tribunal to be mindful of the somewhat sinister undertones to some of the evidence which had not formed part of the actual Rule 7 Allegation and which tended to have a prejudicial effect rather than probative value in terms of deciding paragraphs 1 to 3 of the Allegation.

28. The Tribunal noted that Dr Badici had telephoned Patient A on 2 June 2019 but there was no request for money on that occasion. The Tribunal rejects the characterisation that Dr Badici sought to exploit Patient A and drew reasonable inferences from all of the evidence that her actions on 15 and 16 July 2019 amounted to an impulsive, single incident over a

confined period rather than a carefully planned course of predatory behaviour to exploit Patient A.

29. Nevertheless, the Tribunal was satisfied that Dr Badici's misconduct in asking Patient A for financial help and to transfer money to her crossed professional boundaries. The Tribunal was in no doubt that her misconduct brought the medical profession into disrepute. It also breached one of the fundamental tenets of the medical profession because public trust in the profession was likely to have been undermined by her actions of putting a vulnerable person in, at the very least, a difficult position which led to some degree of distress at the time.

30. In determining whether a finding of current impairment of fitness to practise is necessary, the Tribunal looked for evidence of insight and remediation, and the likelihood of repetition.

31. The Tribunal noted Ms C's evidence that when she called Dr Badici on the 16 July 2019 to confront her, Dr Badici denied calling Patient A. The Tribunal has found that she did. The Tribunal has not been provided with any evidence that Dr Badici has progressed from this position of denial. Further, The Tribunal has not received any evidence that she has apologised to Patient A for the distress caused, nor has it has been provided with any evidence that demonstrates Dr Badici's understanding of how her actions could have impacted on public confidence in the profession.

32. The Tribunal has not been presented with any evidence that Dr Badici has attempted to remediate her misconduct. Given the absence of this evidence, the Tribunal was satisfied that there remains a risk that her misconduct might be repeated.

33. The Tribunal was satisfied that, the need to promote and maintain public confidence in the medical profession and the need to promote and maintain proper professional standards and conduct for members of the profession would be undermined if a finding of impairment were not made in this case.

34. Accordingly, the Tribunal determined that Dr Badici's fitness to practise is impaired by reason of her misconduct.

#### **Determination on Sanction - 17/11/2021**

1. Having determined that Dr Badici's fitness to practise is impaired by reason of misconduct, the Tribunal now has to decide in accordance with Rule 17(2)(n) of the Rules on the appropriate sanction, if any, to impose.

#### **The Evidence**

2. The Tribunal has taken into account evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction.

## Submissions

3. On behalf of the GMC, Ms Tighe submitted that the most appropriate and proportionate sanction in this case would be to erase Dr Badici's name from the Medical Register.
4. Ms Tighe referred to the relevant paragraphs of the Sanctions Guidance (November 2020) ('SG'). She reminded the Tribunal of the overarching objective and stated that it should also have regard to the principle of proportionality.
5. In reference to the mitigating factors in this case, Ms Tighe acknowledged that the evidence suggests Dr Badici was experiencing personal issues at the time of her misconduct. However, she submitted that, in the absence of any engagement from Dr Badici, it is difficult to assess what weight to afford to this as a mitigating feature. Ms Tighe referred to the lapse of time since the incident. Further, she submitted that Dr Badici had only recently been admitted to the Medical Register in 2017 (but without a licence to practise), having qualified as a doctor overseas; and that this may be relevant mitigation to consider.
6. Ms Tighe submitted that Dr Badici's lack of insight is an aggravating factor. Further, she submitted that Dr Badici had abused her professional position. Whilst she acknowledged the Tribunal's finding that Dr Badici had not exploited Patient A, she submitted that the only reason Dr Badici was able to make contact with Patient A was because she had acted contrary to the Care Home's policies in relation to maintaining boundaries with the residents. Further, although Patient A no longer relied on Dr Badici for care when Dr Badici had called her in July 2019 asking for money, Patient A was still a vulnerable resident at the Care Home.
7. Mr Tighe submitted that, given the serious nature of the Tribunal's findings, taking no action in this case would not be appropriate. Given Dr Badici's lack of engagement, together with the fact that she does not have a licence to practise, Ms Tighe submitted that imposing conditions on her registration would not be appropriate, workable, or measurable.
8. In considering whether suspension is the appropriate sanction in this case, Ms Tighe referred the Tribunal to the SG and submitted that suspension may be appropriate where the misconduct is serious but falls short of being fundamentally incompatible with continued registration. She reminded the Tribunal of its earlier finding that there remains a risk of Dr Badici repeating her misconduct. Given Dr Badici's lack of engagement and no evidence of insight or remediation, coupled with the seriousness of the misconduct, Ms Tighe submitted that a sanction of suspension would not be appropriate or proportionate in this case.
9. Ms Tighe submitted that Dr Badici, in asking a vulnerable patient for financial assistance, put her own interests before that of Patient A. She submitted that this was a serious departure from the principles set out in GMP and that Dr Badici's misconduct was fundamentally incompatible with her continued registration on the Medical Register. Ms Tighe submitted that it is necessary for Dr Badici to be erased from the medical register in

