

PUBLIC RECORD

Date: 31/05/2024

Medical Practitioner's name: Dr Henry ALAVA VERZOLA

GMC reference number: 7117758

Primary medical qualification: D Med 1999 Catholic University of Santiago de Guayaquil

Type of case	Outcome on impairment
Review - Misconduct	Impaired
Review - Deficient professional performance	Impaired

Summary of outcome

Erasure

Tribunal:

Legally Qualified Chair	Mr Duncan Ritchie
Lay Tribunal Member:	Ms April Marland
Medical Tribunal Member:	Dr Kate Thomas

Tribunal Clerk:	Ms Angela Carney
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Attendance and Representation:

Medical Practitioner:	Not present, not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Ms Laura Kaye, Counsel

Attendance of Press / Public

In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held partly in public and partly in private.

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 - 31/05/2024

1. This determination will be read in private. However, as this case concerns Dr Alava Verzola's misconduct and deficient professional performance a redacted version will be published at the close of the hearing.
2. 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 Alava Verzola's fitness to practise is impaired by reason of misconduct and deficient professional performance.

The Outcome of Applications Made during the Impairment Stage

3. 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'), that service had been effected and to proceed in Dr Alava Verzola's absence. The Tribunal's full decision on the application is included at Annex A.

Background

4. Dr Alava Verzola qualified in 1999 from the Catholic University of Santiago de Guayaquil and at the time of the events that led to his substantive hearing in May 2022 he had been practising as a Foundation Year 2 ('FY2') doctor in Medicine for Older Persons at Portsmouth Hospitals NHS Trust ('the Trust'), having joined the Trust in August 2018. In addition, Dr Alava Verzola was working as a locum doctor for Medecho Ltd.

The 2022 Tribunal

Misconduct

5. The facts found proved at Dr Alava Verzola's substantive hearing which took place in May 2022 (the 2022 Tribunal) can be summarised as follows. In October 2018, following concerns raised about Dr Alava Verzola's clinical ability, his role was made supernumerary by the Trust with a supervision requirement, and he was not allowed to work night and weekend shifts. Dr Alava Verzola left the Trust on or around 30 June 2019.

6. The 2022 Tribunal found proved that between April 2019 and June 2019 Dr Alava Verzola worked a total of 13 locum shifts at Barking, Havering and Redbridge University Hospitals NHS Trust, Bedfordshire Hospitals NHS Foundation Trust and Western Sussex Hospitals NHS Foundation Trust ('WSH'). Dr Alava Verzola failed to inform those Trusts that he was subject to supervision in response to concerns regarding performance.
7. The 2022 Tribunal found that because of Dr Alava Verzola's compliance with the advice of his supervisors at the Trust and disclosure to his locum agency his conduct in carrying out locum work at the three Trusts between April 2019 and June 2019 did not fall seriously below the requisite standard so as to amount to misconduct and therefore it did not consider impairment.
8. The 2022 Tribunal found proved that between 5 and 18 August 2020 Dr Alava Verzola worked at St Helens and Knowsley Teaching Hospitals NHS Trust, whilst he was subject to an MPTS interim order of conditions and failed to ensure he was directly supervised, to notify the responsible officer, his immediate line manager and the senior clinician at that Trust of the interim condition that he had to be directly supervised.
9. The 2022 Tribunal found that in failing to comply with the interim order conditions on his registration, Dr Alava Verzola's conduct fell seriously below the professional standards expected of him as a doctor and amounted to misconduct.
10. The 2022 Tribunal found proved that on 3 and 4 May 2019, Dr Alava Verzola worked locum shifts at Worthing Hospital, after experiencing XXX. Dr Alava Verzola failed to inform that Trust of XXX. It also found proved that Dr Alava Verzola worked a number of locum shifts for Medecho Ltd during May 2019 whilst on sick leave from the Trust.
11. The 2022 Tribunal concluded that Dr Alava Verzola's actions in respect of his working as a locum whilst on sick leave from the Trust and working following a period of XXX, fell seriously below the expected standard and amounted to misconduct.
12. The 2022 Tribunal noted that there had been no contact from Dr Alava Verzola in the previous 12 months. It found that Dr Alava Verzola had demonstrated limited insight and there was very limited evidence to show that he had made any effort to remediate his conduct. It concluded that the risk of repetition remained high.
13. The 2022 Tribunal considered that Dr Alava Verzola's actions put patients at potential risk of harm, both from the non-disclosure of his need for direct supervision set out in his conditions and from him working following a period of XXX. The 2022 Tribunal also concluded that his conduct in respect of his interim order of conditions had the potential to bring the medical profession into disrepute.
14. In both matters of misconduct, the 2022 Tribunal determined that there was the potential to undermine public confidence in the profession and the maintenance of professional standards for doctors. Further it found that all three limbs of the overarching

