

PUBLIC RECORD

Dates: 03/10/2022 - 07/10/2022

Medical Practitioner's name: Dr Meshach AZUCAR
GMC reference number: 4756013
Primary medical qualification: MB BS 1995 University of Benin

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Impaired

Summary of outcome

Suspension, 1 month

Tribunal:

Legally Qualified Chair	Mr Patrick Cox
Lay Tribunal Member:	Ms Deborah Spring
Medical Tribunal Member:	Dr Aine McGeary

Tribunal Clerk:	Mr Andrew Ormsby
-----------------	------------------

Attendance and Representation:

Medical Practitioner:	Present and not represented
GMC Representative:	Mr Carlo Breen, 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 Facts - 05/10/2022

1. This determination will be handed down in private under the provisions of Rule 41 of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). A redacted version will be published at the close of the hearing.

Background

2. Dr Azucar qualified in 1995 at the University of Benin in Nigeria and in 1998 he moved to England to sit the PLAB examination. Dr Azucar obtained limited registration with the GMC in 1998 and full registration in 2000. He completed vocational training in General Practice in 2001 and obtained a Post Graduate Training and General Practice Certificate in 2003. Dr Azucar was also awarded a fellowship of the Royal Australian College of General Practitioners in 2011.

3. Dr Azucar was employed as a GP at the Broadway Medical Practice in Ellenbrook in Western Australia from May 2014 until April 2016. He then moved briefly to the Jindalee Medical Practice, in Jindalee, Western Australia, before setting up his own practice - The Vines Medical Practice – where he remained until December 2019.

4. The allegation that has led to Dr Azucar's hearing resulted from concerns relating to his time practising as a GP in Australia.

5. Dr Azucar received notification from the Australian Health Practitioner Regulation Agency (AHPRA) in November 2019 informing him that they were investigating an anonymous complaint made against him in relation to his practice as a GP in Australia.

6. Dr Azucar surrendered his Australian licence to practise in December 2019 in order to move back to England and was removed from the Australian national register of health practitioners on 4 February 2020.
7. Throughout the period of concern Dr Azucar held GMC registration but he had surrendered his licence to practise in the UK upon moving to Australia.
8. The complaint letter alleged that Dr Azucar had inappropriately self-managed his own health in that he self-prescribed, ordered investigations in relation to his own health and arranged self-referrals.
9. The GMC received a self-referral from Dr Azucar on 20 August 2020 which enclosed a letter from the AHPRA advising of proposed action against him.

The Outcome of Applications Made during the Facts Stage

10. The Tribunal granted the GMC's application, made pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to delete paragraphs 3, 4 and 5 of the Allegation in their entirety. This application was made at the outset of the hearing. Dr Azucar did not oppose this application.
11. Dr Azucar indicated that he had contacted the GMC before the hearing to ask for the hearing to be heard entirely in private. On the second day of these proceedings, Dr Azucar made an application for matters which relate to XXX to be held in private, pursuant to Rule 41 of the GMC (Fitness to Practise) Rules 2004 ('the Rules'). Mr Breen, on behalf of the GMC, made no objections. The Tribunal determined that the matters relating to XXX should be considered in private. The Tribunal therefore agreed to grant the application.

The Allegation and the Doctor's Response

12. The Allegation made against Dr Azucar is as follows:

'That being registered under the Medical Act 1983, as amended:

1. Between 28 May 2014 and 15 November 2019 you inappropriately self-managed your own health in that, on one or more occasion, you:

- a. self-prescribed as set out in Schedule 1;
Admitted and found proved
 - b. ordered investigations as set out in Schedule 2;
Admitted and found proved
 - c. arranged self-referrals as set out in Schedule 3.
Admitted and found proved
2. You failed to make an adequate record in respect of one or more of the entries referred to in paragraph 1 in that you failed to explain the reasons for:
- a. the prescribing in Schedule 1; **To be determined**
 - b. ordering the investigations in Schedule 2; **To be determined**
 - c. arranging the referrals in Schedule 3. **To be determined**
- ~~3. Between 28 May 2014 and 28 March 2018, whilst working as a GP at Broadway Medical (Ellenbrook), you deleted in excess of 100 entries from your own medical records. **Withdrawn under Rule 17(6)**~~
4. ~~You knew when you took the actions as set out in paragraph 3, that:~~
- ~~a. there was no reasonable justification for your doing so;
Withdrawn under Rule 17(6)~~
 - ~~b. you were concealing the extent of your:~~
 - ~~i. self-prescribing; **Withdrawn under Rule 17(6)**~~
 - ~~ii. ill health. **Withdrawn under Rule 17(6)**~~
- ~~5. Your actions as set out at paragraph 3 were dishonest by reason of paragraph 4.
Withdrawn under Rule 17(6)~~

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct.' **To be determined**

The Admitted Facts

13. At the outset of these proceedings, Dr Azucar made clear admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

The Facts to be Determined

14. Dr Azucar also initially purported to admit the matters contained in paragraph 2(a), 2(b) and 2(c) of the Allegation. However, in making his admissions he made comments which could be interpreted as a denial of the matters. Having considered Dr Azucar's comments, and that Dr Azucar was not represented, the Tribunal considered it would be appropriate to regard Dr Azucar as having denied those matters. The Tribunal decided it could then explore properly issues he had raised that might form a defence.

