

PUBLIC RECORD

Dates: 14/05/2021
04/06/2021

Medical Practitioner's name: Dr Mario LOBO
GMC reference number: 7230830
Primary medical qualification: MBBS 1981 Bombay University - Goa Medical College

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

Summary of outcome
Erasure

Tribunal:

Legally Qualified Chair	Mr Patrick Cox
Medical Tribunal Member:	Professor Sarah Hull
Medical Tribunal Member:	Dr Paolo De Marco
Tribunal Clerk:	Miss Emma Saunders (14/05/2021) Mr Larry Millea (04/06/2021)

Attendance and Representation:

Medical Practitioner:	Present and not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Ms Harriet Tighe, 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 - 14/05/2021

1. 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 Lobo's fitness to practise is impaired by reason of deficient professional performance.

Hearing in Private

2. The Tribunal agreed, in accordance with Rule 41 of the Rules, that parts of this hearing should be heard in private where the matters under consideration are confidential, XXX. As such, this determination will be read in private but a redacted version will be published following the conclusion of this hearing, with those matters relating to XXX removed.

The Outcome of Application Made during the Impairment Stage

3. The Tribunal determined to allow the admission of a letter from Dr Lobo dated 11 May 2021. This was granted pursuant to Rule 34(1) of the Rules.

Background

4. Dr Lobo qualified as a doctor in 1981 in Bombay, India, and prior to the events which were the subject of the original hearing, he held various posts around the world, mostly in paediatrics. In 1988 Dr Lobo obtained a Diploma in Child Health in Ireland and obtained registration with the GMC in 2012.

5. The facts found proved at Dr Lobo's hearing, which took place in January and February 2019 ('the 2019 Tribunal'), followed concerns raised with the GMC by Betsi Cadwaladr University Health Board. The concerns related to Dr Lobo's professional performance during his employment at Wrexham Maelor Hospital. Dr Lobo also referred himself to the GMC.

6. Dr Lobo undertook a GMC performance assessment on 15 to 16 January 2018 and was assessed as a paediatrician working at Tier 2 level, the grade at which he considered himself competent when accepting the post at Wrexham Maelor Hospital. The assessment team considered that Dr Lobo's professional performance was unacceptable in the areas of maintaining professional performance; assessment; clinical management; and record keeping. The team considered that Dr Lobo's professional performance was a cause for concern in the areas of relationships with patients; and working with colleagues. The assessment team made a number of recommendations and was of the view that Dr Lobo was fit to practise on a limited basis. The recommendations included requirements for supervision, a personal development plan (PDP) and that Dr Lobo should work at no higher grade than Tier 1 in paediatrics.

7. Given the wide-ranging deficiencies identified, the 2019 Tribunal concluded that Dr Lobo's performance fell so far short of the standards of performance reasonably to be expected of a doctor as to amount to deficient professional performance. The 2019 Tribunal considered Dr Lobo's assertions that he did not think there were serious issues to consider and that the performance assessment was unfair. It noted that Dr Lobo had not provided any evidence to suggest he had made any attempt to address the findings in the performance assessment report.

8. The 2019 Tribunal was of the view that Dr Lobo had no real insight into his deficient professional performance. It determined that the deficiencies identified by the assessment team suggested that patients would be at risk of harm if Dr Lobo were to practise unrestricted. The 2019 Tribunal determined that Dr Lobo's fitness to practise was impaired by reason of his deficient professional performance.

9. The 2019 Tribunal determined to suspend Dr Lobo's registration for a period of 12 months. It had found Dr Lobo's continuing professional development (CPD) to be very limited and did not cover all areas of his deficient performance. The 2019 Tribunal took the view that the 12 month duration was necessary in order for Dr Lobo to reflect on the seriousness of the deficiencies in his professional performance and to allow him time to reflect and develop insight.

10. Dr Lobo appealed the decision of the 2019 Tribunal to the High Court in Northern Ireland on 11 April 2019. The appeal was dismissed, and Dr Lobo's suspension took effect on 31 May 2019.

The 2020 Review Hearing

11. A review hearing took place on 7 and 22 May 2020 ('the 2020 Tribunal').

12. The 2020 Tribunal was of the view that Dr Lobo had provided no substantive evidence to demonstrate that he had remedied the deficiencies identified. It had sight of a Certificate of Completion for Advanced Communication Skills Part 2 which demonstrated Dr Lobo's attendance on the online course in communication. The 2020 Tribunal found this to be a step in the right direction, but insufficient alone to demonstrate remediation of all the areas of concern identified by the assessment team. Whilst the 2020 Tribunal acknowledged that Dr Lobo had taken steps to try and pass the MRCPCH exam, as requested by the 2019 Tribunal, it noted that Dr Lobo had failed the examination.

