

PUBLIC RECORD

Date: 07/03/2024

Medical Practitioner's name: Dr Diana GALL

GMC reference number: 7685129

Primary medical qualification: Doctor - Medic 2006 Universitatea Transilvania

Type of case	Outcome on impairment
Review - Misconduct	Impaired

Summary of outcome

Erasure

Tribunal:

Legally Qualified Chair	Mrs Emma Boothroyd
Lay Tribunal Member:	Ms Elizabeth Daughters
Medical Tribunal Member:	Dr Alan Smith
Tribunal Clerk:	Ms Fiona Johnston

Attendance and Representation:

Medical Practitioner:	Not present, not represented
GMC Representative:	Mr Neil Shand, 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 - 07/03/2024

1. At this review hearing the Tribunal 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 Gall's fitness to practise continues to be impaired by reason of misconduct.

The Outcome of Applications Made during the Impairment Stage

2. The Tribunal granted the GMC's application, made pursuant to Rule 31 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to proceed with the hearing in Dr Gall's absence. The Tribunal's full decision on the application is included at Annex A.

Background

3. Dr Gall qualified in 2006 from Universitatea Transilvania, Romania, and has worked as a GP in Romania since 2010. She registered with the GMC in 2019 and began working with two online pharmacies, Better Health Online Ltd and Med Connections Ltd, prescribing medication remotely.

4. The initial concerns were raised with the GMC on 15 March 2020 by Mr H, Head of Pharmacy and Medicines Management and the Controlled Drugs Accountable Officer for the Health and Social Care Board ('HSCB'), Northern Ireland.

5. The allegation that has led to Dr Gall's initial hearing in February 2022 can be summarised as follows: Dr Gall failed to contact the General Practitioners ('GP') of patients A,

B, C, D, E and F, or obtain adequate information from the patients' medical records before issuing prescriptions to the patients. She inappropriately prescribed excessive amounts of medication, and also failed to share relevant information with the patients' GPs in relation to the prescriptions for medication.

The 2022 Hearing

6. An MPT hearing took place from 7-10 February 2022. Dr Gall did not attend and was not represented. Dr Gall provided a witness statement in the form of an email, but no admissions were made to the Allegation.

7. The facts found proved at Dr Gall's hearing which took place in February 2022 can be summarised as that she failed to contact the General Practitioners ('GP') of patients, or obtain adequate information from the patients' medical records, before issuing prescriptions to them. She inappropriately prescribed excessive amounts of medication and failed to share relevant information with the patients' GPs in relation to the prescriptions.

8. The Tribunal found the Allegation proved in its entirety.

9. The 2022 Tribunal concluded that the failings identified were so significant that they amounted to fundamental breaches of GMP which amounted to misconduct that was serious and determined that her fitness to practise was impaired.

10. The Tribunal determined to suspend Dr Gall's registration for a period of 12 months. It gave consideration as to whether erasure from the medical register was appropriate, however it concluded that, *'viewed in the round, Dr Gall's conduct is not fundamentally incompatible with registration at this time. She has offered an apology. She has engaged with the regulatory proceedings, albeit in a relatively limited way.'* It went on to state, *'However, it is important that Dr Gall engages with the regulatory process and takes steps to demonstrate full insight into her misconduct and steps towards remediation. Failure to do so may result in her name being erased from the Medical Register.'*

11. The 2022 Tribunal did not consider that Dr Gall had taken sufficient steps to achieve remediation of her misconduct. It was of the view that, in order to remediate such misconduct, an appropriate level of insight and willingness would be required.

12. The Tribunal clarified that, at a review hearing, the onus would be on Dr Gall to demonstrate how she has fully developed insight and remediated her misconduct. It stated that a future reviewing Tribunal may be assisted by the following:

- *‘A statement from Dr Gall which outlines her reflections on the allegations proved against her relating to Patients A-F, explaining what she had learnt from this, how she applies this learning to her practice and how she will avoid any similar incident occurring in the future. Dr Gall may wish to address her understanding of the impact of her actions on Patients A-F, public confidence in the medical profession, the impact on the wider public interest and the profession as a whole.*
- *A list of any development courses undertaken, relevant to the nature of the misconduct found proved, including courses concerning the remote prescription of medication.*
- *Evidence that she is maintaining standards as set out in all domains of GMP. This may take the form of appraisal documentation, patient and colleague feedback, continuing professional development (CPD) logbook in line with her scope of practice. This list is inclusive but not exhaustive.’*

The 2023 Hearing

13. An MPT review hearing took place on 24 February 2023 and 2 March 2023. Dr Gall did not attend and was not represented.

