

PUBLIC RECORD

Dates: 05/05/2023 - 09/05/2023

Medical Practitioner's name: Dr Aleksejs CVETKOVŠ

GMC reference number: 7077337

Primary medical qualification: MD 1996 Latvijas Medicinas Akademija

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Consideration of facts not reached	Consideration of impairment not reached
New - Conviction / Caution	Consideration of facts not reached	Consideration of impairment not reached
XXX	XXX	XXX

Summary of outcome

Adjourned to a new tribunal. XXX

Tribunal:

Legally Qualified Chair	Mr David Raff
Lay Tribunal Member:	Mrs Carol Douglas
Medical Tribunal Member:	Mr Ghulam Mufti
Tribunal Clerk:	Mr Larry Millea

Attendance and Representation:

Medical Practitioner:	Not present and not represented
GMC Representative:	Ms Georgina Goring, 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 Service & Proceeding in Absence - 09/05/2023

1. Ms Georgina Goring, Counsel, represented the GMC. Dr Cvetkovs was neither present nor represented at the hearing.

Service

2. Ms Goring invited the Tribunal to find that, in accordance with Rules 15 and 40 of the GMC (Fitness to Practise) Rules 2004 ('the Rules'), service had properly been effected of the Notice of Allegation ('NOA') and the factors upon which it is based, as referred to in Rule 15(1)(a)(i), and of the Notice of Hearing ('NOH') as referred to in Rule 15(1)(b).

3. The Tribunal considered the proof of service bundles and addendum which included the following documentary evidence:

- Screenshot of Dr Cvetkovs' current registered address and email address on the GMC system;
- Email to Dr Cvetkovs from the GMC attaching the Rule 34(9) letter, including copy of letter, dated 27 March 2023;
- Delivery receipt of Rule 34(9) letter, dated 27 March 2023;
- Rule 34(9) letter sent via post due to no acknowledgement via email, dated 31 March 2023;
- NOH letter carded at post office, dated 4 April 2023;
- Email reminder from GMC to Dr Cvetkovs, dated 20 April 2023;
- Further email reminder from GMC to Dr Cvetkovs, dated 2 May 2023;
- Delivery receipt of email reminder, dated 2 May 2023;

- Last email correspondence received from Dr Cvetkovs re joinder application, dated 23 September 2022;
- MPTS NOH Letter sent via email, dated 29 March 2023
- Reminder email from MPTS to Dr Cvetkovs re NOH letter, dated 30 March 2023;
- Proof of Delivery of NOH Letter sent by post on 31 March 2023, dated 4 April 2023;
- Minutes from FLTC (First Listing telephone Call), dated 31 August 2022;
- Minutes from MPTS Pre-hearing meeting ('PHM'), dated 26 January 2023;
- Email from MPTS to GMC and Dr Cvetkovs, confirming change to day 1 venue from St James Building ("SJB") to virtual, dated 19 April 2023, and;
- Telephone note of call from GMC to Special Counsel appointed to Dr Cvetkovs, dated 5 May 2023.

4. Ms Goring submitted that both the NOA and the NOH had been properly served upon Dr Cvetkovs, both to his registered email address and his registered correspondence address. She further submitted that the evidence provided to the Tribunal demonstrates that hard copy letters for the NOA and Rule 34(9) letter sent by the GMC and the NOH letter sent by the MPTS were posted to him.

5. Ms Goring drew the Tribunal's attention to the PHM notes, which refer to the allegations, making it clear that Dr Cvetkovs had received a copy of the allegations at a prior stage. He had also provided his written Rule 7 response to the initial draft allegations. These notes also make reference to the date of the hearing, which Dr Cvetkovs was therefore aware of at the time.

6. Ms Goring submitted that although subsequent to the NOH being sent to Dr Cvetkovs there was a change to the venue for the first day of the hearing, from in-person at SJB to virtual via Microsoft Teams, the Tribunal should determine that the NOH had been properly served. She noted that the change of day one venue was notified to Dr Cvetkovs via email at his registered email address albeit, no read receipt was received. However, she submitted that this aspect has fallen away since the Tribunal adjourned on day one of the hearing, reconvening on day two at SJB as per the original notice. Further, Ms Goring submitted, enquiries were made with the MPTS and based on those enquiries there was no evidence that Dr Cvetkovs had turned up at SJB on day one in any event.

7. Ms Goring submitted that since this application was being made on day two of the hearing that was now being held in person as envisaged in the original NOH, and as

substantive issues had not been considered on day one, Dr Cvetkovs had not been prejudiced.

8. Ms Goring submitted that the Special Counsel appointed to cross-examine a witness on Dr Cvetkovs' behalf has also confirmed that she has had no communication from Dr Cvetkovs with regard to the case/hearing.

9. Ms Goring submitted that difficulties can arise when a doctor is not engaging with the process as they will not acknowledge when documents and notices are received, but that the GMC has evidenced that notice was served and it had also evidenced the extent of the efforts made to ensure he was aware of the Allegation and hearing details.

