

PUBLIC RECORD

Dates: 05/01/2022 and 26/01/2022

Medical Practitioner's name: Dr Alain Gabriel MITITELU
GMC reference number: 6051767
Primary medical qualification: Doctor - Medic 1993 Universitatea de
Medicina si Farmacie "Grigore T Popa"

Type of case Outcome on impairment
Review - Deficient Impaired
professional performance

Summary of outcome
Conditions, 12 months.
Review hearing directed

Tribunal:

Legally Qualified Chair	Ms Sharmistha Michaels
Lay Tribunal Member:	Mr Geoffrey Brighton
Medical Tribunal Member:	Dr Louis Savage

Tribunal Clerks:	Mrs Rachel Horkin 05/01/2022 Ms Angela Carney 26/01/2022
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Attendance and Representation:

Medical Practitioner:	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 in public.

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 Impairment - 05/01/2022

Background

1. Dr Mititelu qualified from Universitatea de Medicina si Farmacie "Grigore T Popa", Romania, in 1993 and worked in epidemiology and public health in 1999. Dr Mititelu came to the United Kingdom in 2007, to pursue a career in psychiatry.
2. Following several short-term posts, Dr Mititelu worked at the Adastra Treatment Centre for drug addiction, from January 2013. From November 2015, Dr Mititelu worked as a Locum Consultant Psychiatrist at Swanswell, a charity treating patients with drug and alcohol dependency. On 20 June 2016, Dr Mititelu began working as a Locum Consultant Psychiatrist in Offender Mental Health in the Norwich prison cluster.
3. Concerns were raised with the GMC in March 2016 by the Care Quality Commission following their inspection of Adastra Treatment Centre. Their concerns related to Dr Mititelu's clinical skills and knowledge, clinical practice, prescribing, patient care and record keeping.
4. In August 2016 an interim order was imposed upon Dr Mititelu's registration, restricting him from practising in addiction medicine unless under supervision. Dr Mititelu was then referred for a GMC performance assessment CPAO ('PA') across March and April 2017. The PA involved assessing Dr Mititelu whilst working as a locum consultant psychiatrist, mostly during his time at Swansell and the Norwich prison cluster.
5. Dr Mititelu's PA showed consistent failures in performance across several domains of Good Medical Practice 2013 (GMP).

The January 2018 Tribunal

6. Following the conclusion of the PA, Dr Mititelu was referred to a Medical Practitioners Tribunal ('MPT') which took place in January 2018 ('the January 2018 Tribunal'). The January 2018 Tribunal considered the findings of the PA to be correct and determined that Dr Mititelu's fitness to practise was impaired by reason of deficient professional performance. It noted the aggravating features of the deficient professional performance including the serious failings in Dr Mititelu's practice that posed a risk to patients but found that they could be remediated with support. The Tribunal therefore determined Dr Mititelu could resume

safe practice, provided that amongst other conditions, he was in a closely supervised post at Foundation or Core Trainee (CT) level. As such, the Tribunal imposed conditions on Dr Mititelu's license to practise for two years.

7. One of the conditions imposed on Dr Mititelu involved designing an approved personal development plan ('PDP') which he was required to provide to the GMC within three months of his conditions becoming effective. However, Dr Mititelu had been unable to secure a job in order to create a PDP, or a responsible officer to approve it. In correspondence with the GMC, Dr Mititelu explained that he had found it difficult to find a job given the conditions currently placed on his license. A GMC Assistant Registrar considered that it was reasonable to allow an early MPT review so that the conditions could be reconsidered. This occurred in August 2018.

The August 2018 Tribunal

8. Dr Mititelu's case was reviewed by a MPT in August 2018 ('the August 2018 Tribunal'). It noted that Dr Mititelu had not been working since January 2018 and had not been able to remediate the areas identified by the January 2018 Tribunal. It also noted that the issue of ongoing impairment was not contested by parties and that the early review hearing was requested by Dr Mititelu to review the conditions on his registration.

9. The August 2018 Tribunal determined that, as it had no new evidence to demonstrate that Dr Mititelu's fitness to practise was no longer impaired, Dr Mititelu's fitness to practise remained impaired by reason of his deficient professional performance on the same basis as the January 2018 Tribunal had found.

10. The August 2018 Tribunal varied the conditions imposed on Dr Mititelu's registration to help him achieve a safe return to practise.

The January 2020 Tribunal

11. Dr Mititelu's case was reviewed by a MPT in January 2020 ('the January 2020 Tribunal'). It acknowledged that Dr Mititelu had made some progress under the varied conditions imposed by the August 2018 Tribunal. However, it found that Dr Mititelu's insight into his deficiencies in his performance were at the early stages of development, as it was clear he had not understood the importance of providing supporting evidence at the hearing in relation to his progress in remediating his deficiencies. The Tribunal was not satisfied that Dr Mititelu had provided sufficient evidence to show his fitness to practise was unimpaired.

