

Dates: 13/02/2019

Medical Practitioner's name: Dr Jiri LOJDA

GMC reference number: 7434645

Primary medical qualification: MUDr 1981 University Karlova v Praze

Type of case

Review - Misconduct
Review - Deficient professional
performance

Outcome on impairment

Impaired
Impaired

Summary of outcome

Erasure

Tribunal:

Legally Qualified Chair	Miss Nicola Murphy
Lay Tribunal Member:	Mr Michael Turner
Medical Tribunal Member:	Dr Subir Datta

Tribunal Clerk:	Ms Keely Crabtree
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Attendance and Representation:

Medical Practitioner:	Not present and not represented
GMC Representative:	Mr Michael Blakey, 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.

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Determination on Impairment - 13/02/2019

Determination on Service and Proceeding in absence

1. Dr Lojda is neither present nor represented today. The Tribunal has considered Mr Blakey's submission, on behalf of the General Medical Council (GMC), that notification has been properly served upon Dr Lojda.
2. Mr Blakey produced a service bundle which shows that the notice of hearing was sent to Dr Lojda's registered address by DHL courier and also by e-mail. The DHL track and trace narrative shows an entry dated 15 January 2019 to the effect that 'address does not exist' and that on 17 January 2019 DHL processed the shipment for return.
3. The Tribunal noted that notwithstanding that the postal service of the notice of hearing and hearing bundle on Dr Lojda was not successful and that there was clear evidence that he received these by e-mail.
4. The Tribunal considered the case of R v Jones (Anthony) [2001] QB 862 and General Medical Council v Adeogba [2016] EWCA civ162.
5. It noted that it is a matter for the Tribunal's discretion whether to proceed in the absence of Dr Lojda; that this discretion must be exercised with great caution and care and with fairness to Dr Lojda being the prime consideration but also taking in to account fairness of the GMC and to the interests of the public.
6. The Tribunal determined that Dr Lojda's behaviour demonstrated a deliberate and voluntary waiver of his right to appear and that an adjournment would not result in him attending a subsequent hearing.
7. The Tribunal does not draw any improper conclusion or adverse inference from Dr Lojda's non-attendance.

Background

8. The Tribunal has been informed of the background to Dr Lojda's case. The case was first considered by a Fitness to Practise Tribunal in August 2016, which adjourned part-heard. It reconvened between 30 January and 31 January 2017 to conclude matters.
9. Dr Lojda worked as a locum Senior House Officer ('SHO') in Emergency Medicine at Wansbeck General Hospital in Northumberland on three occasions between 11 June 2014 and 16 June 2014. Dr Lojda worked as a locum SHO in Emergency Medicine at Raigmore Hospital, Inverness on three occasions between 8

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July 2014 and 10 July 2014. Concerns were raised about Dr Lojda's ability to work as an SHO level doctor in those departments. The 2017 Tribunal determined that Dr Lojda's professional performance was deficient in his treatment of twelve patients during this period of time. It also found that his actions in relation to five patients amounted to misconduct.

10. Dr Lojda did not attend that hearing and was not represented. The Tribunal found that his fitness to practise was impaired and suspended his registration from the medical register for a period of 12 months. It ordered a review and recommended that the Tribunal reviewing his case would be assisted by

- evidence of the measures he has taken during the period of suspension to ensure his continued professional development, including evidence that he has kept his medical skills and knowledge up to date and that he has remediated the failings identified in his clinical practice;
- testimonial evidence from persons of good standing regarding Dr Lojda's conduct;
- evidence of Dr Lojda's reflection on his misconduct and DPP, and any insight he has developed, for example in the form of a reflective diary or statement;
- Any other information that Dr Lojda considers would assist the Tribunal.

