

Dates: 30/03/2020

Medical Practitioner's name: Dr Antonio Luis MADEIRA CARVALHO

GMC reference number: 6161675

Primary medical qualification: MD 1975 Faculdade de Medicina Luanda

Type of case **Outcome on non-compliance**
Review - Non-compliance with a performance assessment Non-compliance found

Summary of outcome

Suspension for indefinite period

Tribunal:

Legally Qualified Chair	Mr Andrew Cledes
Lay Tribunal Member:	Mrs Jillian Alderwick
Medical Tribunal Member:	Dr Caroline Colaco
Tribunal Clerk:	Miss Evelyn Kramer

Attendance and Representation:

Medical Practitioner:	Not present and not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Mr Kevin Slack, Counsel, instructed by GMC Legal

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.

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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 consideration of non-compliance – 30/03/2020

1. The Tribunal accepted the GMC's submissions, made pursuant to Rules 20 and 40 of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'), that notice of this hearing had properly been served on Dr Madeira Carvalho, and granted its application, made pursuant to Rule 31 of the Rules, that this hearing should proceed in his absence. The Tribunal's full decision on these applications is included at Annex A.

Background

2. This is the second review of Dr Madeira Carvalho's case following a Medical Practitioners Tribunal (MPT) Non-compliance hearing which concluded in March 2018 ('the 2018 Tribunal').

3. When concerns were first raised with the GMC about Dr Madeira Carvalho's professional performance, he was employed by Bupa UK as an Occupational Health physician.

4. On 8 February 2017, Bupa UK notified the GMC that Dr Madeira Carvalho had given inappropriate advice to an employer regarding the fitness of a train driver, namely that he was fit to undertake driving duties despite him taking mirtazapine which can have a sedating effect ('Index Event'). As a result of this incident a look back exercise was conducted by Bupa into other railway medicine cases, which identified a number of concerns, including:

- cases seen by Dr Madeira Carvalho for a railway company where he did not advise a review when it was clinically indicated;
- passing drivers as fit to drive trains without having obtained specialist reports;
- failing to perform an ECG appropriately; and
- failing to notify a patient/their GP of their/the patient's blood pressure result.

5. Bupa also raised concerns that despite Dr Madeira Carvalho having received appropriate retraining, further errors had been identified, some with the potential for serious adverse consequences, such as:

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- a number of reports requiring amendment due to inappropriate or poorly worded advice;
- Bupa received eight complaints including that Dr Madeira Carvalho made patients feel uncomfortable, talked about himself and his religion, and that he had produced poor quality reports;
- Administration noting that he had failed to record calls made to employees and employers.

6. In respect of the Index Event the GMC instructed an independent expert who concluded, in a report dated 14 August 2017, that the standard of care given by Dr Madeira Carvalho in relation to this patient was seriously below the standard expected. On 26 September 2017 Dr Madeira Carvalho was directed under Rule 7(3) and Schedule 1 of the Rules to complete an assessment of his professional performance. Dr Madeira Carvalho failed to comply with the request and his case was referred to the MPTS.

7. The 2018 Tribunal determined that, given the serious index complaint and further performance concerns which had been raised by Bupa, the request for Dr Madeira Carvalho to undergo the performance assessment was reasonable and proportionate. That Tribunal also had regard to the numerous communications sent by the GMC to Dr Madeira Carvalho and his failure to respond or engage with the GMC. In the circumstances the 2018 Tribunal was satisfied that Dr Madeira Carvalho's failure to comply was not unavoidable or otherwise excusable. Furthermore, that Tribunal determined that Dr Madeira Carvalho had failed to comply with a reasonable direction to undergo an assessment of his performance and that there had been non-compliance. The 2018 Tribunal determined to suspend Dr Madeira Carvalho's registration for 12 months which it considered an appropriate period for the performance assessment process to be completed, should Dr Madeira Carvalho decide to engage.

The 2019 Non-compliance Review hearing ('the 2019 Review Tribunal')

8. The 2019 Review Tribunal considered in March 2019 whether Dr Madeira Carvalho had failed to comply with the GMC's direction for a performance assessment. At that hearing, the onus was on Dr Madeira Carvalho to demonstrate compliance. The Tribunal received no evidence to suggest Dr Madeira Carvalho had complied with the GMC direction that he undergo a performance assessment, nor had he engaged with the GMC since the previous hearing. The Tribunal concluded that Dr Madeira Carvalho had failed to respond and engage with his professional regulator. Further, it determined that there were no exceptional circumstances or evidence to conclude that Dr Madeira Carvalho had good reason for his non-compliance. Therefore, the Tribunal determined that Dr Madeira Carvalho had continued to fail to comply with the GMC's direction that he undergo a performance assessment.