12. The Tribunal considered that whilst Dr Mititelu had been engaging with the clinical training process, it appeared that he was not capable of working beyond Core Training 1, despite initially taking a role at Core Training 3. This was a matter of concern for the January 2020 Tribunal. It noted, for example, that Dr Mititelu's supervisors raised an issue around safely prescribing medicine, stating that records had to be re-written in relation to Dr Mititelu's prescribing. The January 2020 Tribunal considered this to be a safeguarding risk. It

also considered that Dr Mititelu's supervisors' report lacked detailed or positive comments in respect of his clinical progress. The January 2020 Tribunal found that this failed to demonstrate remediation on Dr Mititelu's part in relation to the issues raised by his PA. The January 2020 Tribunal concluded that Dr Mititelu had not maintained a good level of professional performance.

13. The January 2020 Tribunal therefore determined that Dr Mititelu's fitness to practise remained impaired by reason of deficient professional performance.

14. The January 2020 Tribunal noted that Dr Mititelu had largely complied with his conditions and was making progress. It considered that were it to impose a period of suspension on Dr Mititelu's practice, he would not be able to continue his progress in remediating his impairment. It therefore determined that continuing to impose conditions on Dr Mititelu's practice would meet the needs of the overarching objective, balancing Dr Mititelu's needs with that of the public and the profession.

15. The January 2020 Tribunal determined that a further period of 12 months conditional registration would be appropriate and permit further time for development, some consistency of supervision and reporting to the GMC, in order to get a reliable observation of his progress.

16. The January 2020 Tribunal imposed conditions on Dr Mititelu's registration and directed that a review hearing should take place shortly before the end of the period of conditional registration.

The January 2021 Tribunal

17. The January 2021 Tribunal considered whether the concerns identified in relation to Dr Mititelu's practice had been remediated, namely in relation to:

- Maintaining professional performance
- Assessment of patients' condition
- Clinical management
- Record keeping
- Relationships with patients
- Working with colleagues

18. In his oral evidence, Dr Mititelu told the January 2021 Tribunal that his appraisal had been due to take place in the early part of 2020 but that it had been delayed due to the Covid-19 pandemic and that it was then due to take place in August, but by this time his contract had finished and he was not working. He had not been able to secure an NHS post since August 2020. The January 2021 Tribunal accepted Dr Mititelu's reasons for not having produced his appraisal documents for this hearing. However, it considered that Dr Mititelu's PDP did not provide objective evidence of progress in addressing the concerns raised.

19. The January 2021 Tribunal considered that the reports from both Dr A, Workplace Reporter and Clinical Supervisor for Dr Mititelu, and Dr B, Educational Supervisor, were lacking detailed objective evidence of improvement or positive comments in respect of his clinical progress, a point which was also raised by the January 2020 Tribunal in relation to earlier reports. The January 2021 Tribunal were of the view this failed to demonstrate remediation on Dr Mititelu's part in relation to the concerns raised. Whilst Dr A said in his report that there had been progress, the January 2021 Tribunal had before it no objective evidence to support this and no detailed discussion of the progress to which reference was made.

20. In his oral evidence, Dr Mititelu told the January 2021 Tribunal that he had undertaken CPD training once a week by attending lectures whilst he was working, but these lectures ceased due to the Covid-19 pandemic. He also told the January 2021 Tribunal that he had undertaken reading. The January 2021 Tribunal had before it no objective evidence in which Dr Mititelu could demonstrate any CPD he had undertaken.

21. Dr Mititelu provided a reflective piece. However, the January 2021 Tribunal considered that it was not obvious how his reflections matched the specific areas of concerns identified by the previous Tribunal. Although there were references to his experience in those areas, there was no structured evidence of how his reflections or his experience addressed the deficiencies.

22. When considering Dr Mititelu's insight, the January 2021 Tribunal bore in mind that his view was these matters have gone on for too long; the conditions imposed on his registration were stopping him from securing employment in a medical setting; that he should be allowed to return to unrestricted practise; and that there were no concerns regarding his practice. Dr Mititelu's accepted that he should be supervised and stated that should be the case for all speciality doctors.

23. The January 2021 Tribunal considered that whilst Dr Mititelu blamed the fact that he could not secure work because of the GMC conditions, there appeared to have been insufficient structured reflection on the deficiencies previously identified. It determined that whilst Dr Mititelu had some insight, it remained limited.

24. Further the January 2021 Tribunal noted that the conditions of practise imposed by the previous reviewing Tribunal for 12 months had in fact only effectively operated for some 7 months due to the conclusion of Dr Mititelu's employment at the Derbyshire Trust.

25. The January 2021 Tribunal therefore determined that Dr Mititelu's fitness to practise remained impaired by reason of his deficient professional performance.

26. The January 2021 Tribunal noted that Dr Mititelu's registration was already subject to conditions. It considered that Dr Mititelu was not working in a medical setting and noted his submissions that the conditions imposed had stopped him from securing employment.