order to protect public confidence in the medical profession and to uphold and maintain proper professional standards.

### The Tribunal's Determination on Sanction

10. The decision as to the appropriate sanction, if any, to impose in this case is a matter for the Tribunal exercising its own judgment. In reaching its decision, the Tribunal has taken GMP and the SG into account and borne in mind the overarching objective.

11. The Tribunal reminded itself that the main reason for imposing any sanction is to protect the public and that sanctions are not imposed to punish doctors, even though they may have a punitive effect. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Badici's interests with the public interest.

#### Aggravating and mitigating factors

12. Before considering what action, if any, to take in respect of Dr Badici's registration, the Tribunal considered the aggravating and mitigating factors in this case.

#### Aggravating factors

13. The Tribunal considered the aggravating factors in the case. First, Dr Badici's actions in asking a vulnerable patient for financial help and to transfer money to her crossed professional boundaries. There was a lack of insight into the misconduct because Ms C's unchallenged evidence was Dr Badici denied in their telephone call that she had phoned Patient A. There has been no evidence provided as to steps taken to remediate or give assurance that the misconduct would not be repeated, and no expression of regret or remorse.

14. The Tribunal considered whether there was an 'abuse of professional position.' The Tribunal had previously indicated that the GMC had not made out a case that Dr Badici exploited Patient A. The SG dealing with this topic is directed towards sexual and other improper personal relationships. That is a natural reading of the SG and the underpinning GMC policy documents. Those sorts of cases involve serious charges which require the allegation to be squarely put, and for there to be cogent evidence. The Tribunal is satisfied that the SG does not directly deal with the sort of circumstances in this case. Furthermore, the GMC case has not been advanced on a specific basis of abuse of position such that Dr Badici had not been given fair notice in the Rule 7 letter, and the Tribunal was not invited to make specific findings of fact at stage 1 about this. Had that been the case, specific legal advice would have been given as to the need for cogent evidence to be adduced by the GMC. Whilst the circumstances of the case at least disclose a power imbalance which may have been an 'abuse of professional position', the case has not been led on that basis until this last stage of proceedings. The Tribunal decided that concluding there was an abuse of professional position at this stage required more than collateral facts to be decided. The Tribunal may have been able to do if the case had proceeded in a different way. However,

given the way the case has unfolded, the Tribunal was concerned about the expansion of the case at this late stage as potentially being unfair and declined to find there was an abuse of professional position for the purposes of determining sanction.

#### Mitigating Factors

15. There was a dearth of evidence to support mitigating factors in this case. Dr Badici has failed to engage with the regulatory process since the first contact, as early as 29 July 2021; the Tribunal has no evidence from her about her circumstances at the time or currently, any explanation as to what went on or reassurance about steps she has taken since in terms of reducing risk of repetition. The Tribunal notes the incident occurred in June/July 2019 and there is no evidence which suggests that Dr Badici has repeated her misconduct. Dr Badici was registered on the Medical Register in 2017 but did not obtain a licence to practise, having qualified as a doctor overseas; and as such she may have been unfamiliar with some of the professional standards required of her. Though conversely, the Tribunal has accepted the GMC evidence that Dr Badici would have been made aware of the various data protection and maintaining boundaries policies at the care home.