13. The 2020 Tribunal found that the evidence of Dr Lobo's CPD remained the same as at the time of the 2019 Tribunal hearing. The 2020 Tribunal also did not consider that it had been provided with meaningful reflection from Dr Lobo on the extensive deficiencies in his professional performance. It was of the view that, in the reflective documents provided by Dr Lobo, he sought to go behind the performance assessment and the previous Tribunal's decision. The 2020 Tribunal stated that Dr Lobo had continually sought to blame the outcome of the previous hearing and his performance assessment on external factors and challenged the need to alert international regulators to the suspension on his GMC registration. The Tribunal appreciated the personal difficulties experienced by Dr Lobo but did not consider that these would have prevented him from demonstrating sufficient reflection and insight into the deficiencies.

14. The 2020 Tribunal was concerned that Dr Lobo had not provided evidence of how he had kept his medical skills and knowledge up to date. Given the failure to take sufficient steps to address the deficiencies and the lack of demonstrable insight, the 2020 Tribunal determined that there remained a high risk of repetition of the failings. It determined that Dr Lobo's fitness to practise remained impaired.

15. The 2020 Tribunal found that Dr Lobo had started to accept some of the areas of his deficient professional performance, such as record keeping and communication. However he continued to seek to go behind the findings of the assessment team and the previous Tribunal's decision. Nevertheless, the 2020 Tribunal were confident that, with further time to address the concerns raised, Dr Lobo could develop insight into his deficient professional performance and begin to remediate his failings.

16. The 2020 Tribunal determined to suspend Dr Lobo's registration for a further period of 12 months. Dr Lobo was advised that the reviewing Tribunal would be assisted by receiving the following:

- Evidence that he had reflected on the Tribunal's findings and developed insight into his deficient professional performance. This may take the form of a reflective diary or statement;

- Evidence of passing the MRCPCH exam;
- Evidence that he had addressed the deficiencies in his professional performance;
- Current testimonials;
- Evidence that he had kept his medical knowledge and skills up to date;
- Evidence of acquiring a mentor to help him produce a PDP, and to address the concerns raised;
- Any other information that he considered would assist.

The Evidence

17. The Tribunal has taken into account all the evidence received, both oral and documentary.

Documentary Evidence

18. The Tribunal had regard to letters from Dr Lobo to the GMC dated 6 April 2020, 1 May 2020 and a reflections document dated 17 May 2020. It also took account of the appeal brief/skeleton argument prepared by Dr Lobo in respect of his appeal in 2019. Dr Lobo requested that these documents, which were considered by the 2020 Tribunal, be placed before this Tribunal. In addition, four new documents were provided to the Tribunal which are all listed below.

Letter 27 May 2020

19. Dr Lobo wrote a letter to the 2020 Tribunal following the hearing. He expressed his disappointment with the outcome of the hearing and stated that he would have to *'accept it with a very heavy heart'*. Dr Lobo stated that he had tried to convince the 2019 Tribunal that there were reasons for his performance deficiencies, that he had accepted them all and they were remediable. Dr Lobo asked the Tribunal members to provide him with a *'focused list of my deficiencies, especially insight and if possible, ways to remedy them'*. Otherwise he said he would *'still be in the dark'*.

Letter 31 January 2021

20. In a letter to the GMC dated 31 January 2021, Dr Lobo stated that he had moved to India after his suspension was imposed in 2019 as he had exhausted his finances in trying to prove his fitness to practise. He stated that he had hoped to obtain registration in Goa but that the IMI alert caused delays in his registration (an IMI alert is required by the European Commission Internal Market Information System - the GMC sends this alert when it has taken regulatory action that restricts or prohibits a doctor's practice). Dr Lobo stated that the

coronavirus pandemic and related lockdowns had then prevented him from being able to obtain an attachment at some of the hospitals in Goa. Once lockdown was lifted, Dr Lobo stated that an attachment was not possible as he *'could not afford the daily PPE with a pension of £300 per month'*.

21. Dr Lobo stated that, given his previous reflections and positive testimonials, he had been disappointed and discouraged, and did not feel these had previously been accepted. Dr Lobo outlined plans he had considered to work in his own clinic *'together with a few consultants which would have helped me to fulfil the conditions'*. He stated that he aimed to start his own clinic in March 2021 and hoped to be able to collect the evidence needed. He stated that he had been keeping his medical skills up to date through lectures on YouTube. Dr Lobo stated that acting as an observer in hospital would be difficult and uninteresting given the coronavirus guidelines of no contact with patients.