However, the January 2021 Tribunal considered that the imposed conditions did allow for Dr Mititelu to practise safely.

27. The January 2021 Tribunal considered whether suspension might be an appropriate sanction. It bore in mind that it had seen no evidence to suggest that Dr Mititelu could not work safely with restrictions. The Tribunal accepted that Dr Mititelu was engaging with the process and that his insight was developing, albeit slowly. It therefore determined that suspension would be disproportionate as the concerns relating to Dr Mititelu's practice could be managed with the imposition of a further period of conditional registration.

28. The January 2021 Tribunal imposed the following conditions for a period of 12 months:

1 He must personally ensure the GMC is notified of the following information within seven calendar days of the date these conditions become effective:

a The details of his current post, including:

i his job title

ii his job location

iii his responsible officer (or their nominated deputy)

b the contact details of his employer and any contracting body, including his direct line manager

c any organisation where he has practising privileges and/or admitting rights

d any training programmes he is in

e of the contact details of any locum agency or out of hours service he is registered with. 1

2 He must personally ensure the GMC is notified:

a of any post he accepts, before starting it

b that all relevant people have been notified of his conditions, in accordance with condition 10

c if any formal disciplinary proceedings against him are started by his employer and/or contracting body, within seven calendar days of being formally notified of such proceedings

- d if any of his posts, practising privileges, or admitting rights have been suspended or terminated by his employer before the agreed date within seven calendar days of being notified of the termination
- e if he applies for a post outside the UK.
- 3 He must allow the GMC to exchange information with any person involved in monitoring his compliance with his conditions.
- 4 a He must have a workplace reporter appointed by his responsible officer (or their nominated deputy).
- b He must not work until:
- i his responsible officer (or their nominated deputy) has appointed his workplace reporter
- ii he has personally ensured that the GMC has been notified of the name and contact details of his workplace reporter.
- 5 a He must design a Personal Development Plan (PDP), with specific aims to address the deficiencies in the following areas of his practice:
- Maintaining professional performance
 - Assessment of patients' condition
 - Clinical management
 - Record keeping
 - Relationships with patients
 - Working with colleagues
- b His PDP must be approved by his responsible officer (or their nominated deputy).
- c He must give the GMC a copy of his approved PDP within three months of these substantive conditions becoming effective.
- d He must give the GMC a copy of his approved PDP on request.
- e He must meet with his responsible officer (or their nominated deputy), as required, to discuss his achievements against the aims of his PDP.
- 6 a He must have an educational supervisor appointed by his responsible officer (or their nominated deputy)

- b He must not work until:
 - i his responsible officer (or their nominated deputy) has appointed his educational supervisor
 - ii he has personally ensured that the GMC has been notified of the name and contact details of his educational supervisor.

7 He must personally ensure his performance assessment report 23 May 2017 is shared with:

- a his responsible officer (or their nominated deputy)
- b the responsible officer of the following organisations:
 - i his place(s) of work, and any prospective place of work (at the time of application)
 - ii all of his contracting bodies, and any prospective contracting body (prior to entering a contract)
 - iii any organisation where he has, or has applied for, practising privileges and/or admitting rights (at the time of application)
 - iv any locum agency or out of hours service he is registered with
 - v if any organisation listed at i) - iv) does not have a responsible officer, he must notify the person with responsibility for overall clinical governance within that organisation. If he is unable to identify the correct person, he must contact the GMC for advice before working for that organisation.
- d [sic] his immediate line manager and senior clinician (where there is one) at his place of work, at least 24 hours before starting work (for current and new posts, including locum posts)
- e his workplace reporter and educational supervisor and clinical supervisor.

8 He must only work in the NHS as a core trainee (psychiatry) or as a Foundation Year doctor; or a locum in psychiatry at core trainee level for a period of not less than six months.

9 a He must be closely supervised in all of his posts by a clinical

supervisor, as defined in the Glossary for undertakings and conditions. His clinical supervisor must be approved by his responsible officer (or their nominated deputy).

- b He must not work until:
 - i his responsible officer (or their nominated deputy) has appointed his clinical supervisor and approved his supervision arrangements
 - ii he has personally ensured that the GMC has been notified of the name and contact details of his clinical supervisor and his supervision arrangements.

10 He must personally ensure the following persons are notified of the conditions listed at 1 to 9:

- a his responsible officer (or their nominated deputy)
- b the responsible officer of the following organisations:
 - i his place(s) of work, and any prospective place of work (at the time of application)
 - ii all of his contracting bodies and any prospective contracting body (prior to entering a contract)
 - iii any organisation where he has, or has applied for, practising privileges and/or admitting rights (at the time of application)
 - iv any locum agency or out of hours service he is registered with
 - v if any of the organisations listed at (i to iv) does not have a responsible officer, he must notify the person with responsibility for overall clinical governance within that organisation. If he is unable to identify that person, he must contact the GMC for advice before working for that organisation.
- c his immediate line manager and senior clinician (where there is one) at his place of work, at least 24 hours before starting work (for current and new posts, including locum posts).

