

PUBLIC RECORD

Dates: 06/07/2021 - 08/07/2021

Medical Practitioner's name: Dr Petru Ioan PASCALAU

GMC reference number: 7693921

Primary medical qualification: Doctor - Medic 2015 Cluj Napoca University of Medicine and Pharmacy

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

Summary of outcome

Suspension, 2 months

Tribunal:

Legally Qualified Chair	Ms Sharmistha Michaels
Lay Tribunal Member:	Miss Susan Hurds
Medical Tribunal Member:	Dr Vivek Sen

Tribunal Clerk:	Mr John Poole
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Attendance and Representation:

Medical Practitioner:	Present and not represented
GMC Representative:	Ms Chloe Hudson, 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 and Impairment - 07/07/2021

Background

1. Dr Pascalau qualified in 2015 in Romania and prior to the events which are the subject of the hearing, he pursued further training in psychiatry and psychotherapy, a 4-year programme with the University of Medicine and Pharmacy in Cluj-Napoca. He completed this programme in 2019.
2. The Allegation that has led to Dr Pascalau's hearing relates to events that took place in Romania whereby in December 2019, he was convicted of driving under the influence of alcohol at the Romania Court of Law of Cluj-Napoca.
3. At the time of the events, Dr Pascalau was working in Romania. He subsequently moved to the UK and before taking up employment in the UK, he informed his employer of this conviction and referred himself to the GMC on 17 December 2019.

The Allegation and the Doctor's Response

4. The Allegation made against Dr Pascalau is as follows:
 1. On 11 December 2019 at the Romania Court of Law of Cluj-Napoca, you were convicted of driving a vehicle under the influence of alcohol, contrary to Article 336(1) of the Criminal Code. **Admitted and found proved**
 2. On 11 December 2019 you were sentenced to:
 - a. 1 year and 4 months' imprisonment, suspended; **Admitted and found proved**
 - b. a suspension of your right to drive vehicles, tramways and agricultural or forest tractors for a period of 1 year; **Admitted and found proved**
 - c. a surveillance period of 3 years; **Admitted and found proved**

- d. participation at one or several social reintegration programmes carried out by the probation service or organized in collaboration with the institutions of the community; **Admitted and found proved**
- e. unremunerated community work for a period of 80 working days within one of the following institutions: Public Service of Social Assistance of Satu Mare or the Emergency Social Centre for Adults of Satu Mare. **Admitted and found proved**

The offence outlined above, if committed in England and Wales, would constitute a criminal offence.

The Admitted Facts

5. At the outset of these proceedings, Dr Pascalau made admissions to both paragraphs of the Allegation, 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 of the Allegation as admitted and found proved.

Impairment

6. In light of Dr Pascalau's admissions to the Allegation, the Tribunal then considered in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts found proved, Dr Pascalau's fitness to practise is impaired by reason of his conviction.

The Evidence

7. Dr Pascalau gave oral evidence to the Tribunal.

8. Dr Pascalau told the Tribunal that his conduct leading to his conviction was the biggest mistake of his life but that it was an isolated incident which would never happen again.

9. By way of background to his conviction, Dr Pascalau described that on Friday 29 September 2019 he had gone to a nightclub and had taken his car. At the nightclub he drank seven to eight drinks, including rum and beer. He accepted that when he left the nightclub, he was drunk and would not have been able to walk in a straight line. Despite being advised by friends, some of whom were also doctors, not to drive, he decided to drive with the intention of visiting a friend approximately 3.5km away. After driving for approximately 1.5km, he went through a yellow light and was stopped by the police. The police saw that Dr Pascalau was intoxicated and summoned the traffic police to breathalyse him and arrange a blood test sample.

10. Dr Pascalau stated that he has complied with the various measures imposed by the Romanian Court. He said he had completed his community service and had XXX although he did not have documentary proof of this. He stated that he would continue to be under the supervision of the probation service until 2023 and that he was fully aware that should he not comply with the conditions of his suspended sentence, he could face imprisonment.

11. When asked by Ms Hudson what was going through his mind when he chose to drive whilst intoxicated, Dr Pascalau stated that he did not want to leave his car where it was parked as he would need it in the morning. He said he thought he would not get caught and that at the time in morning, approximately 4am, the roads would not be busy and this would minimise the risk. He added that it was silly and immoral and a poor decision, that he had been minimising every danger in his head due to his intoxication and he had not had good judgment as his mind was impaired at the time.