Witness Evidence

15. Dr Azucar provided a witness statement, undated, and gave oral evidence at the hearing.

Expert Witness Evidence

16. The Tribunal received evidence from Dr A, GP, expert witness called by the GMC, who gave oral evidence in order to assist the Tribunal in understanding the professional standards to be expected of a GP. He prepared a report, dated 12 February 2022, and a supplementary report, dated 28 September 2022, which addressed the issue of Dr Azucar's management of his own health and the records he kept in relation to that management.

17. Dr A set out the chronology of events and made a list of multiple entries within Dr Azucar's medical records. The entries commenced on 28 May 2014 and ended on 29 November 2019, and consisted, according to Dr A of a total of 158 entries.

18. In his report, dated 12 February 2022, Dr A addressed the question whether Dr Azucar kept adequate records in respect of his self-prescribing and self-care. In response he made the following conclusions:

‘As detailed in Paragraph 5 Chronology Dr Azucar made 158 separate entries in his own medical records between 28 May 2014 and 29 November 2019. Dr Azucar recorded details of prescriptions he wrote for himself [...], medical certificates issued [...] investigations [...] and blood tests ordered [...] and referrals to hospital specialists [...]

On many occasions Dr Azucar wrote prescriptions for antibiotics for himself [...] but failed to make any record of the reason for doing so. Dr Azucar made no record of the reasons for any of his actions in the 158 occasions that he made an entry in his own medical records. This included referral for investigations, prescriptions of controlled drugs and referrals to hospital specialists.’

19. In his report, dated 12 February 2022, Dr A went on to refer to the principles of Good Medical Practice (GMP) and stated:

‘It is clear from the documentation that Dr Azucar failed to record any clinical findings leading to his decisions to self-prescribe, order investigations or make a referral to a hospital specialist. Dr Azucar did record in his own medical record any drugs he prescribed and investigations ordered and referrals made.

I would expect a reasonably competent general practitioner to follow the advice in Good Medical Practice Duties of a Doctor with regards to clinical records. A doctor would not be able to properly carry out an examination of themselves so would not be in a position to XXX as Dr Azucar clearly did.’

Documentary Evidence

20. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included but was not limited to:

- Dr Azucar’s GMC self-referral, dated 24 August 2020, which attached AHPRA letter to Dr Azucar advising of proposed action, dated 18 August 2020;

- AHPRA email to GMC explaining their investigation and decision in respect of notification, dated 18 February 2020;
- Dr Azucar’s initial response to AHPRA, dated 2 February 2020;
- Attached scanned medical records/ correspondence supplied to AHPRA, various dates;
- Prescriptions in Dr Azucar’s name, various dates;
- Anonymous complaint letter, 8 November 2019;
- Health management plans for Dr Azucar from Broadway Medical, various dates;
- Letter from Department of Health, Government of Western Australia, attaching table of prescriptions for XXX, 15 January 2020;
- AHPRA: Notice of Board decision to take action, dated 10 November 2020;
- Dr Azucar’s Rule 7 response, dated 1 October 2021;
- Statement by Dr Azucar undated but which was made by Dr Azucar for this hearing.

The Tribunal’s Approach

21. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Azucar does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e. whether it is more likely than not that the events occurred.

22. The Tribunal had received expert evidence and the Legally Qualified Chair (LQC) advised as follows in relation to the expert evidence:

23. Where expert evidence is given in relation to a particular issue, if the Tribunal decide to reject that evidence, then cogent reasons for doing so must be given.

24. In relation to expert evidence generally, a medical practitioner is entitled to give their own expert evidence. However, it should be borne in mind that the medical practitioner is also entitled to instruct an independent expert witness to give evidence on their behalf.

25. If the Tribunal on consideration of the evidence decides that the doctor has given expert evidence and that evidence conflicts with that of the expert called by the GMC, in considering what weight to attach to Dr Azucar’s expert testimony, the Tribunal must have regard to the fact that he is giving evidence in his own case. He is therefore not independent,

and this could properly impact on how the Tribunal views the opinions he put forward where those differ from the evidence of the GMC expert, Dr A.

26. The allegation in paragraph 2 was that “on one or more occasion” Dr Azucar had failed to make an adequate record of one or more of the entries referred to in paragraph 1 in that he had failed to explain the reasons for the prescribing in Schedule 1, ordering the investigations in Schedule 2 and arranging referrals in Schedule 3. The LQC advised that in view of that wording, it was unnecessary for the Tribunal to consider whether or not the records in respect of each individual instance of prescribing, investigation and referral were inadequate in the manner alleged. Instead, the Tribunal had to determine if at least one of those records were inadequate in the manner alleged. Mr Breen was invited to indicate if he disagreed with that advice. He indicated he did not.

The Tribunal’s Analysis of the Evidence and Findings

27. The Tribunal has considered each outstanding paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts.

28. The Tribunal had regard to the evidence of the expert witness called by the GMC, Dr A. It did not find a reason to reject Dr A’s conclusions but did consider that in some instances he had not sufficiently taken into account the fact that he did not have access to all of the records made by Dr Azucar in this case. For instance, he did not have access to the referral letters written by Dr Azucar. Further, Dr A stated that ‘it is clear from the documentation that Dr Azucar failed to record any clinical findings leading to his decisions to self-prescribe, order investigations or make a referral to a hospital specialist’. However, during the course of hearing the evidence, it became clear that, for instance the referral letters noted above had been written to specialists which may well have contained (and which according to Dr Azucar did contain) clinical findings. Dr A, when providing his report, knew that these letters did exist although he did not have sight of them.

