

PUBLIC RECORD

Dates: 28/05/2024 - 30/05/2024

Medical Practitioner's name: Dr Edward NIKICICZ
GMC reference number: 7504936
Primary medical qualification: Lekarz 1982 Karol Marcinkowski University of Medical Sciences in Poznan

Type of case	Outcome on facts	Outcome on impairment
New - Conviction	Facts relevant to impairment found proved	Impaired
New - Misconduct	Facts relevant to impairment found proved	Impaired

Summary of outcome

Erasure
Immediate order imposed

Tribunal:

Legally Qualified Chair:	Mr Nathan Moxon
Lay Tribunal Member:	Dr Caroline Friendship
Medical Tribunal Member:	Professor William Roche

Tribunal Clerk:	Mr Michael Murphy (28 May 2024) Ms Evelyn Kramer (29 – 30 May 2024)
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Attendance and Representation:

Medical Practitioner:	Not present, not represented
GMC Representative:	Ms Jenny Ferrario, 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 Facts - 29/05/2024

Background

1. Dr Nikicicz qualified in Poland in 1982, when he received a Lekarz diploma in medicine from Karol Marcinkowski University of Medical Sciences in Poznan. Dr Nikicicz began practising in the UK in 2015 at Conquest Hospital, which is a part of East Sussex Healthcare NHS Trust. Prior to the events which are the subject of the hearing Dr Nikicicz had undertaken posts at Dumfries and Galloway Hospital in Scotland and Glangwili Hospital in Wales. At the time of the events which led to the Allegation Dr Nikicicz was practising as a locum at Cwm Taf Morgannwg University Health Board (the Health Board) in Wales.
2. The Allegation that has led to this hearing can be summarised as follows: Dr Nikicicz was convicted by jury of fraud on 3 February 2023 following a five day trial at Cardiff Crown Court. The fraudulent activity took place between July and November 2019. He was sentenced to 12 months imprisonment suspended for two years on 9 June 2023. Further, that he failed to notify the GMC that he had been charged or convicted with a criminal offence.
3. The initial concerns were raised with the GMC, on 14 February 2023, in an email sent by Ms A from the NHS Counter Fraud Team. In the email, Ms A informed the GMC of Dr Nikicicz's conviction on 3 February 2023. She outlined that this was the result of concerns being raised during Dr Nikicicz's locum post at the Health Board, between July and November 2019, where it was alleged that he defrauded them by claiming twice the amount of overtime payments earned.

4. He was charged on the advice of the CPS of fraud by false representation in February 2022.
5. On 9 June 2023, he was sentenced by His Honour Judge F, who stated '*... the fraud itself is of a significant amount of money committed over a five-month or so period. Very simply you overclaimed. You were claiming for overtime you did not do.*'
6. The NHS Counter Fraud Team notified the GMC, on 12 June 2023, that Dr Nikicicz had been sentenced to a suspended custodial sentence.
7. The certificate of conviction was disclosed to the GMC on 20 June 2023 by Cardiff Crown Court.

The Outcome of Applications Made during the Facts Stage

8. The Tribunal determined that service of the notice of this hearing had been effected in accordance with Rule 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. The Tribunal determined to proceed with the hearing in Dr Nikicicz's absence in accordance with Rule 31 of the Rules. The Tribunal's full decision on this matter is included at Annex A.
9. The Tribunal granted the GMC's application, made pursuant to Rule 17(6) of the Rules, to amend paragraph 3 of the Allegation to read '*You failed to notify the GMC without delay that you had been charged or convicted with the criminal offence detailed in paragraph 1*'. The Tribunal was satisfied that this amendment could be made without injustice to Dr Nikicicz. The amendment did not affect the nature of the charge that had been communicated to Dr Nikicicz.

The Allegation and the Doctor's Response

10. The Allegation made against Dr Nikicicz is as follows:

That being registered under the Medical Act 1983 (as amended):

1. Between 30 January 2023 and 3 February 2023 at Cardiff Crown Court you were convicted of dishonestly making false representation to make gain for self/another or cause loss to other/expose other to risk contrary to Section 1 of the Fraud Act 2006. **To be determined**
2. On 9 June 2023 you were sentenced to 12 months imprisonment suspended for two years. **To be determined**
3. You failed to notify the GMC without delay that you had been charged or convicted with the criminal offence detailed in paragraph 1. **Amended under Rule 17(6)**
To be determined

Witness Evidence

11. The Tribunal received evidence on behalf of the GMC from Mr B, GMC Investigation Officer.
12. Dr Nikicicz did not provide a witness statement.