12. Dr Pascalau stated he referred himself to the GMC when he applied to work in the UK. He said he started a contract with an employment agency, NES Healthcare, and had been employed by them from March 2020 to March 2021, as a resident medical officer, undertaking placements in various hospitals. Since then, he returned to Romania for one month and has since started a new contract in the UK, working at a psychiatric hospital for North East London Foundation Trust. His contract has recently been extended until September 2021. He said his long-term ambition is to work in psychiatry but that this may not be in the UK due his personal circumstances.

13. When asked by the Tribunal what strategies he had in place to prevent him repeating his conduct which led to the criminal conviction, he said he could not imagine doing it again and that it had been hard to forgive himself. He accepted when suggested by the Tribunal, that one of those strategies would be to leave his car at home if he were to go out drinking with his friends again.

Documentary Evidence

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

- Dr Pascalau's self-referral to the GMC, dated 17 December 2019.
- Certificate of Conviction (in Romanian), dated 11 December 2019, and a version translated into English.
- GMC letter to Dr Pascalau, dated 2 March 2020, informing him that an Assistant Registrar had decided to refer his case to a hearing before a Medical Practitioners Tribunal.
- XXX.
- Responsible Officer statement from Mr A, NES Healthcare, dated 31 March 2021.
- Dr Pascalau's Appraisal, 2020/2021 (NES Healthcare).

Submissions

GMC Submissions

15. Ms Hudson, on behalf of the GMC, submitted that Dr Pascalau’s fitness to practise is currently impaired by reason of his conviction.
16. Ms Hudson submitted that the imposition of a suspended sentence indicated the gravity of the offence. She stated that this kind of offence undermines the principles of the overarching objective, namely the need to maintain proper standards and conduct of behaviour on the part of those registered as doctors.
17. Ms Hudson submitted that Dr Pascalau’s offence was very serious as it involved a doctor drinking between seven and eight alcoholic drinks of two types and an intention to drive his vehicle between three and three and half kilometres. She submitted that Dr Pascalau was warned by friends, including fellow medical professionals, that he should not drive. However, he did not heed their advice. Ms Hudson submitted that the sheer amount that Dr Pascalau drank and his failure to heed the advice not to drive, means that his offence is not one that could be described as at the lower end of drink driving offences.
18. Ms Hudson submitted that there appears to be a lack of recognition on the part of Dr Pascalau to the danger that his activities posed to other roads users. She stated that Dr Pascalau suggested in his evidence that his drink driving was mitigated by the time of night. She stated that he appeared to have little thought for the damage he could have caused to himself, to other road users or to roadside furniture.
19. Ms Hudson further submitted that Dr Pascalau had not shared the fact of this investigation or the fact he is currently before this tribunal, with his current supervising consultant, who is apparently unaware that Dr Pascalau is on anything other than a holiday this week. She submitted that Dr Pascalau places a heavy responsibility on his agency to report these matters rather than taking the personal responsibility himself for ensuring that he was clear that those supervising him were aware of this investigation, the fact of this hearing and what he has been doing to ensure he does not break the law again.
20. Ms Hudson submitted that the following two paragraphs of Good medical practice (2013 version) (GMP) are engaged:
- 1 Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law.
- 65 You must make sure that your conduct justifies your patients’ trust in you and the public’s trust in the profession.

21. Ms Hudson submitted that there is no evidence that Dr Pascalau is anything but good in his medical practice and stated his appraisal is evidence of this. She submitted that the purpose of these proceedings is not to punish Dr Pascalau again for his conviction but to consider whether his fitness to practise is impaired as a result of it.

22. Ms Hudson noted that there has been an acknowledgement of fault on Dr Pascalau's part. However, she submitted that the conviction is very serious and engaged paragraph 1 and 65 of GMP. She submitted that members of the public and fellow practitioners would be appalled by the choices Dr Pascalau made on that evening. She submitted that the very fact that the drink driving resulted in a suspended sentence amounts to behaviour that falls seriously below the standard of professional conduct expected of doctors. She submitted that the risk Dr Pascalau posed to himself on the date of the incident and to other members of the public was very serious. For those reasons and because of the need to promote and maintain proper standards of conduct and behaviour, she submitted that Dr Pascalau's criminal conviction does impair his fitness to practise.

Dr Pascalau's submissions

23. Dr Pascalau stated that his conviction arose out of the biggest mistake of his life and that there was no doubt his actions were immoral.