Paragraph 2(a) of the Allegation

29. The Tribunal considered the allegation that Dr Azucar failed to make an adequate record in respect of one or more of the entries referred to in paragraph 1 of the Allegation in that he failed to explain the reasons for the prescribing in Schedule 1.

30. The Tribunal noted Dr A's expert opinion that there was a duty for doctors to record adequate reasons when prescribing. It noted the expert opinion that the reasons recorded when prescribing should allow another healthcare professional to clearly understand why prescribing has occurred in order to take over the treatment of the patient. Dr A identified the problem as being that those reasons were not noted in the records of the consultations (which Dr Azucar indicated was termed in Australia "the visit record").

31. It was put to Dr A that it may well be possible to determine what, for instance, the diagnosis was in relation to a particular prescription. Dr Azucar stated that in order to issue any prescription, a doctor must usually enter a diagnosis which is linked to the drug which is prescribed. However, that does not appear on the visit record. Dr A accepted that may well be the case but indicated that the problem was that this information should be in the visit record so that another clinician could easily obtain this information.

32. Dr Azucar, in his evidence, pointed to instances documented in the hearing bundle where other practitioners had made visit records which also did not contain the reasons for the prescription. However, the Tribunal noted that, in many of the other prescriptions, details of symptoms at the very least were provided.

33. Nevertheless, the Tribunal bore in mind that Dr Azucar had accepted Dr A's conclusions and admitted that the notes referred to were inadequate in that they did not give a full explanation of the reasons for the prescribing referred to.

34. The Tribunal examined the visit records entered by Dr Azucar and noted a lack of adequate reasons given in a number of prescribing records for prescriptions. As an example, it examined the record cited as 'XXX' in Schedule 1, and considered that an adequate reason had not been given for the prescription:

'Surgery consultation recorded by Dr Meshach Azucar on 11/02/2015

Actions:

Prescription printed: XXX

Prescription printed: XXX'

35. Therefore, the Tribunal concluded that Dr Azucar failed to make an adequate record in respect of one or more of the entries referred to in paragraph 1 of the Allegation in that he failed to explain the reasons for the prescribing in Schedule 1.

36. Accordingly, the Tribunal determined that paragraph 2(a) was the Allegation was found proved.

Paragraph 2(b) of the Allegation

37. The Tribunal considered the allegation that Dr Azucar failed to make an adequate record in respect of one or more of the entries referred to in paragraph 1 of the Allegation in that he failed to explain the reasons for ordering the investigations in Schedule 2.

38. The Tribunal bore in mind that Dr Azucar accepted that his 'visit records' in relation to the matters that subsequently required investigations were not adequate.

39. Furthermore, the Tribunal also noted the expert opinion of Dr A that Dr Azucar's records had failed to explain the reasons for ordering investigations.

40. It noted that Dr Azucar, when giving oral evidence, did not dispute Dr A's expert opinion, and accepted that the 'visit records' were inadequate.

41. The Tribunal accepted that some reasons were given for investigation in the records but concluded that the reasons recorded were not adequate.

42. The Tribunal bore in mind Dr Azucar's suggestion that standards in regard to record keeping were different in Australia. However, it noted that the AHPRA itself had determined that Dr Azucar's record keeping was not adequate. Further, other than Dr Azucar's assertion in that regard, no evidence had been provided which supported an assertion that the practice of recording limited reasons for investigations was acceptable or commonplace in Australia. The Tribunal was therefore not prepared to accept Dr Azucar's assertion that his level of record keeping was consistent with acceptable practice in Australia.

43. The Tribunal examined as one example investigation number 21 in Schedule 2 '8 January 2018 XXX':

'08/01/2018 Dr M. Azucar XXX.'

44. In the circumstances, and having regard to Dr A's evidence, the Tribunal considered that very limited reasons had been given, and that the limited reasons given did not adequately explain the reason for ordering the XXX.

45. Therefore, the Tribunal concluded that Dr Azucar failed to make an adequate record in respect of one or more of the entries referred to in paragraph 1 of the Allegation in that he failed to explain the reasons for ordering the investigations in Schedule 2.

46. Accordingly, the Tribunal determined that paragraph 2(b) of the Allegation was found proved.

Paragraph 2(c) of the Allegation

47. The Tribunal considered the allegation that Dr Azucar failed to make an adequate record in respect of one or more of the entries referred to in paragraph 1 of the Allegation in that he failed to explain the reasons for arranging the referrals in Schedule 3.

48. The Tribunal considered the first self-referral in Schedule 3: '24 March 2016 Mr B, XXX'. The visit record was as follows:

*'5.55. 24/03/2016 Surgery consultation
Letter to Mr B printed.
Letter written to Mr B re. Specialist referral.'*

49. The Tribunal noted that it did not have access to the referral letter but considered that, on the evidence provided, the reasons for arranging the referral were absent.

50. In the circumstances, the Tribunal considered that the entry referred to in Schedule 3, and noted above, failed to explain the reason and merely noted 'surgery consultation'.

51. The Tribunal considered that this record would not be adequate to enable another clinician to understand the reason for the referral.

52. Therefore, the Tribunal concluded that Dr Azucar failed to make an adequate record in respect of one or more of the entries referred to in paragraph 1 of the Allegation in that he failed to explain the reasons for arranging the referrals in Schedule 3.

53. Accordingly, the Tribunal determined that paragraph 2(c) of the Allegation was found proved.

The Tribunal's Overall Determination on the Facts

54. The Tribunal has determined the facts as follows:

‘That being registered under the Medical Act 1983, as amended:

1. Between 28 May 2014 and 15 November 2019 you inappropriately self-managed your own health in that, on one or more occasion, you:

a. self-prescribed as set out in Schedule 1;

Admitted and found proved

b. ordered investigations as set out in Schedule 2;

Admitted and found proved

c. arranged self-referrals as set out in Schedule 3.