22. Dr Lobo stated that he had already submitted his reflections in respect of the 2019 Tribunal hearing and there was little else to reflect on apart from making efforts to fulfil the matters that had been suggested by the 2019 and 2020 Tribunals. Dr Lobo stated that it had been next to impossible to complete them given the situation at that time, including the coronavirus pandemic, and hoped that these circumstances would be taken into account.

Letter 5 May 2021

23. Dr Lobo stated that he sincerely hoped that the Tribunal would reconsider all of the arguments and evidence that he had submitted since he started fighting his case. He stated that the suspension and restrictions were *'out of proportion'* and were not *'solutions to the problem in hand'*. Dr Lobo submitted that he had given enough explanations and evidence in the previous three years, and this should be taken as support for the withdrawal of the suspension on his registration.

24. Dr Lobo asked the Tribunal to consider his 40 years of experience, examine his Curriculum Vitae and stated that his work experience would remain with him forever. He made reference to the *'difficult covid times'* and that the value of medical professionals had been truly recognised. Dr Lobo referred to the letter he had written to the 2020 Tribunal and stated that he had thought they would have given him an exact picture of his deficiencies on insight which he could then reflect on for this occasion but that this did not happen. Dr Lobo stated that he would *'never know what you are looking for'*.

25. Dr Lobo stated that he had *'done telephonic medical consultations, read up on a large number of medical topics and listened to medical lectures from reputed doctors in the form of podcasts and videos'*. Given the coronavirus pandemic and lockdowns, Dr Lobo stated that it had not been possible to provide evidence of his skills or to obtain an observer role in a

hospital. He stated that there had been a number of difficulties in starting his own clinic but that he expected to start his clinic by the end of June 2021.

Letter 11 May 2021

26. Dr Lobo provided reasons about why he had been unable to fulfil the evidence/requirements the 2020 Tribunal had suggested would have assisted this Tribunal. He explained that the *'whole covid situation had made it next to impossible to answer any exam'*. Dr Lobo stated that the evidence of remediation of his deficiencies had been presented to the 2019 Tribunal and he had *'reflected on all deficiencies and made amends'*. He stated that he has kept his medical skills and knowledge up to date through webinar and online lectures. Dr Lobo referred to the difficulties with obtaining evidence of his fitness to practise given the coronavirus pandemic and the associated lockdowns. He referred to his plans to start his own clinic in Goa, which he has been working on since February 2020, and where he aims to work with consultants in clinics and hospitals.

Oral Evidence

27. Dr Lobo gave oral evidence to the Tribunal. He took the Tribunal through his employment at Wrexham Maelor Hospital. He had been working there from October 2016 in a Level 2/middle grade post in paediatrics. Dr Lobo stated there had been no problems for around four to five months but he was then asked to step down from a Level 2 to a Level 1 post and undertake a training programme with a supervisor. Dr Lobo spoke about the breakdown in the relationship with the supervisor and the additional concerns that were raised with him in May 2017. He stated that he was suspended from his employment at the hospital and his contract with them ended in October 2017. He was then employed in a locum capacity at Queen Elizabeth Hospital, King's Lynn, between November 2017 to December 2017.

28. Dr Lobo XXX. He stated that he wished he had postponed the assessment XXX. Dr Lobo then took the Tribunal through his work history in Northern Ireland between February and July 2018, subsequent difficulties in obtaining work and the 2019 Tribunal hearing. Dr Lobo stated that he had been unable to obtain a clinical attachment, and that he thought it unlikely that any doctor would accept an attachment as there were *'demeaning'* conditions including that he would have to tell each patient why he was suspended. Dr Lobo stated that he had had to move to India due to financial reasons.

29. Dr Lobo referred to his plans in Goa, India, and the various circumstances that have taken place, as set out above. He spoke about his plan to set up his own private clinic in India to enable him to obtain evidence of his fitness to practise. Dr Lobo referred to the impact of the coronavirus pandemic, especially at the present time. He also referred to the prohibitive cost of PPE which he would need to pay for in order for him to undertake a clinical attachment in Goa.

Dr Lobo spoke about the impact of his suspension and that he had been unable to provide the information requested by the 2020 Tribunal at this time.

