

PUBLIC RECORD

Dates: 24/06/2021, 12/07/2021 & 17/08/2021

Medical Practitioner's name: Dr Pawel MIKLASZEWICZ
GMC reference number: 6121969
Primary medical qualification: Lekarz 1992 Akademia Medyczna w Krakowie

Type of case	Outcome on impairment
Review - Misconduct	Not Impaired
Review - Deficient professional performance	Impaired

Summary of outcome

Conditions, 9 months.
Review hearing directed

Tribunal:

Legally Qualified Chair	Mrs Laura Paul
Lay Tribunal Member:	Ms Deborah Spring
Medical Tribunal Member:	Dr Shehleen Khan

Tribunal Clerks:	Ms Jan Smith (24/06/2021) Mr Laurence Millea (12/07/2021) Mr Matthew Rowbotham (17/08/2021)
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Attendance and Representation:

Medical Practitioner:	Present and not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Ms Kathryn Johnson, Counsel (24/06/2021) Ms Katie Jones, Counsel (12/07/2021 & 17/08/2021)

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 - 12/07/2021

Background

1. Dr Miklaszewicz qualified in Poland in 1992 and has worked in the UK since 1995. Dr Miklaszewicz commenced training in psychiatric medicine in 2009, ceased clinical work in April 2016 and later exited the training programme in September 2016.

2019 Tribunal

2. The facts found proved at Dr Miklaszewicz's hearing which concluded in January 2019 ('the 2019 Tribunal') were firstly, that he stated dishonestly to his Educational Supervisor, in 2015, that he had registered with a GP local to Bodmin hospital, when he had not done so. Registering at a local GP's was a requirement of Dr Miklaszewicz's Remedial Training Plan ('RTP'). The RTP had been devised for him by the Health Education South West Deanery following difficulties Dr Miklaszewicz had at Devon Partnership NHS Trust. Secondly, the 2019 Tribunal also found proved that following a professional performance assessment by the GMC in 2017, Dr Miklaszewicz's performance was unacceptable in certain areas of his practice, and cause for concern in others.

3. The 2019 Tribunal went on to determine that Dr Miklaszewicz's fitness to practise was impaired by reason of both misconduct and deficient professional performance. It determined to suspend Dr Miklaszewicz's practice for a period of 12 months. The 2019 Tribunal directed a review and suggested the evidence required to assist a reviewing Tribunal.

2020 Tribunal

4. Dr Miklaszewicz's case was reviewed on 18 June 2020 ('the 2020 Tribunal'). Dr Miklaszewicz did not attend and was not represented at that review hearing. He had not responded to an invitation from the GMC for a further assessment of his professional practice issued in or around August 2019.

5. The 2020 Tribunal reflected upon the findings of the 2019 Tribunal. In relation to misconduct, it noted that the 2019 Tribunal found that Dr Miklaszewicz's dishonesty "risked bringing the profession into disrepute. Further, it also risked undermining public confidence in the profession and the need to maintain proper professional standards and conduct for members of the profession." It also found that Dr Miklaszewicz had not provided any assurance that this situation would not be repeated if it were to arise again.
6. The 2020 Tribunal noted that it had not been provided with any evidence that Dr Miklaszewicz had taken the appropriate steps to allay these concerns. He had not taken notice of the suggestions of the 2019 Tribunal, nor had he put any other material before the 2020 Tribunal. Accordingly, the 2020 Tribunal could not be satisfied that Dr Miklaszewicz would not repeat this misconduct in the future, which would undermine public confidence in the profession.
7. The 2020 Tribunal determined that Dr Miklaszewicz's fitness to practise remained impaired by reason of misconduct.
8. In relation to deficient professional performance, the 2020 Tribunal had not been provided with any evidence to satisfy it that Dr Miklaszewicz had developed insight into, or had remediated, any of the identified deficiencies in his professional performance. The 2020 Tribunal noted that there was no evidence that Dr Miklaszewicz had worked since April 2016. He did not provide any evidence of his continued professional development, nor had he responded to the GMC's request to take part in an assessment of his professional practice. It concluded that there was a risk that Dr Miklaszewicz's performance was unsatisfactory in a number of important areas of his practice.
9. The 2020 Tribunal therefore determined that Dr Miklaszewicz continued to pose a risk to patient safety, such that his fitness to practise remained impaired by reason of deficient professional performance.
10. The 2020 Tribunal considered that a further period of suspension would allow Dr Miklaszewicz to re-engage with the GMC's processes and give him the opportunity to regain his fitness to practise.
11. The 2020 Tribunal was concerned that, in the absence of any evidence to the contrary, Dr Miklaszewicz had not worked since April 2016 and it was of the view that he would need to complete a marked amount of re-training in order to be able to practise medicine safely.
12. The 2020 Tribunal observed that the outlook was less hopeful that Dr Miklaszewicz was interested in re-joining the medical profession. However it did not conclude that his original misconduct and deficient professional performance warranted erasure at that stage, because it was of the view that remediation of both his misconduct and the deficiencies in his professional practice remained a possibility.