Admitted and found proved

2. You failed to make an adequate record in respect of one or more of the entries referred to in paragraph 1 in that you failed to explain the reasons for:

a. the prescribing in Schedule 1; **Determined and found proved**

b. ordering the investigations in Schedule 2;

Determined and found proved

c. arranging the referrals in Schedule 3. **Determined and found proved**

~~3. Between 28 May 2014 and 28 March 2018, whilst working as a GP at Broadway Medical (Ellenbrook), you deleted in excess of 100 entries from your own medical records. **Withdrawn under Rule 17(6)**~~

~~4. You knew when you took the actions as set out in paragraph 3, that:~~

~~a. there was no reasonable justification for your doing so;~~

~~**Withdrawn under Rule 17(6)**~~

~~b. you were concealing the extent of your:~~

~~i. self-prescribing; Withdrawn under Rule 17(6)~~

~~ii. ill health. Withdrawn under Rule 17(6)~~

~~5. Your actions as set out at paragraph 3 were dishonest by reason of paragraph 4.
Withdrawn under Rule 17(6)~~

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct. **To be determined**

Determination on Impairment - 06/10/2022

55. This determination will be handed down in private under the provisions of Rule 41 of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). A redacted version will be published at the close of the hearing.

56. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved as set out before, Dr Azucar's fitness to practise is impaired by reason of misconduct.

The Evidence

57. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary.

58. In addition, the Tribunal received a testimonial in support of Dr Azucar from his line manager, Dr C, Locum Consultant Psychiatrist, Greenwich West ADAPT Team, dated 30 September 2022.

Submissions

Submissions on behalf of the GMC

59. Mr Breen submitted that Dr Azucar's fitness to practise was impaired by reason of misconduct.

60. Mr Breen submitted that the term fitness to practise means not only a capacity or ability to practise medicine in the sense of having the requisite knowledge, experience and skill, but it also refers to a doctor's suitability to practise by reference to his or her character or conduct.

61. Mr Breen stated that Dr Azucar had self-prescribed over a lengthy period of time, had not provided the Tribunal with significant details of remediation, but had only said that he would learn from his mistakes. Further, Mr Breen stated that whilst Dr Azucar had acknowledged that he should not have '*done what he did*', he had not provided the Tribunal with any details regarding actions that he would take in the future to ensure no repetition were he to have a medical condition.

62. Mr Breen referred to *Good Medical Practice (2013)* (GMP) and referenced relevant case law. He argued that when considering the doctor's conduct in light of the overarching objective, Dr Azucar's fitness to practise could be found impaired by reason of public policy alone.

63. Further, Mr Breen submitted that the Australian regulator imposed similar principles to GMP and that the doctor did not consider those principles. He stated that the doctor must have been familiar with the principles of GMP as he had previously practised in the UK.

64. Mr Breen concluded by submitting that, bearing in mind the timespan over which the misconduct took place and the proven facts, the Tribunal should find that the doctor's fitness to practise was currently impaired.

Dr Azucar's submissions

65. Dr Azucar stated that he took full responsibility for his decisions and actions and did not set out to provide any justifications or excuses.

66. Dr Azucar further stated that he accepted the decision that the Tribunal had made in regard to the proven facts and would accept any decision the Tribunal made regarding the issue of misconduct.

67. Dr Azucar accepted that this case involved a serious error of judgement on his part and that, whilst he had always tried to adhere to the principles of GMP, he had failed in regard to the matters before the Tribunal.

68. Dr Azucar stated that he had taken steps since the findings of the Australian regulator to ensure that the conduct would not be repeated. He emphasised that one of the steps he had taken was to ensure that he, and his family, registered with a GP in the UK. Dr Azucar further emphasised that his GP would be his first point of contact for any health issues and submitted that, whilst he had always put his patients' interests first and had maintained adequate records whilst caring for others, his insight had been lacking when it came to his own health.

69. Dr Azucar concluded by stating that he had been working with his line manager in his current place of employment to ensure that any issues regarding record keeping and self-management were reflected on to ensure that failings were not repeated, so as to uphold the principles highlighted by the Australian regulator and set out in GMP, and ensure the integrity of the profession.

The Relevant Legal Principles

70. 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.

71. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved amounted to misconduct, and that the misconduct was serious, and second whether the finding of that misconduct could lead to a finding of impairment.

72. The Tribunal must determine whether Dr Azucar's fitness to practise is impaired today, taking into account Dr Azucar'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.

73. However, even if the Tribunal determined that the misconduct was remediable, had been remedied and the likelihood of repetition was very low, there will be instances where

the need to uphold professional standards and public confidence in the profession would be undermined if a finding of impairment were not made.

