

## PUBLIC RECORD

Date: 08/11/2024

Medical Practitioner's name: Dr Jan MOZNY  
GMC reference number: 7036586  
Primary medical qualification: MUDr 1976 Charles University Prague

Type of case Outcome on impairment  
Review - Misconduct Impaired

Summary of outcome  
Suspension, 12 months  
Review hearing directed

## Tribunal:

Legally Qualified Chair	Mr Mark Scott
Lay Tribunal Member:	Ms Sirah Abraham
Medical Tribunal Member:	Dr Juliet Bennett

Tribunal Clerk:	Mrs Jennifer Coakley
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## Attendance and Representation:

Medical Practitioner:	Not present, not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Ms Safeena Rashid, 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 - 08/11/2024

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

## The Outcome of Applications Made during the Impairment Stage

2. The Tribunal accepted the General Medical Council (GMC)'s submissions, made pursuant to Rule 40 of the GMC (Fitness to Practise) Rules 2004, as amended ('the Rules'), that notice of this hearing had properly been served on Dr Mozny, and granted its application, made pursuant to Rule 31 of the Rules, that this hearing should proceed in his absence. The Tribunal's full decision is included at Annex A.

## Background

3. Dr Mozny qualified in 1976 from Charles University, Prague. At the time of the events which are the subject of the hearing Dr Mozny was practising as a Locum Consultant specialising in Medical Oncology at the University Hospitals of Derby and Burton NHS Foundation Trust ('the Trust').

4. Dr Mozny's case was first considered by a Medical Practitioners Tribunal ('MPT') in April 2023 ('the 2023 Tribunal'). The allegations which led to that hearing related to consultations during which Dr Mozny failed to dictate correspondence in a timely manner for six patients. In relation to one of those patients, it was also alleged that at the consultation, Dr Mozny prescribed chemotherapy and failed to dictate correspondence in a timely manner. In relation to another of those patients, it was alleged that, on 10 March 2020 and 27 March 2020, Dr Mozny had a consultation where he recommended carboplatin, pemetrexed and pembrolizumab therapy when it was not licensed for squamous cell carcinoma ('SCC') of the lung. In relation to another of those patients, it was alleged that, on 10 March 2020, Dr Mozny failed to document his clinical encounter with the patient and failed to inform them of

the results of their computed tomography ('CT') scan. The concerns were initially raised with the GMC on 22 September 2020 by Dr I, Executive Medical Director, on behalf of the Trust.

5. The 2023 Tribunal found the Allegation proved in its entirety. It found that Dr Mozny had breached several paragraphs of Good Medical Practice (2023) ('GMP') and was of the view that his failures were serious and had potentially put patients at risk of harm. The 2023 Tribunal identified that Dr Mozny's actions meant that the clinical staff undertaking the treatment of the patients had no background information and were disadvantaged when delivering cancer treatment without the basic information required. The 2023 Tribunal recognised that the information within the correspondence was important for the patients' care in order for the clinical staff to make proper assessments and monitor side effects.

6. The 2023 Tribunal was also of the view that, in relation to one patient, Dr Mozny's actions were serious as he recommended the wrong course of treatment. This meant that Dr Mozny had put that patient at potential risk of harm.

7. The 2023 Tribunal concurred with an expert opinion that Dr Mozny's overall care of the six patients was seriously below the standard expected of a competent Consultant in Medical Oncology. The 2023 Tribunal therefore found that Dr Mozny's actions in relation the patients amounted to serious misconduct.

8. The 2023 Tribunal considered that in relation to the Allegation that Dr Mozny had failed to inform one patient of the results of their CT scan, this was not as serious compared to the other allegations against Dr Mozny. The 2023 Tribunal noted that the CT scan results could have been chased by the patient themselves with the GP or with the Trust. Therefore, the 2023 Tribunal was of the view that Dr Mozny's action in relation to this paragraph of the Allegation (paragraph 4b), constituted misconduct but not serious misconduct.

9. The 2023 Tribunal determined that Dr Mozny's actions in relation to the entirety of the Allegation, save for paragraph 4b, amounted to serious misconduct. It was of the view that his fitness to practise was impaired by reason of misconduct.