24. Dr Pascalau invited the Tribunal to take into account that he has been honest about his conviction throughout. He submitted that he self-referred to the GMC and has assumed responsibility for and regrets his actions.

25. With regard to only informing his employment agency of his conviction, Dr Pascalau submitted that his intention was not to place responsibility onto others. He stated that he did not know that it was or is a requirement to share the fact of his conviction with his supervisor as there was not a form or document that suggested this, nor was he ever asked directly or indirectly about it. He said that he would not hesitate in sharing this information with his current and future consultants, supervisors or staff members if that is required although he maintained his opinion that he did not think this would build a stronger or better professional relationship.

26. Dr Pascalau submitted that since his conviction he has carried out his duties as a doctor without any difficulties. He submitted that he remains up to date in his field of expertise and has passed the final exam of his training. He stated that he has worked from March 2020 to March 2021 in various hospitals across the UK and done more shifts than he imagined due to Covid. He submitted that he could not see how the public would benefit from his suspension and that this would have the sole purpose of punishing him again.

27. Dr Pascalau told the Tribunal that he will continue XXX because it is part of his personal development plan.

28. Dr Pascalau submitted that he deeply regrets and is fully aware of what could have happened while driving under the influence of alcohol. He submitted that by being honest and admitting everything, he did not want to convey a defiant message. If his attitude came across as defiant in his evidence, he submitted that this was not his intention and suggested it was perhaps his body language, cultural differences, or how he framed his answers.

29. Dr Pascalau added that had he appealed his conviction, the length of the custodial sentence and amount of unpaid work he had to undertake could have been reduced. He submitted he did not appeal as it would have taken more than a year for a resolution.

30. Dr Pascalau submitted the lapse of time since the incident occurred is a mitigating factor and that it was an isolated incident. He submitted that he has had enough time to reflect on this incident, has gained insight and would definitely not do such a thing ever again. Dr Pascalau stated that he would be willing to accept any measures, XXX.

The Relevant Legal Principles

31. 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.

32. The Tribunal must determine whether Dr Pascalau's fitness to practise is impaired today, taking into account his 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.

33. The Tribunal was mindful of the guidance of Dame Janet Smith in the Fifth Shipman Report, which was adopted by the High Court in the case of *CHRE v NMC & Paula Grant* [2011] EWHC 927 [Admin]:

Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or

b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or

c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession

d. has in the past acted dishonestly and/or is liable to act dishonestly in the future.

34. The Tribunal had regard to the overarching objective which is

- *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 the profession.*

35. The Tribunal also had regard to the case of *Chaudhury 2017 EWHC 2561* which reminds it of the importance of the overarching objective, the tripartite public interest and the need for a proper balancing exercise of all three elements of the public interest test.

The Tribunal’s Determination on Impairment

36. The Tribunal considered the danger Dr Pascalau posed to himself and others when he made the decision to drive his car after, on his own admission, having consumed seven to eight alcoholic drinks, not being able to walk in a straight line, and having ignored advice from friends not to drive. These actions resulted in a criminal conviction and a suspended sentence which is still ongoing.

37. Having regard to the guidance laid out by Dame Janet Smith in the Fifth Shipman Report, the Tribunal considered that Dr Pascalau’s conviction does bring the reputation of the profession into disrepute and that he has breached paragraphs 1 and 65 of GMP. The Tribunal determined that there is no suggestion that Dr Pascalau has put patients at risk or acted dishonestly. The Tribunal felt that Dr Pascalau throughout his evidence had been frank and candid in terms of setting out the background to the offence and in his actions in notifying his future employers whilst proceedings were ongoing in Romania. Further, this was confirmed by the Responsible Officer in his statement on 31 March 2021, as well as within Dr Pascalau’s most recent appraisal on 30 December 2020 where reference was made to his having discussed the offence and outcome of the criminal proceedings.

38. The Tribunal considered that Dr Pascalau has expressed genuine remorse for the behaviour which led to his conviction. He has been open and honest and not sought to deflect responsibility for his actions. However, while he assured the Tribunal that he would not repeat such conduct in the future, he was unable to articulate clearly the strategies he has in place to prevent such a repetition. When asked to consider not taking his car out if he was planning to drink, he was quick to accept that he would adopt such a strategy. As such, the Tribunal determined that while his insight was advanced, it was still developing. The Tribunal was satisfied that the risk of him repeating similar conduct in the future is low.