The Tribunal's Determination on Impairment

Misconduct

74. In reaching its determination as to whether Dr Azucar's admitted and proven actions amounted to misconduct, the Tribunal had regard to GMP, in particular the following:

- '21 *Clinical records should include:*
- a relevant clinical findings*
 - b the decisions made and actions agreed, and who is making the decisions and agreeing the actions*
 - c the information given to patients*
 - d any drugs prescribed or other investigation or treatment*
 - e who is making the record and when.'*

75. The Tribunal also had regard to 'Good practice in prescribing and managing medicines and devices' (January 2013), the guidance in force at the time of Dr Azucar's misconduct, in particular the following paragraph:

'17 *Wherever possible you must avoid prescribing for yourself or anyone with whom you have a close personal relationship.'*

'18 *Controlled medicines present particular dangers, occasionally associated with drug misuse, addiction and misconduct. You must not prescribe a controlled medicine for yourself or someone close to you unless:*

- a no other person with the legal right to prescribe is available to assess and prescribe without a delay which would put your, or the patient's, life or health at risk or cause unacceptable pain or distress, and*

- b the treatment is immediately necessary to:*
 - i save a life*
 - ii avoid serious deterioration in health, or*
 - iii alleviate otherwise uncontrollable pain or distress.'*

'19 *If you prescribe for yourself or someone close to you, you must:*

- a make a clear record at the same time or as soon as possible afterwards. The record should include your relationship to the patient (where relevant) and the reason it was necessary for you to prescribe.*
- b tell your own or the patient's general practitioner (and others treating you or the patient, where relevant) what medicines you have prescribed and any other information necessary for continuing care, unless (in the case of prescribing for somebody close to you) they object.'*

Prescriptions

76. The Tribunal considered the proven facts that Dr Azucar had inappropriately self-managed his own health in that he self-prescribed and failed to make an adequate record in that he failed to explain the reason for the self-prescribing.

77. The Tribunal noted that Dr Azucar's self-prescribing, particularly his repeated self-prescribing of controlled drugs over a prolonged period was inappropriate.

78. Further, the Tribunal considered that self-prescribing, in particular controlled drugs, without any stated justification or reasons in the records that would allow another healthcare professional to clearly understand why prescribing has occurred was unacceptable.

79. It was further concerned that Dr Azucar's volume of prescriptions for controlled drugs could have posed a potential safety risk.

80. The Tribunal concluded that Dr Azucar's repeated self-prescribing and his repeated failure to record adequately the reasons for the prescribing, was clearly inappropriate and fell so far short of the standards of conduct reasonably expected of a doctor as to meet the threshold of serious misconduct.

Investigations

81. The Tribunal considered the proven facts that Dr Azucar inappropriately self-managed his own health in that he ordered investigations and failed to make adequate records in that he failed to explain the reasons for ordering the investigations.

82. The Tribunal bore in mind that the investigations were ordered on repeated occasions over a prolonged period and was concerned that this amounted to a pattern of behaviour.

83. It considered that Dr Azucar's failure to make adequate records which explained the reasons for ordering the investigations was unacceptable and demonstrated a cavalier approach to record keeping.

84. The Tribunal concluded that Dr Azucar's self-management of his own health when ordering investigations, and his subsequent failure to make adequate records for ordering the investigations indicated poor judgement on the doctor's part and was clearly inappropriate conduct, and fell so far short of the standards reasonably expected of a doctor as to meet the threshold of serious misconduct.

Self-referrals

85. The Tribunal considered the proven facts that Dr Azucar inappropriately self-managed his own health in that he arranged self-referrals and failed to make adequate records in that he failed to explain the reasons for arranging self-referrals.

86. The Tribunal considered that Dr Azucar's conduct in arranging repeated self-referrals on three occasions between 2016 and 2018 was inappropriate.

87. Further, it concluded that Dr Azucar's failure to make adequate records which explained the reasons for arranging self-referrals, to enable another clinician to understand the reason for the referral, was unacceptable and demonstrated a disregard for GMP.

88. The Tribunal concluded that Dr Azucar’s self-management of his own health when arranging self-referrals, and his subsequent failure to make adequate records for arranging the self-referrals indicated poor judgement on the doctor’s part and was clearly inappropriate conduct, and fell so far short of the standards of conduct reasonably expected of a doctor as to meet the threshold of serious misconduct.

Impairment

89. The Tribunal having found that the facts found proved amounted to misconduct, went on to consider whether, as a result of that misconduct, Dr Azucar’s fitness to practise is currently impaired.

90. The Tribunal considered that Dr Azucar’s misconduct was remediable.

91. The Tribunal noted that Dr Azucar’s self-management in relation to prescribing, ordering investigations and arranging self-referrals had taken place over a prolonged period and had, to some extent, become embedded behaviour. However, it considered that the doctor’s assurances that he would never engage in such self-treatment again were genuine.

92. Further, the Tribunal considered that, whilst Dr Azucar had not provided it with comprehensive evidence of an attitudinal change in relation to self-treatment, it did consider that the fitness to practise proceedings brought against the doctor had made a significant impression on Dr Azucar and caused him to develop insight into the inappropriateness of his self-treatment and record keeping.

93. The Tribunal also took into account Dr Azucar’s acknowledgement of the unacceptability of his misconduct in relation to his self-treatment and noted that the doctor had ensured that he had registered with a GP on his return to the UK from Australia.

94. The Tribunal also bore in mind that there was no evidence that Dr Azucar had self-treated since the index incidents in Australia.

95. It also acknowledged Dr Azucar’s full engagement with the regulatory process and considered that this was a positive indication that the doctor was willing to engage and remedy his misconduct.

96. Furthermore, the Tribunal noted that Dr Azucar had accepted its findings in relation to the proven facts, stated that he would accept its findings at the impairment stage, had not denied that his actions amounted to misconduct and stated that his ignorance was not an excuse and accepted responsibility.

97. The Tribunal also took into account the reference provided by Dr Azucar's supervisor Dr C. Dr C describes Dr Azucar as a valuable member of his team and as an experienced and competent clinician. The Tribunal noted that Dr C stated that Dr Azucar had discussed his misconduct in detail with Dr C and also that Dr C considered Dr Azucar's record-keeping was of a *'high standard and demonstrated an eye for detail'*.