16. The Tribunal acknowledged that Dr Badici's text messages to her colleague, Ms E, indicate that she was facing difficult personal circumstances at the time of the incident, which have been referenced in the stage 2 determination. However, the Tribunal has not received any further explanation from Dr Badici to offer an explanation for her serious misconduct.

17. The Tribunal carefully balanced the aggravating and mitigating factors. The fact Dr Badici has not engaged with the regulatory process or provided any evidence led the Tribunal to attach less weight to the mitigating factors.

18. The Tribunal went on to consider each sanction in ascending order of severity, starting with the least restrictive.

#### **No action**

19. The Tribunal first considered whether to conclude the case by taking no action. It noted that taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances.

20. The Tribunal determined that there were no exceptional circumstances in this case. It considered that given the seriousness of the misconduct and its findings of impaired fitness to practise, taking no action would not be sufficient, proportionate or in the public interest. It would offend against the Overarching Objective.

#### **Conditions**

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

22. It had regard to paragraphs 81 of the SG which states:

'81 *Conditions might be most appropriate in cases:*

*a involving the doctor's health*

*b involving issues around the doctor's performance*

*c where there is evidence of shortcomings in a specific area or areas of the doctor's practice*

*d where a doctor lacks the necessary knowledge of English to practise medicine without direct supervision.*

23. While the Tribunal recognised that paragraph 81 did not exhaustively limit the circumstances in which conditions might be appropriate, it was of the view that, given the seriousness of the misconduct, conditions would be insufficient to meet the public interest and to maintain proper professional standards of conduct for the members of the profession. The Tribunal was also mindful that Dr Badici does not currently have a licence to practise so conditions would be unworkable. Her lack of engagement with the process meant it was unlikely she would comply with conditions. The Tribunal therefore concluded that conditions would not be appropriate, proportionate, workable or measurable.

## Suspension

24. The Tribunal then went on to consider whether suspending Dr Badici's registration would be appropriate and proportionate. The Tribunal considered the SG in relation to suspension including paragraphs 91 and 92, which state:

'91 *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 doctor. Suspension from the medical 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 suspension, although this is not its intention.*

92 *Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (i.e. for which erasure is more likely to be the appropriate sanction*

*because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession).*'

25. The Tribunal also had regard to paragraphs 97a, e, f and g of the SG which set out some of the circumstances in which suspension may be the appropriate sanction:

*'97 Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.*

*a A serious breach of Good medical practice, but where the doctor's misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction lower than suspension would not be sufficient to protect the public or maintain confidence in doctors.*

...

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

*f No evidence of repetition of similar behaviour since incident.*

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

26. The Tribunal took into account its earlier finding that Dr Badici's actions amounted to a serious breach of GMP. The Tribunal found that Dr Badici's misconduct in asking a vulnerable patient for financial help and to transfer money to her crossed professional boundaries and it was in no doubt that her misconduct brought the medical profession into disrepute. The Tribunal was concerned with Dr Badici's lack of engagement with the regulatory process which indicated that there was 'evidence that demonstrates remediation is unlikely to be successful.' The effect of that was paragraph 97e could not be met. Paragraph 97f did apply on the limited evidence before the Tribunal. The Tribunal gave the widest latitude to Dr Badici's potentially difficult personal circumstances at the time of the incident. However, without any updated objective evidence as to why the misconduct took place and how it would be avoided in the future, the Tribunal cannot conclude Dr Badici has demonstrated insight, or properly assess the risk of repetition. That means paragraph 97g is not met. The Tribunal in turning its mind to whether her actions were 'fundamentally incompatible' with continued registration had a detailed discussion as this was the crucial threshold that pivoted the case from a likely lengthy suspension to erasure.

