

PUBLIC RECORD

Dates: 16/01/2024 - 17/01/2024

Medical Practitioner's name: Dr Mark JOYCE

GMC reference number: 7408969

Primary medical qualification: MB ChB 2013 University of Manchester

Type of case	Outcome on impairment
XXX	XXX
Review - Conviction / Caution	Impaired
Review - Misconduct	Impaired

Summary of outcome

Conditions

Tribunal:

Legally Qualified Chair	Mr Angus Macpherson
Lay Tribunal Member:	Ms Gail Mortimer
Medical Tribunal Member:	Professor Robert Mansel

Tribunal Clerk:	Mx Nate Caruso-Kelly
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Attendance and Representation:

Medical Practitioner:	Present, represented
Medical Practitioner's Representative:	Mr Chris Gillespie, Counsel, instructed by The MDU
GMC Representative:	Mr Neil 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 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 - 17/01/2024

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

The Outcome of Applications Made during the Impairment Stage

2. The Tribunal granted Dr Joyce's application, made pursuant to Rule 41 of the Rules, that the hearing be held in private. The GMC made no objection to the application. Therefore, this determination will be read in private. However, as this case concerns Dr Joyce's misconduct and conviction a redacted version will be published at the close of the hearing.

Background

3. Dr Joyce qualified in 2013 from the University of Manchester and then completed his foundation training in Stockport. At the time of the events in question, Dr Joyce was practising as a specialist registrar in acute internal medicine at the Manchester Royal Infirmary ('MRI') and subsequently at Stepping Hill Hospital ('SHH') in the Acute Medical Unit.

4. The facts which were admitted and found proved at Dr Joyce's substantive hearing relate to his conduct, XXX and a conviction. In terms of misconduct, it was found that Dr Joyce attended at MRI on 26 January 2019, when he was not on the rota to work, and had XXX in his possession that he knew he was not permitted to take for personal use. It was also found proved that, on 3 September 2019, Dr Joyce took XXX from SHH and attempted to self-administer XXX whilst at work. Further, it was found proved that Dr Joyce, whilst on shift on 12 December 2019 at SHH, took XXX. It was found proved that Dr Joyce knew that he was not permitted to take these drugs for personal use and all these actions were dishonest. He referred himself to the GMC.

5. XXX

6. XXX

7. XXX on 2 October 2021. On that date he was on a journey on the M1 motorway when he stopped at the motorway service station and bought some alcohol, which he drank in the car. Dr Joyce was reported to the police by a member of the public as he was asleep in the car. He was arrested for being in charge of a motor vehicle whilst over the prescribed limit for alcohol.

8. Dr Joyce was convicted at the Nottingham Magistrates Court of being in charge of a motor vehicle whilst over the prescribed limit for alcohol. Dr Joyce entered a guilty plea and was sentenced to a fine of £1209 and his driving licence was endorsed with 10 penalty points. He self-referred to the GMC in respect of his conviction by email on 11 October 2021. XXX

9. The substantive Tribunal found that Dr Joyce's fitness to practise was impaired by reason of XXX, conviction, and misconduct. The Tribunal determined that conditions should be imposed on Dr Joyce's registration for a period of three years. XXX. The Tribunal was of the view that this time period was appropriate, would minimise the need for a number of interim reviews, and also cover a period during which Dr Joyce will complete his training. Thereafter he will have the opportunity to move on to a Consultant or similar role. The Tribunal determined to direct a review of Dr Joyce's case.

Submissions

10. Both parties made no submissions on impairment and agreed that the decision of the substantive Tribunal remains applicable.

The Relevant Legal Principles

11. The Tribunal reminded itself that the decision of impairment is a matter for the Tribunal's judgement alone. This Tribunal is aware that it is for the doctor to satisfy it that he would be safe to return to unrestricted practise.

12. This Tribunal must determine whether Dr Joyce's fitness to practise is impaired today, taking into account Dr Joyce's 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

13. The Tribunal took into account that this review hearing had been sought by Dr Joyce solely on the basis of amending the conditions to which he is currently subject. No submissions were made that Dr Joyce's fitness to practise is no longer impaired.

14. The Tribunal further bore in mind that the substantive Tribunal determined that conditions would be necessary for a period of three years, XXX. The Tribunal noted that only 11 months of this three-year period have elapsed, and it would be premature to conclude that his fitness to practise was no longer impaired.