98. In the circumstances, given the doctor's willingness to engage with the regulatory process and his acceptance that he should not have self-treated and that his self-treating records were not adequate, the Tribunal was of the view that Dr Azucar was unlikely to engage in self-treatment in the future and, as such, that there was a low risk of a repetition of the misconduct.

99. The Tribunal considered however that Dr Azucar's misconduct engaged the overarching objectives of promoting and maintaining public confidence in the medical profession and of promoting and maintaining proper professional standards and conduct for members of the profession.

100. Therefore, although the Tribunal was of the view that Dr Azucar had remediated to a significant extent and had shown a willingness to gain insight into his misconduct it considered that the misconduct was so serious that public confidence in the medical profession would be undermined, and there would be a failure to uphold professional standards, if a finding of impairment were not made.

101. The Tribunal therefore determined that Dr Azucar's fitness to practise is currently impaired by reason of misconduct.

Determination on Sanction - 07/10/2022

1. This determination will be handed down in private under the provisions of Rule 41 of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). A redacted version will be published at the close of the hearing.

2. Having determined that Dr Azucar'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 Azucar's registration.

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 in reaching a decision on what action, if any, it should take with regard to Dr Azucar's registration.

Submissions

Submissions on behalf of the GMC

4. Mr Breen submitted that the appropriate and proportionate sanction in this case was one of suspension.

5. Mr Breen submitted that the Tribunal may consider, bearing in mind its conclusions at the impairment stage, that a short period of suspension would be commensurate with the findings of fact that it had made, particularly taking into account the observations that it had made in relation to remediation.

6. Mr Breen referred the Tribunal to the *Sanctions Guidance (2020) (SG)* and the overarching objective and submitted that it was in the public interest that the sanction of suspension be imposed to maintain public confidence in the profession.

7. Further, Mr Breen emphasised that a sanction of suspension had a deterrent effect and could be used to send out a signal to the doctor, the profession, and the public regarding behaviour considered to be unbecoming for a registered doctor. He also stated that suspension was appropriate for misconduct that is serious but falls short of being fundamentally incompatible with continued registration.

8. Mr Breen submitted that imposing a sanction of conditions would not satisfy the public interest and stated that '*one wonders whether conditions would serve a necessary purpose here*'.

9. Mr Breen concluded by submitting that a short period of suspension was the most appropriate sanction in this case, as the Tribunal had found that Dr Azucar did not pose a significant risk of repeating his misconduct.

Dr Azucar's submissions

10. Dr Azucar acknowledged that his conduct fell below the necessary standard expected of a doctor and that he deserved to be penalised but asked that the least restrictive sanction be imposed.

11. Dr Azucar acknowledged that his misconduct was serious, and that self-treatment can have serious determinantal consequences.

12. Dr Azucar submitted that he never should have self-treated but that he had not tried to hide anything and had been honest throughout the regulatory process.

13. Dr Azucar emphasised that he had been transparent both with the GMC and the Australian regulator and that his engagement with the regulatory process had been a *'learning curve'*.

14. Dr Azucar stated that he had tried to demonstrate insight into his serious misconduct. He planned to undertake a medical ethics course and regularly undertook research to educate himself with GMP and the code of conduct set out by the Australian regulator. Further, he stated that he had weekly discussions with his supervisor and that they regularly discussed GMP and medical ethics.

15. Dr Azucar emphasised that he would never self-treat again, or indeed treat anyone with whom he had a close personal relationship, and asked that he be given the opportunity to demonstrate his commitment to the profession and the public.

16. Dr Azucar concluded by expressing his remorse for his misconduct and asked that the Tribunal consider imposing conditions on his registration rather than a sanction of suspension.

The Tribunal's Determination

17. The decision as to the appropriate sanction to impose, if any, is a matter for this Tribunal exercising its own judgement. There is no burden or standard of proof at this stage. It recognises that every case will necessarily turn on its own facts.

18. In reaching its decision, the Tribunal has given careful consideration to SG generally and to all the paragraphs outlined in submissions. It has borne in mind that the purpose of a sanction is not to be punitive although it may have a punitive effect.

19. The Tribunal has borne in mind that in deciding what sanction, if any, to impose, it should consider the sanctions available, starting with the least restrictive.

20. Throughout its deliberations, the Tribunal has taken into account the overarching objective, and applied the principle of proportionality, balancing Dr Azucar's interests with the public interest.

21. The Tribunal has taken into account its earlier determinations on the facts and on impairment, the SG and GMP, the submissions of Mr Breen on behalf of the GMC, and the submissions of Dr Azucar.

Mitigating and Aggravating Factors

22. The Tribunal first considered the mitigating factors:

- Dr Azucar had self-reported the matter to the GMC and thereafter had engaged appropriately with the GMC throughout the regulatory process
- There was no evidence of any harm to patients as a result of Dr Azucar's actions;
- Dr Azucar had demonstrated that he had taken steps to develop insight into his misconduct;
- Dr Azucar had registered with a GP, which, the Tribunal concluded, was indicative of a lower risk of repetition of self-treatment;
- Dr Azucar expressed remorse for his misconduct and apologised to the profession, the public and the Tribunal;
- The positive testimonial from Dr Azucar's current supervisor provided additional evidence that he was making efforts to remediate and gain full insight;
- That testimonial also stated that Dr Azucar is a valuable work colleague who maintains high professional standards.