29. The January 2021 Tribunal directed that a review hearing should convene shortly before the end of the period of conditional registration, unless an early review is sought and that the reviewing Tribunal may be assisted by Dr Mititelu providing the following evidence:

- Copies of his PDP and his annual appraisal documents;
- Any documentary record Dr Mititelu is able to provide of the content of his meeting with his Responsible Officer as set out at condition 5e;
- His CPD diary and his reflections on learning from his training;
- Reports from his Clinical and Educational Supervisors which detail Dr Mititelu's progress and which evaluate that progress against the PDP;
- Evidence that he has complied with his conditions;
- Any other documents or evidence that may assist the Tribunal;
- Any other information that Dr Mititelu considered useful.

Today's Tribunal

30. The Tribunal convened to review Dr Mititelu's case in accordance with Rule 22(l)(f), of the General Medical Council's ('GMC') (Fitness to Practise) Rules 2004, as amended ('the Rules'). The Tribunal has to decide whether Dr Mititelu's fitness to practise remains impaired by reason of his deficient professional performance.

The Evidence

31. The Tribunal received documentary evidence which included, but was not limited to:

- Emails between Dr Mititelu and the GMC dated between 17 February 2021 and 18 October 2021;
- Assistant Registrar early review decision dated 22 March 2021;
- Dr Mititelu's Personal Development Plan (PDP) approved 10 October 2021;
- Various reflections provided by Dr Mititelu undertaken throughout 2021;
- Dr Mititelu's background (summary of the case) dated 7 December 2021.

Submissions

32. Ms Harriet Tighe, Counsel, on behalf of the GMC rehearsed the background of the case and submitted that Dr Mititelu's fitness to practice remains impaired by reason of deficient professional performance. Ms Tighe reminded the Tribunal that there is a persuasive burden on the doctor to demonstrate that he is no longer impaired, and Dr Mititelu has made limited progress since the last review. Ms Tighe submitted that Dr Mititelu's focus remains on the impact of the conditions and his gaining employment and that he has not utilised this period to consider how he could obtain objective evidence to demonstrate that he is safe to return to unrestricted practice. Ms Tighe submitted that although Dr Mititelu's insight is developing, his observations are vague and do not link up to the deficiencies previously identified. Regarding remediation, Ms Tighe submitted that Dr

Mititelu has not provided evidence of CPD or extensive reading for this Tribunal. Regarding the CPD undertaken, Ms Tighe submitted that Dr Mititelu has not shown how this CPD links to the deficiencies identified. Ms Tighe further submitted that Dr Mititelu's PDP is short and provides limited information and does not address individually and in detail the way in which he has addressed each area of practice deficiency. She submitted that Dr Mititelu is yet to fully remediate his deficient professional performance and there remains a risk of repetition. Ms Tighe submitted that a finding that Dr Mititelu's fitness to practice was not impaired, by reason of his deficient performance, would seriously undermine the overarching objective.

33. Dr Mititelu submitted that the same points that have been raised today by the GMC were raised at the last hearing. At that time the PDP had been agreed by his former RO at the Trust. Dr Mititelu agreed with Ms Tighe's submissions that the PDP is short, but he has spoken with his current RO and was assured that the PDP is valid.

34. Dr Mititelu also read from written submissions,

"In August 2016, I was reported to the GMC for investigation due to deficiencies in my clinical activities. In all this time I been able to secure a position as a doctor at Derby..... from January 2019 to August 2020. The contract was originally intended to last six months, but they decided to extend it for another year, which I appreciate and I grateful for the trust and opportunity. Unfortunately, my contract could not be renewed after August 2020, and since then, I have applied for over 60 positions around the country, all of which have been unsuccessful. As you may know, most employees will not offer you a reason for being rejected, but the one I received a response from said, "We can't accommodate your conditions." I understand that it is challenging for any employer to recruit me because of my circumstances, as it is difficult to hire a doctor who is under investigation by the GMC, and I respect that. The last five years have been the most challenging of my life, pushing me to examine my mistakes, accept, acknowledge, and learn from them. ...Despite the presence of relatives and friends, this was an all-consuming, highly upsetting experience for which I am well aware that I am accountable and that I, and no one else, was responsible. All of the ignored job applications XXX as I tried to second-guess my coworkers' critical thoughts. Being a doctor is more than just a profession for me; it's become an integral part of my identity, as it's all I have done my entire life. ... It's challenging to be away from practise for so long and realise you have no control over the situation. This interruption from practise allowed me to concentrate on studying for the MRCP exams. Due to financial constraints, I was unable to pay for it this year, but it is currently my top priority. All of the articles, new college modules, and information about the pandemic's impact on mental health have kept me knowledgeable. I'm also gradually regaining some of my shattered clinical confidence as a result of unforeseen circumstances. First, my XXX and I made a diagnosis based solely on his symptoms. XXX. He recently completed his treatment and is doing well. I