objective were engaged and determined that Dr Alava Verzola's fitness to practise was impaired by reason of his misconduct.

Deficient Professional Performance

15. In November 2019, following concerns raised about Dr Alava Verzola's clinical performance he undertook a GMC assessment of the standard of his professional performance.

16. The 2022 Tribunal accepted the findings in the GMC assessment report and found proved that Dr Alava Verzola's professional performance was unacceptable in the areas of Maintaining Professional Performance, Assessment of Patients' Condition, Clinical Management and Relationships with Patients. It also found proved that Dr Alava Verzola's professional performance was a cause for concern in the area of Working with Colleagues and that he scored below the required standard in the Knowledge Test.

17. The 2022 Tribunal concluded that Dr Alava Verzola's performance fell so far short of the standards of performance reasonably to be expected of a doctor of his level as to amount to deficient professional performance. It found that he had not provided any evidence in the 12 months prior to the hearing to demonstrate that he had continued to remedy his deficient professional performance.

18. The 2022 Tribunal was satisfied that Dr Alava Verzola's fitness to practise was impaired by reason of his deficient professional performance and was of the view, given the number and level of deficiency found, that public confidence in the profession would be undermined if a finding of impairment had not been made.

19. Having found Dr Alava Verzola's fitness to practise was impaired by reason of his misconduct and deficient professional performance, the 2022 Tribunal imposed an order of suspension for a period of 12 months and directed a review.

The 2023 Tribunal

Misconduct and Deficient Professional Performance

20. The 2023 Tribunal noted that Dr Alava Verzola had not attended his substantive hearing in May 2022. Dr Alava Verzola did not attend the review hearing in May 2023 and had not engaged with the GMC prior to May 2023. The 2023 Tribunal received no evidence that Dr Alava Verzola had gained insight, remediated his misconduct and addressed his deficient professional performance. It noted that Dr Alava Verzola failed to respond to any correspondence and failed to undertake a performance assessment as directed by the GMC's Assistant Registrar.

21. Due to Dr Alava Verzola's continued lack of engagement, the 2023 Tribunal was not satisfied that he fully appreciated the gravity of his misconduct and deficient professional

performance. It could not be satisfied that he had not repeated his misconduct or that he had addressed the deficiencies in his professional performance. Having received no evidence that Dr Alava Verzola had maintained his clinical skills the 2023 Tribunal was not satisfied that patients would not be placed at risk. Further, public confidence in the profession would be undermined if a finding of impairment was not made.

22. The 2023 Tribunal considered that all three limbs of the overarching objective remained engaged and determined that Dr Alava Verzola's fitness to practise was impaired by reason of misconduct and deficient professional performance.

23. The 2023 Tribunal determined to suspend Dr Alava Verzola's registration for the maximum period of 12 months and directed a review. It suggested that the reviewing Tribunal may be assisted if Dr Alava Verzola provided the following:

- Evidence of improvement and engagement including a detailed written reflection on his misconduct, particularly dealing with his understanding and appreciation of the *personal* duties and responsibilities that he is subject to or that are imposed on him by his regulator;
- Evidence that he has maintained his medical skills and knowledge;
- Evidence of any clinical attachments, mentoring, workplace shadowing or similar;
- An up to date GMC Performance Assessment and Report: and
- Any other information that Dr Alava Verzola considers will assist the reviewing Tribunal.

