

PUBLIC RECORD

Dates: 04/12/2024

Doctor: Dr Piotr PIERZCHNIAK

GMC reference number: 3200700

Primary medical qualification: MB BS 1987 University of London

Type of case Outcome on impairment

Review - Misconduct Impaired

Summary of outcome

Suspension, 12 months.
Review hearing directed

Tribunal:

Legally Qualified Chair	Mrs Nessa Sharkett
Lay Tribunal Member:	Mr Martyn Green
Registrant Tribunal Member:	Dr Pranveer Singh
Tribunal Clerk:	Mr Rowan Barrett

Attendance and Representation:

Doctor:	Not present, not represented
GMC Representative:	Ms Sian Jones, Counsel

Attendance of Press / Public

In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held partly in public and partly in private.

Overarching Objective

Throughout the decision making process the tribunal has borne in mind the statutory overarching objective as set out in s1 Medical Act 1983 (the 1983 Act) to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

Determination on Impairment - 04/12/2024

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

Background

2. Dr Pierzchniak's case was first considered by an MPT in January 2024 ("the January 2024 Tribunal").

3. The Allegation that led to Dr Pierzchniak's initial hearing can be summarised as that between 18 February and 25 May 2022, Dr Pierzchniak undertook medical activities for which a licence to practise was required when he knew/ought to have known that his licence to practise had been withdrawn on 18 February 2022. Dr Pierzchniak called the GMC in May 2022 to query his registration status, following a phone call from a pharmacist who highlighted to him that he did not currently have a licence to practise. Subsequently, a referral was made to GMC Fitness to Practise for further investigation.

4. The January 2024 Tribunal found the Allegation proved in its entirety and found that Dr Pierzchniak's fitness to practise was impaired by reason of his misconduct. Whilst the January 2024 Tribunal did find some evidence of insight and Dr Pierzchniak had expressed remorse and regret for this actions, it found that his insight was not fully developed. The January 2024 Tribunal suspended Dr Pierzchniak's registration for a period of four months and directed that a Review hearing should take place.

5. Dr Pierzchniak's case was reviewed on 6 June 2024 ("the June 2024 Tribunal"). Dr Pierzchniak was not represented and did not attend the hearing. The June 2024 Tribunal determined to proceed in the absence of Dr Pierzchniak and found that his fitness to practise was impaired, because he had failed to provide any further evidence to demonstrate further remediation and insight. The June 2024 Tribunal determined to suspend Dr Pierzchniak's registration for a period of 6 months with a review.

6. The June 2024 Tribunal considered that this reviewing Tribunal may be assisted by:

- Evidence that Dr Pierzchniak has developed further insight into his misconduct, including demonstrating an understanding of why revalidation and maintaining a licence to practise are necessary to maintain public confidence in the profession and uphold proper professional standards;
- Evidence that he has maintained his clinical knowledge and skills and completed relevant Continuing Professional Development specific to the importance of regulation and revalidation;
- Evidence of the steps Dr Pierzchniak has taken to ensure that he does not repeat his misconduct and how he will prepare for revalidation or whether he wishes to seek revalidation.

Today's Hearing

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

The Outcome of Applications Made during the Impairment Stage

8. The Tribunal determined to proceed in Dr Pierzchniak's absence pursuant to Rule 31 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'). The Tribunal's full decision on the application is included at Annex A.

The Evidence

9. The Tribunal received:

- Copies of the previous Tribunal determinations;
- Correspondence from the GMC to Dr Pierzchniak dated between July 2024 and October 2024;
- An email from Dr Pierzchniak to the GMC dated 3 December 2024.

Submissions

10. On behalf of the GMC, Ms Sian Jones, Counsel, submitted that Dr Pierzchniak's fitness to practise is currently impaired. She submitted that the doctor had provided very limited information in the email that had been received yesterday afternoon, both in relation to remediation and insight and in terms of CPD and efforts to keep his knowledge and skills up to date. She submitted that the assertions made by the doctor in the email were inadequate to demonstrate remediation in terms of his insight and remediation of his misconduct, as well as being insufficient to show that he has kept his knowledge and skills up to date.