also helped a family friend with her daughter's breakdown, and based on her mother's description, I was able to direct her to the appropriate assistance and treatment from a specialist. I'll keep working hard to limit the possibilities of making mistakes, expand my knowledge, and maintain a positive attitude. This was a difficult lesson for me to learn: being a good doctor or thinking of yourself as one isn't enough if you can fit everything into the picture. Being a good doctor requires more than just giving patients the finest possible care. The people you work with and the facilities you have access to are just as important as the location where you deliver your service. Accepting to work in a private practise as Adastra was the biggest mistake I've ever made; it caused me to be completely wrong and irresponsible, and I apologise profusely. I understand that regaining my colleagues' trust will take time, but it is the only thing to which I will devote my life: to become the doctor I have always wanted to be. Those 5 years of investigation has taught me a lot. How easy it is to make mistakes if you don't consider things carefully. I'm ready to continue my professional development and complete all of the necessary steps so that I may practise with confidence and receive recognition from my colleagues. I am willing to work for any NHS or non-NHS trust with no restrictions or oversight since I am confident that I will never make such unacceptable mistakes. I understand that requesting your trust is a big ask, but I am confident that whatever decision you will make will be the right one."

35. When questioned by the Tribunal, Dr Mititelu stated that he did not know why it has been so difficult for him to obtain work whilst the current order of conditions is imposed on his registration but acknowledged that he did work for a time with conditions. Dr Mititelu advised that he has not applied for any positions for a period of less than 6 months as his current conditions do not allow this. Dr Mititelu also stated that working at a CT level has allowed him to identify his areas of clinical deficiency. Dr Mititelu stated that he sees himself working at a staff grade or associate specialist in psychiatry but acknowledged that he should not work at locum consultant level. Dr Mititelu confirmed that he has not worked in any capacity since the previous hearing.

36. Dr Mititelu confirmed that he did not have training in Psychiatry either in the UK or elsewhere in the world prior to his appointment in 2007 as an associate specialist in addiction psychiatry. Dr Mititelu stated that between January 2019 and August 2020 he did not formally move on from CT 1 to CT 2 by way of a completed annual review of competency progression (ARCP) due to this route not being open to him as he was a locum doctor. Dr Mititelu advised that he has undertaken reading from various medical journals etc but advised that he does not have many certificates to show to the Tribunal to demonstrate his CPD.

The Relevant Legal Principles

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

38. The Tribunal must determine whether Dr Mititelu's fitness to practise is impaired today, taking into account any relevant factors since, such as the risk of recurrence.

The Tribunal's Determination on Impairment

39. In reaching its decision on impairment the Tribunal bore in mind that its primary responsibility is to the statutory overarching objective, which is as follows:

- *To protect, promote, and maintain the health, safety, and well-being of the public;*
- *To promote and maintain public confidence in the medical profession;*
- *To promote and maintain proper professional standards and conduct for members of that profession.*

40. The Tribunal considered whether Dr Mititelu's fitness to practise is currently impaired by reason of his deficient professional performance. In reaching its decision, it has taken into account all of the documentary and oral evidence presented to it.

41. The Tribunal reminded itself that, despite best efforts, Dr Mititelu has not worked since the previous review hearing and provided feedback from several potential employers that the conditions imposed on his registration remain a key factor in his being unable to obtain employment. However, during the period in which he has not been working as a doctor, the Tribunal noted that Dr Mititelu has been unable to maintain his skills by undertaking any medical work. The Tribunal agreed with the submissions of Ms Tighe that Dr Mititelu's focus since the previous hearing has remained on the impact of the conditions on his ability to gain employment and he had not provided evidence to demonstrate to the Tribunal that he is safe to return to unrestricted clinical practice.

42. The Tribunal noted that, in his submissions, Dr Mititelu stated that he has been studying for his MRCPsych exams but he was unable to continue his studies for financial reasons but hoped to return to his studies at some stage in the future.

43. The Tribunal considered the PDP provided but took the view that it was not specifically relevant to the areas of deficiency previously identified.

44. The Tribunal considered Dr Mititelu's CPD and noted that it had received only limited evidence in the form of certificates of attendance at four relevant online courses. The Tribunal took the view that it cannot be satisfied that Dr Mititelu is taking sufficient steps to remediate his deficient performance.

45. The Tribunal has borne in mind the reflective pieces provided but considers that they too are limited and again do not address the areas of deficiency previously identified in Dr Mititelu's clinical practice. The Tribunal received limited objective evidence of any additional insight or remediation beyond that provided to the January 2021 Tribunal. Similarly, this Tribunal came to the same conclusion as the January 2021 Tribunal in that there was no structured evidence of how his reflections, or his experience addressed the deficiencies identified.

46. Taking the above findings into account and reminding itself of the lack of sufficient or cogent evidence before it today, the Tribunal considered that Dr Mititelu's insight remains limited. It further considers that there is insufficient evidence to demonstrate that Dr Mititelu has kept his skill and knowledge up to date.