14. The 2023 Tribunal noted the recommendations set out by the previous Tribunal in 2022. The Tribunal was of the view that Dr Gall had not provided it with any further significant evidence of her reflections, developed insight or remediation for the serious misconduct found by the 2022 Tribunal. In conclusion, the 2023 Tribunal found that Dr Gall had failed to provide any significant evidence to address the concerns found by the Tribunal in 2022, despite having had 12 months to do so.

15. The 2023 Tribunal took the view that failing to provide any of the requested evidence and wilfully absenting herself from those proceedings demonstrated insufficient engagement with the GMC. It concluded that Dr Gall’s fitness to practise remained impaired by reason of her misconduct.

16. The 2023 Tribunal noted the submission by the GMC that a further 12-month period of suspension was the most appropriate and proportionate sanction to impose.

17. The 2023 Tribunal concluded that Dr Gall should be afforded a further opportunity to demonstrate remediation and insight and to take steps toward a return to medical practice. The Tribunal determined that her actions fell just short of erasure being a proportionate sanction to impose.

18. The 2023 Tribunal stated that a future reviewing Tribunal may be assisted by the following:

- A statement from Dr Gall which outlines her reflections on the allegations proved against her relating to Patients A-F, explaining what she had learnt from this, how she applies this learning to her practice and how she will avoid any similar incident occurring in the future. Dr Gall may wish to address her understanding of the impact of her actions on Patients A-F, public confidence in the medical profession, the impact on the wider public interest and the profession as a whole.
- A list of any development courses undertaken, relevant to the nature of the misconduct found proved, including courses concerning the remote prescription of medication.
- Evidence that she is maintaining standards as set out in all domains of GMP. This may take the form of appraisal documentation, patient and colleague feedback, continuing professional development (CPD) logbook in line with her scope of practice. This list is inclusive but not exhaustive.

Today's Review Hearing

The Evidence

19. The Tribunal received a bundle of documents which included the determinations of the 2022 and 2023 Tribunals and various correspondence between the GMC and Dr Gall regarding this review hearing.

Submissions

20. On behalf of the GMC, Mr Shand, Counsel, outlined the background and the specific circumstances of Dr Gall's case.

21. Mr Shand submitted that Dr Gall has made it clear that she does not want to practice in the UK or be registered with the GMC. He submitted that there has been no evidence that Dr Gall has provided any relevant review documentation in the form of reflection and remediation as suggested by the previous Tribunal.

22. Mr Shand submitted that there has been no change whatsoever to the material circumstances. Therefore, given the circumstances, he submitted that there was an ongoing risk of repeat conduct and as such Dr Gall's fitness to practise continues to be impaired.

The Relevant Legal Principles

23. The Tribunal reminded itself that the decision of impairment is a matter for the Tribunal's judgement alone. As noted above, the 2023 Tribunal set out the matters that a future Tribunal may be assisted by. This Tribunal noted that it is for the doctor to satisfy this Tribunal that she would be safe to return to unrestricted practise.

24. This Tribunal must determine whether Dr Gall's fitness to practise is impaired today, taking into account her 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.

The Tribunal's Determination on Impairment

25. The Tribunal considered that at these proceedings, there is a persuasive burden on Dr Gall to demonstrate that her fitness to practise is no longer impaired.

26. The Tribunal noted that there has been no material change in the circumstances of this case since it was heard by the 2023 Tribunal. There has been no evidence provided by Dr Gall as recommended by the 2023 Tribunal to inform its view as to the current state of Dr Gall's insight, reflection or remorse into her misconduct. Nor did the Tribunal receive any evidence of relevant CPD. The Tribunal also noted that Dr Gall has made it clear that she does not want to practice in the UK or be registered with the GMC.