15. Taking into account the overarching objective to protect the public, the Tribunal has determined that Dr Joyce's fitness to practise remains impaired by reason of misconduct, XXX, and a conviction for a criminal offence.

Determination on Sanction - 17/01/2024

16. This determination will be handed down in private. However, as this case concerns Dr Joyce's misconduct and conviction a redacted version will be published at the close of the hearing.

17. Having determined that Dr Joyce's fitness to practise remains impaired by reason of misconduct, XXX and a conviction, 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 Joyce's registration.

The Outcome of Applications Made during the Sanction Stage

18. The Tribunal granted Dr Joyce's application, pursuant to Rule 34 (1) of the Rules, that further evidence, XXX, be admitted. Mr Gillespie, on Dr Joyce's behalf, submitted that the document was relevant and admissible evidence which was submitted late due to the Christmas break and the need to obtain clarification on certain points. The GMC did not object to the admission of the report.

The Evidence

19. 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 Joyce's registration.

20. The Tribunal received a witness statement from Dr Joyce, dated 20 December 2023, and Dr Joyce gave oral evidence at the hearing. In his oral evidence, Dr Joyce stated that the current condition 7 prevented him from undertaking a training program which would allow him to become dual accredited in intensive care medicine and acute internal medicine. Dr Joyce stated that he is only able to apply for this course at his current stage of training, and other routes to qualification would be circuitous and complicated. Dr Joyce stated that if he was unable to undertake this training opportunity in August 2024, he would be unable to pursue intensive care training as part of the existing training programme in the NHS. Dr Joyce further stated that condition 7 will prevent him from entering the field of intensive care medicine, because a fundamental part of intensive care medicine is the administration of controlled drugs in ICU and/or anaesthetics in theatre. Dr Joyce clarified that this is the only condition in respect of which he seeks removal as it is the only condition which currently prevents him from pursuing intensive care medicine.

21. Dr Joyce stated that his priorities in his work are patient care and the people whom he has the privilege to care for, and secondly, protecting the public. He stated that he has demonstrated his commitment to that on a number of occasions. XXX

22. XXX Dr Joyce stated that he wishes to pursue intensive care medicine as it is something he is good at and enjoys, that it suits his skill set within medicine; further it fits with his recently undertaking and passing the advanced life support instructor course on 13 October 2023. Dr Joyce stated that he believes he has a lot to offer to intensive care medicine were he able to train in it. XXX. Dr Joyce stated that he feels that patient care is the least stressful and most rewarding part of his job; he finds other aspects more stressful, such as paperwork. Dr Joyce stated that while it is true that many patients die in ICU, he has experienced similar death rates working in resuscitation in A&E, and he feels he has adequate support mechanisms in place to manage this stress.

23. XXX.

24. The Tribunal received further documentary evidence as follows; XXX, workplace reports from Dr C dated 6 March 2023 and 9 August 2023, workplace reports from Dr D dated 8 August 2023 and 16 November 2023, XXX, course information, various feedback for Dr Joyce, including 360 feedback, and a letter from Dr F regarding condition 7, dated 14 December 2023.

Submissions

25. On behalf of the GMC, Mr Shand submitted that the GMC is neutral on the question of the removal of condition 7 *'He must not administer or have primary responsibility for drugs listed in schedules 1–5 of the Misuse of Drugs Regulations 2001.'* Mr Shand submitted that the report of Dr B appeared to focus on the impact of condition 7 on Dr Joyce's career, and reminded the Tribunal that it is required to focus on patient safety and the good standing of the medical profession. Mr Shand further noted that while the substantive Tribunal did not give reasons for the imposition of condition 7 in particular, it could be inferred that it was imposed due to Dr Joyce's history and that being in a position to administer controlled drugs brings with it additional risk XXX. Mr Shand suggested that the Tribunal may wish to consider alternatives, for example, revoking the condition when the course commences in August, or relaxing the condition in some way.

26. On behalf of Dr Joyce, Mr Gillespie submitted that condition 7 can be removed without damaging the public interest or the wider public interest in the profession. Mr Gillespie submitted that if the Tribunal find that the condition is no longer necessary, it cannot be justified and should be removed. Mr Gillespie accepted that if the Tribunal find the condition to be necessary, it must remain. XXX

27. XXX. Mr Gillespie submitted that in terms of insight, Dr Joyce is someone who thinks very deeply not only about himself and the effects of things on himself, but he asks why he did certain things and in particular looks at things through the prism of patient safety. Mr Gillespie submitted that Dr Joyce has a plan for his career and that he knows where his skill set lies. XXX

28. XXX. Mr Gillespie set out the positive feedback which Dr Joyce has received from his workplace reporters throughout the last 11 months, as well as feedback from various colleagues, all of which were universally positive.