Submissions

Submissions on behalf of the GMC

30. Ms Tighe submitted that Dr Lobo's fitness to practise was impaired. She stated that there was no new evidence for this Tribunal to consider regarding Dr Lobo's deficient professional performance. Ms Tighe submitted that no progress had been made in the past 12 months and there had in fact been a decline in Dr Lobo's attitude to his deficient professional performance and his willingness to remediate those failings.

31. Ms Tighe stated that Dr Lobo had concentrated, in oral evidence, on detailed circumstances surrounding the performance assessment and hoped that this Tribunal would look at the documents submitted to the previous Tribunals afresh. She stated that Dr Lobo had repeatedly stressed the unfairness of his suspension, equating it to a 'lockdown'. Ms Tighe submitted that the circumstances set out by Dr Lobo did not explain why he had not further reflected on his deficiencies, why no CPD or PDP have been produced, or why he has not sought a mentor.

32. Ms Tighe submitted that Dr Lobo had focused on plans to build a clinic with no mention of tackling his deficient professional performance. She stated that the real issue was that Dr Lobo did not want to follow the recommendations of the previous Tribunal and did not believe them to be necessary. He thinks that he has shown insight and remediated and that there is nothing more to be done. That is why he asked the Tribunal to consider all the previous documents which he believes to be sufficient. Ms Tighe submitted that Dr Lobo lacked insight into his deficient professional performance and this lack of insight and lack of effort to remediate means that there was a high risk of repetition. She submitted that a finding of impairment was necessary to protect patients and to maintain public confidence in the medical profession.

Submissions from Dr Lobo

33. Dr Lobo stated that the suspension imposed, and the coronavirus pandemic, had made it very difficult for him to fulfil the recommendations made by the 2020 Tribunal. He did not agree that his fitness to practise was impaired but recognised that he would require some time to return to his previous level in terms of working independently within a hospital environment. Dr Lobo stated that this requirement for time would not apply in terms of him working as a diagnostician.

34. Dr Lobo referred to the testimonials that he had obtained in Northern Ireland, prior to the 2019 Tribunal hearing and the efforts he had made to remediate at that time. He stated that he had given all of the evidence that his fitness to practise had improved and his professional performance was not deficient, but this was not considered. Dr Lobo stated that he did not have any confidence that this Tribunal would take that into account and determine that his fitness to practise was no longer impaired.

35. During his oral evidence to the Tribunal, Dr Lobo accepted that he had not been able to provide the information that was recommended by the 2020 Tribunal but would anticipate having that information in the future, depending on the coronavirus pandemic. He made reference to his own private clinic in India which he was setting up and hoping to start in June/July 2021. Dr Lobo stated that he had almost 20 years' experience in paediatrics and that he had been keeping his medical knowledge and skills up to date by reading and watching videos on YouTube.

The Relevant Legal Principles

36. 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.

37. This Tribunal must determine whether Dr Lobo's fitness to practise is impaired today, taking into account Dr Lobo's performance at the time of the events and any relevant factors since then such as whether the matters are remediable, whether they have been remedied and whether there is any likelihood of repetition.

The Tribunal's Determination on Impairment

Deficient Professional Performance

38. The Tribunal had regard to whether Dr Lobo's fitness to practise is currently impaired by deficient professional performance.

39. The Tribunal took account of the recommendations made by the 2019 and 2020 Tribunals. It had regard to the reasons and personal circumstances set out by Dr Lobo within his correspondence and oral evidence.

40. This Tribunal was concerned about the lack of any evidence of remediation undertaken in the past 12 months. It noted that Dr Lobo has not addressed any of the recommendations made by the previous Tribunal. Those were, of course, recommendations

not requirements but Dr Lobo did not put forward any other evidence to suggest he has taken any steps to address the deficiencies in his professional performance.

41. The Tribunal took account of Dr Lobo's oral evidence and was concerned that he has continued to criticise the initial concerns raised by the hospital back in 2017 and disagrees with the performance assessment report and process. The Tribunal noted Dr Lobo's views in terms of clinical attachments and that he did not appear to accept the value such observations would provide and that he had indicated that requirements to inform patients of his suspension were '*demeaning*'. In response to a question from the Tribunal, Dr Lobo was not able to articulate how a mentor would assist him in terms of discussing and addressing the deficiencies. He accepted that no PDP has been created or developed. Whilst Dr Lobo indicated that he has undertaken some reading, watched online lectures and listened to podcasts, the Tribunal has not been provided with a list of the reading or webinars nor any reflections on this material to demonstrate how this addresses his professional performance deficiencies or was targeted to keeping his medical skills and knowledge up to date. Furthermore, in oral evidence, Dr Lobo was unable to explain to the Tribunal how he had selected the educational activities that he reports he has undertaken. The Tribunal also noted that Dr Lobo has focused his recent energies on setting up a new private clinic where he would work as an independent clinician. The Tribunal considered that it was unclear how this would assist Dr Lobo in addressing the deficiencies in his performance that had been identified.