27. The Tribunal considered that no evidence has been received to indicate that Dr Gall was no longer impaired. In the absence of any new information from Dr Gall, the Tribunal

determined that the need to meet the overarching objective required a finding of impairment in order to protect the public and to maintain public confidence and to uphold standards in the medical profession.

28. The Tribunal has therefore determined that Dr Gall's fitness to practise is impaired by reason of misconduct.

Determination on Sanction - 07/03/2024

1. Having determined that Dr Gall's fitness to practise is impaired by reason of her misconduct, the Tribunal must now decide in accordance with Rule 22(1)(h) of the Rules what action, if any, it should take with regard to Dr Gall's registration.

Submissions

2. On behalf of the GMC, Mr Shand submitted that a sanction of erasure is the appropriate and proportionate sanction in this case. He referred the Tribunal to the relevant paragraphs of the Sanctions Guidance (November 2020 edition) ('the SG').

31. He submitted that Dr Gall has now been suspended since 2022 and it has been almost 12 months since the last review hearing. He submitted that the doctor had not provided any additional evidence to the Tribunal. He submitted that the doctor has had every opportunity to provide evidence of remediation and evidence that she has kept her medical knowledge up to date.

32. He submitted that since the original fitness to practice hearing that concluded in 2022, there is insufficient evidence before the Tribunal that the doctor has fully addressed the concerns raised or developed any insight into her misconduct and, in the absence of such, it is submitted that the risk of misconduct remains. He submitted that in the light of this continued lack of insight the only appropriate sanction was one of erasure.

The Tribunal's Determination

Relevant Legal Principles

33. The Tribunal's decision as to the appropriate sanction, if any, is a matter for the Tribunal's own independent judgment. In making its determination the Tribunal should consider the least restrictive sanction first, before moving on to consider the other available sanctions in ascending order of severity. The Tribunal was aware that the main purpose of imposing a sanction is to protect the public. Its purpose is not to punish, although it may have a punitive effect. The Tribunal should also weigh the public interest against the interests of the doctor. The Tribunal accepted that interests of the doctor were not as important as the medical profession as a whole.

34. In reaching its decision, the Tribunal should assess any mitigating and aggravating features in the case, in the context of the Sanctions Guidelines and the statutory overarching objective: protecting and promoting the health, safety and well-being of the public, promoting and maintaining public confidence in the profession and promoting and maintaining proper professional standards and conduct.

Aggravating and Mitigating factors

35. In reaching its determination, the Tribunal considered whether there were any aggravating or mitigating factors to consider in this case.

36. The Tribunal took into account paragraph 1 and 65 of the GMP:

'1 Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues,1 are honest and trustworthy, and act with integrity and within the law.

'65 You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession'

37. The aggravating factors identified were as follows:

- a) Dr Gall failed to submit evidence of remediation and insight as requested by previous Tribunal despite repeated opportunities to do so.
- b) Dr Gall failed to submit evidence of maintaining her medical knowledge despite being directed to do so.

No action

38. The Tribunal was satisfied that there were no exceptional circumstances in Dr Gall's case which could justify it taking no action. It determined that, given the circumstances of this case, taking no action would be inappropriate, inadequate and would not be in the public interest.

Conditions

39. The Tribunal next considered whether it would be appropriate to impose conditions on Dr Gall's registration. It bore in mind that any conditions imposed should be appropriate, proportionate, workable and measurable.

40. The Tribunal considered that conditions were not practical or workable. It would not be possible to formulate workable conditions to address the concerns regarding Dr Gall's fitness to practise. The Tribunal was not satisfied that she would comply with conditions, which would require oversight by the GMC.

41. The Tribunal therefore determined that imposing a period of conditional registration would not be appropriate in this case.

Suspension

42. The Tribunal next considered whether extending the period of suspension on Dr Gall's registration would be appropriate.

43. The Tribunal had regard to paragraphs 91, 92, 95 and 97 of the SG, which set out situations in which suspension may be the appropriate course:

'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 unbefitting 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).

