

## PUBLIC RECORD

The GMC successfully appealed the outcome of Dr Donadio’s Medical Practitioners Tribunal hearing, which concluded in February 2020. The High Court ordered that the sanction of 12 months’ suspension be quashed and the case be remitted to the same Medical Practitioners Tribunal for re-consideration of sanction only.

The judgment can be found [here](#).

The remitted Tribunal’s decision on sanction is set out below.

Please also see the record of determinations from Dr Donadio’s original hearing which concluded in February 2021 and can be found [here](#).

Dates: 25/10/2021 - 26/10/2021

Medical Practitioner’s name: Dr Anthony DONADIO

GMC reference number: 4653770

Primary medical qualification: State Exam 1992 Universita di Napoli

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	Mrs Nessa Sharkett
Medical Tribunal Member:	Dr Alan Shepherd, Dr Anjali Ahluwalia
Tribunal Clerk:	Mr Matt O’Reilly

**Attendance and Representation:**

Medical Practitioner:	Present and represented
Medical Practitioner’s Representative:	Mr Nicolas Levisieur, Counsel, instructed by Stephenson’s
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 Sanction - 26/10/2021**

**Background**

1. Dr Donadio’s case was first considered by a Medical Practitioner’s Tribunal in February 2020 (‘the 2020 Tribunal’).
2. The 2020 Tribunal determined that the facts it had found proven amounted to Dr Donadio’s fitness to practise being impaired by reason of his misconduct, which included dishonesty. The 2020 Tribunal determined that Dr Donadio’s registration should be suspended for a period of 12 months with a review.
3. The General Medical Counsel appealed the decision to suspend Dr Donadio, under section 40A of the Medical Act 1983 (1983 Act), on the basis that this sanction was insufficient to protect the public. The appeal was heard at the High Court on 23 February 2021.
4. On 10 March 2021 Mrs Justice Collins Rice ordered that the 12 months suspension imposed by the Medical Practitioner’s Tribunal was quashed and that the case be remitted back to the same Medical Practitioner’s Tribunal for consideration of the appropriate sanction.

**The Outcome of Applications Made during the Sanction Stage**

5. The Tribunal agreed, in accordance with Rule 41 of the Rules, that where this hearing relates to Dr Donadio's family, this hearing should be heard in private.

### The Tribunal's task

6. In accordance with the directions of the High Court, the Tribunal has convened to consider the matter of the appropriate sanction in this case. The Tribunal reminded itself that its role is to consider only whether, on the basis of the facts found proved by the 2020 Tribunal, and of its finding that Dr Donadio's fitness to practise being impaired by reason of misconduct; to consider what, if any, sanction should be imposed upon his registration.

### The Evidence

- The February 2020 Medical Practitioner's Tribunal Facts determination;
- The February 2020 Medical Practitioner's Tribunal impairment determination;
- The High Court Order, 10 March 2021;
- The High Court Approved Judgement, 10 March 2021:
- Reflective Statement of Dr Donadio, dated 22 October 2021
- Dr Donadio's list of personal readings and reflective notes, undated
- Dr Donadio's NATO Medal for Service with NATO on Operations in Relation to the Former Yugoslavia, undated

### Oral Evidence

7. In summary, Dr Donadio referred the Tribunal to his witness statement and his reflective statement.

8. In oral evidence Dr Donadio told the Tribunal that he has now engaged with this process, he now has legal representation and had participated in the appeal hearing before the High Court by listening in by telephone. He has also been preparing for this hearing.

9. Dr Donadio told the Tribunal that he fully accepted his misconduct and was mortified by the same. He fully accepted that he had undermined public trust in the profession and wished to apologise through the Tribunal to the public, the profession and Kettering Hospital.

10. Dr Donadio accepted that he was aware of the IOT hearing of 9 July 2018 but explained that he was unaware of the outcome. He explained that he had experienced XXX which had impacted XXX and Dr Donadio's ability to focus properly on the ongoing professional issues he was involved in. He thought that XXX may have deleted the email notifying him of the outcome of IOT hearing of July 2018 without his knowledge XXX. He did however accept that it had been his responsibility to find out the outcome of the IOT XXX did not justify his actions and misconduct.