27. In all the circumstances, given the seriousness of Dr Badici's misconduct and the lack of evidence of insight and remediation, the Tribunal was of the view that there remains a risk

of repetition. For the reasons below, having decided the sanctions in ascending order, the Tribunal decided paragraph 97a could not be met either. The Tribunal determined that an order of suspension would not adequately maintain public confidence in the profession or uphold proper professional standards for members of the profession. The Tribunal concluded that it would therefore not be sufficient or appropriate to suspend Dr Badici's registration.

## Erasure

28. The Tribunal went on to consider paragraphs 108 and 109 of the SG. It decided paragraph 108 applied to the circumstances of this case, as did paragraphs 109a and b of the SG, which state:

*'108 Erasure may be appropriate even where the doctor does not present a risk to patient safety, but where this action is necessary to maintain public confidence in the profession. For example, if a doctor has shown a blatant disregard for the safeguards*

*109 Any of the following factors being present may indicate erasure is appropriate...*

- a A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor.*
- b A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety.*  
*...'*

29. The Tribunal decided that Dr Badici's misconduct seriously undermined public confidence in the profession. In particular the Tribunal has already stated in the stage two determination that Dr Badici:

*'...crossed a line as regards professionalism and sought financial assistance from Patient A, who despite no longer relying on Dr Badici for professional care, remained a vulnerable resident. Dr Badici's actions were inappropriate, unprofessional and would be considered deplorable by fellow medical practitioners. Dr Badici's request for financial assistance from Patient A amounted to misconduct which was serious.'*

30. The Tribunal having decided that Dr Badici's actions were 'an impulsive, single incident over a confined period rather than a carefully planned course of predatory behaviour to exploit Patient A' went on to conclude at paragraph 29 of that determination:

*'Nevertheless, the Tribunal was satisfied that Dr Badici's misconduct in asking Patient A for financial help and to transfer money to her crossed professional boundaries. The Tribunal was in no doubt that her misconduct brought the medical profession into disrepute. It also breached one of the fundamental tenets of the medical profession because public trust in*

*the profession was likely to have been undermined by her actions of putting a vulnerable person in, at the very least, a difficult position which led to some degree of distress at the time.'*

31. In exercising its professional judgement about this case, the Tribunal was satisfied the circumstances of Dr Badici's misconduct brought it firmly into the arena of being fundamentally incompatible with continued registration. It did so because of the seriousness of the misconduct and the fact it involved a vulnerable person. It was open to Dr Badici to explain what happened and to reassure the Tribunal that such events would be unlikely to take place in the future. It would have been open to her to show remorse, insight and remediation. She has for whatever reason chosen not to engage with the regulatory process. That is her right, but the risk in doing so is that in assessing what sanction is appropriate and proportionate, any level of discretion or compassion that the Tribunal may exercise has little substance to justify why her continued registration meets the wider public interest and Overarching Objective.

32. The Tribunal reminded itself that the reputation of the profession as a whole is more important than the interests of an individual doctor and that a sanction may have a punitive effect. The Tribunal determined that Dr Badici's behaviour is fundamentally incompatible with continued registration. The Tribunal considered that, given Dr Badici's failure to engage in these proceedings, the mitigation referenced above does not allow the Tribunal to find a lesser sanction than erasure to be sufficient to maintain public confidence in the profession and uphold proper professional standards for members of the profession.

33. In all the circumstances, the Tribunal therefore concluded that it was necessary and proportionate to direct that Dr Badici's name be erased from the Medical Register.

#### **Determination on Immediate Order - 18/11/2021**

1. Having determined to erase Dr Badici's name from the Medical Register, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Badici's registration should be subject to an immediate order.

#### **Submissions**

2. On behalf of the GMC, Ms Tighe referred the Tribunal to the relevant paragraphs of the SG and submitted that it is necessary for an immediate order of suspension to be imposed in this case.

3. Whilst Ms Tighe acknowledged that Dr Badici does not currently have a licence to practise, she submitted that an immediate order of suspension should be imposed in order to uphold public trust and public confidence in the medical profession, and to maintain and uphold proper standards of conduct and behaviour.