95 In such cases, to protect the public, the tribunal might wish to impose a period of suspension. The suspension will need to be reviewed and therefore a review hearing should be directed. Such a direction should indicate in broad terms the type of action and evidence of remediation (such as complying with any invitations from the GMC to undergo a performance assessment or English language assessment) which, if carried out during the period of suspension, may help the tribunal's evaluation at any subsequent review hearing. However, the tribunal should bear in mind that during the period of suspension the doctor will not be able to practise

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

a A serious breach of Good medical practice, but where the doctor's misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.

....

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.'

44. The Tribunal noted this was the second review hearing. It had regard to the lack of evidence of insight or remediation at any prior hearing. There was no evidence produced for this hearing. This lack of evidence meant that the Tribunal could only conclude that there was a significant risk of repetition.

The Tribunal noted that the SG indicated that an absence of evidence of remediation indicated that suspension may not be appropriate.

45. The Tribunal concluded that the seriousness of the underlying conduct was aggravated by Dr Gall's disregard for the regulatory process. This, coupled with Dr Gall's failure to produce any evidence that she has taken steps to address her misconduct, meant that the Tribunal could only conclude she lacks insight. This led the Tribunal to conclude that a further sanction of suspension would be inappropriate.

46. Therefore, the Tribunal determined that a further period of suspension would be insufficient to maintain and uphold proper professional standards and protect the public confidence in the profession.

Erasure

47. In reaching its determination, the Tribunal considered the following paragraphs of the SG:

'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.*

...

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

48. The Tribunal considered that all of the above paragraphs of SG are engaged in this case.

49. The Tribunal noted Dr Gall has now been suspended for two years. This is a long period to have not complied with the request for evidence of insight and remediation. This is more so given the nature and seriousness of the misconduct itself. Dr Gall has had repeated opportunities to restore public confidence in her and the medical profession as a whole. She has not done so. There was no basis or evidence upon which the Tribunal could place any reliance that Dr Gall would be prepared to engage in any remediation or that any such engagement would be successful.

50. The Tribunal determined that her conduct was a particularly serious departure from the principles set out in GMP and, due to her failure to engage in remediation of that misconduct, it was now fundamentally incompatible with continued registration. The Tribunal was of the view that cooperation with their professional regulator is the duty of every doctor. It is an important part of upholding professional standards, so that the public could have confidence in all doctors.

51. In all of the circumstances, the Tribunal determined that erasure was the only sanction that would be sufficient to uphold the statutory overriding objective, maintain public confidence in the profession, the regulator and the regulatory process and uphold professional standards.

52. The Tribunal directed that Dr Gall's name be erased from the Medical Register. The MPTS will send Dr Gall a letter informing her of her right of appeal and when the direction and the new sanction will come into effect.

53. Unless Dr Gall exercises her right of appeal, her name will be erased from the medical register 28 days from the date on which written notice of this decision is deemed to have been served upon her. The suspension currently imposed on Dr Gall's registration shall continue to have effect until the appeal period has concluded. If Dr Gall

decides to exercise her right of appeal, the period of suspension currently imposed on her registration shall continue to have effect until the appeal has been decided. A note explaining Dr Gall's right of appeal will be sent to her.

54. That concludes the case.

ANNEX A – 07/03/2024

55. Dr Gall is neither present nor represented today at the Medical Practitioners Tribunal ('MPT') hearing. The Tribunal therefore considered whether the relevant documents had been served in accordance with General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), and paragraph 8 of the fourth Schedule to the Medical Act 1983.

Service

56. Mr Neil Shand, Counsel, on behalf of the General Medical Council ('GMC') made an application on service and proceeding in absence of the doctor on the basis there had been good service. He referred the Tribunal to the documents relevant to proof of service and submitted that notice of the hearing had been properly served to Dr Gall. Mr Shand submitted that that her application is to proceed in Dr Gall's absence under Rule 31 and invited the Tribunal to proceed in her absence.