10. The 2023 Tribunal was satisfied that a period of suspension would mark the seriousness of Dr Mozny's misconduct and send a signal to the doctor, the profession and the public about the standards of conduct expected and how those standards would be upheld. It determined that a period of suspension would maintain public confidence in the profession and would protect patients. The 2023 Tribunal determined that all three strands of the

overarching objective could be addressed by a period of suspension. It determined that it would be appropriate to impose a period of suspension for nine months. It considered that such a period would give Dr Mozny the opportunity to develop insight, if he wished to do so. It would also allow him to take steps to remediate his actions.

11. Dr Mozny's case was reviewed by a MPT on 30 January 2024 ('the January 2024 Tribunal'). That Tribunal noted that Dr Mozny did not engage with the 2023 Tribunal and he had not engaged with the GMC since then, nor had he provided any evidence of insight or remediation or of how he had kept his medical knowledge and skills up to date. Dr Mozny did attend the January 2024 hearing and confirmed that he did not wish to seek an adjournment but preferred for the hearing to go ahead. He indicated that he did not have any further evidence and that he would be applying for voluntary erasure. The January 2024 Tribunal considered that there was no evidence before it to suggest that Dr Mozny's fitness to practise was no longer impaired. It therefore determined that his fitness to practise remained impaired by reason of misconduct.

12. The January 2024 Tribunal determined to impose a further period of suspension on Dr Mozny's registration. It was of the view that all three limbs of the overarching objective would be upheld by a further period of suspension. It determined to impose a further period of suspension for nine months to allow Dr Mozny time to either proceed with his application for voluntary erasure or engage in the regulatory process and provide evidence of his remediation, insight and how he has kept his knowledge and skills up to date.

13. The January 2024 Tribunal directed a review of Dr Mozny's case, to take place shortly before the end of his period of suspension. It indicated that a reviewing tribunal may be assisted if Dr Mozny provided the following:

- Evidence of insight and remediation into his misconduct;
- Reflective statement which shows his remorse and understanding of the impact of his actions;
- Evidence that he has kept his clinical knowledge up to date during his period of suspension;
- Evidence of Continuing Professional Development courses undertaken;
- Any other information which Dr Mozny considers would assist the reviewing Tribunal.

## The Evidence

14. The Tribunal had regard to the documentary evidence received. This included copies of the determinations of previous hearings and correspondence between Dr Mozny and the GMC regarding applying for voluntary erasure. In an email from Dr Mozny to the GMC dated 8 October 2024, Dr Mozny stated *'I am working just now on my voluntary withdrawal from GMC register. I will not take a part on any further hearing. I am XXX and I don't have any thoughts about my further work (especially abroad) XXX. Thank you for your understanding.'*

### Submissions

15. On behalf of the GMC, Ms Safeena Rashid submitted that Dr Mozny's fitness to practise remains impaired. She reminded the Tribunal that it is for Dr Mozny to satisfy the Tribunal that he is fit to practise. However, no evidence of remediation has been received. To date, there has also been no attempt at a voluntary erasure application. Ms Rashid submitted that a lot of time has passed, and Dr Mozny has had ample time to address issues in relation to his misconduct, even to submit a voluntary erasure application if that is the route that he wanted to go down. Ms Rashid submitted that Dr Mozny has failed to satisfy the Tribunal that he is fit to return to unrestricted practice. He remains impaired as he continues to be a danger to the public if he is left to practise unrestricted.

### The Relevant Legal Principles

16. 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 he would be safe to return to unrestricted practise.

17. This Tribunal must determine whether Dr Mozny'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

18. The Tribunal had regard to the determinations of the previous Tribunals. It noted the findings of the 2023 Tribunal that Dr Mozny had breached several paragraphs of GMP and that his failures were serious and had potentially put patients at risk of harm. The 2023 Tribunal was of the view that Dr Mozny's overall care of six patients was seriously below the standard expected of a competent Consultant in Medical Oncology. At the January 2024

hearing, Dr Mozny did not provide any evidence of insight or remediation or of how he had kept his medical knowledge and skills up to date. As such, the January 2024 Tribunal concluded that Dr Mozny's fitness to practise remained impaired by reason of his misconduct.