The Evidence

24. The Tribunal has taken into account all the evidence received. The documentary evidence included:

- Record of Determination of the MPT hearing dated 3-19 March 2022
- Record of Determination of the MPT hearing dated 30 May 2023
- Correspondence from the GMC and the MPTS to Dr Alava Verzola from July 2023 to April 2024

Submissions

25. On behalf of the GMC, Ms Kaye provided the background to the case. Ms Kaye referred the Tribunal to paragraphs 163 and 164 of the Sanctions Guidance (February 2024), the SG, which state:

'163. It is important that no doctor is allowed to resume unrestricted practice following a period of conditional registration or suspension unless the tribunal considers that they are safe to do so.'

164. *In some misconduct cases it may be self-evident that, following a short suspension, there will be no value in a review hearing. However, in most cases where a period of suspension is imposed, and in all cases where conditions have been imposed, the tribunal will need to be reassured that the doctor is fit to resume practice – either unrestricted or with conditions or further conditions. A review hearing is therefore likely to be necessary, so that the tribunal can consider whether the doctor has shown all of the following (by producing objective evidence):*

- a. they fully appreciate the gravity of the offence*
- b. they have not reoffended*
- c. they have maintained their skills and knowledge*
- d. patients will not be placed at risk by resumption of practice or by the imposition of conditional registration.*

26. Ms Kaye submitted that Dr Alava Verzola remains impaired by reason of misconduct and deficient professional performance. She submitted that this Tribunal is no further on than the previous Tribunal was a year ago. She stated that the position is worsened a year on as there is no evidence that Dr Alava Verzola has taken any steps to ensure that he is fit to practise. She submitted that he has not taken any steps to develop insight and has no appreciation of his responsibilities as a doctor. She also submitted that there is no evidence that Dr Alava Verzola has kept his medical skills and knowledge up to date.

27. In the absence of any evidence objective or otherwise the Tribunal cannot be satisfied that Dr Alava Verzola is fit to practise and therefore the risk of repetition is high. She submitted that public confidence would be severely undermined if a finding of impairment was not made today. She reminded the Tribunal that the persuasive burden is on Dr Alava Verzola to demonstrate that he has remediated his misconduct and addressed his deficient professional performance. She invited the Tribunal to find that Dr Alava Verzola's fitness to practise is impaired by reason of his misconduct and deficient professional performance today.

The Relevant Legal Principles

28. 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 may be assisted by. This Tribunal is aware that it is for the doctor to satisfy it that they would be safe to return to unrestricted practise.

29. This Tribunal must determine whether Dr Alava Verzola's fitness to practise is impaired today, taking into account his conduct and performance 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.

30. The Tribunal considered the legal guidance about the meaning of ‘impairment’ provided by Dame Janet Smith in the Fifth Shipman Report and adopted in *CHRE v NMC & Paula Grant [2011] EWHC 297 (Admin)*. Namely:

‘The Tribunal should consider whether the findings of fact in respect of the doctor. ... show that his fitness to practise is impaired in the sense that he:

- *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession...*
- *has in the past acted dishonestly / or is liable in to act dishonestly in the future.’*

31. The Tribunal must also determine whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of current impairment were not made.

32. The Tribunal should consider whether all of the concerns raised in the original finding of impairment through misconduct have been sufficiently addressed to the Tribunal’s satisfaction. In practical terms, there is a persuasive burden on the Doctor to demonstrate that they have fully acknowledged what they did and through insight, application, education, supervision or other achievement has sufficiently addressed the past impairments (as was decided in the case of *Abraham v GMC [2008] EWHC 183 (Admin)*).

The Tribunal’s Determination on Impairment

Misconduct and Deficient Professional Performance

33. The Tribunal noted that Dr Alava Verzola did not attend the substantive hearing in May 2022 and has not engaged with the GMC since. The Tribunal noted that Dr Alava Verzola has failed to respond to correspondence from the GMC and the MPTS and the recent correspondence sent has been returned as ‘Addressee gone away’. The Tribunal further noted that the last communication which the GMC had received from Dr Alava Verzola was in December 2020. It further noted that it is a doctor’s responsibility to keep their registered address up to date.