11. Ms Jones submitted that, given the lack of evidence provided to assist the Tribunal, Dr Pierzchniak remains as impaired today as he was at the last hearing.

12. Ms Jones outlined the information that the previous Tribunal suggested may assist this Tribunal in making its decision. She submitted that the only piece of information received by this Tribunal was contained within the email sent by Dr Pierzchniak the day before the hearing, which was not sufficient to demonstrate remediation.

The Relevant Legal Principles

13. The Tribunal reminded itself that the decision of impairment is a matter for the Tribunal's judgement alone. As noted above, the previous Tribunal set out the matters that a future Tribunal may be assisted by. This Tribunal is aware that it is for the doctor to satisfy it that he would be safe to return to unrestricted practice.

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

The Tribunal's Determination on Impairment

15. The Tribunal noted that in his email Dr Pierzchniak had apologised for not attending the previous hearing, which he said had been due to an error in recording the time and date in his calendar and had not been intended to be discourteous or disrespectful of the process. He also repeated his expressions of 'deep regret' of his misconduct.

16. The Tribunal had regard to the steps Dr Pierzchniak said he had taken to keep up to date and noted that he had continued his subscription to Medscape and the BMJ but had not engaged with any other CPD. He said that he did not intend to work as a doctor in future, due to XXX, and would therefore not undertake future appraisals. At the end of his email Dr Pierzchniak stated:

'I have therefore concluded that I will not be returning to medical practice. I do, however wish to avoid the ignominy of being struck off the Medical Register.'

15. The Tribunal noted Dr Pierzchniak's voluntary absence from today's hearing and his reference to the fact that he does not wish to return to medical practice. The Tribunal further noted that whilst Dr Pierzchniak had made reference to XXX he had not asked for the hearing to be adjourned. With reference to his statement that he did not wish to return to medical practice, the Tribunal noted that he had not submitted an application for Voluntary Erasure.

16. The Tribunal considered that the misconduct in this case is remediable, but that there has been no evidence provided of attempts to remediate, beyond the statements made within Dr Pierzchniak's email sent the day before this hearing.

17. The Tribunal considered whether Pierzchniak's insight has developed since the last review of his case. The Tribunal had regard to his expression of remorse and regret in his email, however, it noted that this is a repetition of his previous expressions of regret and does not go further to outline any further development of insight into his misconduct and the impact it has had. The Tribunal therefore concluded that Dr Pierzchniak's insight has not developed since June 2024.

18. The Tribunal had regard to the suggestions made by the previous Tribunal as to evidence Dr Pierzchniak may wish to provide, none of which has been put before it today. The Tribunal noted that it was not incumbent on the doctor to provide this information, but there was a persuasive burden on him to show that his fitness to practise was no longer impaired. Dr Pierzchniak has not provided any further information to demonstrate remediation. The Tribunal has no evidence to demonstrate that Dr Pierzchniak has taken steps to remediate his misconduct since the last Tribunal hearing.

19. The Tribunal further considered that there was only minimal evidence of CPD provided in Dr Pierzchniak's statements in that he was continuing to read the BMJ and Medscape. The Tribunal therefore could not be satisfied that Dr Pierzchniak has kept his knowledge and skills up to date.

20. The Tribunal therefore determined that a finding of impairment remains necessary 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.

21. This Tribunal has therefore determined that Dr Pierzchniak's fitness to practise remains impaired by reason of misconduct.

Determination on Sanction - 04/12/2024

22. Having determined that Dr Pierzchniak'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 his registration.

23. The Tribunal received no further evidence at this stage.

Submissions

24. On behalf of the GMC, Ms Jones submitted that Dr Pierzchniak has failed to engage significantly with the hearing, notwithstanding his communication by email on 3 December 2024. She submitted that his level of insight remains unchanged since the last hearing and that the Tribunal has been provided with no evidence of remediation or of engagement with appropriate CPD. Ms Jones submitted that, while Dr Pierzchniak has not engaged with the process, this was not a case where a doctor's lack of engagement indicated that the misconduct could not be remediated. She submitted that, in these circumstances, a further period of suspension with a review was the appropriate sanction.