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9. The 2019 Review Tribunal went on to consider what sanction should be imposed. It determined to suspend Dr Madeira Carvalho's registration for a further period of 12 months to allow him a further opportunity to engage with the GMC process and to comply with its direction that he undergo a performance assessment. The 2019 Review Tribunal directed a review of Dr Madeira Carvalho's case prior to the expiry of the period of suspension.

Today's hearing

10. This Tribunal has convened to review Dr Madeira Carvalho's case. It has considered, under Rule 22A of the Rules, whether there has been a continuing failure to comply with an assessment under Schedule 1 of the Rules, which relates to Performance Assessments.

Evidence

11. In reaching its decision, the Tribunal has considered all the documentary evidence presented to it which includes, but is not limited to:

- The determination from the MPTS Non-compliance Review hearing, dated 28 March 2019;
- Emails sent by the GMC to Dr Madeira Carvalho requesting he make contact to arrange the performance assessment, dated 29 July 2019 and 24 December 2019;
- Email and letter sent by the MPTS to Dr Madeira Carvalho confirming the initial hearing date of 31 March 2020, dated 6 August 2019;
- Email and letter sent by the MPTS to Dr Madeira Carvalho confirming the rearranged hearing date of 30 March 2020, dated 30 January 2020.

Submissions

12. On behalf of the GMC, Mr Slack took the Tribunal through the background of the case explaining the circumstances that led to the GMC directing a performance assessment in September 2017. Mr Slack referred the Tribunal to the 2019 Review Tribunal's determination on non-compliance and sanction. He submitted that there is clear evidence of continued non-compliance and a complete lack of engagement by Dr Madeira Carvalho. He submitted that there is no evidence of any exceptional circumstances or good reason for Dr Madeira Carvalho's failure to comply. Accordingly, he submitted that the Tribunal should find that there has been continued non-compliance in this case.

Tribunal's Approach

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13. Whilst the Tribunal bore in mind the submissions made, the decision regarding non-compliance is one for the Tribunal to reach, exercising its own judgement.

14. The Tribunal had regard to the 'Non-compliance Guidance for Medical Practitioner Tribunals' ('the Guidance'), which came into effect on 2 September 2019. In particular, it considered whether there had been continued non-compliance with the GMC direction to undergo a performance assessment.

15. The Tribunal reminded itself that the onus is on Dr Madeira Carvalho to demonstrate compliance at a review hearing.

Tribunal's Decision

16. The Tribunal had regard to all of the evidence before it, the submissions made by Mr Slack and the Guidance.

17. The 2019 Review Tribunal suggested that a future Tribunal may be assisted by Dr Madeira Carvalho providing further information and evidence of compliance. No such information or evidence had been provided by Dr Madeira Carvalho to assist this Tribunal.

18. The Tribunal took into account Dr Madeira Carvalho's complete lack of engagement with the GMC and noted that he has yet to undergo a performance assessment despite first being directed to do so in September 2017. It noted that there was no evidence from Dr Madeira Carvalho to explain why he had not complied with the GMC's direction. The Tribunal concluded that there was clear and protracted non-compliance in this case and that there was no good reason for Dr Madeira Carvalho's failure to comply.

19. In all the circumstances, the Tribunal found that there was continued non-compliance in this case.

Determination on sanction – 30/03/2020

1. Having determined that there is non-compliance by reason of Dr Madeira Carvalho's continued failure to comply with the GMC directed performance assessment in accordance with Schedule 1 to the Rules; the Tribunal must now consider what sanction, if any, to impose.

Submissions

2. On behalf of the GMC, Mr Slack took the Tribunal through the relevant paragraphs of the Guidance and made submissions on the appropriate and proportionate sanction in this case. Mr Slack submitted that given Dr Madeira Carvalho's continued non-engagement and his failure to undergo a performance

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assessment, to revoke the current order of suspension on Dr Madeira Carvalho's registration would not meet the overarching objective. He submitted that to vary the current order and impose conditions on Dr Madeira Carvalho's registration would not be appropriate given the continued non-compliance identified by the Tribunal today.

3. Mr Slack submitted that it was appropriate in this case to extend the current order of suspension. Mr Slack reminded the Tribunal that it was within its power, following Dr Madeira Carvalho's two consecutive 12 month suspensions, to indefinitely suspend his registration at this stage. Mr Slack submitted that considering his continued non-compliance, there is no basis for concluding that Dr Madeira Carvalho is likely to imminently engage with the regulatory process. In such circumstances, Mr Slack submitted that it would be appropriate for Dr Madeira Carvalho's registration to be suspended indefinitely.

