

PUBLIC RECORD

Dates: 06/06/2024

Medical Practitioner's name: Dr Piotr PIERZCHNIAK

GMC reference number: 3200700

Primary medical qualification: MB BS 1987 University of London

Type of case

Review - Misconduct

Outcome on impairment

Impaired

Summary of outcome

Suspension, 6 months

Tribunal:

Legally Qualified Chair	Mrs Kim Parsons
Lay Tribunal Member:	Mr Michael Glickman
Medical Tribunal Member:	Dr Jamal Zaidi
Tribunal Clerk:	Mrs Rachel Horkin

Attendance and Representation:

Medical Practitioner:	Not present, not represented
GMC Representative:	Mr Lewis Kennedy, 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 - 06/06/2024

Background

1. Dr Pierzchniak's case was first considered by an MPT in January 2024 ("the January 2024 Tribunal").
2. The Allegation that led to Dr Pierzchniak's initial hearing can be summarised as 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for which a licence to practise was required when he knew/ought to have known that his licence to practise had been withdrawn on 18 February 2022.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.
3. 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. The January 2024 Tribunal imposed an order of suspension for a period of four months.
4. The January 2024 Tribunal considered that a reviewing Tribunal may be assisted by:
 - Evidence that he 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;
 - Recent testimonials from colleagues, including other doctors;
 - Any other information that he considers will assist.

Today's Hearing

5. 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

6. 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.

7. The Tribunal received;
- A copy of the January 2024 Tribunal determinations;
 - Correspondence from the GMC to Dr Pierzchniak dated between 8 March 2024 and 23 May 2024;
 - An email from Dr Pierzchniak to the GMC dated 8 March 2024 advising that GMC/MPTS correspondence may be sent to him via email.

Submissions

8. On behalf of the GMC, Mr Lewis Kennedy, Counsel, rehearsed the background of the case and submitted that the previous regulatory matter acts as an aggravating factor. He stated that there have been no significant developments since the initial hearing and there have been no new referrals. Mr Kennedy submitted that there is an absence of evidence of Dr Pierzchniak's remediation and insight in this matter and that, as a result, there remains a risk of repetition. Mr Kennedy also submitted that Dr Pierzchniak had not shown that he had kept his knowledge and skills up to date. Mr Kennedy also reminded the Tribunal that Dr Pierzchniak has provided no further evidence of reflection, remorse or regret.

9. XXX

10. Mr Kennedy submitted that, in the absence of any evidence, the Tribunal can infer that Dr Pierzchniak remains impaired by reason of his misconduct.

The Relevant Legal Principles

11. The Tribunal reminded itself that the decision of impairment is a matter for the Tribunal's judgement alone and that there is no burden or standard of proof. 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 practise.

12. 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. Whilst reaching its decision on impairment the Tribunal reminded itself of the evidence before it, the submissions of Mr Kennedy and the relevant paragraphs of Good Medical Practice.

The Tribunal's Determination on Impairment

Misconduct

13. The January 2024 Tribunal found that Dr Pierzchniak’s licence to practise medicine had been withdrawn on 18 February 2022 and he continued to practise as a Consultant Psychiatrist without a license enabling him to do so, until 25 May 2022. Dr Pierzchniak’s licence to practise had also been withdrawn in 2015. The January 2024 Tribunal found that he should have had an increased awareness of what was required of him to maintain his licence as a result. It is a fundamental requirement that doctors who require a licence to practise have one and comply with their regulatory responsibilities in terms of revalidation.

14. XXX. The Tribunal has also borne in mind the short duration of the suspension imposed by the January 2024 Tribunal may have impacted on Dr Pierzchniak’s ability to obtain some of the documents that the January 2024 Tribunal suggested may assist any reviewing tribunal.

15. The Tribunal however considered that Dr Pierzchniak has also shown minimal engagement with the GMC apart from his email of the 8 March 2024 in which he wrote,

*“At the time of reading, I am unable to send a completed and signed form but as a preliminary, I can confirm that I can agree to any correspondence from the MPTS/GMC being sent by email.
I will complete the form as soon as possible.”*

16. XXX. The Tribunal has borne in mind that it has no up to date evidence from Dr Pierzchniak to demonstrate that he has remediated his misconduct or has any insight into the same. Further it has no information about whether he has taken steps to keep his knowledge and skills up to date.

17. The Tribunal is concerned about Dr Pierzchniak’s lack of engagement in respect of this review and his failure to respond to telephone calls, emails and letters sent to him. This causes further concern about his current lack of insight as a doctor regarding the importance of engaging with his regulator in a professional way to promote and uphold proper professional standards and to maintain public confidence in the profession. The Tribunal is further concerned that this lack of cooperation may suggest there is a real risk of repetition in that Dr Pierzchniak would not engage with regulatory requirements if he were to return to clinical practice.

18. Given the above, the Tribunal is satisfied that the test as set out in *CHRE v NMC and Paula Grant* [2011] EWHC 927 Admin remains met,

‘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

...

19. Taking all of the above into account, the Tribunal 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.

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

Determination on Sanction - 06/06/2024

21. 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.