47. The Tribunal therefore determined that Dr Mititelu's fitness to practise remains impaired by reason of his deficient professional performance.

Determination on Sanction - 26/01/2022

1. Having determined that Dr Mititelu's fitness to practise is impaired by reason of deficient professional performance, the Tribunal now has to decide in accordance with Rule 22(1)(h) of the Rules what action, if any, it should take with regard to Dr Mititelu's registration.

The Evidence

2. The Tribunal has taken into account the background to the case and the evidence received during the earlier stage of the hearing where relevant to reaching a decision.

GMC's Submissions

3. Ms Tighe referred the Tribunal to the Sanctions Guidance (November 2020) (the SG) and reminded it of the over-arching objective.

4. In relation to taking no further action Ms Tighe submitted that there were no exceptional circumstances to justify the Tribunal taking no action. She referred the Tribunal to paragraph 41 of its impairment determination, where it found that: *'Dr Mititelu has been unable to maintain his skills by undertaking any medical work' and 'he had not provided evidence to demonstrate to the Tribunal that he is safe to return to unrestricted clinical practice.'*

5. In relation to conditions, Ms Tighe submitted that Dr Mititelu should remain under conditional registration. She said that conditions are the most appropriate and proportionate sanction in this case. Ms Tighe submitted that there are no grounds to warrant an escalation to a sanction of suspension.

6. Ms Tighe acknowledged that Dr Mititelu has remained engaged with the fitness to practise process but highlighted that there was insufficient evidence that Dr Mititelu has kept his knowledge and skills up to date, which the Tribunal may balance against the fact that he has not been practising for some time.

7. Ms Tighe referred the Tribunal to the paragraphs 81, 82 and 84a of the SG in relation to conditions, which state:

'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.*

82 Conditions are likely to be workable where:

- a the doctor has insight*
- b a period of retraining and/or supervision is likely to be the most appropriate way of addressing any findings*
- c the tribunal is satisfied the doctor will comply with them*
- d the doctor has the potential to respond positively to remediation, or retraining, or to their work being supervised.*

84 Depending on the type of case (eg health, language, performance or misconduct), some or all of the following factors being present (this list is not exhaustive) would indicate that conditions may be appropriate:

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

8. Ms Tighe stated that Dr Mititelu has been subject to conditions for some time and a further period of conditions would allow Dr Mititelu to demonstrate that he has remediated his deficiencies and be able to return to practice.

9. Ms Tighe addressed the Tribunal on current conditions. She submitted that it is necessary for Dr Mititelu to remain under close supervision and restricted to working in NHS posts. She stated that close supervision and working in the NHS are reasonable and necessary in the light of the deficiencies identified by previous Tribunals and to protect patient safety. She submitted that the Tribunal may consider reducing any period of employment from six to three months but only if it determined that such a reduction was sufficient to address patient safety and the deficiencies identified.

Dr Mititelu's Submissions

10. Dr Mititelu told the Tribunal that the conditions have been imposed since 2018 and have helped him to improve his deficiencies. He accepted that he still needs supervision.
11. Dr Mititelu submitted that the current conditions could be varied as he has been unable to gain employment due to some of the conditions that had previously been imposed and that if they are not made more flexible, he would find it impossible in the future to provide evidence which showed the required improvements.
12. Dr Mititelu said that he provided evidence to the previous Tribunal that the deficiency regarding relationships with patients and working with colleagues has been addressed.
13. Dr Mititelu submitted that the length of any employment could be reduced from six months to three months, as most locum agencies only offer three-month positions. He suggested that this change from six months to three months would offer him more possibilities of finding employment.
14. Dr Mititelu submitted that the condition of working solely in the NHS has been an impediment to finding employment and consequently he has been unable to obtain locum positions in the private sector, which could provide the appropriate supervision. He stated that he is convinced he would be able to provide evidence of his remediation if the conditions on his registration were varied.
15. Dr Mititelu stated that he fully accepted that sanction is a decision for the Tribunal.

The Tribunal's Determination

16. The decision as to the appropriate sanction to impose, if any, is a matter for this Tribunal exercising its own judgement. In reaching its decision, the Tribunal has taken account of the SG and Good Medical Practice. It has borne in mind that the purpose of a sanction is not to be punitive, but to protect patients and the wider public interest, although it may have a punitive effect.
17. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Mititelu's interests with the public interest. It has already given a detailed determination on impairment and has taken those matters into account during its deliberations on sanction.
18. The Tribunal has taken account of the submissions from Ms Tighe and Dr Mititelu.

No action

19. In reaching its decision as to the appropriate sanction, if any, to impose in this case, the Tribunal first considered whether to conclude by taking no action.

20. The Tribunal determined that it would not uphold the statutory overarching objective to take no action in this case as there were no exceptional circumstances.

Conditions

21. The Tribunal next considered whether, given the circumstances, it would be sufficient to maintain or vary the conditions currently imposed on Dr Mititelu's registration. It bore in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable.

