

PUBLIC RECORD

Date: 08/09/2022

Medical Practitioner's name: Dr Azhari AHMED
GMC reference number: 5186569
Primary medical qualification: MB BS 1986 University of Khartoum
Type of case: Outcome on non-compliance
New - Non-compliance with a performance assessment: Non-compliance found

Summary of outcome

Suspension for 12 months
Review hearing directed
Immediate order imposed

Tribunal:

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| Legally Qualified Chair | Mr Ali Sarwar |
| Lay Tribunal Member: | Ms Christina Baron |
| Medical Tribunal Member: | Dr Susan Ellerby |

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| Tribunal Clerk: | Mr Mark Hibbert |
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Attendance and Representation:

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| Medical Practitioner: | Not present and not represented |
| GMC Representative: | Mr Jacob Dyer, 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 consideration of non-compliance 08/09/2022

1. This determination will be handed down in private. However, as the case concerns matters relating to Dr Ahmed's performance, a redacted version will be published after the hearing, with confidential matters removed.

Outcome of Applications made during this stage

2. This is a new non-compliance matter to be considered by the Tribunal. Dr Ahmed is not present or legally represented at this hearing.
3. The Tribunal determined that service of the notice of this hearing had been effected in accordance with Rule 40 of the General Medical Council (GMC) (Fitness to Practise) Rules 2004 as amended ('the Rules'). The Tribunal determined to proceed with the hearing in Dr Ahmed's absence in accordance with Rule 31 of the Rules. The Tribunal's full decision on this matter is included at Annex A.

Background

4. Dr Ahmed is a Locum Consultant Physician who has been registered with various locum agencies. Between September and November 2021, the GMC received information from multiple different sources, raising concerns about Dr Ahmed's clinical performance.
5. On 14 September 2021, the GMC was contacted by Wirral University Teaching Hospital NHS Foundation Trust ('WUTH'), informing them that they had terminated Dr Ahmed's

locum services at Arrowe Park Hospital and raising a number of concerns about his clinical performance.

6. On 8 November 2021, the GMC received information from an anonymous whistleblower, stating that they had concerns about XXX. They stated that Dr Ahmed had been dismissed from a number of locum posts and had demonstrated medical incompetence on a number of occasions.
7. XXX
8. On 10 November 2021, the GMC received information from ACI Training and Consulting, the delegated administrators for Locum People, stating that they had received several complaints about Dr Ahmed from the following employers:
 - ▶ The Rotherham Trust; raising concerns about Dr Ahmed's clinical performance;
 - ▶ Aneurin Bevan Health Board; raising concerns about Dr Ahmed's time keeping and not being present in the hospital;
 - ▶ Retinue; raising concerns about Dr Ahmed's clinical performance and communication with patients.
9. On 21 January 2022, the GMC made the decision to direct a performance assessment in accordance with Rule 7 (3) and Schedule 1 of the Rules.
10. On 27 January 2022, Dr Ahmed was sent a letter by the GMC, via post, informing him of its decision. It requested that Dr Ahmed submit the Assessment Portfolio by 23 February 2022.
11. A reminder letter was sent, by email, on 1 March 2022. On 2 March, Dr Ahmed responded to request all documents be sent to an alternative 'gmail' email address and via post. The GMC responded the same day, attaching the letter and confirming that it had been sent in the post. It requested that Dr Ahmed submit the Assessment Portfolio by 15 March 2022.
12. A further email from Dr Ahmed was received on 4 March 2022, requesting that all documents be resent by email as he was currently living in Sudan. He confirmed the 'gmail' address he had previously given on 2 March 2022. A response was sent by the

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GMC on 8 March 2022, attaching all documents, and reminding Dr Ahmed of the 15 March 2022 deadline and the need to keep his contact details up to date.

13. A further reminder was sent by the GMC, by email, on 21 March 2022. It requested that Dr Ahmed submit the Assessment Portfolio by 4 April 2022.
14. A further reminder email was sent by the GMC on 13 April.
15. On 14 April 2022, two attempts were made to contact Dr Ahmed by telephone on two different numbers provided by him. Neither call was answered.
16. On 16 May 2022, a final reminder email was sent. A final deadline of 23 May 2022 was given to provide the Assessment Portfolio.
17. On 9 June 2022, having received no response from Dr Ahmed, the GMC took the decision to refer the matter to a non-compliance Tribunal. The GMC alleges that there was no good reason for Dr Ahmed's failure to comply with its direction of a performance assessment.

The Evidence

18. In reaching a decision on the matter of non-compliance, the tribunal has given careful consideration to all of the evidence adduced in this case.