10. Ms Goring submitted that if the Tribunal determines that service had been properly effected, it is clear that Dr Cvetkovs is aware of the hearing and has voluntarily absented himself. She submitted that there has been no request or indication of a request for an adjournment from Dr Cvetkovs, and no evidence to indicate that an adjournment would make his attendance more likely. She also noted that three witnesses, including two professional witnesses, were scheduled to appear. She submitted that all reasonable efforts have been made to serve Dr Cvetkovs with notice of the hearing in accordance with the Rules and that it would be in the public interest to proceed with the case in Dr Cvetkovs' absence.

Tribunal's Decision

Service

11. In reaching its determination, the Tribunal bore in mind the relevant provisions of Rules 15 and 40 of the Rules, and of paragraph 8 of Schedule 4 to the Medical Act 1983, as amended ('the Act'), in particular:

Rule 15.

(1) After an allegation or non-compliance matter has been referred to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal under rule 17 or 17ZA (as the case may be)—

(a) the Registrar shall give notice to the practitioner of—

(i) the allegation against the practitioner and the facts upon which it is based;

...

- (b) the MPTS shall serve a notice of hearing on the practitioner—*
 - (i) specifying the date, time and venue of the hearing,*

...

Rule 40.

(1) Any notice of hearing required to be served upon the practitioner under these Rules shall be served in accordance with paragraph 8 of Schedule 4 to the Act.

(2) Subject to paragraph (1), any notice or document required to be served upon the practitioner under these Rules may be served—

- (a) by ordinary post; or*
- (b) by electronic mail to an electronic mail address that the practitioner has notified to the Registrar as an address for communications.*

...

(4) The service of any notice or document under these Rules may be proved by—

- (a) a confirmation of posting issued by or on behalf of the Post Office, or other postal operator or delivery service;*
- (b) a confirmation of receipt of the notice or document sent by electronic mail;*
or
- (c) a signed statement from any person serving the notice or document confirming that the notice or document was delivered to, sent to or left at—*
 - (i) the practitioner’s proper address;*
 - (ii) the practising address or electronic mail address of the practitioner’s solicitor; or*
 - (iii) the business address or electronic mail address of the practitioner’s trade union or defence organisation.*

Paragraph 8 of Schedule 4 to the Act

...

(2) Any such notice may be so served -

(a) by delivering it to him;

(b) by leaving it at his proper address;

(c) by sending it by a registered post service;

(d) by sending it by a postal service which provides for the delivery of the notice by post to be recorded; or

(e) by sending it to an email address which the person provides for the purpose of fitness to practise proceedings.

(3) For the purposes of this paragraph and of section 7 of the Interpretation Act 1978 in its application to this paragraph, a person's proper address shall be—

(a) his address in the register; or

(b) if the conditions in sub-paragraph (4) below are satisfied, his last known address.

....

(6) For the purposes of this paragraph, service of a notice sent by email is effected only if there is an electronic receipt showing that the email has been opened (or if the recipient acknowledges receipt in some other way).

12. The Tribunal accepted the evidence that the NOA and original NOH had been effectively served on Dr Cvetkovs. In particular, it noted that in the absence of an electronic receipt showing that the email of 29 March 2023 attaching the NOH had been opened, the MPTS had (rightly) sent a further copy by post, delivery of which had been recorded and acknowledged. The Tribunal was therefore satisfied that the service requirements of sub-paragraph 8(2) of Schedule 4 to the Act had been complied with at that stage.

13. The Tribunal then addressed the issues arising from the change (subsequent to the service of the NOH) of the first day of the hearing from an in-person hearing at SJB to an online hearing. It noted that an email to that effect had been sent from the MPTS to Dr Cvetkovs on 19 April 2023. However, there was no evidence of an electronic receipt showing the email had been opened, nor any other acknowledgement of receipt by Dr Cvetkovs. Unlike the original NOH, no subsequent follow-up to the email of 19 April 2023 had been sent by post.

14. The Tribunal was satisfied that it must be the case that, in order to serve an effective new or revised notice of hearing, changing the details of a key element (in this case the venue) the same service requirements as applied to the original NOH must apply. Otherwise, the protections afforded to the practitioner by the statutory notice requirements could effectively be circumvented. Accordingly, applying the provisions of paragraph 8(6) of Schedule 4 to the Act to the 19 April 2023 email, service of that email was not effective.

15. Thus, the Tribunal concluded that;

- I. Service of the original NOH was effective at the time. However, it contained details of a key factor (the venue) which was subsequently changed;
- II. In order for the NOH to have remained effective, notice of the change would have had to have been served on Dr Cvetkovs in accordance with the Act;
- III. There had been no effective service of a new or revised notice incorporating the changed venue details.

Proceeding in Absence

16. Given the Tribunal's determination that service of the Notice of Hearing had not been properly effected on Dr Cvetkovs, it did not go on to consider whether to proceed in his absence pursuant to Rule 31 of the Rules.