Documentary Evidence

13. The Tribunal had regard to the documentary evidence provided by the GMC. This evidence included but was not limited to:
 - The NHS Counter Fraud Specialist Report dated 23 February 2021;
 - Letter from Dr Nikicicz to His Honour Judge G dated 8 February 2022;
 - Dr Nikicicz written statement made to the court dated 12 May 2022;
 - Telephone call note between Dr Nikicicz and the GMC dated 20 February 2023;
 - GMC disclosure email to Dr Nikicicz dated 20 February 2023;
 - NHS Counter Fraud (Wales) referral to the GMC dated 14 February 2023;
 - Email from Dr Nikicicz with his work history dated 5 March 2023;
 - Pre-sentence Report dated 13 March 2023;
 - Responding to Fitness to Practise Form from Dr D dated 13 April 2023;

- Letter from Person E to the GMC dated 18 April 2023;
- Cardiff Crown Court Sentencing Remarks dated 9 June 2023;
- Email from NHS Counter Fraud (Wales) confirming Crown Court hearing outcome dated 12 June 2023;
- Email from NHS Counter Fraud regarding suspended sentence dated 12 June 2023;
- Certificate of Conviction dated 14 June 2023;
- Email to Dr Nikicicz confirming MPT referral dated 27 June 2023.

14. Dr Nikicicz did not provide any documentary evidence.

The Tribunal's Approach

15. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Nikicicz does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e., whether it is more likely than not that the events occurred.

The Tribunal's Analysis of the Evidence and Findings

16. The Tribunal has considered each outstanding paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts.

Paragraph 1

17. The Tribunal considered if, between 30 January 2023 and 3 February 2023 at Cardiff Crown Court, Dr Nikicicz was convicted of dishonestly making false representation to make gain for self/another or cause loss to other/expose other to risk contrary to Section 1 of the Fraud Act 2006

18. In its deliberations, the Tribunal had regard to the Certificate of Conviction, dated 14 June 2023, from Cardiff Crown Court. This stated that Edward Nikicicz was tried and convicted on indictment of *'Dishonestly making false representation to make gain for self/another or cause loss to other/expose other to risk contrary to Section 1 of the Fraud Act 2006'*.

19. The Tribunal therefore found paragraph 1 of the Allegation proved.

Paragraph 2

20. The Tribunal considered if, on 9 June 2023, Dr Nikicicz was sentenced to 12 months imprisonment suspended for two years. It again had regard to the Certificate of Conviction, dated 14 June 2023, from Cardiff Crown Court which stated that Dr Nikicicz was *'sentenced to 12 months imprisonment suspended for 2 years'*.

21. The Tribunal therefore found paragraph 2 of the Allegation proved.

Paragraph 3

22. The Tribunal considered if Dr Nikicicz failed to notify the GMC that he had been charged or convicted with the criminal offence detailed in paragraph 1. In doing so it had regard to the written and oral evidence of Mr B.

23. The Tribunal noted that Mr B had reviewed all of the communications sent from Dr Nikicicz to the GMC and that in these there was nothing from Dr Nikicicz to notify that he had been charged or convicted of any offence. The Tribunal also noted that initial contact with Dr Nikicicz regarding his conviction was initiated by the GMC.

24. In all the circumstances, the Tribunal took the view that Dr Nikicicz was duty bound to disclose his conviction to the GMC in line with paragraph 75 of Good Medical Practice (2013)(GMP) which states:

'You must tell us without delay if, anywhere in the world:

a. you have accepted a caution from the police or been criticised by an official inquiry

b. you have been charged with or found guilty of a criminal offence

c. another professional body has made a finding against your registration as a result of fitness to practise procedures.'