23. The Tribunal then considered the aggravating factors in relation to Dr Azucar's case:

- The Tribunal noted that Dr Azucar's misconduct took place over a lengthy period;
- Dr Azucar's self-treatment included the prescription of controlled drugs;
- In managing his own health Dr Azucar had no other health professional providing an objective overview of his health conditions.

24. The Tribunal considered each sanction in ascending order of seriousness starting with the least restrictive.

No Action

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

26. The Tribunal determined that to take no action would be inappropriate. The Tribunal did not consider that there were any exceptional circumstances that would justify such a course. It would not be sufficient, proportionate or in the public interest to conclude the case by taking no action.

Conditions

27. The Tribunal next considered whether it would be appropriate to impose conditions on Dr Azucar's registration. It bore in mind that any conditions imposed should be appropriate, proportionate, workable and measurable.

28. The Tribunal also reminded itself that this was a case where it had considered it necessary to make a finding of impairment because of the need to uphold professional standards and public confidence in the profession.

29. The Tribunal considered that the imposition of conditions on Dr Azucar's registration would be inappropriate as it would not send a sufficiently robust message to the public or the profession as to the inappropriateness and seriousness of his misconduct.

30. In the circumstances, the Tribunal determined that a period of conditional registration would not meet the public interest.

Suspension

31. The Tribunal then went on to consider whether imposing a period of suspension on Dr Azucar’s registration would be appropriate and proportionate.
32. The Tribunal acknowledged that suspension has a deterrent effect and can be used as a declaratory signal to the doctor, the profession, and to the public about what is regarded as behaviour unbecoming a registered doctor.
33. The Tribunal took account of the following paragraphs of the SG which indicate circumstances in which it may be appropriate to impose a sanction of suspension:

‘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 unbecoming a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention’

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

‘93 Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions ...’

34. The Tribunal determined that a period of suspension would be sufficient to uphold all three limbs of the overarching objective. Further, it considered that a period of suspension was the appropriate and proportionate sanction in this case.

35. The Tribunal took into account the aggravating and mitigating factors identified and concluded that suspension for one month would be sufficient to mark the seriousness of Dr Azucar’s misconduct.

36. The Tribunal concluded that this suspension would send a clear signal to the medical profession and to the wider public that his misconduct relating to self-treatment was unacceptable.

37. The Tribunal determined that a reasonable and fully informed member of the public would regard a one-month suspension as a sufficient marker of the gravity of this particular case.

38. The Tribunal further determined that it was not necessary to direct a review of Dr Azucar’s case as it considered that he was extremely unlikely to repeat his misconduct and did not consider there was any significant ongoing risk.

Determination on Immediate Order - 07/10/2022

1. This determination will be handed down in private under the provisions of Rule 41 of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended (‘the Rules’). A redacted version will be published at the close of the hearing.

2. Having determined that a one-month suspension is the appropriate sanction, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Azucar’s registration should be subject to an immediate order.

Submissions

Submission on behalf of the GMC

3. Mr Breen stated that the GMC made no submissions on the issue of imposing an immediate order.

Dr Azucar’s submissions

4. Dr Azucar stated that he made no submissions.

The Tribunal's Determination

5. The Tribunal concluded that the imposition of an immediate order on Dr Azucar's registration was not necessary to protect the public or to satisfy the public interest.

6. This means that Dr Azucar's registration will be suspended 28 days from the date on which written notification of this decision is deemed to have been served, unless he lodges an appeal. If Dr Azucar does lodge an appeal he will remain free to practise unrestricted until the outcome of any appeal is known.

7. That concludes this case.

Record of Determinations –
Medical Practitioners Tribunal

SCHEDULE 1

	Drug	Dose	Type	Dates
1.	XXX	XXX	XXX	28/05/14;
2.	XXX	XXX	XXX	28/05/14;
3.	XXX	XXX	XXX	10/06/14; 24/06/14;
4.	XXX	XXX	XXX	10/07/14; 30/09/14; 16/12/14; 02/06/15; 30/06/15;24/09/15; 12/02/16; 09/03/16; 14/04/16; 26/04/16; 01/06/16; 13/06/16; 10/08/16; 01/03/17; 29/03/17; 31/05/17; 25/08/17; 15/11/19
5.	XXX	XXX	XXX	17/07/14
6.	XXX	XXX	XXX	21/07/14; 12/03/15; 21/12/15
7.	XXX	XXX	XXX	25/07/14; 19/01/15; 06/01/17; 07/03/19;
8.	XXX	XXX	XXX	31/07/14
9.	XXX	XXX	XXX	25/08/14; 03/09/14; 16/10/14; 21/10/14; 20/01/16; 15/04/16; 26/04/16; 09/05/16; 23/11/16;
10.	XXX	XXX	XXX	21/10/14; 11/12/14; 02/02/15; 09/08/19; 03/10/19;