19. This Tribunal was mindful that there is a persuasive burden upon the doctor at a review hearing to demonstrate that their fitness to practise is no longer impaired. It noted that the January 2024 Tribunal had indicated the kind of evidence which may assist a reviewing Tribunal. However, Dr Mozny has not provided any of the evidence suggested by the previous Tribunal.

20. The Tribunal had regard to Dr Mozny's email of 8 October 2024. It was of the view that Dr Mozny may have some insight in terms of his fitness to practise as he made reference to his age and XXX issues. Further, he indicated that his intention was to apply for voluntary erasure. However, the Tribunal noted that, to date, a voluntary erasure application has not been submitted.

21. Aside from the 8 October 2024 email which demonstrates a limited amount of insight, the Tribunal was of the view that Dr Mozny has not demonstrated any further insight into the impact and seriousness of his misconduct. In addition, the Tribunal considered that there is a lack of evidence in terms of remediation, remorse and keeping his knowledge and skills up to date. As such, the Tribunal was of the view that there would remain a risk to patient safety should Dr Mozny be allowed to resume unrestricted practice. It was also of the view that public confidence in the profession would be undermined if a finding of impairment were not made.

22. In the absence of any evidence to the contrary, this Tribunal has therefore determined that Dr Mozny's fitness to practise remains impaired by reason of misconduct.

#### **Determination on Sanction - 08/11/2024**

1. Having determined that Dr Mozny's fitness to practise remains impaired by reason of misconduct, the Tribunal now has to decide in accordance with Rule 22(1)(h) of the Rules what action, if any, it should take with regard to his 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 Mozny's registration. The Tribunal received no further evidence at this stage.

### Submissions

3. On behalf of the GMC, Ms Safeena Rashid, Counsel, submitted that, given the limited engagement from Dr Mozny, there are no mitigating factors. She submitted that the limited insight identified by the Tribunal in the Impairment determination does not take us far enough, because it doesn't provide much detail nor address the misconduct.

4. Ms Rashid submitted that the previous Tribunal gave a clear steer about what Dr Mozny could do to assist this Tribunal, but he has not followed that steer. Dr Mozny has also not submitted an application for voluntary erasure, which he had mentioned was his intention.

5. Ms Rashid submitted that there are no exceptional circumstances which would justify taking no action. She submitted that conditions are also inappropriate because Dr Mozny has only engaged in a limited manner. She referred to paragraph 82 of the *Sanctions Guidance* (February 2024) ('the Guidance') which relates to workability of conditions and submitted that none of those circumstances apply in this case.

6. Ms Rashid submitted that a further period of suspension would also be inappropriate. She submitted that Dr Mozny's registration has been suspended twice for nine months and he has not submitted a voluntary erasure application despite indicating that he does not intend to practice again. Ms Rashid submitted that there is nothing of note that has been achieved during the past 18 months and that nothing will be achieved through a further period of suspension.

7. Ms Rashid submitted that, in view of the lack of remediation or engagement, the only suitable sanction that would protect the public in this case is erasure. She submitted that the more time that passes with a lack of remediation or engagement, the more difficult this misconduct is to remediate. She submitted that erasure would be the most appropriate sanction in this situation.

8. In response to questions from the Tribunal, Ms Rashid confirmed that it does not appear that Dr Mozny has been warned that a Tribunal could take into consideration the fact

that he has failed to complete a voluntary erasure application. She submitted that it would still be proportionate to erase Dr Mozny's name from the Medical Register because the MPTS Notice of hearing clearly says that erasure is a possibility. She submitted that Dr Mozny has been given steers in relation to how he can proceed with the case and he has had a lot of time (18 months) to consider how he wishes to proceed, but has not made any progress in doing so.

### **The Tribunal's Determination**

9. The Tribunal is aware that the decision as to the appropriate sanction, if any, to impose on Dr Mozny's registration is a matter for this Tribunal exercising its independent judgement. In reaching its decision, the Tribunal has taken account of the Guidance. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Mozny's interests with the public interest.

10. Throughout its deliberations, the Tribunal considered its overarching objective which includes:

- a. protecting, promoting and maintaining the health, safety and well-being of the public,
- b. maintaining public confidence in the profession,
- c. promoting and maintaining proper professional standards and conduct for the members of the profession.