34. The Tribunal found itself in the same position as the reviewing Tribunal in May 2023. Dr Alava Verzola has failed to provide any objective evidence, that he has gained insight,

remediated his misconduct and addressed his deficient professional performance, suggested by the May 2023 Tribunal, which may have assisted this Tribunal. The Tribunal is mindful that the persuasive burden is on Dr Alava Verzola to demonstrate that he has remediated his misconduct and addressed his deficient professional performance and that he is fit to practise.

35. Dr Alava Verzola has failed to undertake a performance assessment as directed by the GMC's Assistant Registrar which could have informed this Tribunal's decision making.

36. The only information this Tribunal has before it is the findings of the 2022 and 2023 Tribunals and evidence of Dr Alava Verzola's lack of engagement when correspondence has been sent to him. The Tribunal considered that Dr Alava Verzola may have moved away from his registered address and therefore would be unaware of correspondence sent there. However, the onus of providing an up-to-date address or means of contact to the Regulator is on the doctor.

37. The position remains the same and the Tribunal could not be satisfied that Dr Alava Verzola fully appreciates the gravity of his misconduct and deficient professional performance or that he has not repeated his misconduct and addressed the deficiencies in his professional performance identified. The Tribunal has no evidence that Dr Alava Verzola has maintained his clinical skills which in fact may have deteriorated further and cannot be satisfied that patients will not be placed at risk.

38. The Tribunal was of the opinion that, given Dr Alava Verzola's misconduct and deficient professional performance in a number of respects, public confidence in the profession would be undermined if a finding of impairment was not made.

39. The Tribunal determined that all three limbs of the overarching objective remain engaged.

40. This Tribunal has therefore determined that Dr Alava Verzola's fitness to practise remains impaired by reason of misconduct and deficient professional performance.

Determination on Sanction - 31/05/2024

41. Having determined that Dr Alava Verzola's fitness to practise is impaired by reason of his misconduct and deficient professional performance, 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 his registration.

Submissions

42. On behalf of the GMC, Ms Kaye submitted that the proportionate and appropriate sanction in this case is erasure. She submitted that erasure would be the proportionate means of

addressing the overarching objective. She referred the Tribunal to paragraph 168 of the Sanctions Guidance (February 2024) ('the SG'), in relation to its powers at this stage.

Paragraph 168 states:

- '168. Where a doctor's registration is suspended, the tribunal may direct that:*
- a. the current period of suspension is extended (up to 12 months)*
 - b. the doctor's name is erased from the medical register (except in cases that relate solely to the doctor's health and/or knowledge of English)*
 - c. impose a period of conditions (up to three years).'*

43. Ms Kaye submitted that there are no exceptional circumstances in this case to warrant the Tribunal taking no action. She submitted that the Tribunal may be unable to determine that Dr Alava Verzola is fit to return to unrestricted practice given its findings on impairment. She submitted that conditions would not address the serious matters of its findings on impairment. She reminded the Tribunal that conditions have not been successful previously and would not address the overarching objective nor could it be satisfied that Dr Alava Verzola would comply with conditions as he has breached them in the past.

44. In relation to suspension, Ms Kaye referred the Tribunal to paragraph 93 of the SG, which states:

- '93. Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions (see paragraphs 24–49).'*

45. Ms Kaye submitted that there is no evidence that the doctor has recognised what went wrong and has taken steps to ensure that the behaviour is not repeated. She submitted that in the circumstances the Tribunal could not be satisfied that the behaviour is unlikely to be repeated and neither could it be satisfied that Dr Alava Verzola has taken steps to mitigate his actions.