**Record of Determinations –
Medical Practitioners Tribunal**

11.	XXX	XXX	XXX	21/10/14; 04/12/15; 08/02/16; 18/04/16; 26/04/16; 18/04/16; 26/04/16; 15/09/16; 17/10/16; 23/12/16; 01/03/17;
12.	XXX	XXX	XXX	21/10/14
13.	XXX	XXX	XXX	21/10/14
14.	XXX	XXX	XXX	26/11/14
15.	XXX	XXX	XXX	11/12/2014; 23/12/14;
16.	XXX	XXX	XXX	22/12/14; 08/07/15; 17/08/15;
17.	XXX	XXX	XXX	06/01/15; 03/07/17; 25/07/17; 12/01/18; 09/03/18;
18.	XXX	XXX	XXX	20/01/15; 08/04/15; 15/05/15; 02/11/18; 20/12/18; 09/08/19;
19.	XXX	XXX	XXX	02/02/15; 11/02/15; 17/08/15
20.	XXX	XXX	XXX	11/02/15
21.	XXX	XXX	XXX	15/05/15; 24/05/16; 06/01/17;
22.	XXX	XXX	XXX	17/05/15
23.	XXX	XXX	XXX	17/05/15
24.	XXX	XXX	XXX	15/06/15
25.	XXX	XXX	XXX	17/06/15; 02/12/15; 05/03/16; 26/04/16; 08/11/19; 15/11/19;
26.	XXX	XXX	XXX	30/06/15; 01/06/16; 13/06/16; 25/08/17; 20/12/18; 15/07/19; 09/08/19;

**Record of Determinations –
Medical Practitioners Tribunal**

				21/08/19;
27.	XXX	XXX	XXX	15/08/15
28.	XXX	XXX	XXX	24/09/15
29.	XXX	XXX	XXX	02/12/15; 05/03/16; 26/04/16;
30.	XXX	XXX	XXX	21/12/15;
31.	XXX	XXX	XXX	08/02/16; 26/04/16;
32.	XXX	XXX	XXX	12/02/16;
33.	XXX	XXX	XXX	09/03/16; 29/07/16; 15/09/16;
34.	XXX	XXX	XXX	23/03/16; 29/03/17;
35.	XXX	XXX	XXX	26/04/16; 12/08/16; 21/09/16; 31/10/16; 23/12/16; 31/10/17; 20/08/18; 16/01/19; 06/04/19; 27/06/19; 30/08/19; 30/10/19;
36.	XXX	XXX	XXX	13/06/16; 31/10/16; 08/05/17; 08/05/17; 29/12/17; 08/01/18; 15/01/18; 27/02/18; 29/08/18; 12/09/18; 02/11/18; 04/01/19;
37.	XXX	XXX	XXX	13/06/16; 16/01/18;
38.	XXX	XXX	XXX	16/08/18; 12/09/18 (twice); 06/02/19; 03/05/19; 03/10/19;
39.	XXX	XXX	XXX	29/06/16
40.	XXX	XXX	XXX	07/03/17; 10/04/17; 08/05/17; 14/06/17; 11/09/17; 04/11/17; 15/01/18; 06/02/18;
41.	XXX	XXX		06/05/17

**Record of Determinations –
Medical Practitioners Tribunal**

42.	XXX	XXX	XXX	04/09/17;
43.	XXX	XXX	XXX	24/09/17; 02/01/18;
44.	XXX	XXX	XXX	30/10/17;
45.	XXX	XXX	XXX	31/10/17; 29/12/17; 02/01/18; 30/01/18; 23/02/18; 27/02/18;
46.	XXX	XXX	XXX	04/12/17;
47.	XXX	XXX		04/12/17;
48.	XXX	XXX		04/12/17; 29/12/17; 02/01/18; 16/01/18; 30/01/18; 28/03/18
49.	XXX	XXX	XXX	16/03/2018; 16/03/18; 26/10/18; 20/12/18; 16/01/19; 06/04/19; 27/06/19; 30/10/19;
50.	XXX	XXX	XXX	16/08/18; 11/09/18; 12/09/18 (twice); 26/10/18; 16/01/19; 03/05/19; 15/11/19
51.	XXX	XXX		20/12/18; 06/04/19; 27/06/19;
52.	XXX	XXX	XXX	20/12/18; 16/01/19;
53.	XXX	XXX	XXX	16/01/19; 08/11/19;
54.	XXX	XXX	XXX	07/03/19;
55.	XXX	XXX	XXX	07/03/19; 07/10/19
56.	XXX	XXX		07/03/19;
57.	XXX	XXX		07/03/19; 27/06/19; 07/10/19;
58.	XXX	XXX	XXX	06/04/19; 27/06/19; 03/10/19; 30/10/19;
59.	XXX	XXX	XXX	03/10/2019;
60.	XXX	XXX		03/10/19;

SCHEDULE 2

	Date requested	Investigation
1.	21 July 2014	XXX
2.	24 July 2014	XXX
3.	7 August 2014	XXX
4.	18 August 2014	XXX
5.	16 October 2014	XXX
6.	22 December 2014	XXX
7.	29 January 2015	XXX
8.	6 February 2015	XXX
9.	17 May 2015	XXX
10.	2 October 2015	XXX
11.	21 December 2015	XXX
12.	23 March 2016	XXX
13.	4 May 2017	XXX
14.	5 May 2017	XXX
15.	8 May 2017	XXX
16.	12 May 2017	XXX
17.	4 December 2017	XXX
18.	8 December 2017	XXX
19.	12 December 2017	XXX
20.	15 December 2017	XXX
21.	8 January 2018	XXX
22.	5 February 2018	XXX
23.	10 November 2018	XXX
24.	4 January 2019	XXX

Record of Determinations –
Medical Practitioners Tribunal

25.	11 January 2019	XXX
26.	6 February 2019	XXX
27.	28 June 2019	XXX
28.	10 July 2019	XXX
29.	24 September 2019	XXX

SCHEDULE 3

	Date	Referral
1.	24 March 2016	Mr B, XXX
2.	20 December 2016	XXX
3.	29 March 2018	Dr D, XXX