Documentary Evidence

19. The Tribunal received a bundle of documentary evidence which included but was not limited to:
 - Transfer of information from HCL Doctors to Global Medics;
 - Emails from WUTH to the GMC;
 - Emails from ACI Training and Consulting to the GMC;
 - GMC decision to direct a performance assessment;
 - Letter enclosing the GMC performance assessment decision, and follow up email reminders, sent by the GMC to Dr Ahmed;
 - Emails from Dr Ahmed to the GMC;
 - GMC decision to refer to a non-compliance hearing;

- Letter enclosing the GMC non-compliance referral decision, and follow up email reminders, sent by the GMC to Dr Ahmed;
- Letter sent by MPTS Case Management to Dr Ahmed, providing details of this hearing;
- IOT Determinations dated 5 January and 29 June 2022.

Submissions

20. On behalf of the GMC, Mr Dyer submitted that it was clear from the documentary evidence, that Dr Ahmed was aware of the direction made for him to undertake a performance assessment.
21. Mr Dyer submitted that Dr Ahmed had demonstrated an unwillingness to engage. He stated that the information requested by the GMC was fundamental to the performance assessment process and that Dr Ahmed had not provided any reasons for his failure to provide it.

The Tribunals' approach

22. The Tribunal is aware that the burden of proof rests on the GMC and that it is for the GMC to prove non-compliance. The Tribunal is also aware that the standard of proof is that applicable to civil proceedings, which is the balance of probabilities.
23. The Tribunal first considered whether Dr Ahmed had failed to comply with the direction to undergo a performance assessment. It had regard to the MPTS Non-compliance guidance ('NCG'). In particular it noted that paragraph A18 (d) states:

"A18 A doctor may have failed to comply with a GMC direction or request to provide information where they have:

d failed to respond to a direction to undergo an assessment or request to provide information."

24. The Tribunal was satisfied that the GMC had properly notified Dr Ahmed of the requirement to undergo an assessment of his performance. Further the Tribunal noted his email to the GMC on 4th March 2022, in which he stated, *"...I have not received the performance assessment letter..."*, which showed that he was aware this matter was being pursued.

25. The Tribunal was of the view that the GMC had taken all reasonable steps to encourage Dr Ahmed to comply, as evidenced by the many reminders sent by email, to different addresses as requested by Dr Ahmed, and the attempts to contact him by telephone.
26. The Tribunal was satisfied that Dr Ahmed had failed to comply with the direction.
27. The Tribunal then considered whether there was a good reason for Dr Ahmed's failure to comply.
28. The Tribunal noted that it had not received any evidence from Dr Ahmed to provide it with an explanation as to why he had not supplied the information requested. It concluded that Dr Ahmed had disengaged from the process.
29. In all the circumstances, the tribunal determined that non-compliance had been found.

Determination on sanction 08/09/2022

30. Having determined that there was non-compliance by reason of Dr Ahmed's failure to undertake a performance assessment in accordance with Schedule 1 of the Rules; the Tribunal went on to consider whether to give a direction for conditional registration or suspension ('a non-compliance order').

Submissions

31. On behalf of the GMC, Mr Dyer submitted that the appropriate sanction in this case, is to suspend Dr Ahmed from the register for a period of 12 months.
32. Mr Dyer submitted that given the nature of Dr Ahmed's failure to comply, imposing conditions would not assist as the Tribunal has no evidence of what he is currently doing and no evidence to suggest that he would comply.
33. Mr Dyer invited the Tribunal to consider the Overarching Objective and submitted that all three limbs were engaged in this case.

34. Mr Dyer submitted that the seriousness of the concerns raised and the potential risk to public safety were such that the Tribunal ought to consider suspending Dr Ahmed's registration.

The Tribunal's Decision

35. The Tribunal is aware that the decision as to the appropriate sanction, if any, to impose on Dr Ahmed's registration is a matter for this Tribunal exercising its independent judgment. In reaching its decision, the tribunal has taken account of the non-compliance guidance ('the NCG').
36. Throughout its deliberations, the Tribunal considered its overarching objective, which includes:
- protecting, promoting and maintaining the health, safety and well-being of the public,
 - maintaining public confidence in the profession
 - promoting and maintaining proper professional standards and conduct for the members of the profession.

The Tribunal has also borne in mind that the purpose of a sanction is not to punish or discipline doctors, although they may have a punitive effect.

Conditions

37. The Tribunal considered whether it would be appropriate to impose a period of conditions on Dr Ahmed's registration. It noted that any conditions must be appropriate, proportionate, workable and measurable.
38. The Tribunal noted Dr Ahmed's lack of recent engagement with the GMC and failure to provide the information requested, without apparent good reason. It was of the view, therefore, that there was no evidence to suggest that Dr Ahmed would comply with any conditions imposed on his registration. Further, in the light of the multiple serious and wide-ranging concerns, and in the absence of a performance assessment, conditions could not be formulated to manage the risks in this case.

39. The Tribunal concluded that, given the seriousness of the concerns raised and the non-compliance with the order for a performance assessment, conditions would not be sufficient to satisfy the three limbs of the overarching objective.

