

PUBLIC RECORD

Dates: 30/01/2024

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, 9 months.

Tribunal:

Legally Qualified Chair	Mrs Laura Paul
Medical Tribunal Member:	Dr John Garner
Medical Tribunal Member:	Dr Prashanth Nandhabalan
Tribunal Clerk:	Mr Matt O'Reilly

Attendance and Representation:

Medical Practitioner:	Present, not represented
GMC Representative:	Mr Richard Shand, Counsel

Attendance of Press / Public

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

Overarching Objective

Throughout the decision making process the tribunal has borne in mind the statutory overarching objective as set out in s1 Medical Act 1983 (the 1983 Act) to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

Determination on Impairment - 30/01/2024

The Outcome of Applications Made during the Impairment Stage

1. Dr Mozny attended the hearing and was unrepresented. It was not anticipated that Dr Mozny would be attending the hearing today as he had not engaged with the GMC or indicated that he would be participating. Dr Mozny confirmed that he is now based in the Czech Republic. The Legally Qualified Chair explained the options to Dr Mozny, as there are limitations to him giving oral evidence to the Tribunal without permission from the Czech Republic. It was explained to Dr Mozny that he could apply for an adjournment today, go through the process of applying for permission to give oral evidence, and he may wish to seek an adjournment, in any event, in order to submit further evidence to the Tribunal. In the alternative, he could attend the proceedings today as an observer and not give evidence, but he could give oral submissions.
2. Dr Mozny told the Tribunal that he did not wish to seek an adjournment. It was his preference that the hearing should be concluded today, and that he had no intention of working in the UK again. He said that he has no further evidence to send to the Tribunal. He indicated that he would be applying for voluntary erasure, and the relevant documents had been sent to him from the GMC. A further copy of the hearing bundle was sent to Dr Mozny via email so that he could follow the proceedings.
3. Mr Shand, Counsel, on behalf of the GMC, indicated that the hearing should proceed today.
4. The Tribunal considered its powers relating to adjournments under Rule 29 of the General Medical Council's (Fitness to Practise) Rules 2004. The Tribunal was satisfied that it had explained the options clearly to Dr Mozny and he had made the decision that he wished to continue with the review hearing today. He did not wish to apply for an adjournment. The Tribunal also considered that Dr Mozny's period of suspended registration is due to expire

shortly on 15 February 2024. The Tribunal has to strike a balance between fairness to the doctor and the public interest. It was appropriate and proportionate to continue with the review hearing as planned.

Background

5. Dr Mozny qualified in 1976 from Charles University Prague. At the time of the events Dr Mozny was practising as a Locum Consultant specialising in Medical Oncology for University Hospitals of Derby and Burton NHS Foundation Trust ('the Trust').
6. Dr Mozny's case was considered by a Medical Practitioners Tribunal ('MPT') in April 2023 ('the 2023 Tribunal'). Dr Mozny was neither present nor represented at the 2023 hearing.
7. The Allegation that led to Dr Mozny's hearing in April 2023 MPT can be summarised as follows.
8. It was alleged that, following consultations on various dates, Dr Mozny failed to dictate correspondence in a timely manner for six patients (Patient A, B, C, E, F and G). In relation to Patient B, it was also alleged that at the consultation, Dr Mozny prescribed chemotherapy and failed to dictate correspondence in a timely manner.
9. In relation to Patient C, it was alleged that on 10 March 2020 and 27 March 2020 Dr Mozny had a consultation with Patient C, where he recommended carboplatin, pemetrexed and pembrolizumab therapy when it is not licensed for squamous cell carcinoma ('SCC') of the lung.
10. In relation to Patient D, it was alleged that on 10 March 2020, Dr Mozny failed to document his clinical encounter with Patient D and failed to inform Patient D of the results of his computed tomography ('CT') scan.
11. The initial concerns were raised with the GMC on 22 September 2020 by Dr I, Executive Medical Director, on behalf of the Trust.
12. The 2023 Tribunal found the Allegation proved in its entirety. It found that Dr Mozny had breached several paragraphs of Good Medical Practice (2013) ('GMP') and that it was clear that, on six occasions, Dr Mozny failed to dictate correspondence for Patients A, B, C, E, F and G, in a timely manner. It also found that

Dr Mozny failed to document his clinical encounter in relation to Patient D. The 2023 Tribunal was of the view that Dr Mozny's failures were serious and had potentially put patients at a 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.