46. Ms Kaye referred the Tribunal to paragraph 94 of the SG, which states:

- '94. Suspension is also likely to be appropriate in a case of deficient performance or lack of knowledge of English in which the doctor currently poses a risk of harm to patients but where there is evidence that they have gained insight into the deficiencies and have the potential to remediate if prepared to undergo a rehabilitation or retraining programme.'*

47. Ms Kaye submitted that there is an ongoing risk of harm to patients and reminded the Tribunal of the findings of performance assessment report. She said there is no evidence of insight or the potential to remediate.

48. Ms Kaye referred the Tribunal to paragraph 97 of the SG, which states:

'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.

b. In cases involving deficient performance where there is a risk to patient safety if the doctor's registration is not suspended and where the doctor demonstrates potential for remediation or retraining.

...

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.

49. Ms Kaye submitted that the facts of this case suggest that the misconduct will be difficult to remediate. She said that this indicates removal of Dr Alava Verzola's name from the medical register is necessary. She said that there is no evidence that remediation is likely to be successful, as demonstrated by Dr Alava Verzola's disengagement. Ms Kaye submitted that the Tribunal cannot be satisfied the doctor has insight and does not pose a significant risk of repeating behaviour. She submitted that suspension is no longer an appropriate sanction.

50. In relation to erasure, Ms Kaye referred the Tribunal to paragraphs 107-109 of the SG, which state:

'107. The tribunal may erase a doctor from the medical register in any case – except one that relates solely to the doctor's health and/or knowledge of English – where this is the only means of protecting the public.

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.*

...

j. *Persistent lack of insight into the seriousness of their actions or the consequences. 151–159).*

51. Ms Kaye referred the Tribunal to the paragraphs in the SG which relate to the mitigating and aggravating factors in this case. In relation to aggravating factors, Ms Kaye referred to paragraphs 50 and 51, which state:

'50. The tribunal needs to consider any aggravating factors presented to it against the central aim of sanctions (see paragraphs 14–16).

51. It is important for tribunals to consider insight, or lack of, when determining sanctions. It is particularly important in cases where the doctor and the GMC agree undertakings or the tribunal imposes conditions. The tribunal must be assured that this approach adequately protects patients, in that the doctor has recognised the steps they need to take to limit their practice to remediate.'

52. In conclusion, Ms Kaye submitted that the 2022 and 2023 Tribunals each felt that a period of 12 months would be sufficient to remediate Dr Alava Verzola's misconduct and address the deficient professional performance. She said that 24 months had now passed and Dr Alava Verzola has failed to either remediate the misconduct or address the deficient professional performance. Ms Kaye confirmed that her submission is that Dr Alava Verzola poses a risk to patients in light of his deficient professional performance. She submitted that his lack of engagement with the regulatory process and his previous misconduct in failing to abide by IOT conditions demonstrates 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.

53. Ms Kaye invited the Tribunal to erase Dr Alava Verzola's name from the medical register.

The Tribunal's Determination

54. The decision as to the appropriate sanction to impose, if any, in this case is a matter for this Tribunal exercising its own judgement. In reaching its decision, the Tribunal has taken account of the SG and the over-arching objective. It has borne in mind that the purpose of a

sanction is not to be punitive, but to protect patients and the wider public interest, although it may have a punitive effect.

55. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Alava Verzola's interests with the public interest. The public interest includes, amongst other things, the protection of patients, the maintenance of public confidence in the profession, and the declaring and upholding of proper standards of conduct and behaviour.

56. The Tribunal has already given a detailed determination on impairment and it has taken those matters into account during its deliberations on sanction.

Aggravating and mitigating factors

57. The Tribunal was mindful that it is less able to take mitigating factors into account when the concern is about patient safety, or is of a more serious nature, than if the concern is about public confidence in the profession.

58. The Tribunal considered that the absence of evidence of any insight or remediation on Dr Alava Verzola's part was an important factor which suggested the need for an effective sanction when considered alongside the SG, but it has guarded against counting this as an aggravating factor in addition to taking it into account when applying the SG.

59. The Tribunal went on to consider sanction starting with the least restrictive sanction.

No action

60. In coming to its decision as to the appropriate sanction, if any, to impose in Dr Alava Verzola's case, the Tribunal first considered whether to conclude the case by taking no action. Taking no action would only be appropriate in exceptional circumstances.

