

PUBLIC RECORD

Date: 13/09/2024

Medical Practitioner's name: Dr Carlos GOMES DE SANCHES DAMAS
GMC reference number: 7243661
Primary medical qualification: Lic Med 2002 Universidade Nova de Lisboa

Type of case **Outcome on impairment**
Review - Misconduct Impaired

Summary of outcome
Suspension, 12 months.
Review hearing directed

Tribunal:

Legally Qualified Chair	Ms Rachel Jones
Medical Tribunal Member:	Dr Paul Mitchell
Medical Tribunal Member:	Dr Sarah Jeffery

Tribunal Clerk:	Mrs Rachel Horkin
-----------------	-------------------

Attendance and Representation:

Medical Practitioner:	Not present, not represented
GMC Representative:	Ms Imaan Osman, 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 Impairment - 13/09/2024

Background

1. Dr Gomes De Sanches Damas ('Dr Damas') qualified in 2002.
2. Dr Damas' case was first considered by an MPT in August 2023 ("the August 2023 Tribunal"). Prior to the events which were the subject of that hearing, he was working as a consultant general surgeon at Frimley Park Hospital.
3. The facts found proved at Dr Damas' August 2023 hearing can be summarised as follows. On 25 September 2018, Dr Damas obtained a signed consent form from Patient A to undergo a procedure by the 'open' approach (only), but Dr Damas commenced the procedure by the laparoscopic (or 'keyhole') approach, without obtaining further consent from his patient for 'keyhole' surgery. Further, Dr Damas amended the master copy of the consent form retrospectively, after the original version had been signed by Patient A, to indicate consent to a laparoscopic 'keyhole' approach. The amendment of the consent form was dishonest, as Dr Damas knew that Patient A had not consented to that approach.
4. The August 2023 Tribunal further concluded that, while Dr Damas had written to the Trust to apologise about what happened, he had not accepted responsibility for undertaking surgery outside the scope of his patient's consent.
5. The August 2023 Tribunal suspended Dr Damas' registration for a period of 12 months. It directed a review hearing, stating that the onus would be on Dr Damas at that hearing to demonstrate insight and remediation, and that a reviewing Tribunal may be assisted by a reflective statement, testimonials, any evidence of professional development and such other information as Dr Damas may rely on.

Today's hearing

6. At this review hearing the Tribunal now has to decide, in accordance with Rule 22(1)(f) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'), whether Dr Damas' fitness to practise is impaired by reason of misconduct.

The Outcome of Applications Made during the Impairment Stage

7. The Tribunal granted the GMC's application, made pursuant to Rules 20, 40 and 31 of the Rules, to proceed with the hearing in Dr Damas' absence. All reasonable efforts were made to serve Dr Damas with relevant documents at the most recent address he provided to the GMC. The Tribunal's full decision on this application is set out in Annex A.

The Evidence

8. No evidence has been submitted to this Tribunal on behalf of Dr Damas. The Tribunal noted the correspondence sent from the GMC and the MPTS to Dr Damas between 29 September 2023 and 7 August 2024. The Tribunal was informed by the GMC's counsel, Ms Osman, that to date, no response has been received from Dr Damas.

Submissions

9. Ms Osman submitted that Dr Damas remains impaired. She pointed to the lack of any evidence provided by Dr Damas to show otherwise, and his lack of engagement since he was suspended by the August 2023 Tribunal.

The Relevant Legal Principles

10. The Tribunal reminded itself that the decision on impairment is a matter for the Tribunal's judgement alone. As noted above, the previous Tribunal set out the matters that a future Tribunal may be assisted by. At a review, a persuasive burden lies on the doctor to show that he would be safe to return to unrestricted practice: *Abrahaem v GMC* [2008] EWHC 183 (Admin).

11. This Tribunal was advised that it must determine whether Dr Damas' fitness to practise is impaired as at today, taking into account Dr Damas' conduct at the time of the events and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition: *Meadow v GMC* [2006] EWCA Civ 1390.

