

PUBLIC RECORD

Please note: Dr Rakoczy has lodged an appeal against decisions of this tribunal.

Date: 27/04/2021

Medical Practitioner's name: Dr Gyorgy RAKOCZY

GMC reference number: 5158347

Primary medical qualification: MD 1979 Semmelweiss Orvostudományi Egyetem

Type of case: Review - Language impairment

Outcome on impairment: Impaired

Summary of outcome

Suspension, 12 months
Review hearing directed

Tribunal:

Legally Qualified Chair	Mr Robert Ward
Medical Tribunal Member:	Dr Peter Kyle
Medical Tribunal Member:	Dr Marta Babores Raset
Tribunal Clerk:	Ms Lauren Duffy

Attendance and Representation:

Medical Practitioner:	Present and not represented
GMC Representative:	Mr Alan Taylor, 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 - 27/04/2021

1. The Tribunal has convened 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 Gyorgy Rakoczy's fitness to practise is impaired by reason of him not having the necessary knowledge of English.

Background

2. Dr Rakoczy graduated from Semmelweis University in Hungary in 1979.

The 2019 Tribunal

3. Dr Rakoczy's case was first considered by a Medical Practitioners Tribunal ('MPT') between 21 January – 7 February 2019 ('the 2019 Tribunal').

4. At the time of the events which were the subject of Dr Rakoczy's initial hearing, he was employed as a Consultant Paediatric Surgeon at Central Manchester University Hospitals NHS Trust ('the Trust'), a post he took up substantively in 2008.

5. In summary, the allegations that led Dr Rakoczy's to the 2019 Tribunal were that between 23 November 2016 and 25 November 2016, and on 9 January 2017, Dr Rakoczy underwent a GMC assessment of his standard of professional performance and was observed by a Performance Assessment Team (PAT). Part of the PAT conclusions were that there were some issues with Dr Rakoczy's ability to communicate in English and it was recommended that he underwent an assessment of his English language in accordance with the International English Language Testing System ('IELTS'). On 16 September 2017, Dr Rakoczy took the test in which he failed to achieve the minimum standard required. Dr Rakoczy undertook a further test in May 2018 and also failed this test.

6. By way of background, the 2019 Tribunal noted that from 2013 Dr Rakoczy was working with restrictions imposed by the National Clinical Assessment Service (NCAS). NCAS found that overall Dr Rakoczy's English skills were satisfactory, although there were some areas for improvement, which included improving minor mistakes in grammar and to 'soften' directness in speech.

7. The findings of the NCAS report were shared with the GMC Employer Liaison Adviser by the Medical Director of the Trust. On 29 December 2015, the Employer Liaison Adviser emailed the GMC Fitness to Practise Directorate recommending that an investigation be opened into Dr Rakoczy's fitness to practise.

8. The 2019 Tribunal determined that Dr Rakoczy's fitness to practise was not impaired by reason of his deficient professional performance. However, it took the view that a lack of English language skills at the required standard could present a potential risk to patient safety. The 2019 Tribunal determined that Dr Rakoczy's fitness to practise was impaired by reason of his knowledge of English language alone and that such a finding was required in order to maintain public confidence in the profession and to promote and maintain proper professional standards for members of the profession.

9. The 2019 Tribunal determined that Dr Rakoczy's deficiencies were capable of being remedied and considered that a period of conditional registration was the appropriate and proportionate sanction. It determined to impose conditions on his registration for a period of twelve months. The 2019 Tribunal considered that this period would allow Dr Rakoczy sufficient time to improve his English language skills and pass either the IELTS or Occupational English Test (medical profession version) ('OET') test.

10. Dr Rakoczy appealed the decision of the 2019 Tribunal. The appeal was dismissed by the High Court (Dr Rakoczy having given evidence that he withdrew the appeal) and conditions were imposed on his registration until 20 May 2020.

The 2020 Tribunal

11. Dr Rakoczy's case was reviewed by an MPT in 2020, which concluded on 6 May 2020 ('the 2020 Tribunal').

12. The 2020 Tribunal had regard to an email that Dr Rakoczy had sent to the MPTS on 2 April 2020 enclosing his OET test results, which were dated 8 February 2020. He scored an average of 327.5 against the requirement of 350, achieving a C+ score. The 2020 Tribunal determined that it did not have new evidence before it which demonstrated that Dr Rakoczy met the GMC criteria and standard of knowledge of the English language.

13. The 2020 Tribunal determined that Dr Rakoczy had failed to discharge the burden of proof that he had sufficient knowledge of the English language to meet the minimum GMC standards. It determined that there were no exceptional circumstances which justified departing from the guidance set in place to guide a Tribunal's decision in such cases. The 2020 Tribunal concluded that a finding of impairment was required in order to maintain public confidence in the profession and to promote and maintain proper professional standards for members of the profession.