61. The Tribunal concluded, in agreement with the May 2023 Tribunal, that there were no exceptional circumstances in Dr Alava Verzola's case. Therefore, the Tribunal concluded that, in the absence of any exceptional circumstances, and given the lack of engagement, insight and remediation by Dr Alava Verzola, it would not be appropriate or proportionate and would not serve the public interest to take no further action.

Conditions

62. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Alava Verzola's registration. It has borne in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable.

63. The Tribunal considered paragraph 82 the SG, which states:

'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.'*

64. The Tribunal noted that conditions are likely to be workable where a doctor has demonstrated insight and has the potential to respond positively to remediation. Dr Alava Verzola has not engaged with the GMC since prior to his substantive hearing in May 2022 or with these proceedings. Dr Alava Verzola has not provided the Tribunal with any evidence of his insight or remediation.

65. The Tribunal noted that Dr Alava Verzola previously breached the interim order of conditions on his registration. It also noted that Dr Alava Verzola was directed to undergo two GMC performance assessments and has failed to comply with those directions. The Tribunal concluded that it could not be satisfied that Dr Alava Verzola would comply with conditional registration.

66. Further, the Tribunal considered that a period of conditional registration would not adequately reflect the serious nature of Dr Alava Verzola's misconduct and deficient professional performance and determined that conditions could not be formulated which would protect the public interest and maintain public confidence in the medical profession.

67. The Tribunal has, therefore, determined that it would not be sufficient to direct the imposition of conditions on Dr Alava Verzola's registration.

Suspension

68. The Tribunal next considered whether it would be appropriate and proportionate to impose a further period of suspension on Dr Alava Verzola's registration. It has borne in mind that suspension can have 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 unbecoming a registered doctor.

69. The Tribunal has borne in mind paragraphs 91 - 93 of the SG, which state:

'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 unbecoming 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).*

93. *As listed above.'*

70. The Tribunal cannot be satisfied that Dr Alava Verzola's behaviour will not be repeated due to his lack of engagement with these proceedings. Nor can it be satisfied that Dr Alava Verzola has taken any steps to mitigate his misconduct and deficient professional performance.

71. The Tribunal considered the factors in paragraph 97 (as above) of the SG which indicate where suspension may be appropriate. In particular, it considered sub-paragraphs a, b, e & g and considered that in respect of each of these examples where suspension might be appropriate, the current case could be distinguished as more serious because:

- Dr Alava Verzola's misconduct is now so difficult to remediate because of his lack of engagement with his regulator that complete removal from the register is in the public interest.
- Dr Alava Verzola's case involves deficient performance and there is a risk to patient safety demonstrated by his uncorrected deficient performance which the Doctor has shown no evidence of potential to remediate.
- Remediation has been demonstrated to be unlikely to succeed by Dr Alava Verzola's breach of IOT conditions and his unwillingness to engage with the regulatory process.
- The Tribunal cannot be satisfied, in light of Dr Alava Verzola's deficient performance, misconduct and lack of engagement with the regulatory process that he does not pose a significant risk of repeating his behaviour.

72. The Tribunal also considered the example of a case where suspension would be appropriate contained in paragraph 94 of SG and again considered that the current case was more serious because Dr Alava Verzola posed a risk to patients and there is no evidence that he has gained insight into his deficient performance or has the potential to remediate.

73. The Tribunal noted Ms Kaye’s submissions that a sanction of suspension would not be appropriate in this case.

74. The Tribunal has borne in mind paragraphs 163 and 164 of the SG, as noted in its impairment determination.

75. As the Tribunal received no evidence of Continuing Professional Development from Dr Alava Verzola and he has failed to undertake a directed performance assessment, he may have become de-skilled which raises further concerns about patient safety. For these reasons, the Tribunal determined that suspension would not adequately address the concerns raised by Dr Alava Verzola’s impairment; would not adequately protect the public and would not address the public’s trust and confidence in the medical profession.