13. When determining the period of suspension, the 2020 Tribunal concluded that, given the level of remediation and insight that Dr Miklaszewicz would need to achieve, a period of 12 months would be appropriate. This would also ensure patient safety and the maintenance of public confidence in the profession.

14. The 2020 Tribunal determined to direct a review of Dr Miklaszewicz's case. It was keen to emphasise that, at the review hearing, the onus would be on Dr Miklaszewicz to demonstrate how he has remediated and developed insight into his actions in order to safely return to medical practice. It therefore suggested that the reviewing Tribunal may be assisted by the provision of the following:

- (a) evidence that demonstrates Dr Miklaszewicz's commitment to dealing with his deficient performance. For example, this may include a sufficient period of supervised practice in Dr Miklaszewicz's sub-specialty;
- (b) evidence that Dr Miklaszewicz has insight into his misconduct and performance deficiencies;
- (c) evidence of reflection on his misconduct and his deficient performance;
- (d) evidence of compliance with any invitation from the GMC to undertake a further assessment;
- (e) evidence of CPD, PDP and other remediation;
- (f) evidence that Dr Miklaszewicz has kept his medical professional skills up-to-date;
- (g) evidence of Dr Miklaszewicz developing a coping strategy XXX; and
- (h) any other evidence which would indicate to a future Tribunal that Dr Miklaszewicz has maintained his professional competence.

15. The 2020 Tribunal invited Dr Miklaszewicz to provide any other information that he considered would assist a future Tribunal.

Today's Hearing

16. The Tribunal has convened to review Dr Miklaszewicz's case in accordance with Rule 22 of the General Medical Council's ('GMC') (Fitness to Practise) Rules 2004, as amended ('the Rules'). The Tribunal has to decide, in accordance with Rule 22(1)(f), whether Dr Miklaszewicz's fitness to practise is impaired by reason of his misconduct and/or deficient professional performance.

Evidence

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

- the determinations of the previous MPT Tribunals in January 2019, and June 2020;
- a letter from the GMC to Dr Miklaszewicz, dated 20 August 2019, inviting him to undergo a performance assessment;
- a letter from the GMC to Dr Miklaszewicz, dated 4 March 2021, requesting the documentary evidence as suggested by the 2020 Tribunal;
- a telephone note, dated 13 March 2021, which reported a telephone conversation between the GMC and Dr Miklawzewicz during which he confirmed his email address;
- email exchanges between the GMC and Dr Miklaszewicz regarding a date for the assessment of his practice and confirmation that Dr Miklaszewicz's assessment is to be carried out in September 2021;
- a completed assessment Portfolio of Secondary Care.

18. Dr Miklaszewicz gave oral evidence at this hearing, under oath.

19. Dr Miklaszewicz told the Tribunal that for quite a long time he could not accept having to provide evidence of his current professional performance and that he just wanted to prove that there was no problem with his clinical practice to justify an assessment. Dr Miklaszewicz stated that he changed his mind about the fitness to practise process after he had been suspended for the first time in 2019.