11. In oral evidence he volunteered that he had been dishonest in his email correspondence to the GMC and the MPTS between the 4 and 6 July 2018 when he led the GMC to believe he was in the Ukraine when he was in fact in the UK for work. He explained that although he was unaware of the outcome of the IOT hearing of July 2018, he accepted how the Tribunal had reached its decision on making a finding of dishonesty in relation to his failures to comply with the conditions imposed by the IOT and his breach of the same.

12. Dr Donadio accepted that he did not have regard to the regulations or proceedings of the IOT in the UK whilst he was in the Ukraine. He said that he wrongly assumed the locum agency he worked for would check the IOT outcome for him, he accepted that it was his responsibility and that he put patients at risk.

13. Dr Donadio said that he had undertaken reading on ethics and different types of dishonesty, and also undertaken reading to maintain his clinical knowledge whilst he has been unable to work. He said that he is currently in a remote part of the Ukraine and is unable to undertake any courses to remediate his actions. He said he has also written reflections on the CPD he has done and on his conduct which he has provided to the Tribunal.

#### **Submissions on behalf of the GMC**

14. Ms Georgina Goring, Counsel, submitted that Dr Donadio has taken a broad-brush approach to the findings of dishonesty and that his acceptance of his dishonest conduct is limited. She submitted that whilst he accepts dishonest conduct in respect of his email communications with the GMC/ MPTS between 4-6 July 2018, his acceptance goes no further than this. In respect of the finding of dishonesty in relation to the allegation before the Tribunal, Dr Donadio maintained his position that he was not aware of the outcome of the 9 July 2018 IOT hearing.

15. Ms Goring referred the Tribunal to the evidence of remediation submitted by Dr Donadio and submitted that this goes no further than reading about dishonesty. There is no evidence of this most serious type of dishonesty being remediated.

16. Ms Goring referred the Tribunal to the Sanctions Guidance (November 2020) ('SG') and the overarching objective when considering sanction in this case. She submitted that a warning is only appropriate in exceptional circumstances and this is not appropriate in this case. When considering undertaking or conditions, Ms Goring submitted that these are simply not appropriate given the misconduct. She submitted that the Tribunal has no reassurance that Dr Donadio would comply with conditions given his history in this case.

17. Ms Going referred the Tribunal to the relevant paragraphs of the SG in relation to suspension. She submitted that suspension was neither appropriate nor proportionate for the misconduct in this case. She submitted that there was not full acknowledgment of fault, that there is no evidence the behaviour will not be repeated and that this does not satisfy the overarching objective. She submitted that this only leaves the sanction of erasure.

18. Ms Goring referred the Tribunal to the relevant paragraphs of the SG in relation to erasure. She submitted that the SG states that ‘the Tribunal may erase a doctor from the medical register in any case’. She referred the Tribunal to paragraph 108 of the SG, which states:

*“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 designed to protect members of the public and maintain high standards within the profession that is incompatible with continued registration as a doctor.”*

19. Ms Goring submitted that paragraph 108 sets out exactly the situation in this case, as the 2020 Tribunal found that Dr Donadio was aware of the IOT conditions and continued to practice disregarding his conditions and placed patients at risk of harm.

20. Ms Goring submitted that when considering erasure, the following factors as set out at paragraph 109 of the SG were engaged:

*“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*
- d Abuse of position/trust*
- h Dishonesty, especially where persistent and/or covered up...*
- j Persistent lack of insight into the seriousness of their actions or the consequences.”*

21. Ms Goring submitted that an aggravating factor which should be considered by the Tribunal was the fact of Dr Donadio’s fitness to practise history, from June 2017 relating to his performance. She told the Tribunal that whilst that case was closed in November 2018, the undertakings agreed at that time remained in place.

22. Ms Goring submitted that in all the circumstances, erasure is the only appropriate and proportionate sanction in this case.