11. The Tribunal bore in mind its findings at the impairment stage, alongside the evidence already adduced and the submissions made.

### No Action

12. The Tribunal first considered whether to conclude Dr Mozny's case and take no further action. However, it determined that, in view of the concerns and its findings on impairment, it would not be sufficient, proportionate, nor in the public interest to conclude this case by taking no action. It also considered that there are no exceptional circumstances which would warrant taking no action in this case

### Conditions



13. The Tribunal next considered whether it would be appropriate to impose a period of conditions on Dr Mozny's registration. It has borne in mind that any conditions must be appropriate, proportionate, workable and measurable.

14. The Tribunal took into account Dr Mozny's limited engagement and was of the view that conditions would not be suitable as it could not be satisfied that he would comply with them.

15. The Tribunal also took into account paragraph 82 of the Guidance and agreed with Ms Rashid's submissions that none of those circumstances apply in this case.

### Suspension

16. Having determined that the imposition of conditions would not be appropriate, the Tribunal considered whether to suspend Dr Mozny's registration for a further period. It considered the following paragraphs of the Guidance were of particular relevance:

*'91 Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention.'*

*'92 Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (ie for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession).'*

*'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.*

...

*f* No evidence of repetition of similar behaviour since incident.'

17. The Tribunal noted that, whilst there has been limited engagement from Dr Mozny, during the January 2024 hearing he expressed his intention to submit a voluntary erasure application. He has communicated with the GMC since his last review hearing in relation to voluntary erasure. Having had regard to that correspondence, the Tribunal notes that Dr Mozny sought assistance from the GMC after experiencing difficulty in completing an online form as part of the voluntary erasure application. The GMC subsequently sent him a copy of the relevant form for him to print, complete and return. Dr Mozny also made reference to XXX issues in a recent email dated 8 October 2024, although the Tribunal has no further detail in relation to this. The Tribunal notes that, to date, no voluntary erasure application has been received by the GMC.

18. Given the continued lack of constructive engagement nor evidence of insight and remediation into his misconduct, the Tribunal considered whether it would be appropriate to erase Dr Mozny's name from the Medical Register. It had regard to the following paragraph of the Guidance which states:

*'109 Any of the following factors being present may indicate erasure is appropriate*

...

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

19. The Tribunal considered that, whilst Dr Mozny's misconduct was serious, it was not such that it was fundamentally incompatible with continued registration at this stage. It noted that the MPTS Notice of hearing made clear that erasure was an option for a reviewing tribunal. However, it was of the view that it had not been made expressly clear in the January 2024 Tribunal's determination, nor subsequently by the GMC, that a failure to either submit a voluntary erasure application or to provide relevant evidence to a reviewing Tribunal could lead to an outcome of erasure. At paragraph 13 of the Sanction decision, the January 2024 Tribunal had outlined that suspension would allow both a route back to the Register and, alternatively, time to progress a voluntary erasure application. However, at paragraph 17 the

January 2024 Tribunal referred only to a reviewing tribunal having regard to the former route. Dr Mozny's email of 8 October 2024 indicated that he was still intending to proceed with a voluntary erasure application. The Tribunal was mindful that whilst both may result in a doctor's name being erased from the Register, voluntary erasure is a very different thing to being erased by a tribunal. The Tribunal also bore in mind that Dr Mozny has been unrepresented and is towards the end of his career. In the current circumstances, the Tribunal considered that erasure would be a disproportionate response at this stage.

20. The Tribunal was satisfied that a further period of suspension would allow Dr Mozny time to complete a voluntary erasure application and for that application to be considered by the GMC. Alternatively, if Dr Mozny chose to engage with the regulatory process, it would enable him time to gather evidence of how he has remediated, gained insight into his misconduct and kept his knowledge and skills up to date.

21. In reaching its decision, the Tribunal weighed the interests of Dr Mozny against the interests of the public. It was of the view that the interests of the public can be protected through a further period of suspension. The interests of Dr Mozny could be significantly impacted by deciding to erase his name from the Medical Register. The Tribunal was satisfied that all three limbs of the overarching objective would be upheld by a further period of suspension, namely; the need to protect, promote and maintain the health, safety and wellbeing of the public, the need to promote and maintain public confidence in the medical profession and the need to promote and maintain proper professional standards.