42. The Tribunal noted that Dr Lobo wrote to the 2020 Tribunal to ask them to provide him with a focused list of the deficiencies in his insight. This suggested a lack of understanding as to what was required of him. It also noted Dr Lobo's repeated comments that he has provided all the relevant evidence in the past. Again, this suggested a lack of understanding as to what was required of him.

43. The Tribunal was of the view that Dr Lobo has very little insight into his deficient professional performance. It noted the comments of the 2020 Tribunal who suggested that Dr Lobo was at the early stages of displaying his insight. This Tribunal did not consider that Dr Lobo's insight had progressed. In fact, Dr Lobo's comments generally where he appeared to not accept deficient professional performance suggested the possibility of a regression in his insight.

44. In all the circumstances, the Tribunal determined that a finding of impaired fitness to practise was both necessary 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.

45. This Tribunal has determined that Dr Lobo's fitness to practise is impaired by reason of deficient professional performance.

Determination on Sanction - 04/06/2021

1. Having determined that Dr Lobo's fitness to practise is impaired by reason of 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 Dr Lobo's registration.

The Outcome of Applications Made during the Sanction Stage

2. On 14 May 2021 the Tribunal handed down its determination on impairment but did not have sufficient time to conclude the hearing in the remaining time. As such, it determined to adjourn the hearing part heard, pursuant to Rule 29(2) of the Rules. The Tribunal confirmed that the hearing could reconvene on 4 June 2021 and determined to extend the order of suspension for a period of one month to cover this period. The Tribunal's full decision on the application is included at Annex A.

The Evidence

3. The Tribunal has taken into account the background to the case and the evidence received during the earlier stage of the hearing (where relevant) as well as the submissions of both the GMC and Dr Lobo in reaching a decision on what action, if any, it should take with regard to Dr Lobo's registration.

4. The Tribunal received the following further evidence on behalf of Dr Lobo:

- Email correspondence between Dr Lobo and the MPTS, various dates 17 to 28 May 2021 (exhibit reference D3)
- Word document containing details of an MMC webinar '*MMC COVID SUMMIT – A Comprehensive Webinar on Covid by Experts : The Current Scenario & Future Preparedness*', conducted on 29th & 30th May 2021 (exhibit reference: D4), and ;
- A document dated 2 June 2021 which is headed '*PDP work carried out during 20/21 till date*' (exhibit reference D5) .

Submissions

Submissions on behalf of the GMC

5. Ms Tighe submitted that the appropriate sanction in this case is that of erasure, referring the Tribunal to the relevant paragraphs of the Sanctions Guidance (November 2020) ('SG').

6. Ms Tighe submitted that conditions would not be workable nor appropriate in the circumstances given that the Tribunal had previously found that Dr Lobo had very little insight into his deficient professional performance. She submitted that Dr Lobo has sought to challenge the findings of previous tribunals and stated in the latest PDP document he had provided (Exhibit reference: D5) that *"I would like to mention that my fitness to practice is not impaired as I still have the confidence of my skills."*

7. Ms Tighe submitted that Dr Lobo has failed to follow the recommendations of the previous tribunals in any meaningful way and he has not put forward any other evidence that he has taken steps to address the deficiencies in his performance. She submitted that Dr Lobo appears unwilling to engage in the process of remediation and so the Tribunal could not be satisfied that he would comply with any such conditions, and that in any circumstance, conditions would not provide sufficient protection to the public.

8. Ms Tighe submitted that Dr Lobo has had 2 previous periods of suspension during which he could have demonstrated insight and provide evidence of remediation but has failed to do either. She submitted that he no longer appears motivated or willing to remediate and has stated that he sees suspension as *"totally detrimental"* to his progress and rehabilitation. She submitted that his position appears to be that he cannot remediate while his practice is suspended, referring the Tribunal to Dr Lobo's latest PDP document, where at page 11 he states:

"I thought the suspension was out of proportion and I needed to work as I believe that Practice makes perfect and experience is the best teacher. If the suspension was not imposed I would have been rehabilitated with the help of a mentor and would have been of help to thousands of patients in the UK."