### **Submissions on behalf of Dr Donadio**

23. Mr Nicolas Levisseur, Counsel, reminded the Tribunal of the background to these proceedings which was how it is that these proceedings began. He submitted that Dr Donadio had been referred to the GMC in June 2017 because of concerns about his performance. A performance assessment carried out in April 2018 identified deficiencies in his performance and the need for him to work under direct supervision. An Interim Orders

Tribunal of the 9 July 2018 made an order for conditions on Dr Donadio's registration and practice. It is the breach of these conditions and the events surrounding the same that brought Dr Donadio before the hearing of the MPTS of 19-26 February 2020. Dr Donadio did not attend that hearing but documents he placed before it were considered by the Tribunal. Mr Levisaur submitted that in the circumstances, it could not properly be said that Dr Donadio had given evidence or a full explanation of his conduct at that time. He reminded the Tribunal that the dishonest conduct of Dr Donadio in working as a Locum Consultant over the period of eight days in July and August 2018. He accepted that Dr Donadio's behaviour was entirely and appropriately deemed to be serious misconduct and that the 2020 Tribunal made a finding of impairment.

24. Mr Levisaur submitted that, as a matter of law, it is not correct for the GMC to submit that erasure is the only sanction available to the Tribunal, as the High Court properly observed. He submitted that in giving its original determination, there was no evidence at all of remediation or insight to the dishonesty and the sanction of suspension was imposed. He submitted the High Court would not and could not have remitted the matter to this Tribunal if erasure was the only possible outcome.

25. Mr Levisaur referred the Tribunal to its findings at the 2020 hearing. He submitted that the findings were that, at the time of the misconduct in 2018, there had been no further repetition for more than a year. He also reminded the Tribunal that the 2020 Tribunal had determined that the type of dishonesty the Tribunal had found was remediable and at that time there was no evidence of insight or remediation.

26. Mr Levisaur submitted that there are different degrees of dishonesty and types of dishonesty and the 2020 Tribunal determined that this type of dishonesty was remediable. He submitted that this is different today because Dr Donadio has now demonstrated a considerable understanding of what has happened. He submitted that it is not easy to appear before one's own regulator and Dr Donadio has done so both at the High Court and in these proceedings, which has enabled part of that understanding.

27. Mr Levisaur reminded the Tribunal that Dr Donadio has been candid before this Tribunal to the extent that he has been at pains to tell the Tribunal the truth about his whereabouts when the IOT hearing of July 2018. He submitted that Dr Donadio has shown a great amount of insight and is much less likely to repeat his conduct in the future.

28. Mr Levisaur reminded the Tribunal that Dr Donadio wishes to continue to practice in the UK. He submitted that moving to the UK will relieve the external pressures he currently experiences in the Ukraine. He asked the Tribunal to have regard for the positive changes in Dr Donadio's circumstances and the long period of suspension that has occurred as a result of the High Court appeal. He submitted that an appropriate sanction would be one of suspension and in the circumstances should be for a relatively short period.

## The Tribunal's Approach

29. 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 or discipline doctors, even though they may have a punitive effect. In reaching its decision, the Tribunal has taken the Guidance into account and borne in mind the overarching objective. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Donadio's interests with the public interest.

### **The Tribunal's Determination on Sanction**

#### Aggravating and mitigating factors

30. Before considering what action, if any, to take in respect of Dr Donadio's registration, the Tribunal first considered the aggravating and mitigating factors present.

31. In considering both aggravating and mitigating circumstances, the Tribunal had regard to its findings at the 2020 Tribunal and the additional written and oral evidence presented to the Tribunal at this hearing.

32. The Tribunal considered that in addition to the dishonest conduct found at the first stage of these proceedings, which involved Dr Donadio in working unsupervised at consultant level was in breach of the conditions imposed by the July 2018 IOT put patients at risk. A further aggravating factor was that Dr Donadio disclosed and admitted further acts of dishonesty in his communications between the 4 and 6 July 2018 with the GMC / MPTS during his evidence at this stage in proceedings. Whilst the Tribunal acknowledged and gave credit for his candour, it could not ignore the voluntary disclosure of further dishonesty. This increases the seriousness of the dishonesty and impacts on remediation.

33. The Tribunal also had regard to Dr Donadio having made no effort whatsoever to establish the outcome of the IOT hearing of July 2018, notwithstanding that he knew it was taking place and that a previous performance assessment of his practice had identified deficiencies.

34. In mitigation, the Tribunal has had regard to the XXX, his acceptance of the findings of the 2020 Tribunal, his disclosure of dishonesty in relation to acts not forming parts of the Allegation and the apology he has offered to all who may have been affected by his conduct. The Tribunal notes his engagement with the proceedings and has had regard to the evidence of remediation and insight provided by Dr Donadio.