22. The Tribunal determined to impose a further period of suspension for 12 months to allow sufficient time for Dr Mozny to either proceed with his application for voluntary erasure or to engage in the regulatory process and gather relevant evidence to submit at a future review hearing.

23. The Tribunal determined to direct a review of Dr Mozny's case. A review hearing will convene shortly before the end of the period of suspension. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Mozny to demonstrate how he has remediated and developed insight into his misconduct. It therefore may assist the reviewing Tribunal if Dr Mozny provides the following:

- Evidence of insight and remediation into his misconduct;
- Evidence that he is remorseful and understands the impact of his actions;

- Evidence that he has kept his clinical knowledge up to date during his period of suspension;
- Evidence of Continuing Professional Development courses undertaken;
- Any other information that Dr Mozny considers will assist.

24. Alternatively, during the further period of suspension, Dr Mozny could submit an application for voluntary erasure. If he experiences difficulty with this, he is encouraged to make contact with the GMC, and proactively progress any such application.

25. A future review tribunal may take into account a failure to provide further evidence or to submit, and/or meaningfully progress, a voluntary erasure application when reaching its decisions at the impairment and/or sanction stages.

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

ANNEX A – Service and proceeding in absence – 08/11/2024

Service

1. Dr Mozny is neither present nor represented at today's Medical Practitioners Tribunal ('MPT') hearing. The Tribunal therefore considered whether the relevant documents had been served in accordance with Rule 40 of the General Medical Council ('GMC') Fitness to Practise Rules 2004 ('the Rules') and paragraph 8 of the fourth Schedule to the Medical Act.

2. Ms Safeena Rashid, Counsel, on behalf of the GMC, drew the Tribunal's attention to various documents regarding service of the notice of hearing. These included:

- Email to Dr Mozny with MPTS Notice of hearing, dated 19 September 2024;
- Chaser email to Dr Mozny requesting acknowledgement of MPTS Notice of hearing, dated 20 September 2024;
- Read receipt from Dr Mozny regarding MPTS Notice of hearing, dated 20 September 2024;
- Email to Dr Mozny from the GMC with draft bundle and GMC Information letter, dated 27 September 2024;
- Email from Dr Mozny in response to the above email, dated 8 October 2024.

3. Ms Rashid submitted that service has been effected in accordance with Rule 40 of the Rules.

4. The Tribunal had regard to the documents before it and the submissions made by Ms Sharif. It was satisfied that notice of this hearing has been served in accordance with Rule 40.

Proceeding in Absence

5. Having been satisfied that notice was properly served upon Dr Mozny, the Tribunal then considered whether to proceed with this hearing in his absence, in accordance with 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 utmost care and caution, balancing the interests of the doctor with the wider public interest.

6. Ms Rashid submitted that Dr Mozny has indicated that he will not appear at today's hearing and that he wishes to seek voluntary erasure. She confirmed that, to date, no

application for voluntary erasure has been received, nor has he sought an adjournment for these proceedings. She submitted that it is in the public interest to continue with these proceedings and to ensure that this matter is dealt with in an expeditious manner.

7. The Tribunal has evidence before it that Dr Mozny was aware of this hearing taking place today. The Tribunal was of the view that Dr Mozny has voluntarily waived his right to attend today. In particular, the Tribunal had regard to the email from Dr Mozny dated 8 October 2024 in which he confirms that *'I am working just now on my voluntary withdrawal from GMC register. I will not take a part on any further hearing. I am XXX and I don't have any thoughts about my further work (especially abroad) XXX. Thank you for your understanding.'* Furthermore, there has been no request for an adjournment.

8. The Tribunal has balanced Dr Mozny's interests with the public interest in deciding whether to proceed in his absence. It noted that the suspension currently imposed on Dr Mozny's registration is due to expire on 14 November 2024. The Tribunal concluded that it is in the public interest and in the interests of justice to proceed with this hearing today.

9. Accordingly, the Tribunal determined that it was fair and reasonable to proceed in Dr Mozny's absence.