The Tribunal's Approach

4. The Tribunal had regard to the options available to it when considering what sanction, if any to impose. It noted that it could decide to extend, vary, or revoke the order currently imposed on Dr Madeira Carvalho's registration. Alternatively, as submitted by Mr Slack, the Tribunal was also able to consider whether to indefinitely suspend Dr Madeira Carvalho's registration with the GMC as two consecutive 12 months periods of suspension have already been imposed. The decision as to the appropriate order, if any, to impose in this case is a matter for the Tribunal exercising its own judgement.

5. Throughout its deliberations, the Tribunal considered the overarching objective:

- a. protecting, promoting and maintaining the health, safety and well-being of the public,
- b. maintaining public confidence in the profession
- c. promoting and maintaining proper professional standards and conduct for the members of the profession.

6. 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. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Madeira Carvalho's interests with the public interest. In reaching its decision, the Tribunal has taken the Guidance into account and borne in mind the overarching objective.

No Action

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7. The Tribunal first considered whether to conclude Dr Madeira Carvalho's case and take no further action. The Tribunal considered that allowing Dr Madeira Carvalho, following the expiry of his current period of suspension, to return to unrestricted practice would not uphold the overarching objective to protect the public. It concluded that taking no action would not maintain public confidence in the profession given the particular circumstances of this case and Dr Madeira Carvalho's persistent non-compliance. Therefore, the Tribunal concluded that taking no action in this case would be not be appropriate or proportionate.

Conditions

8. The Tribunal next considered whether it would be appropriate to vary the current order of suspension and impose conditions on Dr Madeira Carvalho's registration. The Tribunal noted that any conditions imposed must be appropriate, proportionate, workable and measurable.

9. The Tribunal had regard to the evidence of Dr Madeira Carvalho's continued non-engagement with the GMC. The Tribunal noted that there was no evidence before it to suggest that Dr Madeira Carvalho would comply with any conditions it imposed. Further, given his lack of engagement, it could not be satisfied that Dr Madeira Carvalho has kept his clinical knowledge and skills up to date. The Tribunal was not satisfied that a period of conditional registration was the appropriate or proportionate sanction in this case.

Suspension

10. Having determined that the imposition of conditions would not be appropriate, the Tribunal next considered whether to extend the current suspension of Dr Madeira Carvalho's registration.

11. The Tribunal had regard to the history of this case. It noted that Dr Madeira Carvalho's non-engagement with the GMC and his non-compliance with its direction that he undergo a performance assessment has been ongoing since 2017. The Tribunal reminded itself that there was no evidence before it about what Dr Madeira Carvalho has been doing since Bupa UK first raised concerns about his professional performance in February 2017. Further the Tribunal noted that despite being suspended for a total of 24 months, this has not prompted Dr Madeira Carvalho to re-engage with his professional regulator and seek to demonstrate his competence by undergoing the performance assessment as directed. The Tribunal concluded that without any evidence to the contrary, considering the initial serious concerns about his professional performance, his unwillingness to engage with his regulator and his continuing non-compliance, it was appropriate to conclude that Dr Madeira Carvalho currently poses a genuine risk to patient safety.

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12. The Tribunal was of the view that given Dr Madeira Carvalho's persistent failure to engage with his professional regulator, the public interest would not be satisfied if a further period of suspension was imposed. There was no evidence to suggest that another period of suspension would lead Dr Madeira Carvalho to comply and undergo the performance assessment directed by the GMC. Taking all of this into account, the Tribunal concluded that to impose a further period of suspension on Dr Madeira Carvalho's registration would serve no purpose nor would it uphold the overarching objective.

Indefinite Suspension

13. Having concluded that another period of suspension would not sufficiently protect the public, the Tribunal went on to consider whether to indefinitely suspend Dr Madeira Carvalho's registration. The Tribunal noted that the two previous periods of suspension appear to have had no impact on Dr Madeira Carvalho's willingness to engage with the GMC and comply with its direction. The Tribunal was of the view that Dr Madeira Carvalho has not engaged at all with the GMC despite his suspensions and the Tribunal could not be satisfied that the public would be sufficiently protected should Dr Madeira Carvalho's registration not be indefinitely suspended.

14. In all the circumstances, the Tribunal determined that it was necessary, for the protection of patients, and in the wider public interest, to suspend Dr Madeira Carvalho's registration indefinitely.