14. The 2020 Tribunal was of the view that Dr Rakoczy had not yet developed full insight and failed to recognise that a condition of his GMC registration was that he demonstrates a satisfactory level of the English language. However, it was satisfied that he had the potential to demonstrate full remediation and insight. In all the circumstances, it concluded that a period of conditional registration was the appropriate, proportionate, and necessary sanction. It determined that a period of conditional registration for twelve months would allow Dr Rakoczy sufficient time to improve his English language skills and pass the IELTS or OET test.

15. The 2020 Tribunal directed that a review be undertaken before the end of the period of conditional registration. It stated that a reviewing Tribunal would be assisted by:

- Evidence of satisfactory IELTS or OET test scores (medical profession version); and
- Evidence of up to date Continuing Professional Development (CPD) specific to his area of practice.

Today's hearing

The Evidence

16. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included but was not limited to:

- Record of Determination of the MPT hearing dated 7 February 2019;
- Record of Determination of the MPT hearing dated 6 May 2020;
- Letter and email correspondence between the GMC and Dr Rakoczy from 12 June 2020 – 16 March 2021; and
- Dr Rakoczy's bundle of documents:
 - Reflective statement;
 - Letter from Dr Rakoczy to his local MP, Ms A, dated 26 February 2021;
 - Various documentation that was put before the 2020 Tribunal.

17. Dr Rakoczy also gave oral evidence at the hearing.

18. In his oral evidence, Dr Rakoczy told the Tribunal that the decisions of the previous Tribunals were incorrect. He stated that the press had misinformed the public about several aspects of his case.

19. Dr Rakoczy took the Tribunal through the statements from his colleagues and various other medical professionals that he had previously provided to the 2020 Tribunal. He told the Tribunal that it can be assured by these statements that his knowledge of the English Language is satisfactory.

20. Dr Rakoczy explained that he does have insight into his previous deficiencies with the English language. He told the Tribunal that there was a problem with his English when he first arrived in this country. However, he took the Tribunal through various statements from his colleagues and stated that nobody had concerns about any risk to patient safety resulting from his knowledge of the English language.

21. Dr Rakoczy told the Tribunal that the IELTS and OET tests are discriminatory towards him because of his age. He explained that, because of his age, he would require more time to complete and pass these tests.

Submissions

22. On behalf of the GMC, Mr Alan Taylor detailed the background to Dr Rakoczy's case and drew the Tribunal's attention to those matters it must consider when reaching a decision on current impairment of fitness to practise.

23. Mr Taylor submitted that Dr Rakoczy's fitness to practise remains impaired by reason of him not having the necessary knowledge of English.

24. Mr Taylor submitted that Dr Rakoczy's insight appears to have regressed since the 2020 hearing. He referred to Dr Rakoczy's oral evidence that he is not going to take the IELTS or OET again as he does not consider them to be fair. Whilst the 2020 Tribunal found that Dr Rakoczy had made some attempts at remediation, Mr Taylor submitted that this no longer applies as Dr Rakoczy has stated that he has no intention to take the test again.

25. Mr Taylor submitted that a finding of impairment is necessary to protect patients. Further, he submitted that a finding of impairment is necessary to maintain public confidence in the medical profession and uphold proper professional standards.

26. Dr Rakoczy stated that he was disappointed that the GMC do not appear to understand his concerns with the tests. He submitted that the GMC has a role in solving this problem and that this hearing gave them an opportunity to do so. He made a suggestion of adjourning today's hearing so that the GMC could look at the age discrimination issue that he has raised about the tests. He told the Tribunal that it was not urgent for him to be able to

practise again. Whilst he would be content to work again, he stated that if the issues with the tests are not looked at by the GMC then he would retract his GMC registration.

The Relevant Legal Principles

27. The Tribunal reminded itself that the decision of impairment is a matter for the Tribunal's judgement alone. As noted above, the previous Tribunal set out the matters that a future Tribunal would be assisted by. This Tribunal is aware that it is for the doctor to satisfy it that he would be safe to return to unrestricted practice.

28. This Tribunal must determine whether Dr Rakoczy'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 Dr Rakoczy's insight into his lack of knowledge of the English language.

The Tribunal's Determination on Impairment

29. The Tribunal has taken account of all the evidence presented to it along with the submissions made by Mr Taylor on behalf of the GMC and those made by Dr Rakoczy.

30. The Tribunal noted that the GMC accepts two English language tests as evidence of the necessary knowledge of English, the IELTS and the OET. It had regard to the fact that Dr Rakoczy has not attempted to complete either test since the 2020 hearing, despite this being a condition on his registration. Therefore, the Tribunal determined that it had not been provided with any satisfactory objective or independent evidence that Dr Rakoczy's knowledge of English has changed since the matter was last considered by the Tribunal in 2020.