22. The Tribunal noted that, despite best efforts to secure a paid position, Dr Mititelu has not worked since the previous review hearing and has been unable to maintain his skills by undertaking any medical work. It also determined that Dr Mititelu's focus since appeared to have remained on the impact of the conditions on his ability to gain employment. It found that Dr Mititelu's PDP was not specifically relevant to the areas of deficiency previously identified, it received limited evidence of his CPD and Dr Mititelu did not provide sufficient evidence to demonstrate he is safe to return to unrestricted clinical practice.

23. However, the Tribunal noted that Dr Mititelu has engaged with the fitness to practise process. The Tribunal was satisfied that Dr Mititelu has some insight, as evidenced by his recognition that he requires supervision, but that it is not yet fully developed.

24. The Tribunal noted that in Dr Mititelu's written submissions prepared for this review hearing, dated 7 December 2021, he had stated that he has been unable to address the concerns regarding relationships with patients and working with colleagues as he has not been working.

25. The Tribunal noted that Dr Mititelu's had also stated in these submissions:

'The most straightforward solution will most likely be to have only supervision, with the length of the contact [sic] not being limited to only 6 months, as many work opportunities are only for three or less months. In addition, I would really like the choice to work for both NHC and non-NHC, at least as a last resort, as my primary goal is to obtain a full-time contract in NHC [sic] from which to complete all of the necessary steps to become a fully qualified specialist.'

26. The Tribunal noted that Dr Mititelu has been subject to conditional registration since 2017. The Tribunal was mindful of paragraph 84a of the SG and considered that Dr Mititelu has made limited progress since conditional registration was imposed. However, it accepted Dr Mititelu's submission that the period of employment of six-months has curtailed his opportunity to remediate the deficiencies identified.

27. The Tribunal noted the GMC’s submission that close supervision remains necessary given the deficiencies found. It also noted that Dr Mititelu accepted that he requires supervision. The Tribunal was satisfied that the current level of supervision is appropriate and should be maintained.

28. The Tribunal accepted Dr Mititelu’s position that he had provided evidence that his job seeking had proved unsuccessful due to the current condition that the minimum period of employment was six months. Dr Mititelu submitted that the likelihood of obtaining employment would be improved if the minimum period of employment was reduced to three months. The Tribunal noted the GMC’s submission that a reduction to the period of employment was acceptable, as long as there was no risk to patient safety. The Tribunal considered that the period of employment could be reduced to three months without compromising patient safety which would be sufficiently addressed by the condition of close supervision.

29. The Tribunal noted the GMC’s submission that Dr Mititelu should only be allowed to work within the NHS in the light of the deficiencies identified by previous Tribunals and to ensure patient safety. The Tribunal was satisfied that the condition requiring close supervision applies to any post to which he may apply and therefore this restriction was not necessary.

30. The Tribunal noted that the 2018 Tribunal considered that the revocation of the previous condition 11, which prohibited Dr Mititelu from working as a locum or in a fixed term contract. This would assist Dr Mititelu in seeking employment as a locum and fixed term contract and thus gather the evidence required. However, this Tribunal is mindful that in spite of a period of employment at the Derby Teaching Hospital NHS Foundation Trust, previous Tribunals have been critical of the level of progress made by Dr Mititelu and this Tribunal took the same view.

31. The Tribunal determined that conditional registration remains necessary and appropriate to allow Dr Mititelu to practise safely whilst also protecting the public. In light of the above, the Tribunal determined to vary the conditions previously imposed on Dr Mititelu’s registration and to impose further conditions for a period of 12 months. The Tribunal considered that 12 months would be a sufficient period of time to enable Dr Mititelu to demonstrate that he has addressed the deficiencies in his practise.

32. The conditions are as follows and will be published:

1 He must personally ensure the GMC is notified of the following information within seven calendar days of the date these conditions become effective:

a The details of his current post, including:

i his job title

- ii his job location
 - iii his responsible officer (or their nominated deputy)
 - b the contact details of his employer and any contracting body, including his direct line manager
 - c any organisation where he has practising privileges and/or admitting rights
 - d any training programmes he is in
 - e of the contact details of any locum agency or out of hours service he is registered with. 1
- 2 He must personally ensure the GMC is notified:
 - a of any post he accepts, before starting it
 - b that all relevant people have been notified of his conditions, in accordance with condition 10
 - c if any formal disciplinary proceedings against him are started by his employer and/or contracting body, within seven calendar days of being formally notified of such proceedings
 - d if any of his posts, practising privileges, or admitting rights have been suspended or terminated by his employer before the agreed date within seven calendar days of being notified of the termination
 - e if he applies for a post outside the UK.
- 3 He must allow the GMC to exchange information with any person involved in monitoring his compliance with his conditions.
- 4
 - a He must have a workplace reporter appointed by his responsible officer (or their nominated deputy).
 - b He must not work until:
 - i his responsible officer (or their nominated deputy) has appointed his workplace reporter