20. XXX However, by the time of the first review of his case in 2020, Dr Miklaszewicz stated that he was not ready to demonstrate evidence of improvement because he was angry XXX, and had not accomplished any meaningful reflection. He said that he felt wronged for quite some time and considered whether he wanted to continue with his career in medicine.

21. Dr Miklaszewicz told the Tribunal that he came to accept that he would not be allowed to practise again unless he could demonstrate his competence to do so. He said that he came to understand that there were clearly doubts about his professional performance and that he needed to undergo a GMC assessment. He said that he had changed his thinking, XXX. Dr Miklaszewicz stated that he has become much more positive now and wants to demonstrate that he could be a useful doctor. He said that he understands that he cannot return to clinical practice until he has completed a performance assessment.

22. Dr Miklaszewicz told the Tribunal that he wished to apply for an observership but, in Poland, he is not allowed to see patients whilst he is under suspension by the GMC, even if under supervision. It was Dr Miklaszewicz's contention that if he could demonstrate his improved knowledge and skills at the performance assessment, then he will have a chance of returning to medical practice.

23. In respect of keeping his knowledge and skills up to date, Dr Miklaszewicz stated that he has accessed online materials from the College of Psychiatry and from an American Psychiatry Association. He said that he has continued to make an effort to read books on psychiatry and methods of psychiatric assessment. He had also watched more than one hundred videos which did not involve actual patients but dealt with various scenarios which were common in psychiatry. Dr Miklaszewicz stated that he accepted that there are deficiencies in his professional practice, but he wanted to be able to demonstrate that he has reflected on those deficiencies and dealt with them accordingly. He admitted that he has not worked in clinical practice for 5 years although he told the Tribunal that he completed the first part of his PhD last year.

24. Dr Miklaszewicz was asked why he had not provided the documentary evidence suggested by the previous Tribunal. He responded that he thought they were only suggestions and that he preferred to answer questions during oral evidence. He contended that it did not occur to him that the lack of documentary evidence could suggest that he was not making improvements to his clinical practice. In relation to a Professional Development Plan (PDP), Dr Miklaszewicz stated that there would not be sufficient information to put into a PDP until he had completed his performance assessment. He said that he had not kept a log of his online reading, and that whilst he could produce a list of all the subjects he had accessed online he did not think he would be able to complete a PDP based on that list.

25. Dr Miklaszewicz was questioned as to why he had not responded to the GMC's earlier invitation to him to undergo a performance assessment in 2019. He responded that he may not have understood the documents that were sent to him although he accepted that had received the hearing outcome letter in 2020 from which he should have been aware of the request for an assessment.

26. When questioned as to why he had not provided a written reflective piece, Dr Miklaszewicz replied that he preferred to make oral statements. He said he gave evidence today and felt it was important to explain to the Tribunal personally how his position has changed since his previous hearings.

27. In relation to the misconduct in his case, Dr Miklaszewicz told the Tribunal that he accepted the rulings of the previous hearings and that he understands fully that he was at fault, although he could not admit that at the time. Dr Miklaszewicz said that he will be mindful that, in future, it is essential that he does not put himself into the same situation again. He admitted that he should have explained why he was not registered with a local GP and he accepted that he did not resolve the situation in the way he should have done. In his oral evidence, Dr Miklaszewicz said that his case had been adjudicated properly and that he accepted the decisions that were made.

28. Dr Miklaszewicz was asked why he had not undertaken an ethics course which are freely available online, particularly in light of the findings of the previous Tribunals. He told the Tribunal that he had done such courses some years previously and that the issue of ethics remains the same today as it was then.