39. The Tribunal noted that there are no concerns about Dr Pascalau’s clinical practice and that he is a capable and competent doctor. The Tribunal was satisfied that Dr Pascalau poses no risk to patient safety and took into account XXX as well as the report from his Responsible Officer which included the positive testimonial from the Medical Director at the

Priory Kneesworth. However, given the criminal conviction and the not insignificant sentence that Dr Pascalau received, the Tribunal took the view that Dr Pascalau's conviction had brought the reputation of the profession into disrepute as set out above. The Tribunal considered therefore that a finding of impairment was necessary in the public interest.

40. The Tribunal determined that Dr Pascalau's fitness to practise is impaired by reason of his criminal conviction. Such a finding is necessary to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of the profession.

Determination on Sanction - 08/07/2021

41. Having determined that Dr Pascalau's fitness to practise is impaired by reason of his conviction, the Tribunal now has to decide in accordance with Rule 17(2)(n) of the Rules on the appropriate sanction, if any, to impose.

The Evidence

42. The Tribunal has taken into account evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction as well as written submissions received from Dr Pascalau.

Submissions

GMC Submissions

43. Throughout her submissions, Ms Hudson referred to the Sanctions Guidance (November 2020 version) (SG). She submitted that given the Tribunal's findings on impairment, a period of suspension should be imposed to reflect the gravity of Dr Pascalau's criminal conviction.

44. Ms Hudson reminded the Tribunal of the reasons for imposing sanctions, which is to protect the public. She stated that whilst Dr Pascalau has already been punished for his behaviour, sanctions are not imposed to punish or discipline a doctor but may have a punitive effect.

45. Ms Hudson invited the Tribunal to consider the aggravating and mitigating features in this case. She submitted that the aggravating features are Dr Pascalau's failure to heed the warnings of others not to drive and the amount of alcohol he drank which led to a significant custodial sentence, albeit suspended. As for the mitigating features, she submitted that Dr Pascalau does appear to have insight into his behaviour, it was an isolated incident and the risk of repetition appears to be low, and he pleaded guilty to the offence in Romania.

46. XXX.

47. Ms Hudson submitted that taking no action would be inappropriate. She added that conditions would also be inappropriate and difficult to formulate given the nature of the case.

48. Ms Hudson submitted that suspension was the appropriate and proportionate sanction. She noted that there had been an acknowledgement of fault, that the risk of repetition is low, and that Dr Pascalau has continued to work hard in his chosen profession. As to the period of any suspension, she submitted that this was a matter for the Tribunal.

49. Given the isolated nature of Dr Pascalau's offence and that he appears to have insight, Ms Hudson submitted that this is not a case where erasure would be proportionate.

Dr Pascalau's Submissions

50. Dr Pascalau invited the Tribunal to take no action. He stated that his offence occurred outside the workplace and has not influenced his performance in any way. He reminded the Tribunal that he self-referred to the GMC and submitted that there was not a lack of integrity on his part and that his conviction was an isolated incident.

51. XXX.

52. Dr Pascalau accepted that he departed from GMP but noted the guidance in the SG that a failure to follow GMP does not automatically mean action will be taken.

53. In regard to mitigating factors, Dr Pascalau noted the lapse of time since the incident occurred and that he has had an opportunity to reflect and gain insight. He also noted that had the sentence not been suspended, he would have now been released.

54. Dr Pascalau submitted that undertakings or conditions would not be appropriate in his case, and that a sanction of suspension would not be in the public interest.

The Tribunal's Determination on Sanction

55. The decision as to the appropriate sanction, if any, to impose in this case is a matter for the Tribunal exercising its own judgment. In reaching its decision, the Tribunal has taken GMP and the SG into account and borne in mind the overarching objective.

56. The Tribunal reminded itself that the main reason for imposing any sanction is to protect the public and that sanctions are not imposed to punish or discipline doctors, even though they may have a punitive effect. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Pascalau's interests with the public interest.

57. The Tribunal has already given a detailed determination on facts and impairment and it has taken those matters into account during its deliberations on sanction.

58. Before considering what action, if any, to take in respect of Dr Pascalau's registration, the Tribunal considered the mitigating and aggravating factors in this case.