9. Ms Tighe submitted that owing to Dr Lobo's persistent lack of insight, his failure to accept the findings against him, and the apparent regression of his insight, a further period of suspension would not be effective. She referred the Tribunal to paragraph 94 of the Sanctions Guidance ('SG') which states that suspension is likely to be appropriate *"where*

there is evidence that (the Doctor) has gained insight into the deficiencies and (has) the potential to remediate if prepared to undergo a rehabilitation or retraining programme.”

10. She referred the Tribunal to paragraph 109(j) of the Sanctions Guidance which states that a persistent lack of insight into the seriousness of their actions or consequences is a factor which may indicate that erasure is appropriate. She submitted that in the circumstances, erasure was the only appropriate sanction.

Submissions from Dr Lobo

11. Dr Lobo stated that he does not agree with the submissions of the GMC and that his present situation in terms of his finances and the Covid pandemic have not been taken into account and that it is impossible to reach the level or standard expected of him.

12. Dr Lobo also stated that he had given detailed explanations of his PDP and how he plans to progress his medical career, and he does not accept the GMC's assessment of his PDP as poor.

13. Dr Lobo also stated that he has already provided his structured reflections to the GMC and previous tribunals and so has not provided any further evidence in this regard to the current tribunal. He submitted that he has given the details of his PDP, attended CPD online lectures and webinars, and has reflected on his deficiencies.

14. Dr Lobo indicated that he had sat the MRCPCH exam but fell short of a pass mark and he intended to resit this in the future. He submitted that in terms of evidence he has addressed the deficiencies in his professional performance, this is dependent on what is meant by professional performance, stating that as he has not been practising or been able to attend as an observer due to his situation, there is no evidence as far as practice is concerned. He submitted that it has not been possible for him to attend and observe another doctor in practice due to his financial situation and the difficulties concerning PPE and Covid.

15. Dr Lobo submitted that for the same reason he has not been able to provide any further, more recent testimonials. He submitted that he has been keeping his knowledge and skills up to date by providing assistance in healthcare management to his friends and family and through self-directed learning, mainly online lectures, webinars and podcasts, as set out in his most recent PDP documents. He submitted that he has not included full details or

evidence of these courses, or provided detailed reflections on them in relation to his skills and performance, but could do so.

16. Dr Lobo submitted that he has self-mentored up to now but does plan to have mentors when he returns to practice, including an online mentor in the UK, stating *“if you still find me deficient I will probably have an online mentor”*. He submitted that the reason he does not have a mentor yet is his situation and asked what else a mentor would tell him other than to start working and discuss cases with them. He submitted that he doesn't think that a mentor could provide him with broader support and that as far as becoming self-employed and building a clinic is concerned, this is something he has to do himself, and once employed he would consider working with mentors.

17. Dr Lobo submitted that he should not be suspended further and that suspension has traumatised him as far as his confidence and motivation are concerned. He submitted that after he was suspended he was not rehabilitated and was left to do everything himself, which was detrimental to him. He submitted that he doesn't know how a mentor would have been of use during this time, particularly with Covid meaning that everything he needed to do was not really possible, and that the only way he felt he could address the findings against him was to get into practice first and then get a mentor. Dr Lobo stated *“I don't see what better PDP he would help me produce than what I have produced”*.

The Tribunal's Determination

18. The decision as to the appropriate sanction to impose, if any, in this case is a matter for this Tribunal exercising its own judgement.

19. In reaching its decision, the Tribunal has taken account of the SG. It has borne in mind that the purpose of the sanctions is not to be punitive, but to protect patients and the wider public interest, although they may have a punitive effect.

Mitigating Factors

20. The Tribunal considered that the position arising out of the Covid pandemic will have made it more difficult for Dr Lobo to provide some of the material suggested by the previous Tribunal. However, the Tribunal was of the view that although the pandemic may have made it more difficult for Dr Lobo, it did not provide an insurmountable difficulty. Whilst it may have made it more difficult, it did not prevent him from providing a reflective diary, it did not

prevent him from taking steps to address the deficiencies in his professional performance, it did not prevent him from keeping his medical knowledge and skills up to date and it did not prevent him from acquiring a mentor.

Aggravating Factors

21. The Tribunal considered that the aggravating factor in this case is Dr Lobo's continued and persistent lack of insight.

No action

22. In coming to its decision as to the appropriate sanction, if any, to impose, the Tribunal first considered whether to conclude the case by taking no action.