GMC Submissions

29. Ms Johnson submitted that Dr Miklaszewicz's fitness to practise remains impaired by virtue of misconduct and deficient professional performance. It was her contention that there has been little progress since the original hearing in 2019. Ms Johnson reminded the Tribunal that Dr Miklaszewicz did not engage with the review hearing in 2020 and did not undergo the performance assessment he was invited to participate in at that time. XXX

30. Ms Johnson submitted that Dr Miklaszewicz has failed to produce the evidence suggested by the 2020 Tribunal, including a written reflective piece. She stated that in the absence of such evidence the Tribunal could only assess Dr Miklaszewicz's reflections, remediation and insight by the oral evidence he gave today.

31. Ms Johnson submitted that Dr Miklaszewicz stated in his oral evidence that he has kept his medical knowledge and skills up to date, however there is no record of the learning he has done and whether it has achieved the objective of keeping his knowledge updated. In relation to his misconduct, Ms Johnson submitted that it is questionable how much insight Dr Miklaszewicz does have and whether he fully accepts responsibility for his actions, as previously he has attempted to excuse his conduct by blaming others.

32. Ms Johnson submitted that there has been little change in this case from the position as it was in 2020. She acknowledged that Dr Miklaszewicz accepted that he needs to complete the performance assessment, scheduled for September 2021, but that there are other areas in which he could have reflected upon in the meantime. Ms Johnson submitted that there has been a lack of reflection and remediation as well as a lack of development of insight. In these circumstances, she submitted that a finding of impairment of fitness to practise by reason of misconduct and deficient professional performance is necessary to maintain public confidence in the profession and to uphold the proper standards of conduct within the profession.

Dr Miklaszewicz's Submissions

33. Dr Miklaszewicz submitted that he has explained his state of mind at the time of his original hearing and that he has since understood the fitness to practise processes which is a measure of his progress. He also submitted that he has accepted the original findings against him and has shared them with others who are helping him. Dr Miklaszewicz stated that in recognising the situation he was in previously, he would avoid that situation in the future.

34. Dr Miklaszewicz submitted that he does not challenge that he has not demonstrated the expected level of competence to date but hopes to be able to demonstrate it at the next possible opportunity. He accepted that in terms of his current fitness to practise, there is a need for assessment of his medical competence and skills.

35. In respect of his deficient professional performance, Dr Miklaszewicz submitted that he is unable to produce the evidence that his fitness to practise is no longer impaired, and that he will need to await the outcome of the performance assessment in September before he is able to do so.

36. In relation to his misconduct, Dr Miklaszewicz submitted that he will not reoffend in the future and that he has accepted the rulings of previous Tribunals. He stated that he has no doubt that what he did was wrong and that he can do no more to increase his understanding. Dr Miklaszewicz submitted that he has overcome the problems which caused him to misunderstand the fitness to practise process previously, and that he is now in a “positive cycle” rather than a negative one.

Relevant Legal Principles

37. The Tribunal reminded itself that the decision on impairment is a matter for its judgement alone. It is aware that the onus is on Dr Miklaszewicz to satisfy it that he would be safe to return to clinical practice.

38. The Tribunal must determine whether Dr Miklaszewicz’s fitness to practise is impaired today, taking into account his conduct and performance at the time of the events and any relevant factors since then, such as whether the matters are remediable, have been remediated and any likelihood of repetition.

39. Throughout its deliberations, the Tribunal has been mindful of its responsibility to uphold the overarching objective as set out in the Medical Act 1983 (as amended). That objective is as follows:

- a. to protect, promote and maintain the health, safety and wellbeing of the public;
- b. to maintain public confidence in the profession; and
- c. to promote and maintain proper professional standards and conduct for members of the profession

Tribunal’s Decision on Impairment

Misconduct

40. The Tribunal has not been provided with any documentary evidence from Dr Miklaszewicz to demonstrate that he has developed any insight into or has remediated his dishonest behaviour. It wished to stress to Dr Miklaszewicz that it would have been helpful if he could have produced a diary of reflective notes which would have been of benefit to this Tribunal. However, the Tribunal has had regard to the oral evidence he gave at this hearing, during which he answered all questions put to him and gave details on how he has reflected on his previous misconduct. The Tribunal accepted that Dr Miklaszewicz has expressed

genuine remorse for his conduct and he has acknowledged that what he did was wrong. It noted Dr Miklaszewicz's repeated assertions that he has "absorbed the rulings" and that he "would not reoffend".

