

PUBLIC RECORD

Dates: 21/09/2023

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

Review - Non-compliance with a performance assessment: Non-compliance found

Summary of outcome

Suspension for 12 months

Review hearing directed

Tribunal:

Legally Qualified Chair	Mrs Suzi Denton
Lay Tribunal Member:	Ms Christina Baron
Medical Tribunal Member:	Dr Sarah Marwick
Tribunal Clerk:	Mrs Jennifer Ireland

Attendance and Representation:

Medical Practitioner:	Not present and not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Ms Emma Gilsean, 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 consideration of non-compliance – 21/09/2023

1. This is a review of Dr Ahmed's case following a Medical Practitioners Tribunal (MPT) hearing which was conducted on 8 September 2022.

The Outcome of Applications made during this stage

2. The Tribunal granted an application made by Ms Gilsean, Counsel on behalf of the GMC, pursuant to Rules 15 and 40 of the Rules and determined that notice of this hearing had been properly served on Dr Ahmed. It also granted the GMC's application made pursuant to Rule 31 of the Rules to proceed with the case in Dr Ahmed's absence. The Tribunal's full decision is included at Annex A.

Background

3. Dr Ahmed qualified MB BS from University of Khartoum in 1986. Dr Ahmed is a Locum Consultant Physician who has been registered with various locum agencies.

4. Between September and November 2021, the GMC received information from several different sources, raising concerns about Dr Ahmed's clinical performance, timekeeping and communication with patients.

5. 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. Dr Ahmed was informed of this decision in a letter sent by post on 27 January 2022. The letter requested that Dr Ahmed submit the Assessment Portfolio by 23 February 2022.

6. A reminder letter was sent, by email, on 1 March 2022. On 2 March 2022, Dr Ahmed responded to request all documents be sent to an alternative email address and via post. The

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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.

7. A further email from Dr Ahmed was received on 4 March 2022. He confirmed the email address he had previously given on 2 March 2022 and requested that all documents be resent by email as he was currently living in Sudan. A response was sent by the 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.

8. Further reminder emails were sent to Dr Ahmed on 21 March 2022, 13 April 2022 and 16 May 2022. The GMC also attempted to contact Dr Ahmed via telephone on 14 April 2022 on two different contact numbers he had provided, but neither call was answered.

9. 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, which took place on 8 September 2022.

The 2022 Tribunal

10. The 2022 Tribunal considered whether Dr Ahmed had failed to comply with the direction to undergo a performance assessment.

11. The 2022 Tribunal was satisfied that the GMC had properly notified Dr Ahmed of the requirement to undergo an assessment of his performance. It was of the view that the GMC had taken all reasonable steps to encourage Dr Ahmed to comply, evidenced by the numerous reminders sent by email to different addresses, as requested by Dr Ahmed, and the attempts to contact him by telephone. The 2022 Tribunal was therefore satisfied that Dr Ahmed had failed to comply with the direction to undergo a performance assessment.

12. The 2022 Tribunal also considered that it had no evidence before it from Dr Ahmed to provide an explanation as to why he had not supplied the information requested. It concluded that Dr Ahmed had disengaged from the process.

13. The 2022 Tribunal determined that non-compliance had been found.

14. Having found non-compliance by reason of Dr Ahmed's failure to undertake a performance assessment in accordance with Schedule 1 of the Rules, the 2022 Tribunal went on to consider whether to give a direction for conditional registration or suspension ('a non-compliance order').

15. Taking into consideration Dr Ahmed's lack of engagement, the serious concerns being raised and Dr Ahmed's non-compliance with the GMC's direction, the 2022 Tribunal concluded that an order of conditions would not be sufficient to satisfy the overarching objective.

16. The 2022 Tribunal therefore determined to suspend Dr Ahmed's registration. It determined that a period of 12 months was necessary to enable the performance assessment to be organised and completed, given Dr Ahmed's lack of engagement. It directed for a review to take place, with the onus being on Dr Ahmed to demonstrate compliance and undergo a performance assessment.