The Tribunal's Determination

25. The Tribunal noted that the decision as to the appropriate sanction, if any, to impose in this case was a matter for it exercising its own judgement. In reaching its decision, the Tribunal has taken the Sanctions Guidance (February 2024) (the 'SG') into account and borne in mind the overarching objective.

26. 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 any sanction imposed may have a punitive effect. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Pierzchniak's interests with the public interest.

Aggravating and Mitigating Factors

27. The Tribunal had regard to the aggravating and mitigating factors set out in the January 2024 and June 2024 determinations. Whilst the Tribunal noted the limited engagement of Dr Pierzchniak in these current proceedings, which has demonstrated a continuing lack of insight, it recognised the reasons given by Dr Pierzchniak for his current lack of engagement. This included his commitment to XXX. The Tribunal noted that it was by reason of XXX that Dr Pierzchniak had concluded that he would not be returning to medical practice. The Tribunal noted that there had been no repeat of the misconduct and that Dr Pierzchniak's clinical ability had never been called into question.

No action

28. The Tribunal first considered whether to conclude the case by taking no action. It determined that there were no exceptional circumstances in this case which would justify the taking of no action.

Conditions

29. The Tribunal next considered whether to impose conditions on Dr Pierzchniak's registration. It bore in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable. The Tribunal determined that it would not be possible to formulate such conditions that would be workable given the nature of the misconduct and the fact that the doctor was not currently employed. In addition due to the lack of engagement by Dr Pierzchniak there is no evidence before the Tribunal that he would comply with conditions if imposed.

Suspension

30. The Tribunal went on to consider whether to impose a period of suspension on Dr Pierzchniak's registration. The Tribunal considered all relevant paragraphs of the Sanctions Guidance including paragraph 97a, 97e and 97g as follows:

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...

...

e No evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor's unwillingness to engage.

...

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.'

31. The Tribunal considered that Dr Pierzchniak's insight remains limited and has not developed significantly from the level of insight evidenced at the January and June 2024 hearings. The Tribunal considered, however, that Dr Pierzchniak has shown that he has some insight into his misconduct and has expressed remorse and regret. The Tribunal considered that, in all the circumstances of this case, the limited amount of insight demonstrated to date meant that there remained a small risk of the misconduct being repeated.

32. The Tribunal considered that Dr Pierzchniak has made some efforts to engage with the process by providing information to the Tribunal by email about XXX and his intention not to return to medical practice. It did not consider that this was a case where a doctor had not made any efforts to engage such that remediation would be unlikely to be successful.

33. The Tribunal is satisfied that to erase Dr Pierzchniak's name from the medical register would be neither appropriate nor proportionate in all the circumstances given that his misconduct is not incompatible with continued registration.

34. The Tribunal considered that a period of 12 months suspension would be sufficient to allow Dr Pierzchniak to reflect on his misconduct and if he so wished, to fully develop his insight and to take steps toward remediation. In addition, he would have the opportunity to demonstrate that he has kept his knowledge and skills up to date, should he wish to return to work in the future.

35. The Tribunal further considered that a period of 12 months suspension would provide sufficient time for Dr Pierzchniak to reflect. The Tribunal had regard to the information provided about Dr Pierzchniak's domestic circumstances and XXX. The Tribunal understood that these may be factors which could impact his decision not to continue in practice in the present, however, it considered that these factors may change over time. The Tribunal notes that it is open to Dr Pierzchniak to seek Voluntary Erasure should he choose to carry out his intention not to return to medical practice.

Review

36. The Tribunal determined to direct a review of Dr Pierzchniak's case. A review hearing will convene shortly before the end of the period of suspension. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Pierzchniak to demonstrate how he has developed insight and taken steps to remediate. It therefore may assist the reviewing Tribunal if Dr Pierzchniak provides:

- Evidence that he has developed further insight into his misconduct, in particular demonstrating an understanding of why revalidation and maintaining a licence to practise are necessary to maintain public confidence in the profession and uphold proper professional standards;
- Evidence that he has maintained his clinical knowledge and skills and completed relevant Continuing Professional Development specific to the importance of regulation and revalidation;
- Evidence of the steps Dr Pierzchniak has taken to ensure that he does not repeat his misconduct and the steps he is taking to engage in revalidation or whether he wishes to seek revalidation.