41. The Tribunal acknowledged that Dr Miklaszewicz has taken these matters seriously and reflected on the errors he has made in the past. It took into account that he has accepted that what he did was dishonest. In the Tribunal's view, Dr Miklaszewicz has shown genuine remorse and demonstrated that he has developed insight into his previous misconduct. The Tribunal has concluded that the risk of repetition of such conduct in the future is very low.

42. Accordingly, the Tribunal has concluded that Dr Miklaszewicz's fitness to practise is no longer impaired by reason of misconduct.

Deficient Professional Performance

43. The Tribunal has not been provided with any evidence to demonstrate that Dr Miklaszewicz has remedied the identified deficiencies in his clinical practice, despite the request of the previous Tribunals to provide up-to-date documentation. The Tribunal has had regard to the absence of any information before it to indicate that Dr Miklaszewicz has fully remedied the concerns raised in respect of his clinical practice. In the Tribunal's view, there is a significant risk of repetition of similar incidents of poor clinical practice in the future.

44. In his oral evidence Dr Miklaszewicz told the Tribunal how he has kept his medical knowledge up to date by reading books and watching videos of clinical studies, at the recommendation of professional colleagues. However, Dr Miklaszewicz has not provided a log of his reading and online activities.

45. The Tribunal has borne in mind that the onus is on Dr Miklaszewicz to provide evidence of remediation of the identified deficiencies in his clinical performance. He is aware of the areas where his performance was found to be "unacceptable" and a "cause for concern" following his performance assessment in 2017. Dr Miklaszewicz has failed to provide any documentary evidence to demonstrate that he has addressed those identified deficiencies.

46. The Tribunal has concluded that Dr Miklaszewicz has failed to demonstrate that he is fit to return to clinical practice. It is satisfied that patients would be put at risk and public confidence would be undermined if a finding of impairment were not made.

47. Accordingly, the Tribunal has determined that Dr Miklaszewicz's fitness to practise remains impaired by reason of deficient professional performance.

Determination on Sanction - 17/08/2021

1. Having determined that Dr Miklaszewicz'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 Miklaszewicz's registration.

The Evidence

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

GMC Submissions

3. Ms Jones submitted that the appropriate and proportionate sanction to impose in this case is a further period of suspension, with the length of the suspension to be determined by the Tribunal.

4. Ms Jones submitted that there are no exceptional circumstances present in this case, and that the findings against Dr Miklaszewicz are too serious to justify taking no action. There are no conditions which would be workable in this case or which would be proportional to the risk to patient safety posed by Dr Miklaszewicz. She also submitted that the GMC position is that the sanction of erasure would not be appropriate or necessary in light of the current position and the Tribunal's findings on impairment.

5. Ms Jones submitted that Dr Miklaszewicz has a Performance Assessment scheduled for September 2021. The report is likely to be available by mid-December 2021. She referred the Tribunal to the GMC Sanctions Guidance 2020 ('SG') and submitted that as Dr Miklaszewicz now appears to be engaging with the proceedings and has demonstrated some, albeit limited, insight, a period of suspension would reflect the seriousness of the findings against him while protecting public and patient safety. She submitted that there are no factors present which would indicate that remediation of Dr Miklaszewicz's impairment is unlikely to be successful, but that his insight appears to be at the early stages of development given his oral evidence and recent written statement.

6. Ms Jones submitted that the mitigating factors in this case are Dr Miklaszewicz's recent change in attitude and engagement in the current proceedings, the time that has elapsed since the events and that he has now provided some information on CPD activities he has been undertaking. She submitted that the aggravating factor in this case is the low level of insight demonstrated by Dr Miklaszewicz, which is not yet anywhere near complete or fully developed.