Suspension

40. Having determined that the imposition of conditions would not be sufficient to address the seriousness of the non-compliance or the risk to patients, the Tribunal determined to suspend Dr Ahmed's registration.
41. The Tribunal noted that the NCG suggests that a period of six months would normally be enough time for a performance assessment to be completed. However, it noted the background of lack of recent engagement, and that Dr Ahmed may not be currently in the country. The Tribunal therefore considered an additional six months appropriate to enable the performance assessment to be organised and completed. Therefore, to satisfy the limbs of the overarching objective, the Tribunal determined that the maximum period of 12 months' suspension should be imposed.
42. The Tribunal directed a review hearing to be held before the end of the period of suspension. Dr Ahmed should understand that the onus is on him to demonstrate compliance and that if at any time he considers that he has fully complied with the direction to undergo a performance assessment, he can make a request for the GMC to consider arranging an early review of his non-compliance order.
43. The effect of this direction is that, unless Dr Ahmed exercise 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. A note explaining Dr Ahmed's right of appeal will be provided to him.

Determination on immediate order 08/09/2022

44. Having determined that Dr Ahmed's registration be suspended, the Tribunal has now considered, in accordance with Section 38 of the Medical Act 1983 as amended, whether to impose an immediate order of suspension on his registration.

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45. Mr Dyer, Counsel, on behalf of the GMC submitted that an immediate order was necessary on all three limbs of the overarching objective. He invited the Tribunal to revoke the current interim order and impose an immediate order of suspension.
46. The Tribunal reminded itself that it had already determined that a sanction of suspension was necessary to satisfy the overarching objective. It noted the seriousness of the concerns raised about Dr Ahmed's performance and the risk posed to the public if Dr Ahmed was allowed to continue to practise without an assessment of his performance having taken place.
47. The Tribunal therefore determined that it was necessary for the protection of members of the public, to maintain public confidence in the profession, and to uphold proper standards and conduct, to order that Dr Ahmed's registration be suspended immediately.
48. This means that Dr Ahmed's registration will be suspended from the date on which notification of this decision is deemed to have been served upon him. The substantive direction, as already announced, will take effect 28 days from that date, 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.
49. The interim order will be revoked when the immediate order takes effect.
50. That concludes this hearing.

Annex A - Service and proceeding in absence

Service of Notice of the Hearing

51. Dr Ahmed is neither present nor represented today.
52. Mr Dyer, counsel, on behalf of the GMC drew the Tribunal's attention to the documents regarding service of notification of these proceedings on Dr Ahmed. He confirmed that all documents had been served by post to Dr Ahmed's registered address in accordance with Rule 40 of the GMC Fitness to Practise Rules 2004 (as amended) ('the Rules'). This included a copy of the GMC Notice of Non-Compliance, dated 3 August 2022 and a Royal Mail proof of delivery for the letter dated 4 August 2022, signed for by 'Rahman', one of Dr Ahmed's middle names. The Tribunal also had sight of the MPTS Notice of Hearing letter to Dr Ahmed, sent by email on 3 and 4 August 2022, and by post on 5 August 2022. A Royal Mail proof of delivery for this letter confirms it was delivered on 6 August 2022, signed for by 'Ahmed'.
53. The Tribunal had regard to the service bundle provided by the GMC, as well as Mr Dyer's submissions. The Tribunal was satisfied that the Notice of the hearing had been served upon Dr Ahmed more than 28 days before this hearing date. Taking account of the Royal Mail proof of delivery for both documents, the Tribunal was satisfied that notice of the hearing had been properly served in accordance with Rules 15 and 40 of the Rules and paragraph 8 of Schedule 4 to the Medical Act 1983 (as amended).

Proceeding in Dr Ahmed's absence

54. The Tribunal went on to consider whether it would be appropriate to proceed with this hearing in Dr Ahmed's absence pursuant to Rule 31 of the Rules. The Tribunal noted that it must balance the interests of the doctor with the wider public interest.
55. Mr Dyer invited the Tribunal to proceed in Dr Ahmed's absence. He submitted that all reasonable efforts had been made to contact Dr Ahmed. He added that there was a history of lack of engagement from Dr Ahmed and no indication that he would attend a subsequent hearing if the Tribunal were to adjourn to a future date.

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56. The tribunal has balanced Dr Ahmed's interests with the public interest in deciding whether to proceed in his absence.
57. The Tribunal was satisfied that Dr Ahmed was aware of today's hearing. Dr Ahmed has not provided any explanation for his absence, nor has he requested an adjournment. There was no evidence to suggest that an adjournment would prompt him to attend the hearing if it was held at a future date. The Tribunal therefore concluded that Dr Ahmed had voluntarily absented himself from these proceedings. Considering the public interest in these matters, in particular the concern in relation to Dr Ahmed's ability to practise safely due to concerns about his performance, the Tribunal concluded that it was fair and in the public interest as well as in the interests of justice to proceed with this hearing today.
58. Therefore, in accordance with Rule 31, the tribunal has determined to proceed with the hearing.