23. In this case, the Tribunal noted that to take no action would mean allowing Dr Lobo's current suspension to lapse, or to revoke the suspension immediately.

24. The Tribunal considered that there were no exceptional circumstances in this case which would warrant taking no action, and that given Dr Lobo has failed to provide any of the material set out by the previous tribunals, taking no action would not be sufficient to uphold the overarching objective.

Conditions

25. The Tribunal then went on to consider whether to impose a period of conditional registration on Dr Lobo.

26. The Tribunal concluded that given the lack of insight demonstrated by Dr Lobo in terms of his deficient professional performance, conditions would not be appropriate or proportionate in this case.

27. Further, the Tribunal was concerned that Dr Lobo appeared to lack comprehension of his deficient professional performance or the steps needed to develop insight and remediate. Therefore, it had no confidence that conditions would be workable in this case.

Suspension

28. Having concluded that conditions would not be proportionate or workable in the circumstances, the Tribunal went on to consider whether to impose a further period of suspension on Dr Lobo’s registration.
29. The Tribunal noted that Dr Lobo has already been suspended for 24 months, and considered that he has failed to recognise the purpose of suspension. He described it as “*detrimental*” and stated that “*practice makes perfect*” i.e. that he needed to be in clinical practice in order to remediate and address any deficiency in his performance.
30. The Tribunal was concerned that Dr Lobo was, in response to questioning from the Tribunal, unable or unwilling to articulate what areas of his practice were, or remain, deficient. He stated “*I don’t know how I haven’t addressed any deficiencies*”. He sought to minimise the findings of the Performance Assessment, stating that the issues related mainly to documentation, or the lack thereof. He stated that if he had kept better documentation then he would have had enough evidence and reflections, to convince the Tribunal that he is not deficient or is partly deficient and can rectify any areas of deficiency in his practice.
31. It should be noted that the 2019 Tribunal had stated that his professional performance was unacceptable in four different areas – maintain professional performance, assessment, clinical management and record keeping (see paragraph 7 of the 2020 Tribunal’s determination). It was only in relation to record keeping that Dr Lobo accepted any deficiency.
32. The Tribunal was mindful of paragraphs 94 and 97 of the SG, which state:
- 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.*
- 97** *Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.*

...

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, e.g. because of previous unsuccessful attempts or a doctor’s unwillingness to engage.

g The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.

33. The Tribunal determined that there was no evidence that Dr Lobo had gained insight into his deficiencies. There was no evidence of a potential to remediate and there had been a previous unsuccessful attempt to ensure remediation.

34. The Tribunal was concerned that Dr Lobo’s PDP (exhibit reference D5) indicates that he does not seem to grasp the purpose of a PDP. The Tribunal was not satisfied that Dr Lobo has provided any meaningful evidence to demonstrate that he has identified or addressed the deficiencies in his performance, nor kept his knowledge and skills up to date.

35. At pages 8 and 9 of the PDP, Dr Lobo provided details of courses he had undertaken. However, he has not provided the dates on which he undertook the courses nor has he provided details of the length of those courses. In some instances, there is no evidence as to who had provided the course. Overall, there was no evidence as to how he had selected the courses or what areas of his practice or knowledge he was hoping to address by the learning events undertaken. The Tribunal noted that the majority of the course titles appeared to relate to Covid-19 and were, on the whole, not directly applicable to general medical or paediatric practice. Further, in light of the findings and recommendations of the previous tribunals and Dr Lobo’s failure to meaningfully address these in any way, it considered there was no evidence that any further progress will be made by Dr Lobo.

36. The Tribunal concluded that Dr Lobo continues to demonstrate a lack of insight and a lack of willingness to remediate, and, further, does not accept the deficiencies in his practice.

37. In light of the evidence and Dr Lobo’s submissions, the Tribunal was of the view that Dr Lobo views mentors as for “*in-practice*” situations and to discuss cases. He does not appear to understand the role or purpose of a mentor in his situation. He stated that he would require a mentor that “*understands*” him and this would be difficult as there is a difference between mentoring him as opposed to a training or newly qualified doctor. The Tribunal considered that Dr Lobo maintains the view that owing to his seniority, a mentor would not fulfil his needs or, in his words “*be able to convince*” him of the steps he needs to take. In relation to having a mentor, Dr Lobo stated that he “*didn’t know how a mentor could be of use*” unless it was in an “*in-practice*” situation.

38. Whilst not bound by the Sanctions Guidance (‘SG’), the Tribunal was of the view that the guidance indicates that suspension would not be appropriate in this case, and that the factors which may lead to a sanction of suspension are not present owing to the lack of proper engagement by Dr Lobo into the findings of deficient professional performance combined with the absence of evidence of any material insight or remediation.