7. Dr Miklaszewicz submitted that the appropriate sanction to impose is one of conditions. He submitted that he is not seeking to return to unsupervised practice prior to the Performance Assessment and that the imposition of conditions would be the most straightforward way of allowing him a route back to practice whilst addressing any patient safety concerns.

8. Dr Miklaszewicz submitted that he is unable to obtain, or therefore provide evidence of, supervised practice owing to his current suspension, adding that because of managerial and patient safety restrictions, he cannot be considered even for observerships while suspended. He submitted that if conditions were to be imposed, he could be supervised by a consultant to limit the risk to the public. He would adhere to any conditions and necessary supervision, being fully aware of the impact on his registration and chances of returning to practice were he to breach any conditions.

9. Dr Miklaszewicz submitted that conditions might allow him to provide more evidence of his remediation, to continue to prepare for the Performance Assessment, and to speak to consultants so they could consider him for future work under strict supervision. He submitted that should he pass the Performance Assessment, the route back to clinical practice would be through such a process and that conditions would facilitate this.

10. Dr Miklaszewicz submitted that around March 2021 he had contacted a consultant who told him that if he could help Dr Miklaszewicz he would. Dr Miklaszewicz said that he was awaiting the outcome of these proceedings before contacting the consultant again. He submitted that his current registration status, with a suspension due to misconduct and professional performance which appears on the European Alert System (for medical practitioners), means that he can not be considered for opportunities in Poland at present.

11. Dr Miklaszewicz submitted that he would only expect to be observing clinical practice initially, then potentially return to practice at a CT1 or CT2 level. He submitted that a supervisor/supervising consultant would be able to assess and direct what tasks he is suitable and safe to observe or undertake, and that following the Performance Assessment he would not expect to return to psychiatry at a higher grade than a CT2, which was his grade at the time of his suspension.

Tribunal Approach

12. The decision as to the appropriate sanction, if any, to impose is a matter for the Tribunal alone, exercising its own judgment. In so doing, it has considered all the evidence, its finding on impairment of fitness to practise, and the submissions made by Ms Jones, on behalf of the GMC, and Dr Miklaszewicz.

13. Throughout its deliberations the Tribunal has borne in mind that the purpose of sanctions is not to be punitive, although they may have a punitive effect, to achieve the Tribunal's statutory overarching objective, which is:

- protecting, and promoting the health, safety and well-being of the public;
- promoting and maintaining public confidence in the medical profession;
- promoting and maintaining proper professional standards and conduct for members of that profession.

14. In reaching its decision, the Tribunal also had regard to the principle of proportionality, and it weighed Dr Miklaszewicz's interests against the public interest.

15. In deciding what sanction, if any, to impose the Tribunal considered each of the options available, starting with the least restrictive.

No Action

16. The Tribunal first considered whether to conclude Dr Miklaszewicz's case by taking no action. The Tribunal concluded that there were no exceptional circumstances in this case which would justify taking no action and that to take no action would be insufficient, inappropriate and not in the public interest.

Conditions

17. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Miklaszewicz's registration. It has borne in mind that any conditions imposed should be appropriate, proportionate, workable and measurable. In reaching its determination, the Tribunal was mindful of paragraphs 82 to 84 of the Sanctions Guidance.

- 82** *Conditions are likely to be workable where:*
- a** *the doctor has insight*
 - b** *a period of retraining and/or supervision is likely to be the most appropriate way of addressing any findings*
 - c** *the tribunal is satisfied the doctor will comply with them*
 - d** *the doctor has the potential to respond positively to remediation, or retraining, or to their work being supervised.*

18. The Tribunal was of the opinion that as Dr Miklaszewicz is no longer impaired by reason of misconduct, has demonstrated some insight into his deficient professional performance and indicated that he seeks to pursue retraining and supervised practice, all of the above factors indicating that conditions would be workable in this case are applicable.