The Tribunal's Determination on Impairment

12. The Tribunal noted that, as above, it is for Dr Damas to demonstrate that he has remediated his misconduct and developed insight since the August 2023 hearing.

13. The Tribunal was concerned by the lack of engagement from Dr Damas. It considered that there is no evidence before it to demonstrate that the doctor has developed his insight into, or taken steps to remediate, the misconduct. There is nothing that could satisfy the Tribunal that he has reflected on his behaviour and understands what he did wrong.

14. This Tribunal has therefore determined that Dr Damas's fitness to practise remains impaired by reason of misconduct.

Determination on Sanction - 13/09/2024

15. Having determined that Dr Damas' fitness to practise is impaired by reason of misconduct, the Tribunal now has to decide, in accordance with Rule 22(1)(h) of the Rules, what action, if any, it should take with regards to his registration.

Submissions

16. On behalf of the GMC, Ms Osman submitted that erasure is the appropriate sanction in this case, as it is necessary to maintain public confidence in the profession. She submitted that the lack of engagement on Dr Damas' part shows a blatant disregard for the safeguards designed to protect members of the public or maintain high standards within the profession. Finally, Ms Osman submitted that Dr Damas has shown a persistent lack of insight into his misconduct.

Aggravating and Mitigating Factors

17. The Tribunal identified what it considered to be the aggravating and mitigating factors in this case.

Aggravating

18. As an aggravating factor, the Tribunal considered that Dr Damas has not engaged with these proceedings as would be reasonably expected of a registered doctor. The Tribunal noted that Dr Damas did not attend the August 2023 hearing, nor did he attend this hearing. Further, it appears that Dr Damas has chosen not to engage with the review; either he has not kept his regulator up-to-date with his contact details, or he has failed to respond to repeated correspondence. It further noted that paragraph 98 of Good Medical Practice requires doctors to cooperate with regulatory processes.

Mitigating

19. The Tribunal was not able to identify any mitigating factors, as Dr Damas did not provide any documents or evidence for his review.

The Tribunal's Determination

20. The Tribunal reminded itself that the decision as to the appropriate sanction to impose, if any, in this case was a matter for its own judgement. In reaching its decision, the Tribunal took account of the Sanctions Guidance (SG). It has borne in mind that the purpose of sanctions is not to be punitive, but to protect patients and the wider public interest, although they may have a punitive effect. It reminded itself that in deciding what sanction, if any, to impose, it should consider the sanctions available, starting with the least restrictive. The Tribunal reminded itself of the principle of proportionality, and of the overriding objective.

No action

21. The Tribunal first considered whether to conclude the case by taking no action. It noted that taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances.

22. The Tribunal was satisfied that there were no exceptional circumstances in Dr Damas' case which could justify it taking no action.

Conditions

23. The Tribunal next considered whether it would be appropriate to impose conditions on Dr Damas' registration. The Tribunal reminded itself that conditions need to be appropriate, proportionate, workable and measurable.

24. The Tribunal has determined that, as Dr Damas has not engaged with his regulator nor with these proceedings, then conditions are unlikely to be workable and, therefore, are not an appropriate sanction. The Tribunal further determined that conditions would not be appropriate or sufficient to uphold standards or to maintain public confidence in the profession.

Suspension

25. The Tribunal next considered whether it would be appropriate to impose a further period of suspension.

26. The Tribunal had regard to paragraph 97 of SG, in particular the following:

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.

...

g The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.

27. The Tribunal noted with concern that, as discussed above, Dr Damas has failed to engage with this review. As a result, the Tribunal has no evidence before it to demonstrate insight. Further, the Tribunal considered that Dr Damas' non-engagement may, in itself,

indicate that he does not yet have any, or sufficient, insight into his misconduct and its seriousness.