57. The Tribunal noted the following documents:

- Proof of Dr Gall's registered address;
- Pathfinder email sent to Dr Gall and response, dated 23 November 2023;
- Letter to Dr Gall regarding MPT hearing via email, dated 25 January 2024;
- Acknowledgement email from Dr Gall, dated 25 January 2024;
- Notice of Hearing letter sent to Dr Gall via email, dated 26 January 2024;
- Acknowledgement of Notice of Hearing from Dr Gall, dated 29 January 2024;
- Call to Dr Gall regarding position on hearing – no response, dated 22 February 2024;
- Email to Dr Gall regarding position and additional documents they want to add, dated 22 February 2024;
- CMD letter sent to Dr Gall via email, dated 23 February 2024;
- Acknowledgement of CMD letter from Dr Gall and confirming she will not be present at hearing 23 February 2024;

- Email to Dr Gall informing GMC is seeking erasure, dated 6 March 2024;
- Response from Dr Gall acknowledging email, dated 6 March 2024.

58. The Tribunal took account of all documents provided including the email from Dr Gall dated 23 February 2024 confirming her non-attendance.

'Good afternoon

Mr/Mam,

The e-mail was well received. As per upcoming hearing, please note that I don't wish to admit any additional evidence, nor being able to assist/attend to the hearing, due to personal circumstances.

I appreciate all the work behind the case.

Kindly yours,

Diana Gall '

59. The Tribunal was satisfied that notice of the hearing had been properly served in accordance with the Rules. Having considered the evidence before it and the submissions made by Mr Shand, the Tribunal was satisfied that Notice of the Hearing had been served on Dr Gall in accordance with Rule 15 and Rule 40 of the GMC (Fitness to Practise) Rules 2004 (the Rules), and paragraph 8 of Schedule 4 to the Medical Act 1983, as amended.

Proceeding in absence

60. The Tribunal noted Dr Gall's email dated 23 February 2024. Having been satisfied that notice was properly served upon Dr Gall, the Tribunal then considered whether to proceed with the hearing in her absence, in accordance with Rule 31 of the Rules.

'31. Where the practitioner is neither present nor represented at a hearing, the Committee or Tribunal may nevertheless proceed to consider and determine the allegation if they are satisfied that all reasonable efforts have been made to serve the practitioner with notice of the hearing in accordance with these Rules.'

The Tribunal's Decision

61. The Tribunal accepted the advice of the LQC who referred to the relevant Rules and judgments in the cases of *R v Jones [2003] 1 AC 1*; *[2002] UKHL 5* and *GMC v Adeogba [2016] EWCA Civ 163*. The Tribunal had regard to the following factors:

- The nature and circumstances of the doctor’s behaviour in absenting himself;
- 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;
- The likely length of any such adjournment;
- Whether the doctor, although absent, wished to be represented, or whether he had waived her right to be represented;
- The general public interest.

62. The Tribunal was mindful that the discretion to proceed in the absence of a doctor should be exercised with the utmost care and caution and with a regard to the overall fairness of the proceedings. In doing so, it considered the need to balance Dr Gall’s interests with the overarching statutory objective.

63. The Tribunal has evidence before it that Dr Gall was aware of the hearing taking place on 7 March 2024. The Tribunal noted Dr Gall’s email dated 23 February 2024 confirming her non-attendance and an email dated 6 March 2024, in response to an email from the GMC in which she states:

*‘Good afternoon,
I acknowledge the email was received.
As per the intention of GMC in regards with the outcome, I am aware of, I do not wish to practice in the nearby future as a doctor in the UK.
Thank you for the implication of the team from the beginning on.
Kind regards,
Diana Gall ‘*

64. The Tribunal determined that Dr Gall has chosen to voluntarily absent herself from the hearing. Furthermore, it has not received any indication that Dr Gall has requested an adjournment. The Tribunal could not be satisfied that, were there to be an adjournment, Dr Gall might attend a hearing on a future date.

65. There was no evidence before the Tribunal to suggest that Dr Gall would provide any further information or documentation if the hearing was to adjourn to a later date.

66. The Tribunal has balanced Dr Gall's interests with the wider public interest in deciding whether to proceed in her absence. The Tribunal concluded that it is in the public interest and in the interests of justice to proceed with the hearing today.

67. Accordingly, the Tribunal determined that it was fair and reasonable to proceed in Dr Gall's absence in accordance with Rule 31.