- 83** *When deciding whether remedial training is possible, the tribunal needs to consider any objective evidence that has been submitted. For example, assessments of the doctor's performance, health or knowledge of English, or evidence about the doctor's practice, health or knowledge of English.*

19. The Tribunal considered that Dr Miklaszewicz provided little documentary evidence of how he has addressed the areas of deficient professional performance which have been identified, but has given persuasive oral evidence that he is now engaged and wishes to return to the profession. The Tribunal noted that Dr Miklaszewicz has been out of clinical practice since April 2016 and has stated that whilst suspended he is unable to secure any opportunities to return to practice, even in an observational or non-clinical role.

- 84** *Depending on the type of case (eg health, language, performance or misconduct), some or all of the following factors being present (this list is not exhaustive) would indicate that conditions may be appropriate:*
- a** *no evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor's unwillingness to engage*
 - b** *identifiable areas of their practice are in need of assessment or retraining*
 - c** *willing to respond positively to retraining, with evidence that they are committed to keeping their knowledge and skills up to date throughout their working life, improving the quality of their work and promoting patient safety (Good medical practice, paragraphs 7–13 on knowledge, skills and performance and paragraphs 22–23 on safety and quality)*
- ...

20. The Tribunal concluded that the potential for remediation has been demonstrated, that there were four specific areas of concern identified in Dr Miklaszewicz's practice, and that he has indicated that he wants the opportunity to retrain and return to practice. He had taken steps to contact a consultant who would be willing to help him. These are all factors which would indicate that conditions are the appropriate sanction.

Suspension

21. The Tribunal then went on to consider whether suspension would be the appropriate sanction in this case. It has borne in mind that, at the conclusion of the hearing in 2019, that Tribunal imposed a period of suspension due to the serious misconduct and the clinical deficiencies identified in Dr Miklaszewicz's case. This Tribunal found that Dr Miklaszewicz is no longer impaired by reason of misconduct, and so it considered the sanction in light of the outstanding finding of impairment by deficient professional performance.

22. In reaching its decision, the Tribunal considered paragraph 97 of the Sanctions Guidance, which states.

- 97** *Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.*
- a** *A serious breach of Good medical practice, but where the doctor's misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.*

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, eg 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.

23. In light of the above paragraph, the Tribunal considered that Dr Miklaszewicz is no longer impaired by reason of misconduct. The Tribunal noted that he has the potential for retraining and patient safety could be satisfactorily protected by close supervision, that he had reasons for not engaging previously and has now demonstrated that he is very willing to engage. He has demonstrated insight into his abilities and the level of supervision he requires.

24. The Tribunal considered that a period of suspension would be disproportionate and there was no risk or objective which a further period of suspension would be required to fulfil. It concluded that conditions would adequately safeguard patients and public. The conditions are workable and could be formulated to address the performance issues previously identified. A future Tribunal would then be able to consider the results of the forthcoming Performance Assessment.

25. The Tribunal was of the opinion that a period of nine months would provide sufficient time for the Performance Assessment to take place and the report to be produced and made available, and for Dr Miklaszewicz to consider its findings, and if necessary act on areas that require addressing.

26. As a result, the Tribunal determined that a period of conditional registration, for a period of nine months, was the appropriate and proportionate sanction in this case.

27. The following conditions will be published:

1. He must contact the GMC within seven calendar days of returning to the UK.
2. 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
- 3. 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 14
 - 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.
- 4. He must allow the GMC to exchange information with any person involved in monitoring his compliance with his conditions.
- 5.
 - 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.