25. The Tribunal therefore found paragraph 3 of the Allegation proved.

The Tribunal's Overall Determination on the Facts

26. The Tribunal has determined the facts as follows:

That being registered under the Medical Act 1983 (as amended):

1. Between 30 January 2023 and 3 February 2023 at Cardiff Crown Court you were convicted of dishonestly making false representation to make gain for self/another or cause loss to other/expose other to risk contrary to Section 1 of the Fraud Act 2006. **Determined and found proved**
2. On 9 June 2023 you were sentenced to 12 months imprisonment suspended for two years. **Determined and found proved**
3. You failed to notify the GMC without delay that you had been charged or convicted with the criminal offence detailed in paragraph 1. **Amended under Rule 17(6)**
Determined and found proved

Determination on Impairment - 30/05/2024

1. The Tribunal now has to decide, in accordance with Rule 17(2)(l) of the Rules, whether Dr Nikicicz's fitness to practise is impaired by reason of misconduct and / or conviction.

The Evidence

2. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary.
3. No further evidence was adduced at this stage of proceedings.

Submissions

4. On behalf of the GMC, Ms Ferrario submitted that Dr Nikicicz’s fitness to practise is impaired by reason of both his conviction for a criminal offence and misconduct.
5. Ms Ferrario submitted that Dr Nikicicz has a responsibility to be familiar with, and adhere to the principles, values and standards of care and professional behaviour expected of all medical professionals as set out in GMP. She submitted that Dr Nikicicz’s actions, in being convicted of a serious criminal offence, and in failing to notify the GMC that he had been charged, and later convicted, amounted to breaches of paragraphs 65 and 75 of GMP:

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

75 You must tell us without delay if, anywhere in the world:

a ...

b you have been charged with or found guilty of a criminal offence

c ...’

6. Ms Ferrario submitted that Dr Nikicicz’s actions involved a breach of a fundamental tenet of the profession because it related to acting dishonestly, demonstrating a lack of integrity and a failing to uphold the law.
7. Ms Ferrario reminded the Tribunal about the nature of Dr Nikicicz’s conviction and sentence. She submitted that there were a number of relevant aggravating factors. These include that Dr Nikicicz had taken advantage of an opportunity in submitting the timesheets that he did. His actions were premediated, had taken place on multiple occasions over a five-month period and amounted to an abuse of position. Ms Ferrario submitted that Dr Nikicicz’s actions demonstrated a persistent pattern of behaviour. She submitted that he knew that he was submitting timesheets for work he had not carried out. He had put his own interests first by defrauding the NHS. His fraudulent behaviour only stopped because he was caught by the finance department at the hospital. Ms Ferrario submitted that Dr Nikicicz had shown a reckless disregard for professional standards.

8. Ms Ferrario submitted that the one mitigating factor she could identify is that there was no suggestion that Dr Nikicicz, who has been practising in Poland, has repeated his actions.
9. In considering impairment, Ms Ferrario submitted that this is a case about public confidence and not patient harm. She submitted that Dr Nikicicz has not taken any accountability for his conviction or in failing to notify the GMC of being charged, and then convicted, of a criminal offence. He has provided no evidence of insight, reflection, remorse or remediation. Ms Ferrario submitted that a finding of impairment was required to uphold public confidence in the profession and to uphold proper professional standards.

The Relevant Legal Principles

10. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision of impairment is a matter for the Tribunal's judgment alone.
11. In approaching the decision, the Tribunal was mindful that it was being invited to find impairment on the grounds of both a conviction of a criminal offence and misconduct.
12. In considering misconduct, the two-stage process to be adopted was: first whether the facts as found proved amounted to serious misconduct and then whether the finding of that misconduct which was serious could lead to a finding of impairment.
13. The Tribunal must determine whether Dr Nikicicz's fitness to practise is impaired today, taking into account his 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