31. The Tribunal went on to consider Dr Rakoczy's level of insight. The Tribunal had regard to the 2020 Tribunal's finding that Dr Rakoczy had limited insight. The Tribunal remain concerned with Dr Rakoczy's level of insight in that he continued to not recognise the importance of demonstrating the requisite English language skills through the tests authorised by the GMC. It took the view that he appears to be caught up in the wider issue regarding concerns about the nature of the tests rather than doing what is required of him by the GMC to demonstrate that he has the necessary knowledge of English.

32. The Tribunal acknowledged Dr Rakoczy's concerns with the requirements of the tests in that he believes that they are discriminatory towards people of his age. The Tribunal had regard to Dr Rakoczy's suggestion to adjourn today's hearing so that the GMC could have the opportunity to investigate these concerns. However, the Tribunal was of the view that the GMC's position on this matter is clear in that it relies on a satisfactory IELTS or OET test for a

doctor to objectively demonstrate that they have the necessary knowledge of the English language. Therefore, an adjournment was not ordered.

33. The Tribunal was of the view that patients require doctors to have the necessary knowledge of English in order to treat them safely. The Tribunal concluded that a finding of impairment is required in order to protect patients, to maintain public confidence in the medical profession, and to promote and maintain proper professional standards for members of the profession.

34. In all the circumstances, the Tribunal has determined that Dr Rakoczy's fitness to practise remains impaired by reason of not having the necessary knowledge of English.

Determination on Sanction - 27/04/2021

1. Having determined that Dr Rakoczy's fitness to practise is impaired by reason of him not having the necessary knowledge of English, the Tribunal now has to decide in accordance with Rule 22(1)(h) of the Rules what action, if any, it should take with regard to Dr Rakoczy's registration.

The Evidence

2. The Tribunal has taken into account the background to the case and the evidence received during the earlier stage of the hearing where relevant to reaching a decision on what action, if any, it should take with regard to Dr Rakoczy's registration.

Submissions

3. On behalf of the GMC, Mr Taylor referred to the relevant paragraphs of the Sanctions Guidance (November 2020) (SG). He reminded the Tribunal of the overarching objective and submitted that all three limbs are engaged in this case.

4. Mr Taylor referred the Tribunal to the 2020 Tribunal's sanction determination which made reference to Dr Rakoczy's insight. He stated that Dr Rakoczy has not undertaken any English language lessons or attempted to take one of the required tests to demonstrate that he now has the necessary knowledge of the English language.

5. Further, he submitted that Dr Rakoczy's insight has regressed in that he has stated that he would not be willing to do either the IELTS or the OET test again until the age-related discrimination issue is addressed. Mr Taylor reminded the Tribunal that it is not for this Tribunal to adjudicate in relation to this argument and stated that Dr Rakoczy's persistence in trying to argue about this demonstrates a lack of insight.

6. Mr Taylor submitted that it would be wholly inappropriate to take no action in this case. He stated that there are no exceptional circumstances.

7. In relation to conditions, Mr Taylor submitted that conditions are no longer workable in this case. He stated that Dr Rakoczy has not responded positively to remediation. He stated that Dr Rakoczy has very limited insight and has not complied with the conditions on his registration. He submitted that Dr Rakoczy has not undertaken any action to improve his English language nor has he attempted to pass an IELTS or OET test. Mr Taylor submitted that a further period of conditional registration is no longer appropriate or workable.

8. Mr Taylor referred the Tribunal to paragraph 97d of the SG (as set out below). He stated that not having the necessary level of English language skills impacts upon a doctor's ability to practise and could place patients at risk. He submitted that a period of suspension would give Dr Rakoczy sufficient time to improve his English language skills and pass the required test. Mr Taylor further submitted that Dr Rakoczy is unlikely to do a further language assessment which is the wider concern.

9. Dr Rakoczy submitted that he does have very strong insight. He said the GMC is not compliant with the scientific evidence that has been presented regarding the age-related issues with the IELTS and OET tests. He stated that he will not be able to pass the tests. He said that if he could pass the tests then he would do it. He stated that he has the necessary level of English required.

The Tribunal's Determination

Mitigating and Aggravating Features

10. Prior to considering what action, if any, to take in this case, the Tribunal considered the mitigating and aggravating features.

11. The Tribunal acknowledged that Dr Rakoczy has undertaken some self-study under difficult circumstances during the current COVID-19 Pandemic. It considered that this was a mitigating feature in this case.

12. The Tribunal was of the view that Dr Rakoczy's undue focus on the wider issues in relation to his concerns about the nature of the IELTS and the OET tests demonstrates a lack of insight. The Tribunal considered this to be an aggravating feature.