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

Submissions

23. On behalf of the GMC, Mr Kennedy submitted that, in the absence of any evidence from Dr Pierzchniak and given the Tribunal's determination that he remains impaired by reason of misconduct, an order of suspension is appropriate. Mr Kennedy also referred to the relevant paragraphs of the Sanctions Guidance ('SG') in his submissions. Mr Kennedy submitted that an addition period of suspension would allow Dr Pierzchniak to engage with remediation and develop and demonstrate his insight. Mr Kennedy also submitted that a further period of suspension may allow Dr Pierzchniak to XXX, if this is necessary, so as to be able to make progress during the period of suspension. Mr Kennedy indicated that Dr Pierzchniak may not wish to return to clinical practice in any event. Mr Kennedy also submitted that erasure would be excessive and disproportionate given Dr Pierzchniak's expressions of remorse and, albeit limited, insight found by the January 2024 Tribunal.

The Tribunal's Determination

24. 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.

25. 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

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

27. It identified the following aggravating features since the January 2024 hearing,

- Dr Pierzchniak has not engaged with his regulator, nor with these proceedings, during the period of suspension.
- Dr Pierzchniak has not provided this Tribunal with any evidence to demonstrate how he has remediated or to show how his insight has developed.

28. The Tribunal reminded itself of Mr Kennedy's submissions that XXX may have impacted his ability to demonstrate insight. The Tribunal was, however, mindful that Dr Pierzchniak had not provided this Tribunal with any information about how XXX may have impacted on the progress made over the period of suspension.

29. The Tribunal determined that, given it has received no evidence from Dr Pierzchniak, there are no apparent mitigating factors to be taken into consideration. The Tribunal observed that the January 2024 Tribunal noted that Dr Pierzchniak stopped working immediately in May 2022, and has not worked as a doctor since.

No action

30. 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

31. 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 due to the lack of engagement by Dr Pierzchniak with his regulator and these proceedings. There is no evidence before the Tribunal that Dr Pierzchniak would comply with conditions if imposed. The Tribunal also reminded itself of Mr Kennedy's submissions that it is not clear if Dr Pierzchniak would be returning to clinical practice in any event, but acknowledged that it has no objective evidence regarding XXX X or his future intentions.

Suspension

32. 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 SG including paragraph 97a, 97e and 97g of the SG in its consideration of suspension:

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.

...

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

33. The Tribunal noted that the January 2024 Tribunal had identified that Dr Pierzchniak had demonstrated remorse and regret and was developing insight. It bore in mind that his failure to engage subsequently may have been due to XXX.

34. The Tribunal reminded itself that Dr Pierzchniak has not provided any evidence to suggest that he has kept his knowledge and skills up to date. However, it reminded itself that he was considered a clinically competent and well-regarded doctor at the time of the January 2024 hearing. There had been no patient safety concerns.

35. The Tribunal considers that a period of 6 months suspension would be sufficient to mark the seriousness of Dr Pierzchniak's lack of engagement with his regulator. A further period of suspension would allow Dr Pierzchniak to reflect and address his failure to demonstrate that he had remediated and developed his insight over the initial period of suspension.

36. 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.

37. 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 remediated and developed insight. It therefore may assist the reviewing Tribunal if Dr Pierzchniak provided:

- Evidence that he 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.

38. The Tribunal have directed to suspend Dr Pierzchniak's registration for 6 months. The MPTS will send Dr Pierzchniak a letter informing him 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.

39. This concludes the case.

ANNEX A – 06/06/2024

Determination on service and proceeding in the doctor’s absence

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

41. 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.

42. 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 initially sent to Dr Pierzchniak’s registered email address on 23 April 2024. A hard copy of this letter was also sent by recorded delivery to Dr Pierzchniak’s registered postal address on 29 April 2024 and the Tribunal was provided with a screenshot of proof of delivery which was signed for by “PIOTR” on 30 April 2024. The Tribunal also considered the telephone notes from 25 and 26 April 2024 which documented the occasions on which the GMC attempted to contact Dr Pierzchniak and that there was no answer.

43. The Tribunal was also provided with a copy of the MPTS Notice of Hearing letter which was sent by recorded delivery to Dr Pierzchniak on 26 April 2024 and a screenshot of proof of delivery which was signed for by “PIOTR” on 27 April.

44. Mr Kennedy 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. Mr Kennedy submitted that all reasonable efforts have been made to serve Dr Pierzchniak with notice of this hearing and that the doctor has apparently voluntarily absented himself. Mr Kennedy submitted that there may be XXX reasons why Dr Pierzchniak is unable to attend this hearing today. Mr Kennedy submitted that an adjournment of this hearing would not guarantee Dr Pierzchniak’s attendance at a later hearing and, further, Mr Kennedy submitted that Dr Pierzchniak has not engaged with the GMC. Mr Kennedy submitted that it is in the public interest for this hearing to proceed in Dr Pierzchniak’s absence and it would be fair, expeditious and enable the efficient disposal of this matter.

The Tribunal’s determination on Service

45. The Tribunal had regard to the documentation provided and the submissions from Mr Kennedy. 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

46. 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.

The Tribunal’s determination on Proceeding in the Doctor’s absence

47. The Tribunal considered the information contained in the service bundle and the determination made by the January 2024 Tribunal. The Tribunal noted that Dr Pierzchniak did not attend the January 2024 hearing either. XXX. The Tribunal acknowledges that it has no substantive evidence regarding XXX and that he did not mention XXX leading to or contributing to his inability to participate in these proceedings or engage with his regulator in his email of 8 March 2024 to the GMC.

48. The Tribunal has determined that Dr Pierzchniak has voluntarily absented himself from these proceedings. The Tribunal considered Dr Pierzchniak has not engaged with this hearing and has not requested an adjournment. 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 and that whilst he may be disadvantaged by his lack of engagement, as no information was available to this Tribunal about the steps taken since January 2024, it was fair, expedient and met the wider overarching objective to proceed with the case without delay.