Conviction

14. The Tribunal had found proved that Dr Nikicicz had been convicted and sentenced for a criminal offence. It was required to determine whether his fitness to practise is impaired by reason of his conviction.
15. First, the Tribunal had regard to the nature and seriousness of Dr Nikicicz's conviction for a criminal offence. Dr Nikicicz had been convicted of a serious offence involving dishonesty. His dishonesty, in claiming overtime that he was not entitled to, was connected to his work as a doctor. He made multiple claims over a five-month period and received significant financial gain from his fraudulent activity. The Tribunal also bore in mind that Dr Nikicicz's suspended sentence is still running and that it will not be discharged until June 2025.
16. The Tribunal was mindful that, despite an early suggestion from Dr Nikicicz that he had made a mistake in claiming the overtime, he otherwise denied wrongdoing. He pleaded not guilty to the criminal charge and was convicted after trial. He continued to deny any dishonesty when he was interviewed by probation for the preparation of a pre-sentence report and in his communications with the GMC. The Tribunal determined that Dr Nikicicz has therefore failed to demonstrate insight.
17. After his conviction, Dr Nikicicz repaid the money he had falsely claimed for, as confirmed by HHJ F in the sentencing remarks. The Tribunal determined that this was evidence of remediation. However, in the absence of any further reflections or personal development related to honesty, integrity and probity, Dr Nikicicz's remediation was incomplete.
18. The Tribunal acknowledged that the probation service had found that the risk of Dr Nikicicz repeating his fraudulent activity is low. It did not seek to go behind that finding. Nevertheless, in acting dishonestly and not acting within the law, Dr Nikicicz had breached paragraph 65 of GMP (set out above).
19. Given the serious nature of Dr Nikicicz's conviction and the lack of evidence of insight and remediation, the Tribunal determined that a finding of impairment was necessary 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.
20. The Tribunal therefore determined that Dr Nikicicz's fitness to practise is impaired by reason of a conviction for a criminal offence.

Misconduct

21. The Tribunal had already found that Dr Nikicz failed to notify the GMC that he had been charged with, and subsequently convicted of, a criminal offence. The Tribunal accepted that paragraph 75b of GMP had been breached by Dr Nikicz. Not only had he failed to notify the GMC without delay, but he did not notify the regulator at all.
22. The Tribunal considered that Dr Nikicz's failure to notify the GMC was made more serious by the nature of his offence: dishonesty in connection with his position as a doctor. Further, having been charged in February 2022, convicted in February 2023, and then sentenced in June 2023, Dr Nikicz had a significant amount of time, and multiple triggers within the criminal justice process, that should have acted as a reminder to notify the GMC. Dr Nikicz did not notify the GMC at any stage. He was charged with, and then convicted of, a serious criminal offence. It was his responsibility to notify the GMC when he was charged with such a serious criminal offence.
23. The Tribunal determined that Dr Nikicz's failure to notify the GMC that he had been charged with, and subsequently convicted of, a serious criminal offence was a serious omission and was a significant breach of GMP.
24. The Tribunal concluded that Dr Nikicz's conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct that was serious.

Impairment by reason of misconduct

25. The Tribunal, having found that the facts found proved in respect of paragraph 3 of the Allegation amounted to misconduct, went on to consider whether, as a result, Dr Nikicz's fitness to practise is currently impaired by reason of misconduct.
26. In considering impairment, the Tribunal bore in mind its findings. It concluded that Dr Nikicz, by not notifying the GMC that he had been charged with, and convicted of, a criminal offence demonstrated a lack of insight into what is required of him as a doctor. Further, he had never acknowledged his wrongdoing in failing to notify the GMC.
27. The Tribunal found that Dr Nikicz had demonstrated no insight or understanding about his responsibility to notify the GMC in line with paragraph 75b of GMP. He had made no

attempt to apologise or take any accountability for his failings. There was no evidence of remediation. In such circumstances, the Tribunal determined that there was a risk that Dr Nikicicz could repeat his failure to notify the GMC in line with his duties under GMP because he had demonstrated no understanding of them.

28. The Tribunal determined that a finding of impairment was again necessary 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.
29. Therefore, the Tribunal determined that Dr Nikicicz's fitness to practise was impaired by reason of misconduct, as well as by his conviction for a criminal offence.

Determination on Sanction - 30/05/2024

1. Having determined that Dr Nikicicz's fitness to practise is impaired by reason of a conviction of a criminal offence and by reason of misconduct, the Tribunal now has to decide, in accordance with Rule 17(2)(n) of the Rules, on the appropriate sanction, if any, to impose.

The Evidence

2. The Tribunal has taken into account evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction.
3. No further evidence was adduced at this stage of the hearing.

Submissions

4. On behalf of the GMC, Ms Ferrario referred the Tribunal to the relevant paragraphs of the Sanctions Guidance (2024) ('the SG'). She identified aggravating and mitigating factors for the Tribunal to consider with reference to HHJ F's sentencing remarks. She reminded the Tribunal that its consideration of the overarching objective as a whole when determining what sanction, if any, to impose is very different from the sentencing guidelines applied in the criminal courts.