Aggravating and Mitigating Factors

59. The Tribunal considered Dr Pascalau's criminal conviction for driving a vehicle under the influence of alcohol and the custodial sentence he received albeit suspended. Beyond this, however, the Tribunal did not identify any other aggravating factors.

60. The Tribunal identified the following mitigating factors:

- Dr Pascalau pleaded guilty to the offence.
- Dr Pascalau has completed various requirements of his sentence, such as unpaid community service. While he has not produced evidence of this, the Tribunal had no reason to doubt that he has not complied with the requirements imposed on him.
- There is no evidence of any other criminal convictions.
- Dr Pascalau self-referred to the GMC when he arrived in the UK. He has also notified his employers in the UK and had reflected on his conviction in his 2020-2021 Appraisal.
- The offence was an isolated incident, occurred almost two-years ago and there has been no repetition of similar behaviour.
- Dr Pascalau has advanced insight and the risk of repetition is low.

No action

61. In coming to its decision as to the appropriate sanction, if any, to impose in Dr Pascalau's case, the Tribunal first considered whether to conclude the case by taking no action.

62. The Tribunal reminded itself that where there has been a finding of impairment, it is usually necessary to take action unless there are exceptional circumstances and that such circumstances are unusual, special or uncommon. The Tribunal accepted that Dr Pascalau has done everything that could have been expected of him in light of his criminal conviction, however, it could not identify any exceptional circumstances in his case to justify taking no action.

63. The Tribunal determined that in view of its findings on impairment and the absence of exceptional circumstances, it would be neither sufficient, proportionate nor in the public interest to conclude this case by taking no action.

Conditions

64. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Pascalau's registration. It has borne in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable.

65. The Tribunal noted that conditions are appropriate and can be formulated in cases involving a doctor's health, or where there are issues around the doctor's performance, shortcomings in a specific area of practice, or if a doctor lacks the necessary knowledge or English. The Tribunal was satisfied that this is not a case where conditions would be appropriate.

Suspension

66. The Tribunal next considered whether suspension would be an appropriate and proportionate sanction. It found the following paragraphs of the SG to be particularly relevant in this case:

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.

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...

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.

f No evidence of repetition of similar behaviour since incident.

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

67. The Tribunal noted the deterrent effect of a period of suspension and that it 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. It was also satisfied that Dr Pascalau's conviction is not incompatible with continued registration. As such, the Tribunal considered that erasure from the Medical Register would be disproportionate. However, any sanction less than

suspension would be insufficient to promote and maintain public confidence in the medical profession and promote and maintain proper professional standards and conduct for the members of the profession.

68. Having determined that a sanction of suspension is appropriate and proportionate, the Tribunal considered the length of suspension that should be imposed. Given the mitigating factors in this case and that there are no patient safety issues, the Tribunal considered that a period of two months suspension, in the particular circumstances of this case, would be sufficient to send out the appropriate message about what is regarded as behaviour unbecoming a registered doctor. The Tribunal determined that a longer period would be disproportionate and would deny the public access to a competent doctor. The Tribunal was satisfied that a review hearing was not necessary in this case on account of the low risk of repetition, Dr Pascalau's level of insight and that there are no patient safety issues.

69. Accordingly, the Tribunal determined that it is necessary to suspend Dr Pascalau's registration for a period of two months in order to promote and maintain public confidence in the medical profession, and promote and maintain proper professional standards and conduct for the members of the profession.

Determination on Immediate Order - 08/07/2021

70. Having determined to suspend Dr Pascalau's registration for a period of two months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Pascalau's registration should be subject to an immediate order.

Submissions

71. On behalf of the GMC, Ms Hudson submitted that an immediate order was not necessary in this case as there are no patient safety issues. She also confirmed that Dr Pascalau has not been subject to an interim order.

The Tribunal's Determination

72. The Tribunal had regard to the paragraphs of the SG which advise when an immediate order might be necessary. It determined that an immediate order is not necessary to protect members of the public. Further, that an immediate order is not necessary in the public interest which is served by the Tribunal's finding of impairment and the substantive sanction of two months suspension.

73. This means that Dr Pascalau's registration will be suspended from the Medical Register 28 days from when notice of this decision is deemed to have been served upon him, unless he lodges an appeal. If Dr Pascalau does lodge an appeal he will remain free to practise unrestricted until the outcome of any appeal is known.

74. There is no interim order to revoke.

75. That concludes the case.

Confirmed
Date 08 July 2021

Ms Sharmistha Michaels, Chair