29. Mr Gillespie submitted that the removal of condition 7 is necessary for Dr Joyce to undertake the training pathway for which he is applying, and that the other conditions will remain for the outstanding two years as safeguards, XXX. Mr Gillespie submitted that the remaining conditions provide an adequate safeguard to satisfy the Tribunal that the risk to patients is so low, it can safely remove condition 7. XXX

30. Mr Gillespie submitted that this Tribunal should not leave condition 7 in place until some date in the summer, when Dr Joyce may begin his training, but it should look at the situation now and determine if condition 7 is truly necessary. Mr Gillespie submitted that the

interviews for the course are set to take place in February and March, and therefore the decision must be made today.

31. Mr Gillespie finally submitted that there is now sufficient mitigation in place which lowers the risk to an acceptable level so that it is no longer necessary to maintain condition 7, and therefore it should be removed.

The Tribunal's Determination

32. The Tribunal, having regard to the basis of the finding of impairment made by the substantive Tribunal, and also having regard to the overarching objective, must decide whether condition 7 still remains necessary. The decision as to the appropriate sanction to impose, if any, in this case is a matter for this Tribunal exercising its own judgement.

33. 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 Joyce's interests with the public interest.

Conditions

34. XXX

35. XXX

36. The Tribunal further considered that over the last 11 months, during which he has been subject to conditions, Dr Joyce has demonstrated his ability to cope with stressors XXX.

37. In his oral evidence, Dr Joyce stated that he is committed to patient care, and this is the driver for his application to have condition 7 removed. Dr Joyce stated that he believes his skill set in medicine lies in intensive care medicine, and he finds such work rewarding. The Tribunal also considered his written statement, and noted:

XXX

38. XXX

39. The Tribunal therefore found that Dr Joyce has significant and well-developed insight XXX.

40. The Tribunal then considered the risk of repetition. XXX

The Tribunal found that while the risk of repetition was low, owing to Dr Joyce's excellent insight, it remains a not insignificant risk.

41. The Tribunal was mindful that Dr Joyce's training in intensive care medicine would involve regularly handling and administering the drugs to which condition 7 refers, in particular opioids and benzodiazepines. XXX. The Tribunal also noted that an ICU is a highly supervised environment, with high levels of staff and supervision of drugs. It therefore found that the risk of Dr Joyce taking drugs for his own use would not be increased by his working in intensive care.

42. The Tribunal further noted the opinion of Dr B:

'I am mindful the impact of the current Conditions in question could effectively deprive Dr Joyce, as well as future patients, of the benefits of his being able to provide intensive care medicine at the most skilled consultant level in his future career, and that in these circumstances, the GMC/MPTS may consider that on balance it might be in the public interest to remove this particular Condition if the risks are suitably low. I have no significant concern that removing this Condition now will have any significant effect on risks to patients or to the repetition of misconduct, XXX.'

43. The Tribunal noted the wide range of exceptionally positive feedback which Dr Joyce has received in the last 11 months, and his continuing impressive performance as part of his training program. The Tribunal took into account the 360 review, the opinions of Dr Joyce's workplace reporters Dr C and Dr D, as well as the feedback from training sessions that Dr Joyce has delivered. The Tribunal bore this in mind when considering the public interest in good doctors being allowed to practise medicine.

44. The Tribunal was reassured that other conditions on Dr Joyce's registration would continue. XXX. The Tribunal took into account that Dr Joyce has fully engaged with the GMC in regard to his conditions and recognises that he must work in partnership with the GMC to ensure patient safety and the continuation of his career. The Tribunal therefore had no concerns that the remaining conditions would not be fully complied with and would therefore continue to provide a safeguard.

45. The Tribunal found that the risk to the public in removing condition 7 is very low. The Tribunal took into account Dr Joyce's significant insight, XXX and the safeguards provided by the ongoing conditions. The Tribunal therefore determined that condition 7 is no longer necessary to protect the public.

46. The Tribunal was mindful that there is a public interest in ensuring that good doctors can return to work and progress to specialist training. The Tribunal further found that the removal of condition 7 shows a managed and supervised return to work, which increases public trust in the profession. The Tribunal therefore determined to remove condition 7.