Review Tribunal

17. This Tribunal has convened to review Dr Ahmed's case. It has considered, under Rule 22A of the Rules, whether there has been a failure to comply with a performance assessment under Schedule 1 of the Rules.

The Evidence

18. The Tribunal had regard to the documentary evidence provided by the parties at this stage of the hearing. This evidence included but was not limited to:

- MPTS Record of Determination, dated 8 September 2022;
- Reminder letters sent by the GMC to Dr Ahmed, dated 9 December 2022, 25 January 2023, 27 April 2023, 9 May 2023, and 13 July 2023.

Submissions

19. On behalf of the GMC, Ms Gilsean submitted that Dr Ahmed has failed to comply with the direction to undergo performance assessment since January 2022. She referred the Tribunal to the numerous reminders sent to Dr Ahmed by email and post since the last hearing and submitted that Dr Ahmed has also failed to engage at all with the GMC to comply with the direction to complete the performance assessment.

20. Ms Gilsean submitted that there has been no material change, either legal or factual, in the circumstances of this case since the last hearing. She therefore invited the Tribunal to find that Dr Ahmed has continued to fail to comply with the direction to undergo a performance assessment.

The Tribunal's Approach

21. 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.

22. In reaching its decision on non-compliance, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove non-compliance. Dr Ahmed does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities.

23. Throughout its deliberations, the Tribunal had regard to the Guidance and considered all of the documentary evidence adduced in this case.

The Tribunal's decision

24. The Tribunal had regard to the MPTS Non-compliance guidance ('the Guidance'). In particular it noted that paragraph A18(d) and C55 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

...

C55 The following additional factors will be relevant to the tribunal's decision:

a whether there is any new information before the tribunal that might affect the tribunal's decision on the appropriate order, and

b whether the doctor has complied with any conditions put in place by the previous tribunal for the protection of the public during the term of the non-compliance order.'

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 and by post to his registered address. It noted that Dr Ahmed had not engaged with the GMC since the last hearing in September 2022.

26. The Tribunal was satisfied that there has been no progress since the last hearing, and that Dr Ahmed has continued to fail to comply with the direction to undergo a performance assessment.

27. The Tribunal considered whether there was a good reason for Dr Ahmed's continued failure to comply. It took into account that there is no new information before the Tribunal to provide an explanation for his non-compliance.

28. In the circumstances, the Tribunal has determined that non-compliance has been found.

Determination on sanction – 21/09/2023

29. 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 has considered whether a sanction should be imposed.

Submissions

30. On behalf of the GMC, Ms Gilsenan submitted that the appropriate and proportionate response in this case is a further period of suspension. Ms Gilsenan drew the Tribunal's attention to Part C of the Guidance which provides guidance to the Tribunal on the appropriate sanction, if any, to impose. She also referred to the general principles of the Sanctions Guidance (2020) and the Tribunal's findings on non-compliance.

31. Ms Gilson submitted that Dr Ahmed has been suspended for 12 months and has failed to comply with the direction to undergo a performance assessment in that time. She submitted that the Tribunal had no advantage of testimonials or any evidence before it that Dr Ahmed had complied. Therefore, there is no basis on which the Tribunal could determine to impose no further order. Further, Ms Gilson submitted that there was no evidence to suggest conditions were appropriate, given Dr Ahmed's continuing non-compliance. She submitted that there has been no material change in circumstances since 2022 and conditions would not be appropriate, proportionate, workable and measurable, and would not adequately serve to uphold the overarching objective.

32. Ms Gilson submitted that a further period of suspension was the necessary response in this case. She submitted that a suspension would send out a signal to Dr Ahmed as to the seriousness of non-compliance, but also to the profession and the public as to the behaviour expected from a registered doctor. She made no submissions as to the length of suspension.

The Tribunal's Approach

33. 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 and in conducting its risk assessment, the Tribunal applied the principle of proportionality, balancing Dr Ahmed's interests with the public interest.