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

14. The 2023 Tribunal concurred with the expert opinion of Dr K that Dr Mozny's overall care of Patients A, B, C, D, E, F and G was seriously below the standard expected of a competent Consultant in Medical Oncology. Therefore, the 2023 Tribunal found that Dr Mozny's actions in relation to Patients A, B, C, D, E, F and G amounted to serious misconduct.

15. The 2023 Tribunal considered that in relation to the Allegation that Dr Mozny had failed to inform Patient D of the results of his CT scan (paragraph 4b of the Allegation), 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 himself 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 constituted misconduct but not serious misconduct.

16. 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.

17. The 2023 Tribunal was satisfied that a period of suspension would be sufficient to 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, as the public would understand that he was prevented from working as a doctor for a period of time. It would protect patients as Dr Mozny would be prevented from practising. The 2023 Tribunal determined that all three strands of the overarching objective can be addressed by a period of suspension.

18. The 2023 Tribunal determined to impose a period of suspension for nine months as that would be the most appropriate length of sanction in this case. It considered that such period would enable Dr Mozny to have the opportunity to develop insight, if he wished to do so. It also allowed Dr Mozny to take steps to remediate his actions.

19. The 2023 Tribunal also directed that a review hearing should take place shortly before the end of Dr Mozny's period of suspension. It indicated that a reviewing Tribunal may be assisted by the following:

- Evidence of insight and remediation into his misconduct;
- Reflective statement which shows his remorse and understanding 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.

This Hearing

20. 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 Mozny's fitness to practise is impaired by reason of misconduct.

The Evidence

21. The Tribunal has taken into account all of the documentary evidence received. This included, but was not limited to:

- The previous Records of Determinations from the 2023 Tribunal;
- Various correspondence sent by the GMC and MPTS to Dr Mozny's GMC registered address and registered email address in both 2023 and 2024;
- Telephone notes made by Mr J, GMC investigation officer, from contact made with Dr Mozny, dated 14 June 2023, 3 November 2023 and 7 November 2023;
- Response from Dr Mozny confirming his email address on 8 November 2023.
- Email sent from the GMC to Dr Mozny dated 22 January 2024, referring to a recent telephone conversation about his intended voluntary erasure application.

Submissions on behalf of the GMC

22. Mr Shand, Counsel, provided a detailed background of the case and submitted that Dr Mozny did not attend the last hearing and no information has been submitted since then to deal with the issues raised. He submitted that the only conclusion opened to the Tribunal today is that Dr Mozny does remain impaired.

Submissions on by Dr Mozny

23. Dr Mozny submitted that the situation in 2020 was complicated and that he had XXX and that he could not cope with the documentation. He said that he did not XXX work at the moment but that he tries to keep up to date with oncology by reading the literature he receives, and that he would like to return to part time work in the Czech Republic, but not in the UK.

The Relevant Legal Principles

24. The Tribunal reminded itself that the decision of impairment is a matter for the Tribunal's judgment alone. As noted above, the 2023 Tribunal set out the matters that a future Tribunal may be assisted by. This Tribunal acknowledged that it is for Dr Mozny to satisfy it that he would be safe to return to unrestricted practise.

25. 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

26. The Tribunal noted that Dr Mozny did not engage with the 2023 Tribunal and he has not engaged with his regulator since then, nor has he provided any evidence of insight or remediation at all. Dr Mozny provided no evidence of how he has kept his medical skills and knowledge up to date. The Tribunal also had no evidence before it as to what Dr Mozny has been doing since the 2023 hearing, or whether he has been working.

27. The Tribunal noted that Dr Mozny had put patients at risk of harm and it had before it no evidence of remorse or apology for his conduct.

28. Dr Mozny provided some explanation to this Tribunal that he had XXX concerns at the time of the events referred to in the Allegation. That factor was not considered by that Tribunal and there is no XXX provided before this Tribunal to support that claim. The Tribunal did not consider this to be a relevant factor in its deliberations.