## The Tribunal's Determination

4. The Tribunal had regard to paragraphs 172 and 173 of the SG which state:

*'172 The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. The interests of the doctor include avoiding putting them in a position where they may come under pressure from patients, and/or may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.*

*173 An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety. For example, where they have provided poor clinical care or abused a doctor's special position of trust, or where immediate action must be taken to protect public confidence in the medical profession.'*

5. The Tribunal considered the seriousness of the matter and whether it would be appropriate to immediately suspend Dr Badici's registration. It determined that, given the serious nature of Dr Badici's misconduct, it was both necessary and proportionate to impose an immediate order of suspension on her registration. This immediate order serves to uphold public trust and public confidence in the medical profession, and to maintain and uphold proper standards of conduct and behaviour.

6. This means that Dr Badici's registration will be suspended from when notification is deemed to have been served. The substantive direction, as already announced, will take effect 28 days from when written notice of this determination has been served upon Dr Badici, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.

7. There is no interim order to revoke.

8. That concludes this case.

**Confirmed**

**Date** 17 November 2021

Mr Jetinder Shergill, Chair

**ANNEX A – 15/11/2021**

**Application on Service and proceeding in absence**

**Service**

108. Dr Badici is neither present nor represented at this hearing.

109. Ms Tighe, Counsel, on behalf of the GMC, provided the Tribunal with documents regarding service of these proceedings on Dr Badici. This included a copy of the GMC letter sent to Dr Badici's registered GMC address, dated 17 September 2021, enclosing the Notice of Allegation and the evidence the GMC intended to rely on. Royal Mail Track and Trace documentation confirmed that the letter was delivered on 18 September 2021. On 22 September 2021, Dr Badici responded to the GMC to confirm that she was content to receive confidential GMC correspondence via her registered email address.

110. The Tribunal was given a copy of the Medical Practitioners Tribunal Service (MPTS) Notice of Hearing letter, dated 8 October 2021, which was emailed and posted to Dr Badici's registered address by Royal Mail Special Delivery on the same day. Royal Mail Track and Trace documentation confirmed that the Notice of Hearing letter was delivered and signed for by someone by the name of 'Adelina' on 9 October 2021.

111. The Tribunal was satisfied that Dr Badici had received and responded to correspondence from the GMC and that the MPTS had sent its correspondence by post and by email to doctor's registered addresses.

112. The Tribunal had regard to the service bundle provided by the GMC, as well as Ms Tighe's submissions. Having considered all of the evidence before it, the Tribunal was satisfied that notice of the hearing had been served in accordance with Rules 15 and 40 of the General Medical Council (Fitness to Practise) Rules 2004 (as amended) ('the Rules') and paragraph 8 of Schedule 4 to the Medical Act 1983 (as amended).

**Proceeding in Dr Badici's absence**

113. The Tribunal went on to consider whether it would be appropriate to proceed with this hearing in Dr Badici's absence pursuant to Rule 31 of the Rules. The Tribunal was conscious that the discretion to proceed in the absence of a doctor should be exercised with appropriate care and caution, balancing the interests of the doctor with the wider public interest.

114. Ms Tighe invited the Tribunal to proceed in Dr Badici's absence. Ms Tighe submitted that Dr Badici is aware of these proceedings and has chosen not to attend or instruct someone to attend on her behalf. She submitted that Dr Badici has voluntarily absented herself. Ms Tighe submitted that Dr Badici had been made aware that the Tribunal can

proceed in her absence and that she had not requested an adjournment. She submitted that there was no evidence that an adjournment would secure the Dr Badici's attendance or be of benefit to these proceedings.

115. The Tribunal was satisfied that Dr Badici was aware of the investigation and hearing date, and had corresponded with the GMC on one previous occasion by email. There was no substantive response or evidence from Dr Badici. The Tribunal was satisfied that Dr Badici had not engaged with the regulatory process and had voluntarily absented herself from these proceedings. A future date was unlikely to secure her attendance. There was a competing issue to the doctor's interest, namely the timely and expeditious consideration of regulatory matters. These outweighed the doctor's interests in deciding to exercise the discretion to proceed. The Tribunal decided that it was in the public interest to proceed with this hearing today.

116. Therefore, in accordance with Rule 31, the Tribunal has determined to proceed in Dr Badici's absence.