The Tribunal's Decision

34. The Tribunal bore in mind its finding of non-compliance, alongside the evidence already adduced and the further submissions of Ms Gilson. It also considered paragraphs C5, C7 and C8 of the Guidance:

'C5 In order to assess the overall seriousness of the risks, the tribunal will carry out a risk assessment. The tribunal will not make any findings of fact, but will decide what action, if any, is needed to protect the public based on all the information available.

...

- C7** *In considering whether to make a non-compliance order, the question for the tribunal is whether, based on their finding in respect of non-compliance, action is needed to protect the public.*
- C8** *Protection of the public means acting in a way that meets the three elements of the statutory overarching objective:*
- i. protecting, promoting, and maintaining the health, safety and wellbeing of the public*
 - ii. promoting and maintaining public confidence in the profession*
 - iii. promoting and maintaining proper professional standards and conduct for the members of the profession.'*

No Action

35. The Tribunal first considered whether or not action was needed in Dr Ahmed's case to protect the public. In light of the serious concerns about his performance, the Tribunal concluded that action was necessary in order to uphold the overarching objective of protection of the public.

36. Further, the Tribunal concluded that taking no action, having found non-compliance, would not maintain public confidence in the profession given the particular circumstances of this case. Therefore, the Tribunal concluded that it would not be appropriate or proportionate to take no action as action was required to uphold all three limbs of the overarching objective.

Conditions

37. The Tribunal next considered whether it would be appropriate to impose an order of conditions on Dr Ahmed's registration. The Tribunal bore in mind that any conditions imposed must be appropriate, proportionate, workable and measurable.

38. The Tribunal considered that, given Dr Ahmed's non-compliance with the GMC's request to undergo a performance assessment, it was reasonable to conclude that there was

no evidence that he would comply with any conditions placed on his registration. Further, in the light of the serious and wide-ranging concerns about his clinical abilities, and in the absence of a performance assessment, conditions could not be formulated to manage the risks in this case.

Suspension

39. Having determined that the imposition of conditions would not be appropriate, the Tribunal considered it necessary to impose an order of suspension on Dr Ahmed's registration. In reaching its decision, the Tribunal took into account paragraphs C23 and C24 of the Guidance:

'C23 *When considering whether a period of suspension is a proportionate response to a doctor's non-compliance, the tribunal may want to consider the previous opportunities the doctor has had to comply and the level of the doctor's engagement with the fitness to practise process.*

C24 *Suspension is likely to be appropriate where a doctor has explicitly refused to comply with a direction or request to provide information or has failed to respond to a direction or request to provide information, and there is no mitigating information to suggest that conditions are likely to be sufficient.'*

40. The Tribunal was satisfied that, given Dr Ahmed's continued non-compliance, lack of any evidence of mitigation, and lack of independent reassurance that Dr Ahmed was currently safe to treat patients, the only appropriate and proportionate sanction in this case was suspension. The Tribunal was of the view that only a period of suspension would uphold the overarching objective.

41. The Tribunal determined to suspend Dr Ahmed's registration for a further period of 12 months. The Tribunal considered that this was necessary to give Dr Ahmed time to reengage with the GMC and for a performance assessment to be arranged and completed.

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's 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. If Dr Ahmed does decide to appeal against this decision, the suspension currently imposed on his registration will remain in force until the appeal is determined.

44. That concludes this hearing.

Annex A – 21/09/2023

45. Dr Ahmed is neither present nor represented today. The Tribunal noted that, in order to proceed with the hearing in Dr Ahmed's absence, it needed to be satisfied that Dr Ahmed had been properly served with notice of the hearing and that it was appropriate for the hearing to proceed in his absence.

46. The Tribunal was provided with a copy of a Service Bundle from the General Medical Council (GMC). The Service Bundle indicates that on 14 August 2023 at 1:09pm the GMC emailed Dr Ahmed a letter and enclosed details of the review hearing and the GMC's bundle. The letter was also sent via post to Dr Ahmed's registered address on the same day and delivered on 17 August 2023. No response was received to the email.