28. The Tribunal also had regard to paragraph 109(J) of the SG,

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

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

29. While the Tribunal could not be satisfied that Dr Damas has developed insight into his misconduct, given he has not provided any evidence, it noted that he has only had 12 months since the initial substantive hearing of his case. The Tribunal determined that insufficient time has elapsed for it to conclude that there has been a “persistent” lack of insight that warrants erasure at this time. The Tribunal also noted that the August 2023 Tribunal did not consider Dr Damas’ misconduct to be fundamentally incompatible with registration as a doctor.

30. The Tribunal determined that a further period of suspension would be appropriate, to allow Dr Damas time to engage with his regulator, and to provide evidence as to any remediation and insight that he has developed.

31. The Tribunal further considered that a 12-month suspension is a sufficiently serious sanction to mark the seriousness of Dr Damas’ failure to engage with his regulator and with this review. A further lengthy period of suspension is also appropriate, and proportionate, to sufficiently maintain and uphold proper professional standards, to protect public confidence in the profession, and to send a message to the profession regarding the standards expected of a registered doctor.

Erasure

32. This Tribunal considered carefully whether erasure would be the appropriate sanction in this case. While the decision on sanction was finely balanced, the Tribunal determined that erasure was not appropriate or proportionate at this time, for the reasons above.

Review

33. The Tribunal determined to direct a review of Dr Damas’ case. A review hearing will convene shortly before the end of the period of suspension.

34. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Damas to demonstrate how he has remediated and developed his insight. It therefore may assist the reviewing Tribunal if Dr Damas provided:

- Evidence of his remediation and insight;
- Testimonials;
- Any evidence of professional development;
- Any such other information he relies on.

35. The Tribunal have decided to suspend Dr Damas' registration for 12 months. The MPTS will send Dr Damas a letter informing him of his right of appeal and when the direction and the new sanction will come into effect. The current order of suspension will remain in place during the appeal period.

36. This concludes the case.

ANNEX A – 13/09/2024

Service and Proceeding in the doctor's absence

37. Dr Damas was neither present nor represented at this hearing.

Service

38. Ms Osman, counsel for the General Medical Council (GMC), informed the Tribunal that notice of the review hearing was served on Dr Damas by post to his registered address on 29 July 2024, which was returned to the GMC on 1 August 2024 marked "gone away". A further letter was sent to him on 7 August 2024. Ms Osman submitted that the GMC has complied with the GMC (Fitness to Practise) Rules 2004 ('the Rules'), and Dr Damas was given proper service.

39. The Tribunal considered the submissions made by Ms Osman and the documents provided.

40. The Tribunal noted the correspondence sent to Dr Damas, including the GMC letter dated 15 May 2024, which was returned on 17 May 2024 marked "Gone Away". Further postal correspondence was sent to Dr Damas but also returned marked "Gone Away." A pathfinder email was also sent on 11 June 2024 and no response was received from Dr Damas.

41. The Tribunal is satisfied that service was properly effected, and that all reasonable efforts have been made by the GMC to serve Dr Damas with notice of these proceedings, in accordance with the Rules.

Proceeding in the doctor's absence

42. The Tribunal next went on to consider whether it would be appropriate to proceed with this hearing in Dr Damas' 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 great care, balancing the interests of the doctor with the wider public interest.

43. Ms Osman submitted that all reasonable efforts have been made by the GMC to serve Dr Damas with notice of these proceedings and that he is, or should be, aware of this hearing. There has been no response to repeat communications.

44. The Tribunal considered that it has no evidence from Dr Damas that he intends to engage with these proceedings. The Tribunal also noted that Dr Damas did not attend his original Tribunal hearing. It appears that he has chosen not to attend the hearing. There is no application to adjourn and, given that an adjournment would not guarantee his attendance at any future hearing, then an adjournment would serve no useful purpose.

45. The Tribunal concluded that it is in the public interest and in the interests of justice to proceed with this hearing today.

46. Accordingly, the Tribunal determined that it was fair and reasonable to proceed in Dr Damas' absence.