6.
 - a He must design a Personal Development Plan (PDP), with specific aims to address the deficiencies in the following areas of his practice:
 - comprehensive assessment of patients which should be subsequently debriefed with a senior clinician where he can obtain feedback on the quality of his assessment,
 - working on relationships with patients and seeking to obtain feedback from senior colleagues,
 - maintaining professional performance and continuing with relevant CPD activity,
 - working with colleagues and obtaining relevant feedback on performance.
 - b His PDP must be approved by his responsible officer (or their nominated deputy).
 - c He must give the GMC a copy of his approved PDP within three months of these substantive conditions becoming effective.
 - d He must give the GMC a copy of his approved PDP on request.
 - e He must meet with his responsible officer (or their nominated deputy), as required, to discuss his achievements against the aims of his PDP.
7.
 - a He must have an educational supervisor 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 educational supervisor
 - ii he has personally ensured that the GMC has been notified of the name and contact details of his educational supervisor.
8. He must undertake an assessment of his performance, if requested by the GMC.
9. He must personally ensure his performance assessment report expected in December 2021 is shared with:
 - 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 of 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 he is registered with
 - v if any organisation listed at i) – 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 the correct person, he must contact the GMC for advice before working for that organisation.
- c the approval lead of his regional Section 12 approval tribunal (if applicable) - or Scottish equivalent
- d 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)
- e his workplace reporter and educational supervisor / clinical supervisor.
10. He must only work as a junior doctor.
11. He must only work in an NHS setting.
12. a He must be closely supervised in all of his posts by a clinical supervisor, as defined in the *Glossary for undertakings and conditions*. His clinical supervisor must be approved 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 clinical supervisor and approved his supervision arrangements
 - ii he has personally ensured that the GMC has been notified of the name and contact details of his clinical supervisor and his supervision arrangements.

13. He must not work:
- a as a short-term locum for a period of less than 4 weeks' duration
 - b out-of-hours
 - c on-call.
14. He must personally ensure the following persons are notified of the conditions listed at 1 to 13:
- 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 of 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 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 that person, he must contact the GMC for advice before working for that organisation.
 - c the approval lead of his regional Section 12 approval tribunal (if applicable) - or Scottish equivalent
 - d 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).

28. The Tribunal determined to direct a review of Dr Miklaszewicz's case. A review hearing will convene shortly before the end of the period of conditions, unless an early review is sought. The Tribunal wishes to emphasise that at the review hearing, Dr Miklaszewicz will need to demonstrate how he has reflected on and remediated his previous deficient professional performance, and addressed the outstanding concerns. It therefore may assist

the reviewing Tribunal if Dr Miklaszewicz were to provide the following up-to-date information:

- Performance Assessment Report
- formal feedback report from supervisor
- any feedback colleagues/workplace (as applicable)
- up to date written reflective statement
- documentary evidence of ongoing CPD activity
- Personal Development Plan
- any other evidence that Dr Miklaszewicz considers may be of assistance.

29. These conditions will take effect 28 days from when written notice of this decision is deemed to have been served upon Dr Miklaszewicz. The current order of suspension will remain in place during this 28-day appeal period. If an appeal is made, the current order of suspension on his registration will remain in force until the appeal has concluded.

30. That concludes this case.

Confirmed

Date 17 August 2021

Mrs Laura Paul, Chair

ANNEX A – 12/07/2021

Consideration of adjournment and extension of current sanction

1. The Tribunal has heard submissions on the question of sanction but has not yet concluded its determination on what sanction, if any to impose. The Tribunal was of the view that it would not have sufficient time to conclude the hearing in the time remaining today.
2. As such, the Tribunal proposed adjourning the hearing part-heard at this stage and extending the current order of suspension, which is due to expire on 15 July 2021, and sought submissions from parties on the matter.

Submissions

3. Ms Jones, Counsel on behalf of the GMC, submitted that if proceedings could not be concluded today, then adjourning part-heard and extending the current order of suspension would be the only appropriate course of action.
4. Dr Miklaszewicz submitted that he understood the need to adjourn, and confirmed with the Tribunal that the suspension currently in place on his registration would remain so until the hearing reconvened and announced its determination on sanction.

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 17 August 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 Miklaszewicz's registration is due to expire on 15 July 2021. The Tribunal determined to extend the current order of suspension until 17 August 2021, 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 previous Tribunals and the current finding of impairment.

9. The hearing is adjourned part-heard until 17 August 2021, with a listing of one day.