47. Finally, the Tribunal considered the submission made on behalf of the GMC that condition 7 could be relaxed in some way or removed at a later date, closer to the commencement of Dr Joyce’s further training. The Tribunal did not consider this a practical solution, given that the interviews for the position will be held in the coming months. Further, the Tribunal has found that condition 7 is no longer necessary for the protection of the public, and therefore it would be disproportionate and does not meet the test as set out in paragraph 85 of The Sanctions Guidance (2020):

‘85 Conditions should be appropriate, proportionate, workable and measurable.’

48. The Tribunal has determined that the following conditions set out below will remain imposed on Dr Joyce’s registration. The following conditions relate to Dr Joyce’s employment and will be published:

- 1 He must personally ensure the GMC is notified of the following information within seven calendar days of the date these conditions become effective:
 - a the details of his current post, including:
 - i his job title
 - ii his job location
 - iii his responsible officer (or their nominated deputy)
 - b the contact details of his employer and any contracting body, including his direct line manager
 - c any organisation where he has practising privileges and/or admitting rights
 - d any training programmes he is in
 - e of the contact details of any locum agency or out of hours service he is registered with.
- 2 He must personally ensure the GMC is notified:
 - a of any post he accepts, before starting it
 - b that all relevant people have been notified of his conditions, in accordance with condition 10
 - c if any formal disciplinary proceedings against him are started by his employer and/or contracting body, within seven calendar days of being formally notified of such proceedings

- d if any of his posts, practising privileges or admitting rights have been suspended or terminated by his employer before the agreed date within seven calendar days of being notified of the termination
 - e if he applies for a post outside the UK
- 3 He must allow the GMC to exchange information with any person involved in monitoring his compliance with his conditions.
- 4
- a He must have a workplace reporter appointed by his responsible officer (or their nominated deputy).
 - b He must not work until:
 - i his responsible officer (or their nominated deputy) has appointed his workplace reporter
 - ii he has personally ensured that the GMC has been notified of the name and contact details of his workplace reporter.
- 5
- a He must get the approval of his GMC Adviser before accepting any post.
 - b He must keep his professional commitments under review and limit his work if his GMC Adviser tells him to.
 - c He must stop work immediately if his GMC Adviser tells him to and must get the approval of his GMC Adviser before returning to work.
- 6
- a He must only prescribe drugs listed in schedules 1–5 of the Misuse of Drugs Regulations 2001 under arrangements which have been agreed by his GMC adviser and approved by his responsible officer (or their nominated deputy)
 - b He must not prescribe drugs listed in schedules 1–5 of the Misuse of Drugs Regulations 2001 until:
 - i his GMC adviser has agreed these arrangements
 - ii His responsible officer (or their nominated deputy) has approved these arrangements
 - iii He has personally ensured that the GMC has been notified of these arrangements.
- 7 He must not prescribe any drugs for himself, or anyone with whom he has a close personal relationship.

- 8 He must get the approval of the GMC before working in a non-NHS post or setting.
- 9 a He must get the approval of his responsible officer (or their nominated deputy) and the GMC Adviser, before working as a locum / in a fixed term contract.
- b He must not work until:
- i his responsible officer (or their nominated deputy) and the GMC Adviser has confirmed approval
- ii he has personally ensured that the GMC has been notified of the approval of his responsible officer (or their nominated deputy) and the GMC Adviser.
- 10 He must personally ensure the following persons are notified of the conditions listed at 1 to 9:
- a his responsible officer (or their nominated deputy)
- b the responsible officer of the following organisations:
- i his place(s) of work, and any prospective place of work (at the time of application)
- ii all his contracting bodies and any prospective contracting body (prior to entering a contract)
- iii any organisation where he has, or has applied for, practising privileges and/or admitting rights (at the time of application)
- iv any locum agency or out of hours service he is registered with.
- v If any of the organisations listed at (i to iv) does not have a responsible officer, he must notify the person with responsibility for overall clinical governance within that organisation. If he is unable to identify this person, he must contact the GMC for advice before working for that organisation.
- c his immediate line manager and senior clinician (where there is one) at his place of work, at least 24 hours before starting work (for current and new posts, including locum posts).

49. XXX

50. The Tribunal has directed that the conditions previously imposed for the remainder of the current order be varied. The MPTS will send Dr Joyce a letter informing Dr Joyce of his

right of appeal and when the direction and the new sanction will come into effect. The current order of conditions will remain in place during the appeal period.

51. That concludes the case.