5. Ms Ferrario took the Tribunal through the sanctions in ascending order of restrictiveness. She submitted that, given the nature and gravity of Dr Nikicicz’s criminal offending, and his failure to notify the GMC of being charged and convicted, it would be inappropriate and disproportionate to take no action, agree undertakings or impose conditions.
6. Ms Ferrario submitted that, in circumstances where Dr Nikicicz has provided no evidence of accountability, insight, or adequate attempts to remediate, an order of suspension would not reflect the gravity of the offence, nor would it be sufficient to uphold the overarching objective.
7. Ms Ferrario submitted that the only appropriate and proportionate sanction in the circumstances of this case was erasure. She submitted that only erasure would uphold the overarching objective.

The Tribunal’s Determination on Sanction

8. The decision as to the appropriate sanction, if any, to impose in this case is a matter for the Tribunal exercising its own judgement. In reaching its decision, the Tribunal has taken the SG into account and borne in mind the overarching objective.
9. 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 applied the principle of proportionality, balancing Dr Nikicicz’s interests with the public interest.

Aggravating and Mitigating Factors

10. The Tribunal was assisted by the analysis of aggravating and mitigating factors set out by HHJ F in the sentencing remarks. However, it acknowledged that it was not bound by any conclusions of the criminal courts. In considering the aggravating and mitigating factors in these proceedings, the Tribunal had regard to the wider regulatory context and the need to uphold the overarching objective.
11. The Tribunal has already set out its decision on the facts and impairment which it took into account during its deliberations on sanction. Before considering what action, if any,

to take in respect of Dr Nikicicz's registration, the Tribunal considered and balanced the aggravating and mitigating factors in this case.

12. The Tribunal identified the following aggravating factors:

- Dr Nikicicz was convicted of a serious criminal offence that involved dishonesty in his professional practice, and took place on multiple occasions over a significant period of time;
- His fraudulent activity only ceased because he was caught by his employer;
- He has demonstrated no insight into his conviction, has never accepted wrongdoing and has taken limited steps in remediation;
- His failure to notify the GMC that he had been charged with, and then convicted of a serious criminal offence persisted over a long period of time. His conviction only came to the attention of the GMC via a third party;
- He has shown no insight, remorse or remediation in respect of his failure to notify the GMC. In such circumstances, there is a persistent risk of repetition in respect of Dr Nikicicz not notifying the GMC without delay of any further matters.

13. In considering mitigation, the Tribunal had regard to the sentencing remarks of HHJ F:

'As far as I can see there are no aggravating factors but there is a lot of mitigation. You have been a pathologist for 30 years. You worked in the UK, arriving from Poland, from October 2015. Nobody questions your dedication, your competence. Nothing has changed my view of the work that you did when evidence is given by you and about you. You genuinely cared about the people and their lives when you are working on the analysis of slides. You were worried about delay, the impact that would have on them, the uncertainty for them in waiting for results. All of that was genuine, all of that was rather compelling. I have to take all of that good work into account and in my view is very forceful mitigation along with the fact that you have got no previous convictions.'

14. The Tribunal was mindful that Dr Nikicicz had engaged with his criminal trial and sentencing. He had not engaged with these regulatory proceedings since 5 March 2023.

15. The Tribunal identified the following mitigating factors:

- Dr Nikicicz has no previous history of adverse regulatory findings;

- After he was convicted, he repaid the money from the fraud in full including interest;
- He was assessed by the probation service as posing a low risk of re-offending;
- There was no evidence before the Tribunal to suggest any repetition of his actions since his conviction in February 2023.

16. The Tribunal balanced the aggravating and mitigating factors identified in this case and considered them throughout its deliberations on what, if any, the appropriate and proportionate sanction to impose would be. The Tribunal considered each sanction in ascending order of severity, starting with the least restrictive.

No action

17. The Tribunal first considered whether to conclude the case by taking no action. It accepted that taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances. The Tribunal determined that there are no exceptional circumstances in this case and that, given the seriousness of its findings, it would not be sufficient, proportionate, or in the public interest to conclude this case by taking no action.