11. Dr Lojda's case was first reviewed in February 2018. Again, Dr Lojda did not attend and was not represented. He produced no evidence of any steps that he had taken to ensure his continued professional development, or that he had kept his medical skills and knowledge up to date, or that he had remediated the failings identified in his clinical practise. He produced no reflective statement, testimonial evidence or indeed any evidence of any nature to assist or engage with that review. The tribunal considered that Dr Lojda's Deficient Professional Performance (DPP) and misconduct was remediable, and determined to 'give him one more opportunity to address the recommendations of the 2017 Tribunal', but noted that 'failure to do so may in the future be seen as a persistent lack of insight on Dr Lojda's part'.

12. The tribunal determined that a further period of suspension for 12 months was the appropriate and proportionate sanction. It determined that the Tribunal reviewing Dr Lojda's case would be assisted by

- evidence of the measures he has taken during the period of suspension to ensure his continued professional development, including evidence that he has kept his medical skills and knowledge up to date and that he has remediated the failings identified in his clinical practice;

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- testimonial evidence from persons of good standing regarding Dr Lojda’s conduct;
- evidence of Dr Lojda’s reflection on his misconduct and DPP, and any insight he has developed, for example in the form of a reflective diary or statement;
- Any other information that Dr Lojda considers would assist the tribunal.

Today’s Review

13. This Tribunal has today reviewed Dr Lojda’s case and has considered in accordance with Rule 22(1)(f) whether his fitness to practise is currently impaired. In so doing, it has taken into account all of the evidence put before it.

The Evidence

14. The Tribunal has read and considered all of the evidence provided. This includes, but is not limited to:

- Letter from GMC to Dr Lojda dated 9 April 2018
- Email exchange between GMC and Dr Lojda dated 3-10 July 2018
- Email from GMC to Dr Lojda dated 18 October 2018
- Email exchange between GMC and Dr Lojda dated October 2018 – 13 November 2018
- GMC Information Letter dated 4 January 2019 sent to Dr Lojda by email
- Email from GMC to Dr Lojda dated 8 January 2019
- Email chain between GMC and Dr Lojda dated 18 October 2018 to 23 January 2019
- Email chain between GMC and Dr Lojda dated 23 January 2019

Submissions

15. On behalf of the GMC, Mr Blakey submitted that Dr Lojda had produced no evidence for the Tribunal to consider and that this was the second time that Dr Lojda had wholly failed to meet the Tribunal’s expectations. He submitted that in these circumstances Dr Lojda remains impaired.

The Relevant Legal Principles

16. The tribunal is reminded of the guidance given in the case of *Abrahaem v GMC* to the effect that:

the statutory context for the Rule relating to reviews must mean that the review has to consider whether the concerns raised in the original finding of impairment have been sufficiently addressed to the Panel’s satisfaction. In practical terms

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there is a persuasive burden on the practitioner at a review to demonstrate that he or she has fully acknowledged their past failings and through insight, application, education, supervision or other achievement has sufficiently addressed the past impairments.

17. The persuasive burden therefore falls on Dr Lojda to show that his misconduct and deficient professional performance has been remediated in order to demonstrate that he is no longer impaired.

18. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision of impairment is a matter for the Tribunal's judgement alone. It also reminded itself that when considering whether a doctor's fitness to practice should be regarded as impaired the tribunal should take into account the statutory overarching objective of the General Medical Council which includes to protect and promote the health, safety and wellbeing of the public, to promote and maintain public confidence in the medical profession and to declare and uphold proper standards of conduct and behaviour for the members of the profession.

The Tribunal's Determination on Impairment

19. The Tribunal noted that Dr Lojda has not provided any evidence of any measures he has taken during the two consecutive periods of his suspension to maintain his continued professional development. Notwithstanding that the 2017 review Tribunal gave Dr Lojda 'one more opportunity to address the recommendations of the 2017 Tribunal' it has been provided with no evidence that he has kept his medical skills and knowledge up to date or that he has taken any steps to remediate the failings identified in his clinical practise. It has been provided with no evidence of any reflection by Dr Lojda on his misconduct and DPP and therefore cannot conclude that he has developed any insight in to these matters. Dr Lojda has not provided any testimonial evidence regarding his conduct or provided the Tribunal with any other information to assist it.