Dr Pierzchniak will also be able to provide any other information that he considers will assist.

37. The Tribunal have directed to suspend Dr Pierzchniak's registration for a period of 12 months. The MPTS will send Dr Pierzchniak a letter informing Pierzchniak of his right of appeal and when the direction and the new sanction will come into effect. The current suspension will remain in place during the appeal period.

38. This concludes the case.

ANNEX A – 04/12/2024

Service

39. Dr Pierzchniak was neither present nor represented at this hearing.

40. The Tribunal first had to consider whether service had been properly effected as required by the General Medical Council (Fitness to Practise) Rules 2004 as amended ('The Rules') and the Medical Act 1983 ('The Act'). The Tribunal could not go on to determine whether to proceed in Dr Pierzchniak's absence unless it first concluded that service had been undertaken in accordance with the Rules.

41. The Tribunal was provided with a service bundle which included a screenshot of Dr Pierzchniak's registered contact information and a copy of the GMC information letter and draft hearing bundle which was sent to Dr Pierzchniak's registered email address on 23 October 2024. The Tribunal has noted an email from Dr Pierzchniak to the GMC, dated 27 September 2024, to confirm that he would accept service of these documents via email. The Tribunal has also noted an email response from Dr Pierzchniak dated 29 October, acknowledging receipt of this email.

42. The Tribunal was also provided with a copy of the MPTS Notice of Hearing letter which was sent by email to Dr Pierzchniak on 15 October 2024. The letter was also sent by post to Dr Pierzchniak's registered address on 16 October 2024.

43. The Tribunal has further had regard to an email from Dr Pierzchniak, dated 3 December 2024, in which he stated that he would not be attending the hearing today.

44. Ms Jones submitted that the proof of service bundle has been properly served on Dr Pierzchniak in line with the Rules and service of the GMC information letter has been properly effected. Ms Jones submitted Dr Pierzchniak has been properly served with notice of this hearing and has voluntarily absented himself.

45. In respect of the application on proceeding in the doctor's absence, Ms Jones submitted that an adjournment of this hearing would not guarantee Dr Pierzchniak's attendance at a later hearing and noted that he has not attended any of the hearings to date. Ms Jones submitted that Dr Pierzchniak has not indicated that there is any prospect of him attending this hearing. Ms Jones submitted that it is in the public interest for this hearing to proceed in Dr Pierzchniak's absence.

The Tribunal's determination on Service

46. The Tribunal had regard to the documentation provided and the submissions from Ms Jones. The Tribunal is satisfied that all reasonable effort has been made to properly serve Dr Pierzchniak with notice of this hearing.

Proceeding in the doctor's absence

47. The Tribunal then went on to consider whether it would be appropriate to exercise its discretion to proceed with this hearing in Dr Pierzchniak’s absence pursuant to Rule 31 of the Rules.

48. The Tribunal had regard to Dr Pierzchniak’s email of 3 December 2024, in which he indicated that he was aware of the time and date of the hearing and would not be attending due to XXX. The Tribunal considered the information contained in the service bundle and the determinations of the previous Tribunals. The Tribunal noted that Dr Pierzchniak has not attended either of the previous hearings. The Tribunal noted that Dr Pierzchniak had included written submissions in his email, which he indicated that he would not be attending the hearing. The Tribunal noted that Dr Pierzchniak referred to XXX within this email, however, there was no application for a postponement of the hearing and he did not indicate that he intended to participate in the hearing at any future date.

49. The Tribunal has determined that Dr Pierzchniak has voluntarily absented himself from these proceedings. The Tribunal considered that an adjournment would serve no useful purpose as it would not guarantee his attendance at any future hearing. The Tribunal found that there is a public interest in a timely review of this order. In accordance with Rule 31, the Tribunal considers that it is appropriate to proceed in Dr Pierzchniak’s absence. The Tribunal has been provided with no further evidence about any steps taken since January 2024, and it was fair, expedient and met the wider overarching objective to proceed with the case without delay.