Erasure

39. Having concluded that suspension would not be proportionate or workable in the circumstances, nor meet the requirement to uphold the overarching objective, the Tribunal went on to consider whether to erase Dr Lobo’s name from the medical register. The Tribunal had regard to paragraph 109(j) of the SG:

109 *Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).*

...

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

40. The Tribunal was mindful of its determination on impairment, where it stated:

“In fact, Dr Lobo’s comments generally where he appeared to not accept deficient professional performance suggested the possibility of a regression in his insight.”

41. The Tribunal considered that Dr Lobo has had sufficient time and ample opportunity to demonstrate and progress his insight and remediation, but has failed to do so. He has not provided a proper PDP plan to address the deficiencies in his professional performance, nor has he provided other evidence of working towards addressing the deficiencies in his practice. He has not passed the MRCPC examination. He has not provided any current testimonials. He has provided limited evidence of keeping his medical knowledge and skills up to date. He has not provided evidence of acquiring a mentor. The Tribunal was aware that the current Covid pandemic may well have made it more difficult to acquire a mentor but there was no evidence of any attempt to acquire a mentor.

42. The Tribunal concluded that public confidence would be undermined were a lesser sanction than erasure imposed. Dr Lobo has been suspended since May 2019 and has still not provided any material to suggest that he has any real insight into his deficiencies. When asked about why he had not undertaken the proposed steps, as set out by the previous tribunals, Dr Lobo provided insufficient reasons and explanations as to why he had not done this.

43. The Tribunal also concluded that patient safety and the reputation of the profession would also be undermined were a lesser sanction imposed, and that erasure was necessary in order to uphold the overarching objective.

44. The Tribunal have directed to erase Dr Lobo's name from the Medical Register. The MPTS will send Dr Lobo a letter informing Dr Lobo 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.

Confirmed

Date 04 June 2021

Mr Patrick Cox, Chair

ANNEX A - 14/05/2021

Consideration of adjournment and extension of current sanction

1. The Tribunal has handed down its determination on impairment but has not yet heard any submissions on the question of sanction. Given the lateness of the hour, the Tribunal raised the question of adjourning the hearing part heard at this stage.
2. The Tribunal was of the view that it would not have sufficient time to conclude the hearing in the time remaining today. As such, the Tribunal sought submissions on the question of extending the current sanction.

Submissions

3. Ms Tighe, Counsel on behalf of the GMC, submitted that the current order should be extended to cover the intervening period. She stated that Dr Lobo's current suspension is due to expire on 29 May 2021. Ms Tighe referred to paragraph 170 of the Sanctions Guidance (16 November 2020):

'Where a review hearing cannot be concluded before the conditional registration or suspension expires, the tribunal can extend it for a short period. This would allow for re-listing of the review hearing as soon as practicable and to maintain the status quo before the outcome of the review hearing.'

4. Dr Lobo stated that the suspension had caused him difficulty but did not put forward an argument as to why extension of the suspension was not appropriate in this instance.

Tribunal's Decision

5. The Tribunal had regard to the current circumstances in this case and had regard to its powers under Rule 29(2) of the Rules:

'Where a hearing of which notice has been served on the practitioner in accordance with these Rules has commenced, the Committee or Tribunal considering the matter may, at any stage in their proceedings, whether of their own motion or upon the application of a party to the proceedings, adjourn the hearing until such time and date as they think fit.'

6. The Tribunal determined that it did not have sufficient time to conclude the hearing in the time remaining today. As such, it determined to adjourn this hearing part heard.

7. The first date which this Tribunal can reconvene is 4 June 2021. It canvassed the availability of all parties, who confirmed that they were available on this date, and checked this date with the MPTS.
8. The Tribunal noted that the order of suspension on Dr Lobo’s registration is due to expire on 29 May 2021. The Tribunal determined to extend the current order of suspension for a period of one month, by exercising its powers under Section 35D(5)(a) of the Medical Act 1983, as amended. It determined that such an extension was necessary and proportionate in terms of protecting the public and patients, given the conclusions of the 2019 and 2020 Tribunals and today’s finding of impairment.
9. The MPTS will send Dr Lobo a letter informing Dr Lobo of his right of appeal and when the new sanction will come into effect. The current order of suspension will remain in place during the appeal period.
10. The hearing is adjourned part heard until 4 June 2021, with a listing of one day.