Conditions

18. The Tribunal next considered whether to impose conditions on Dr Nikicz's registration. It had regard to paragraphs 79 to 90 of the SG. The Tribunal acknowledged that conditions must be appropriate, proportionate, workable and measurable. The Tribunal could identify no conditions that could adequately address the nature of Dr Nikicz's conviction or his misconduct. Further, it was relevant that Dr Nikicz had not corresponded with the GMC since 5 March 2023 and therefore the Tribunal could not be satisfied that he would comply with any conditions it could impose. In any event, the Tribunal was of the view that to impose conditions on Dr Nikicz's registration would not sufficiently mark the gravity with which it viewed his conviction for a serious criminal offence involving dishonesty, and his misconduct in failing to notify his regulator.

Suspension

19. The Tribunal went on to consider whether to impose a period of suspension on Dr Nikicz's registration. It had regard to paragraphs 91 to 106 of the SG. The Tribunal

accepted that suspension does have a deterrent effect and could be used to send a signal to Dr Nikicicz, the profession, and the public about what is regarded as behaviour unbefitting a registered doctor. The Tribunal acknowledged the SG provides that suspension may be appropriate where there is an acknowledgement of fault and it is satisfied the conduct is unlikely to be repeated.

20. In particular, the Tribunal had regard to paragraphs 92 and 97 of the SG:

'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).

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

a A serious departure from Good medical practice, but where the misconduct is not so difficult to remediate that complete removal from the register is in the public interest. However, the departure is serious enough that a sanction lower than a suspension would not be sufficient to protect the public...

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.'

21. The Tribunal considered that the nature of Dr Nikicicz's conviction and misconduct, though difficult to remediate, did not automatically amount to being fundamentally incompatible with continued registration. The Tribunal also accepted that there was no evidence of any repetition of similar behaviour since Dr Nikicicz was charged. However,

the Tribunal took account of the aggravating factors, including that Dr Nikicicz's fraudulent activity only ceased because he was caught, as well as his lack of acknowledgement, remorse and adequate remediation. These factors did increase the seriousness with which it viewed not only Dr Nikicicz's conviction and misconduct, but his response to them. He had not provided any evidence of remediation, for example by undertaking courses relevant to honesty, integrity, and probity. He had therefore not displayed insight into either his conviction or his misconduct. Further, the Tribunal had concluded that there was a risk of repetition in that he could fail to notify his regulator of serious matters again.

22. Dr Nikicicz had breached fundamental tenets of the profession and not shown insight into or sufficiently remediated his conviction and misconduct. In these circumstances, the Tribunal determined that an order of suspension could not address its concerns nor would it uphold the overarching objective.

Erasure

23. The Tribunal went on to consider whether the sanction of erasure was appropriate and proportionate in this case. The Tribunal reminded itself of the aggravating factors it had identified. It had regard to paragraphs 107 to 111 of the SG. It also considered the paragraphs relating to dishonesty. In particular, the Tribunal considered the following paragraphs to be engaged:

'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 difficult to remediate.

b A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety...

d Abuse of position/trust (see Good medical practice, paragraph [65]: ‘You must make sure that your conduct justifies your patients’ trust in you and the public’s trust in the profession’)...

h Dishonesty, especially where persistent and/or covered up (see guidance below at paragraphs 120–128)...

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

124 *Although it may not result in direct harm to patients, dishonesty related to matters outside the doctor’s clinical responsibility (eg providing false statements or fraudulent claims for monies) is particularly serious. This is because it can undermine the trust the public place in the medical profession. Health authorities should be able to trust the integrity of doctors, and where a doctor undermines that trust there is a risk to public confidence in the profession. Evidence of clinical competence cannot mitigate serious and/or persistent dishonesty.*

125 *Examples of dishonesty in professional practice could include:*

a defrauding an employer...’

24. The Tribunal bore in mind the failure of Dr Nikicicz to adequately engage with the regulatory proceedings and the lack of evidence of insight, remorse and remediation. It also had regard to the risk of repetition in respect of his misconduct and the seriousness of his criminal offending. The Tribunal concluded that taking all of the above circumstances into account, Dr Nikicicz’s misconduct and conviction were fundamentally incompatible with continued registration.
25. The Tribunal concluded that erasure is the only appropriate sanction that will uphold the overarching objective to promote and maintain public confidence in the medical profession, and to uphold proper professional standards and conduct for members of the profession.
26. The Tribunal therefore determined that Dr Nikicicz’s name be erased from the Medical Register.