15. If Dr Madeira Carvalho does wish to re-engage with the GMC, he will be eligible to apply for a review hearing after 24 months, if he wishes to do so.

16. The effect of this direction is that, unless Dr Madeira Carvalho exercises his right of appeal, this decision will take effect 28 days from when written notice of this determination is deemed to have been served upon him. The current order of suspension will remain in place during the appeal period. A note explaining his right of appeal will be provided to him.

17. That concludes this hearing.

Confirmed

Date 30 March 2020

Mr Andrew Cledes, Chair

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Annex A – 30/03/2020

Service of Notice of the Hearing

1. Dr Madeira Carvalho is neither present nor represented at this hearing.
2. Mr Slack, Counsel, on behalf of the GMC, provided the Tribunal with documents regarding service of these proceedings on Dr Madeira Carvalho and both the residential address and email address he had provided to the GMC. The Tribunal received a copy of correspondence sent by the GMC which included a letter confirming the hearing date, the 'Details of Non-compliance' and a proposed hearing bundle, dated 27 February 2020. This letter was followed up with an email sent to Dr Madeira Carvalho's registered email address on 28 February 2020 asking him to confirm receipt. Mr Slack confirmed that the GMC received no reply to this email and the letter was returned to sender.
3. The Tribunal was provided with a copy of the Medical Practitioners Tribunal Service (MPTS) Notice of Hearing letter, dated 27 February 2020 which was posted to Dr Madeira Carvalho's registered address by Royal Mail Special Delivery. This Notice of Hearing letter was also sent to Dr Madeira Carvalho's email address on the same day. The Tribunal had sight of the returned envelope that enclosed the Notice of Hearing, dated 4 March 2020 which included the comment 'GONE AWAY TWO YEARS AGO'. The Tribunal also had regard to the email sent to Dr Madeira Carvalho's registered email address on 27 March 2020 notifying him that his hearing would be going ahead virtually using Skype for Business and providing instructions on how to access the virtual hearing.
4. The Tribunal had regard to the service bundle provided by the GMC, as well as Mr Slack's submissions. Having considered all of the evidence before it, particularly noting the numerous attempts the GMC and MPTS has made to contact Dr Madeira Carvalho at his registered residential and email addresses, the Tribunal was satisfied that notice of the hearing had been served in accordance with Rules 20 and 40 of the General Medical Council (Fitness to Practise) Rules 2004 (as amended) ('the Rules') and paragraph 8 of Schedule 4 to the Medical Act 1983 (as amended).

Proceeding in Dr Madeira Carvalho's absence

5. The Tribunal went on to consider whether it would be appropriate to proceed with this hearing in Dr Madeira Carvalho's absence pursuant to Rule 31 of the Rules. The Tribunal was conscious that the discretion to proceed in the absence of a doctor should be exercised with appropriate care and caution, balancing the interests of the doctor with the wider public interest.
6. Mr Slack invited the Tribunal to proceed in Dr Madeira Carvalho's absence. Mr Slack submitted that Dr Madeira Carvalho has not engaged with the GMC's

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investigation and that it is his responsibility to keep his contact details with the GMC up to date. Mr Slack referred the Tribunal to the case of *General Medical Council v Adeogba; General Medical Council v Visvardis* [2016] EWCA Civ 162 which emphasised the public interest in proceeding with matters expeditiously. Mr Slack took the Tribunal through the case of *R v Jones* [2003] 1 AC 1, submitting that Dr Madeira Carvalho had voluntarily and consistently failed to engage with the GMC's direction and these proceedings. Further, he submitted that there is no evidence to suggest an adjournment would prompt Dr Madeira Carvalho to attend these proceedings, either with or without legal representation. Mr Slack submitted that there was a pressing need to review the current non-compliance order and that it was in public interest to proceed today.

7. The Tribunal was satisfied that Dr Madeira Carvalho was aware of the GMC's investigation process as this was the second review of his non-compliance and he has been sent regular correspondence about these proceedings as they have progressed. The Tribunal was satisfied that Dr Madeira Carvalho had voluntarily absented himself from these proceedings. Further, it concluded that there was no evidence before it that an adjournment would serve any useful purpose. Considering the public interest in these matters, and Dr Madeira Carvalho's complete non-engagement, the Tribunal accepted that it was in the public interest to proceed with this hearing today and review the current non-compliance order.

8. Therefore, in accordance with Rule 31, the Tribunal has determined to proceed in Dr Madeira Carvalho's absence.

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