47. The Tribunal also noted that on 18 August 2023 at 12:09pm, the MPTS emailed Dr Ahmed a letter confirming the date of the hearing as 21 September 2023, and that the hearing would be held virtually. The email also requested confirmation from Dr Ahmed as to whether he would be attending and provided information as to the support available in relation to the hearing. The letter was also sent via post to Dr Ahmed's registered address on the same day and delivered on 19 August 2023. No response was received to the email.

GMC's Submissions

48. Ms Gilsonan, Counsel on behalf of the GMC, took the Tribunal through the Service bundle and highlighted that notice of the hearing had been sent to Dr Ahmed by email and by post to his registered address. She invited the Tribunal to conclude that service had been effected in accordance with the GMC (Fitness to Practise) Rules 2004, as amended ('the Rules').

49. Ms Gilsonan invited the Tribunal to consider Rule 31 of the Rules which provides that where a practitioner is neither present nor represented, the Tribunal may nevertheless proceed to consider and determine the allegation if it is satisfied that all reasonable efforts have been made to serve the practitioner with notice of the hearing in accordance with the Rules. She submitted that all reasonable efforts have been made to serve the documents in accordance with the Rules and the hearing should proceed in the absence of Dr Ahmed.

Tribunal's Determination

Service

50. The Tribunal had regard to Rule 40(2) of the Rules which provides that a notice or document required to be served under the Rules may be served by ordinary post or by electronic mail ('email') to an email address that the practitioner had notified to the Registrar as an address for communications. Rule 40(4) provides that proof of service of any notice or document under the Rules may be provided by a number of methods including proof of postage to the doctor's registered address, or confirmation of receipt of the notice or document sent by email.

51. In light of the evidence of the details of non-compliance and the Notice of Hearing being served by email and post to Dr Ahmed's registered address, the Tribunal was satisfied that Dr Ahmed had been properly served with the Notice of Hearing in accordance with Rules 15 and 40 of the Rules.

Proceeding in Dr Ahmed's Absence

52. In making its determination the Tribunal noted that the decision as to whether or not the hearing should proceed in Dr Ahmed's absence was a matter for its discretion and that such discretion was to be exercised with great care.

53. The Tribunal had regard to the legal authority of *R v Hayward, Jones & Purvis* [2001] QB 862 CA, which states that a defendant has a right to be present at a trial and a right to be legally represented but that those rights can be waived where a defendant voluntarily absents themselves from a trial and/or withdraws instructions from those representing them.

54. The Tribunal also had regard to the guidance provided in *R v Jones* [2003] 1 AC HL and *GMC v Adeogba* [2016] EWCA Civ 162. It noted in particular the following relevant considerations:

- The nature and circumstances of the doctor's behaviour in absenting himself.
- In particular, whether the behaviour was voluntary and therefore that the doctor waived the right to be present;
- Whether an adjournment would result in the doctor attending on a subsequent occasion;

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- Whether the doctor, although absent, wished to be represented, or whether he had waived his right to be represented.

55. The Tribunal noted that the correspondence had been sent to Dr Ahmed by both post and electronic mail, and no response had been received. In light of the information before it, the Tribunal was satisfied that Dr Ahmed had voluntarily absented himself from this hearing.

56. The Tribunal also considered whether an adjournment would result in Dr Ahmed attending the hearing. Setting aside that there had been no application for an adjournment, there was no evidence before the Tribunal to suggest that an adjournment would result in Dr Ahmed attending at a future date. The Tribunal had no evidence before it to suggest that Dr Ahmed intended to participate.

57. The Tribunal noted that any decision to proceed in Dr Ahmed's absence might result in prejudice to him including that it may not necessarily have all of the information that he would wish to advance at the hearing. However, the Tribunal considered that any such prejudice must be balanced against other factors including the statutory overarching objective and the public interest. The Tribunal noted that the public interest included the fair, economic, expeditious and efficient disposal of the hearing and this had to be balanced against any prejudice to Dr Ahmed.

58. Therefore, in accordance with Rule 31, the Tribunal has determined to proceed in Dr Ahmed's absence.