20. The Tribunal noted that Dr Lojda had not practised as a doctor in the UK since 2014 and has not engaged with his regulator throughout this process, save in relation to his recent communications concerning his wish to pursue a voluntary erasure application.

21. The Tribunal has therefore determined that Dr Lojda's fitness to practice remains impaired by reason of misconduct and deficient professional performance

Determination on Sanction - 13/02/2019

22. Having determined that Dr Lojda's fitness to practise is impaired by reason of misconduct and Deficient Professional Performance (DPP), the Tribunal now has to

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decide in accordance with Rule 17(2)(n) of the Rules the appropriate sanction, if any, to impose.

The Evidence

23. The Tribunal has taken into account the evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction.

Submissions

24. On behalf of the GMC, Mr Blakey submitted that the appropriate sanction is one of erasure. He submitted that Dr Lojda had shown no evidence of insight or remediation despite being repeatedly asked to do so. He submitted that Dr Lojda no longer resides in the UK and that it was safe for the Tribunal to infer from Dr Lojda's request for voluntary erasure that he had not kept his medical knowledge and skills up to date. Mr Blakey referred the Tribunal to the overarching objective and the relevant paragraphs of the Sanctions Guidance (SG)

The Tribunal's Determination on Sanction

25. The decision as to the appropriate sanction, if any, to impose is a matter for the Tribunal alone, exercising its own judgement. In so doing, it has given consideration to its findings that Dr Lojda's fitness to practise remains impaired. It has taken account of the submissions made by Mr Blakey on behalf of the GMC.

26. Throughout its deliberations the Tribunal bore in mind that the purpose of sanctions is not to be punitive, but to protect the public interest. The public interest includes protecting the health, safety and wellbeing of the public, maintaining public confidence in the profession, and declaring and upholding proper standards of conduct and behaviour. In making its decision, the Tribunal also had regard to the principle of proportionality, and it considered Dr Lojda's interests as well as those of the public. The Tribunal has also had full regard to the SG throughout.

No action

27. The Tribunal first considered whether to conclude the case by taking no action.

28. The Tribunal determined that there were no exceptional circumstances to justify taking no action against Dr Lojda's registration.

Conditions

29. The Tribunal next considered whether conditions would be an appropriate sanction.

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30. The Tribunal determined that in the absence of any evidence of insight, engagement or evidence that Dr Lojda would respond positively to remediation, retraining or his work being supervised there was no likelihood that Dr Lojda would comply with any conditions it imposed.

Suspension

31. The Tribunal then went on to consider whether a period of suspension would be an appropriate and proportionate sanction to impose on Dr Lojda's registration. It determined that in the light of Dr Lojda's total lack of engagement with these proceedings and his persistent lack of insight it could not be satisfied that his misconduct or DPP was unlikely to be repeated. The Tribunal determined that Dr Lojda presented a continuing risk to patient safety and that previous attempts to engage Dr Lojda in remediation had failed due to his unwillingness to cooperate. It therefore determined that a further period of suspension would not be an appropriate or proportionate sanction to impose and that it would not serve adequately to protect the public interest.

Erasure

32. The Tribunal noted paragraph 163 of the SG which states that:

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.

33. The Tribunal also noted that the 2018 review considered a further period of suspension would give Dr Lojda 'one more opportunity' to address the recommendations of the 2017 Tribunal, and that 'failure to do so may in the future be seen as a persistent lack of insight on Dr Lojda's part'.

34. Dr Lojda has not provided any evidence of insight or remediation at any point throughout his hearings. The Tribunal determined that Dr Lojda's continued lack of insight in to the seriousness of his actions and their consequences, as well as the fact that he presented a continuing risk to patient safety and compounded by the fact that he has persistently failed to engage with his regulator throughout these proceedings were incompatible with his continued registration as a doctor. It therefore determined that the sanction of erasure was both appropriate and proportionate.

Confirmed

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Date 13 February 2019

Miss Nicola Murphy, Chair