35. The Tribunal had regard to the submissions of Ms Goring that Dr Donadio's previous fitness to practise history should be considered as an aggravating factor. The Tribunal consider that this history relates to performance and not conduct and do not therefore think an aggravating factor.

### **No action**

36. In coming to its decision as to the appropriate sanction, the Tribunal first considered whether to conclude the case by taking no action. The Tribunal reminded itself that there should be exceptional circumstances to justify taking no action where a finding of impairment has been made.

37. The Tribunal found that there are no exceptional circumstances that justify taking no action against Dr Donadio's registration. The Tribunal determined that, in view of the seriousness of the facts found proved, and its finding of impairment, it would be neither sufficient, proportionate nor in the public interest, to conclude this case by taking no action.

### Conditions

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

39. The Tribunal determined that a period of conditional registration would not adequately reflect the serious nature of Dr Donadio's misconduct. It noted that Dr Donadio breached the interim conditions in 2018 and it could not be satisfied that he would comply with further conditional registration.

40. The Tribunal considered that, in a case involving this type of dishonesty, conditions could not be formulated to adequately protect the public interest and maintain public confidence in the medical profession. Further, the Tribunal concluded that conditions would not send the appropriate message to Dr Donadio, the profession and the public with regard to the high standards of conduct and behaviour expected of registered doctors at all times. The Tribunal has, therefore, determined that it would not be sufficient to direct the imposition of conditions on Dr Donadio's registration.

### Suspension

41. The Tribunal then went on to consider whether suspending Dr Donadio's registration would be appropriate and proportionate. It had regard to the SG which sets out factors which may be present indicating suspension to be the appropriate sanction. The Tribunal considered the following aggravating factors to be present in this case:

#### *“Seriousness of findings*

- *The extent to which the doctor departed from the principles of Good medical practice...*
- *The extent to which the doctor's actions risked patient safety or public confidence*

#### *Extent to which the doctor has complied*

- *The extent to which the doctor failed to comply with restrictions/requirements*
- *Whether the doctor showed a deliberate or reckless disregard for restrictions/requirements*
- *Whether the doctor failed to be open and honest with GMC and local investigations”*

42. The Tribunal then went on to consider whether suspending Dr Donadio’s registration would be appropriate and proportionate. In doing so, the Tribunal took into account paragraphs 91, 92, 93 and 97e, f and g of the SG, 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 unbecoming 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 (ie 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).*

93 *Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions...”*

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

...

- e No evidence that demonstrates remediation is unlikely to be successful, eg 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”*

43. Dr Donadio’s dishonesty was a serious departure from the principles of Good Medical Practice and the high professional standards expected of members of the medical profession. The Tribunal noted that although Dr Donadio’s misconduct did not relate to his clinical competence, it did relate to his conduct and behaviour within the context of his professional role. The Tribunal considered that dishonesty whilst performing a professional function is particularly serious. The Tribunal determined that Dr Donadio’s misconduct undermined the trust and confidence in the medical profession as a whole.

44. Having considered paragraph 97 of the SG and whether suspension was the appropriate sanction, the Tribunal also considered paragraph 109 relating to erasure. Paragraph 109 lists a number of non-exhaustive factors and the Tribunal considered that a, b, d, h, l and j are engaged in this case. The Tribunal noted that a finding of fundamental incompatibility with continued registration, as stated in paragraph 92 of the SG, amounts to a determination that there are no circumstances in which the doctor should be permitted to practise medicine.

45. In reaching its decision the Tribunal noted that not every case of dishonesty must result in erasure. The Tribunal considered the extent of the act of dishonesty in this case, it found that Dr Donadio’s misconduct had been deliberate, repeated on more than one occasion, and took place over a short period of time. The Tribunal had regard to the fact that Dr Donadio ceased his dishonest conduct before it had been discovered. However, the act itself was a deliberate disregard of an order from his regulator which was imposed to protect the public. In undertaking a locum position as a consultant in breach of the conditions imposed, Dr Donadio led those who placed their trust in him to believe he was eligible to work at that level. Whilst it is true as submitted by Mr Levisseur that there has been no finding in respect of Dr Donadio’s clinical capabilities, the IOT had nonetheless ordered these conditions on his practice for the protection of the public. His breach of them was of a most serious nature.