Determination on Immediate Order - 30/05/2024

1. Having determined to erase Dr Nikicicz's name from the Medical Register, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether his registration should be subject to an immediate order of suspension.

Submissions

2. On behalf of the GMC, Ms Ferrario invited the Tribunal to impose an immediate order of suspension and to revoke the interim order of suspension in place.

The Tribunal's Determination

3. The Tribunal had regard to paragraphs 172 to 178 of the SG. It took account of the guidance, the submissions made on behalf of the GMC by Ms Ferrario and the specific basis upon which the Tribunal reached its determination on sanction. In particular, it had regard to paragraph 172:

'172 The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor...'

4. The Tribunal had regard to the seriousness with which it viewed Dr Nikicicz's conviction for a criminal offence and his misconduct, its findings on impairment and the sanction it has imposed. The Tribunal determined that it is necessary to suspend his registration with immediate effect in order to uphold the overarching objective namely to promote and maintain public confidence in the medical profession and uphold proper professional standards.
5. This means that Dr Nikicicz'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.

6. The interim order will be revoked when the immediate order takes effect.
7. That concludes the case.

ANNEX A – 28/05/2024

Service and Proceeding in Absence

Service

1. Dr Nikicicz is neither present nor legally represented at this hearing.
2. The Tribunal was provided with a copy of a Service bundle from the General Medical Council (GMC). The bundle included:
 - A screen shot of Dr Nikicicz’s registered postal and email address;
 - Notice of Allegation sent via Special Delivery, dated 4 April 2024;
 - Notice of Allegation sent via email, dated 15 April 2024;
 - Proof of Delivery for Notice of Allegation, 22 April 2024;
 - Notice of Hearing sent via email by MPTS, dated 15 April 2024;
 - Chaser email by MPTS to Dr Nikicicz to confirm receipt of Notice of Hearing, dated 16 April 2024;
 - Notice of Hearing sent via Special Delivery by MPTS, dated 17 April 2024;
 - Proof of Delivery for Notice of Hearing, dated 22 April 2024.
3. Ms Ferrario, Counsel on behalf of the GMC, submitted that there has been proper service. She stated that there is no requirement by the GMC that the documents have been received but that the documents have been served.
4. The Tribunal was satisfied that that notice of hearing had been served on Dr Nikicicz in accordance with Rule 40 of the GMC’s (Fitness to Practise) Rules 2004, as amended, (‘the Rules’), and paragraph 8 of Schedule 4 to the Medical Act 1983, as amended.

Proceeding in Absence

5. Ms Ferrario invited the Tribunal to proceed with the hearing in Dr Nikicicz’s absence in accordance with Rule 31 of the Rules. Ms Ferrario stated that there has been no engagement from Dr Nikicicz in 2024. She referred the Tribunal to the email from the GMC dated 20 February 2023 and to a telephone note of the same date between Dr Nikicicz and the GMC. Ms Ferrario referred the Tribunal to an email dated 5 March 2023

from Dr Nikicicz to the GMC and confirmed that this is the last correspondence received from him.

6. Ms Ferrario submitted that the Tribunal ought to proceed in Dr Nikicicz's absence as he ought to be aware of the hearing and that he has voluntarily absented himself from the hearing. She confirmed there has been no communication from Dr Nikicicz since the documents were sent to him. Ms Ferrario reminded the Tribunal of the factors in the cases of *R v Jones [2003] 1 AC 1*; *[2002] UKHL 5* and *GMC v Adeogba [2016] EWCA Civ 163* and the need to ensure fairness to both sides.
7. The Tribunal considered whether it would be appropriate to proceed with this hearing in Dr Nikicicz'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 the appropriate care and caution, balancing the interests of the doctor with the wider public interest.
8. In deciding whether to proceed with this hearing in Dr Nikicicz's absence, the Tribunal carefully considered all the information before it. It considered that all reasonable steps were made to serve notice of this hearing upon Dr Nikicicz. It noted that his last communication with the GMC was on 5 March 2023 and that since then he has disengaged.
9. In the circumstances, the Tribunal determined that it was appropriate to proceed in Dr Nikicicz's absence because he has voluntarily absented himself from proceedings. It considered that an adjournment would be unlikely to result in Dr Nikicicz's participation in the hearing. The Tribunal was satisfied that it was in the public interest for this hearing to proceed in Dr Nikicicz's absence.