29. There is no evidence before this Tribunal to suggest that Dr Mozny's fitness to practise is no longer impaired.

30. The Tribunal therefore determined that Dr Mozny's fitness to practise remains impaired by reason of his misconduct.

Determination on Sanction - 30/01/2024

31. Having determined that Dr Mozny's fitness to practise is 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 Dr Mozny's registration.

The Evidence

32. 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. No further evidence was provided at this stage.

Submissions on behalf of the GMC

33. Mr Shand submitted that in this case the lack of any progress since the last hearing meant that taking no action, issuing a warning, or making the doctor subject to conditions would not appropriately safeguard patients. Mr Shand submitted that suspension is required in order for Dr Mozny to remedy the issues that were identified at the last hearing, or at least to persuade the Tribunal that there is no significant risk of repetition of his conduct.

34. Mr Shand submitted that erasure would be disproportionate and that Dr Mozny has expressed an interest in voluntary erasure. He said that if a period of suspension were to be imposed upon Dr Mozny's registration, he would then have the option of either pursuing the voluntary erasure application or seeking to satisfy the Tribunal at a future hearing that he is no longer impaired. He stressed that application for voluntary erasure is an application and that it was not inevitable that it would be granted.

35. In respect of the length of any suspension, Mr Shand submitted that the GMC do not have any strong views but that a period in the region of 6 months might be appropriate.

Submissions by Dr Mozny

36. Dr Mozny said that he intended to finish his work completely and that there will be no change in his situation in the next six months. He said that he had no comments in respect of the submission by the GMC suggesting that suspension is the appropriate sanction.

The Tribunal's Determination

37. The decision as to the appropriate sanction, if any, to impose in this case is a matter for the Tribunal exercising its own judgment. In reaching its decision, the Tribunal has taken the Sanctions Guidance ('SG') into account and borne in mind the overarching objective.

38. The Tribunal reminded itself that the main reason for imposing any sanction is to protect the public and that sanctions are not imposed to punish or discipline doctors, even though they may have a punitive effect. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Mozny's interests with the public interest.

No action

39. The Tribunal first considered whether to conclude the case by taking no further action. Taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances. The Tribunal determined that there are no exceptional circumstances in this case.

Conditions

40. The Tribunal went on to consider whether imposing conditions upon Dr Mozny's registration would be appropriate in this case. It determined that conditions would not be appropriate, proportionate, workable or measurable in the circumstances of this case. In particular, the Tribunal considered Dr Mozny's overall lack of engagement, his submissions today that he does not wish to practise again in the UK, and the fact that he is considering making an application for voluntary erasure, suggested to this Tribunal that conditions would not be suitable as it could not be satisfied that he would or could comply with them.

Suspension

41. The Tribunal noted that whilst there has been a lack of engagement up until the start of this hearing, Dr Mozny has engaged with this Tribunal and acknowledged the significance of what has happened. In response to the impairment decision, Dr Mozny said that he does have remorse for his actions.

42. The Tribunal considered that the following paragraphs of the Sanctions Guidance (2020) were engaged in this case:

“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...”

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

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

43. The Tribunal was satisfied that a further period of suspension would allow Dr Mozny a route back to GMC registration if he wished, and if the doctor did not wish to return, suspension would allow him time to progress the voluntary erasure procedure.

44. Whilst the Tribunal considered that a further period of suspension may be an appropriate sanction, it went on to consider whether erasure was required in order to meet the need to uphold the overarching objective. The Tribunal considered that whilst Dr Mozny’s

misconduct was serious, it was not fundamentally incompatible with continued registration. It also considered that the misconduct was remediable and Dr Mozny had engaged with the process albeit at a late stage. The Tribunal determined that erasure would be a disproportionate response in all the circumstances of this case.

45. 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, and the need to promote and maintain public confidence in the medical profession and the need to promote and maintain proper professional standards.

46. The Tribunal determined therefore to impose a further period of suspension for a period of 9 months. This would allow Dr Mozny sufficient 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.

Review Hearing Directed

47. 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 actions. It therefore may assist the reviewing Tribunal if Dr Mozny provides the following:

- Evidence of insight and remediation into his misconduct;
- Reflective statement which shows his remorse and understanding 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.

48. The Tribunal has directed to impose a further period of suspension on Dr Mozny's registration for a period of 9 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.

49. That concludes this case.

Record of Determinations –
Medical Practitioners Tribunal