Erasure

76. The Tribunal has borne in mind paragraphs 107 to 109 of the SG as above. The Tribunal is of the opinion that Dr Alava Verzola has demonstrated a blatant disregard of the regulatory process, firstly by the breach of his interim order conditions and secondly by his lack of engagement with these proceedings.

77. The Tribunal considered paragraph 109 and noted that none of the non-exhaustive list of factors suggested erasure in circumstances such as this case. However, the Tribunal noted the SG on suspension and considered that the circumstances of this case did not sit easily with that guidance. It also noted that none of the indicators of more serious action set out at paragraphs 133 to 162 of the SG were present here. However, the Tribunal considered that this case was serious because of the absence of any evidence of insight by Dr Alava Verzola into his actions; because his behaviour is now particularly difficult to remediate due to his disengagement from the process and the lack of any evidence of any professional development.

78. Dr Alava Verzola’s misconduct put patients at potential risk of harm from the non-disclosure of his need for direct supervision and his working following a period of XXX. Further, Dr Alava Verzola’s breach of his interim order of conditions had the potential to bring the medical profession into disrepute. These misconduct matters had the potential to undermine public confidence in the profession and the maintenance of professional standards for doctors. Further, Dr Alava Verzola’s professional performance was found unacceptable in four areas. He has had opportunity since that assessment to address his deficient professional performance and to remediate his misconduct, but he has failed to demonstrate any attempt to do so. The Tribunal therefore considered that there was a significant risk of repetition of his misconduct and deficient professional performance and that the public interest required a sanction to address those risks.

79. The Tribunal considered proportionality and whilst it noted that erasure will affect Dr Alava Verzola’s ability to earn a living, it balanced this against the public interest and the overarching objective.

80. Given all these factors, the Tribunal considered that Dr Alava Verzola should not practise again in the public interest, for patient safety and to protect the reputation of the profession. The Tribunal was satisfied that Dr Alava Verzola's misconduct and failure to address his deficient professional performance make him fundamentally incompatible with continued registration.

81. In all of the circumstances, the Tribunal determined that the only proportionate and appropriate sanction to address the overarching objective is that of erasure.

82. The Tribunal therefore determined to erase Dr Alava Verzola's name from the Medical Register.

83. The MPTS will send Dr Alava Verzola a letter informing him of his right of appeal and when the direction will come into effect. Unless Dr Alava Verzola exercises his right of appeal, his 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 him. The current of suspension will remain in place during the appeal period.

ANNEX A – 31/05/2024

Application on Service & Proceeding in Absence

1. Dr Alava Verzola is neither present nor represented today at this 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. In so doing, the Tribunal has taken into account all the information placed before it, together with the submissions made by Ms Laura Kaye, Counsel on behalf of the General Medical Council (GMC).

2. Ms Kaye made an application on service and proceeding in the doctor's absence pursuant to Rule 31. She submitted that all reasonable efforts have been made to serve notice of the hearing. She reminded the Tribunal of Rule 40 which states the manner in which notice of the hearing can be served, by post or electronic mail.

3. Ms Kaye referred the Tribunal to the relevant proof of service documents as follows:

- Screenshot of Dr Alava Verzola's GMC registered address
- Correspondence from the GMC to Dr Alava Verzola from July 2023 to February 2024
- MPTS letter including the Case Management directions, dated 8 September 2023
- GMC Rule 34(9) letter and Notice of Allegation and hearing bundle, dated 18 April 2024
- MPTS Notice of Hearing letter sent by special delivery, dated 17 April 2024
- Returned MPTS Notice of Hearing letter sent by special delivery, dated 17 April 2024 – status '*Addressee gone away*' received 24 April 2024
- MPTS Notice of Hearing letter sent by Royal Mail, dated 19 April 2024
- Returned MPTS Notice of Hearing letter sent by Royal Mail, dated 19 April 2024 - status '*Addressee gone away*' received 22 April 2024

4. Ms Kaye confirmed that there has been no response from Dr Alava Verzola to any of the correspondence by the GMC or MPTS. She confirmed that the GMC information letter and MPTS notices sent by special delivery and Royal Mail were returned to sender with the status '*Addressee gone away*'. Ms Kaye invited the Tribunal to find, on the balance of probabilities, that all reasonable efforts have been made to serve notice on Dr Alava Verzola.