46. The Tribunal also had regard to the fact that at the Facts stage of these proceedings it had been of the understanding that there had been no other episodes of dishonesty. It has now learnt at this stage of proceedings this is not the case. Whilst not forming part of the Allegation, the Tribunal would not be acting in the public interest if it were to ignore this fact in finding that this is a seriously aggravating factor to be considered.

47. The Tribunal considered the attempts Dr Donadio has made to remediate and develop insight into what he now accepts is his misconduct. The Tribunal find those attempts extremely limited even in the circumstances described by Dr Donadio and the personal responsibilities he has. Given the seriousness of his dishonest conduct and the limited evidence before it, the Tribunal is not satisfied that the doctor will be able to develop full insight and, the risk of repetition should he be allowed to return to practice, is high.

## Erasure

48. The Tribunal considered erasure. It had regard to paragraphs 108, 109 a, b, d, h, I and J, and 120 of the SG which it considered to be engaged in this case. They 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 designed to protect members of the public and maintain high standards within the profession that is incompatible with continued registration as a doctor.*

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

*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*

*...*

*d Abuse of position/trust (see Good medical practice, paragraph 65: ‘You must make sure that your conduct justifies your patients’ trust in you and the public’s trust in the profession’).*

*...*

*h Dishonesty, especially where persistent and/or covered up*

*I Putting their own interests before those of their patients*

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

### ***“Considering dishonesty***

*120 Good medical practice states that registered doctors must be honest and trustworthy, and must make sure that their conduct justifies their patients’ trust in them and the public’s trust in the profession.”*

49. The Tribunal reminds itself that not all acts of dishonesty will be incompatible with continued registration. In failing to comply with the conditions of the IOT 2018 Dr Donadio showed a blatant disregard for the safeguards designed to protect members of the public and maintain high standards within the profession. This represented a serious departure

from the principles set out in Good Medical Practice. By continuing to work in breach of the conditions, Dr Donadio abused his position of trust and his conduct did not justify patient trust in him and the public's trust in the profession. Whilst there may have been some mitigating circumstances relating to his personal life, he put his own interest before those of his patients. He acted dishonestly, and by his own admission, in circumstances beyond those for which he appears before this Tribunal which is indicative of persistent misconduct.

50. Given the seriousness of these acts, compounded by the additional acts of dishonesty, the Tribunal determined the appropriate sanction is erasure. It determined that this sanction is appropriate in order to meet the overarching objective, namely; to protect and promote the health, safety and wellbeing of the public; promote and maintain public confidence in the medical profession and to promote and maintain proper professional standards and conduct for the members of that profession.

#### **Determination on Immediate Order - 26/10/2021**

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

#### **Submissions on behalf of the GMC**

52. Ms Goring submitted that taking into account the Tribunal's determination on sanction and paragraph 172 of the SG, which she submitted was fully engaged, and immediate order was necessary.

#### **Submissions on behalf of Dr Donadio**

53. Mr Levisur submitted that since the doctor is not working and there is no prospect of him working in the next 30 days, an immediate order is not contested.

#### **The Tribunal's Determination**

54. The Tribunal considered the relevant paragraphs of the Sanctions Guidance and exercised its own independent judgement. In particular, it took account of paragraphs 172, 173 and 178 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.*

178 *Having considered the matter, the decision whether to impose an immediate order will be at the discretion of the tribunal based on the facts of each case. The tribunal should consider the seriousness of the matter that led to the substantive direction being made and whether it is appropriate for the doctor to continue in unrestricted practice before the substantive order takes effect."*

55. The Tribunal considered that given the serious nature of Dr Donadio's misconduct, if he were allowed to practice unrestricted it would pose a potential risk to patient safety and undermine public confidence in the profession.

56. The Tribunal therefore determined that it would be appropriate to impose an immediate order of suspension in this case. It determined that it would be inappropriate to allow him to practice unrestricted given its findings.

57. This means that Dr Donadio's registration will be suspended from when notice of this determination is deemed to have been served upon him. The substantive direction of erasure, as already announced, will take effect 28 days from when written notice of this determination has been served upon Dr Donadio, 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.

58. That concludes this case.