No Action

13. In coming to its decision as to the appropriate sanction to impose in Dr Rakoczy's case, the Tribunal first considered whether to conclude the case by taking no action. The Tribunal identified no exceptional circumstances in this case. It therefore determined that taking no action would not be appropriate, proportionate, or in the public interest.

Conditions

14. The Tribunal next considered whether it would be sufficient to maintain or vary the existing order of conditions on Dr Rakoczy's registration. It had regard to paragraphs 81(d) and 82 of the SG, which provide:

'81 Conditions might be most appropriate in cases:

....

d where a doctor lacks the necessary knowledge of English to practise medicine without direct supervision.

82 Conditions are likely to be workable where:

a the doctor has insight

b a period of retraining and/or supervision is likely to be the most appropriate way of addressing any findings

c the tribunal is satisfied the doctor will comply with them

d the doctor has the potential to respond positively to remediation, or retraining, or to their work being supervised.'

15. The Tribunal considered whether it would be sufficient to continue the conditions on Dr Rakoczy's registration. It has borne in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable. The Tribunal agreed with Mr Taylor's submissions that conditions are no longer the appropriate sanction in this case because of Dr Rakoczy's lack of insight.

16. The Tribunal was mindful of the fact that Dr Rakoczy has made little progress since the last review hearing. The Tribunal is of the opinion that Dr Rakoczy does not fully understand or accept the reasons for the restrictions on his registration, namely that he does not have the necessary knowledge of English and the impact this has on patient safety.

17. Therefore, the Tribunal determined that imposing a further period of conditions on Dr Rakoczy's registration would not be appropriate or proportionate at this time.

Suspension

18. The Tribunal then went on to consider whether suspending Dr Rakoczy's registration would be appropriate and proportionate.

19. The Tribunal had regard to paragraph 97d of the SG:

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

...
d in cases that relate to knowledge of English, where the doctor's language skills affect their ability to practise and there is a risk to patient safety if the doctor were allowed to continue to practise even under conditions'

20. Given Dr Rakoczy's lack of insight into the need to pass the required test in order to satisfy it that he has the required knowledge of the English language, the Tribunal determined that the only appropriate sanction in this case was one of suspension. The Tribunal determined that a period of suspension would allow Dr Rakoczy to gain insight and obtain the necessary level of English language. Further, it determined that a period of suspension would meet its overarching objective and send a signal to the profession that doctors are required to have the necessary knowledge of the English language to practise medicine safely.

21. The Tribunal considered that a period of 12 months suspension would be appropriate, to give Dr Rakoczy the time to complete an OET or IELTS test; this would ensure patient safety and uphold professional standards, as well as maintaining public trust in the medical profession.

22. The Tribunal determined to direct a review of Dr Rakoczy's case. A review hearing will convene shortly before the end of the period of suspension, unless an early review is sought (which can be requested by Dr Rakoczy). The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Rakoczy to demonstrate:

- Evidence of satisfactory IELTS or OET test scores (medical profession version); and
- Evidence of up to date Continuing Professional Development (CPD) specific to his area of practice.

Determination on Immediate Order - 27/04/2021

1. Having determined that Dr Rakoczy's registration is to be suspended for a period of 12 months, the Tribunal has considered, in accordance with the Rules, whether his registration should be subject to an immediate order.

Submissions

2. On behalf of the GMC, Mr Taylor submitted that an immediate order of suspension is required. He drew the Tribunal's attention to paragraph 172 of the SG.

'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. The interests of the doctor include avoiding putting them in a position where they may come under pressure from patients, and/or may repeat the

misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order’.

3. Mr Taylor submitted that it is necessary to protect members of the public and would also be in the public interest for such an order to be imposed.

4. Dr Rakoczy’s submissions focused on his request for the GMC to look again at the need to not rely on the IELTS/ OET tests for assessing language for medical practitioners over the age of 60.

The Tribunal’s Determination

5. The Tribunal had particular regard to paragraph 172 of SG. It has also had regard to the principle of proportionality and balanced Dr Rakoczy’s interests with the public interest. The Tribunal has determined that it is not necessary to impose an immediate order to suspend Dr Rakoczy’s registration. It determined that the conditions already imposed on Dr Rakoczy’s registration would protect patients and the public interest prior to the substantive order of suspension taking effect.

6. The substantive sanction of suspension as already announced will take effect 28 days from when written notice is deemed to have been served upon Dr Rakoczy unless an appeal is lodged in the interim. If Dr Rakoczy does lodge an appeal the current order of conditions will remain in force until the substantive direction of suspension takes effect, or until the outcome of any appeal is decided.

7. That concludes this case.

Confirmed
Date 27 April 2021

Mr Robert Ward, Chair