5. Ms Kaye made further submissions on proceeding in Dr Alava Verzola's absence. Ms Kaye referred the Tribunal to the case of *R v Jones [2003] 1 AC 1*. She submitted that Dr Alava Verzola has voluntarily absented himself and that his lack of attendance is consistent with his absence at previous hearings. She said Dr Alava Verzola has chosen not to engage nor has he requested an adjournment. She reminded the Tribunal that it is incumbent on Dr Alava Verzola to keep his registered address up to date. Ms Kaye submitted that it is in the public interest to proceed today and invited the Tribunal to proceed in Dr Alava Verzola's absence.

She submitted that there is no unfairness in this case and the Tribunal can properly proceed under Rule 31.

The Tribunal Decision

Service

6. The Tribunal took account of the correspondence sent by the GMC and MPTS by recorded delivery, Royal Mail and email, since July 2023, to which there has been no response from Dr Alava Verzola. The Tribunal was mindful that the onus is on the doctor to ensure their registered address is up to date.

7. Having considered the evidence before it and the submissions made by Ms Kaye, the Tribunal was satisfied that that all reasonable efforts had been made to serve notice of this hearing on Dr Alava Verzola, not just by email, but also by special delivery and post.

8. Accordingly, the Tribunal was satisfied that Notice of this Hearing had been served on Dr Alava Verzola 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

9. As the Tribunal was satisfied that notice had been properly served on Dr Alava Verzola, the Tribunal then considered whether to proceed with this hearing in his absence, in accordance with Rule 31 of the Rules, which states:

'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.'

10. The Tribunal has borne in mind the relevant Rules, the case of *R v Jones [2003] 1 AC 1; [2002] UKHL 5* and the overarching objective. 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 his right to be represented;
- The general public interest.

11. 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 Alava Verzola's interests with the overarching statutory objective.

12. The Tribunal noted that Dr Alava Verzola did not engage with the substantive hearing in May 2022 or the review hearing in May 2023. Dr Alava Verzola has not responded to any of the GMC's and MPTS's correspondence referred to during this hearing. The Tribunal considered that this appears to be a pattern of behaviour by Dr Alava Verzola.

13. Dr Alava Verzola has given no reason for his non-attendance, nor has he made any application to adjourn these proceedings. The Tribunal was of the view that an adjournment would serve no useful purpose in this case. There was no evidence before the Tribunal to suggest that Dr Alava Verzola would be more likely to attend a hearing if it were held at a later date.

14. The Tribunal considered that the fair, economical, expeditious and efficient disposal of allegations made against medical practitioners is of very real importance. The Tribunal must balance the interests of Dr Alava Verzola with the interests of the public. The Tribunal took into account that the current order of suspension was imposed in part, for the protection of the public. The order was due to expire in June 2024 and there was therefore a public interest in the review being carried out.

15. The Tribunal determined that Dr Alava Verzola has chosen to voluntarily absent himself from this hearing. Furthermore, it has not received any indication that Dr Alava Verzola has requested an adjournment. The Tribunal could not be satisfied that, were there to be an adjournment, Dr Alava Verzola might attend a hearing on a future date.

16. The Tribunal is mindful of its power to proceed in a doctor's his absence. Dr Alava Verzola was made aware that the Tribunal may determine to proceed in his absence.

17. The Tribunal has balanced Dr Alava Verzola's interests with the wider public interest in deciding whether to proceed in his absence. Considering the public interest in this case and the sanction imposed on Dr Alava Verzola's registration being due to expire on 19 June 2024, the Tribunal concluded that it is in the public interest and in the interests of justice to proceed with this hearing today.

18. Accordingly, the Tribunal determined that it was fair and reasonable to proceed in Dr Alava Verzola's absence in accordance with Rule 31 of the Rules.