- ii he has personally ensured that the GMC has been notified of the name and contact details of his workplace reporter.
- 5
 - a He must design a Personal Development Plan (PDP), with specific aims to address the deficiencies in the following areas of his practice:
 - Maintaining professional performance
 - Assessment of patients' condition
 - Clinical management
 - Record keeping
 - Relationships with patients
 - Working with colleagues
 - b His PDP must be approved by his responsible officer (or their nominated deputy).
 - c He must give the GMC a copy of his approved PDP within three months of these substantive conditions becoming effective.
 - d He must give the GMC a copy of his approved PDP on request.
 - e He must meet with his responsible officer (or their nominated deputy), as required, to discuss his achievements against the aims of his PDP.
- 6
 - a He must have an educational supervisor appointed by his responsible officer (or their nominated deputy)
 - b He must not work until:
 - i his responsible officer (or their nominated deputy) has appointed his educational supervisor
 - ii he has personally ensured that the GMC has been notified of the name and contact details of his educational supervisor.
- 7 He must personally ensure his performance assessment report 23 May 2017 is shared with:
 - a his responsible officer (or their nominated deputy)
 - b the responsible officer of the following organisations:
 - i his place(s) of work, and any prospective place of work

(at the time of application)

- ii all of his contracting bodies, and any prospective contracting body (prior to entering a contract)
- iii any organisation where he has, or has applied for, practising privileges and/or admitting rights (at the time of application)
- iv any locum agency or out of hours service he is registered with
- v if any organisation listed at i) - iv) does not have a responsible officer, he must notify the person with responsibility for overall clinical governance within that organisation. If he is unable to identify the correct person, he must contact the GMC for advice before working for that organisation.

d his immediate line manager and senior clinician (where there is one) at his place of work, at least 24 hours before starting work (for current and new posts, including locum posts)

e his workplace reporter and educational supervisor and clinical supervisor.

8 He must only work at foundation or core trainee doctor level, for a period of not less than three months. This would include any locum or fixed term contracts.

9 a He must be closely supervised in all of his posts by a clinical supervisor, as defined in the Glossary for undertakings and conditions. His clinical supervisor must be approved by his responsible officer (or their nominated deputy).

b He must not work until:

i his responsible officer (or their nominated deputy) has appointed his clinical supervisor and approved his supervision arrangements

ii he has personally ensured that the GMC has been notified of the name and contact details of his clinical supervisor and his supervision arrangements.

10 He must personally ensure the following persons are notified of the conditions listed at 1 to 9:

- a his responsible officer (or their nominated deputy)
- b the responsible officer of the following organisations:
 - i his place(s) of work, and any prospective place of work (at the time of application)
 - ii all of his contracting bodies and any prospective contracting body (prior to entering a contract)
 - iii any organisation where he has, or has applied for, practising privileges and/or admitting rights (at the time of application)
 - iv any locum agency or out of hours service he is registered with
 - v if any of the organisations listed at (i to iv) does not have a responsible officer, he must notify the person with responsibility for overall clinical governance within that organisation. If he is unable to identify that person, he must contact the GMC for advice before working for that organisation.
- c his immediate line manager and senior clinician (where there is one) at his place of work, at least 24 hours before starting work (for current and new posts, including locum posts).

Suspension

33. Given the circumstances of this case and the GMC's submission on suspension, the Tribunal considered that the concerns relating to Dr Mititelu's deficient professional performance do not warrant consideration of suspension at this time.

Review Hearing Directed

34. The Tribunal determined to direct a review of Dr Mititelu's case. A review hearing will convene shortly before the end of the period of conditional registration, unless an early review is sought. It considered that a reviewing Tribunal would expect to see significant progress, were it to be satisfied that conditions remain appropriate, proportionate and workable. The Tribunal wishes to clarify that at the review hearing the responsibility will be on Dr Mititelu to demonstrate that he is fit to return to safe unrestricted practice. It is likely to assist the reviewing Tribunal if Dr Mititelu provides the following evidence:

- A statement of reflection which specifically focuses and addresses the concerns raised by his performance Assessment, namely,
 - Maintaining professional performance

- Assessment of patients' condition
 - Clinical management
 - Record keeping
 - Relationships with patients
 - Working with colleagues
-
- Copies of his PDP and his annual appraisal documents;
 - Any documentary record Dr Mititelu is able to provide of the content of his meeting of his Responsible Officer as set out at condition 5e;
 - His CPD diary and proof of CPD activities;
 - Reports from his Clinical and Educational Supervisors which detail Dr Mititelu's progress and which evaluate that progress against the PDP;
 - Evidence that he has complied with his conditions;
 - Any other documents or evidence that may assist the Tribunal.

35. Dr Mititelu will also be able to provide any other information that he considers will assist.

Appeal Period

36. The MPTS will send Dr Mititelu a letter informing him of his right of appeal and when the direction and the new sanction will come into effect. The current order of conditions will remain in place during the appeal period.

37. Case Concluded.