

Dates: 27/07/2020 - 30/07/2020

Medical Practitioner's name: Dr Stanislaw ZULICHOWSKI
GMC reference number: 6163089
Primary medical qualification: Lekarz 1970 Jagiellonian University
Type of case **Outcome on impairment**
New - Determination by other regulator Impaired

Summary of outcome

Erasure

Immediate order imposed

Tribunal:

Legally Qualified Chair	Mr Geoffrey Payne
Medical Tribunal Member:	Mrs Anjali Ahluwalia
Medical Tribunal Member:	Dr Kate Thomas
Tribunal Clerk:	Mr Larry Millea

Attendance and Representation:

Medical Practitioner:	Not present and not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Ms Jennie Ferrario, 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,

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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 - 28/07/2020

Background

1. Dr Zulichowski qualified in 1970 from Jagiellonian University, Poland. He was granted registration by the GMC on 31 July 2007, as a specialist in Obstetrics & Gynaecology and Histopathology. He obtained his registration with the Medical Council of Ireland ('the MCI') on 12th November of 2008, where he was registered in the Specialist Division of Obstetrics & Gynaecology.
2. The allegation that has led to Dr Zulichowski's hearing relates to findings of professional misconduct made against him by a Fitness to Practise Committee of the MCI which took place over the course of various dates between 11 September 2017 and 11 December 2017. Following these findings the MCI determined to cancel his registration on 18 May 2018. This decision was subsequently upheld by the High Court of Ireland on 9 July 2018. At the time of the events which were the subject of these proceedings, it appears from transcripts provided by the GMC that Dr Zulichowski was practising Gynaecology at a private practice for EMC Healthcare Limited ('EMC'), Dublin.
3. The matters to be considered by this Tribunal are as follows. It is alleged that,
 - (a) following an inquiry in Ireland between 11 September 2017 and 11 December 2017, a Fitness to Practise Committee determined that his conduct amounted to professional misconduct;
 - (b) that as a consequence of the determination of professional misconduct the MCI decided to cancel his registration on 18 May 2018, and;
 - (c) that on 9 July 2018 the High Court of Ireland confirmed the decision of the MCI to cancel his registration.
4. The initial concerns were raised with the GMC on 13 July 2018 via the Internal Market Information ('IMI') System, Report Number XXX, dated 11 July 2018. This was the date which the GMC became aware of the overseas determination of the MCI.

The Outcome of Applications Made during the Facts Stage

5. The Tribunal granted the GMC's application, made pursuant to Rule 31 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that the hearing should proceed in Dr Zulichowski's absence. The Tribunal's full decision on the application is included at Annex A.

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6. Following this application and the Tribunal's determination to proceed with the case, the GMC advised that Dr Zulichowski had informed them that he intended to provide submissions and/or representations to the Tribunal by email over the following two hours. The Tribunal noted that it had already adjourned proceedings to provide him further opportunity to engage earlier in the day but he had not done so. It further noted the period of months that had gone by since the previous hearing, which was deferred, during which there had been no engagement from Dr Zulichowski until the Friday before the hearing was listed to commence. It therefore determined to continue with proceedings. Any representations provided by Dr Zulichowski would be considered by the Tribunal as and when they were submitted.

7. The Tribunal agreed, in accordance with Rule 41 XXX of the Rules, that parts of this hearing should be heard in private where the matters under consideration are confidential. As such, a redacted version will be published following the conclusion of this hearing, with those confidential matters removed.

8. Dr Zulichowski then submitted an application to adjourn the hearing. The Tribunal determined to refuse that application to adjourn the hearing in accordance with Rule 29(2) of the Rules. Full details of the Tribunal's decision can be found at Annex B.

The Allegation and the Doctor's Response

9. The Allegation made against Dr Zulichowski is as follows:

That being registered under the Medical Act 1983 (as amended):

1. Following an inquiry in Ireland between 11 September 2017 and 11 December 2017, the Fitness to Practise Committee determined that your conduct amounted to professional misconduct. **To be determined**
2. As a consequence of the determination set out at paragraph 1, on 18 May 2018 the Medical Council of Ireland ('the MCI') decided to cancel your registration. **To be determined**
3. On 9 July 2018 the High Court of Ireland confirmed the decision of the MCI to cancel your registration. **To be determined**

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

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Documentary Evidence

10. The Tribunal had regard to the following documentary evidence, provided by the GMC:

- Extracts of the transcript from the MCI fitness to practise hearing, various dates between 11 September 2017 and 18 May 2018;
- Order from the High Court of Ireland 9 July 2018 confirming the cancellation of the practitioner's registration;
- Internal Market Information ('IMI') System Report Number XXX, dated 11 July 2018.

The Tribunal's Approach

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

12. In the course of submissions, the Tribunal noted that the underlying facts of the MCI proceedings were not the subject of any of the paragraphs of the Allegation. The Tribunal was being asked only to adjudicate on formal matters relating to the hearings and the findings. The GMC was invited to indicate whether it was relying on any of the facts underlying those findings. Ms Ferrario indicated that it was not and that the case for the GMC was confined to those factual matters set out in writing in the Allegation. Following some further time for reflection, Ms Ferrario indicated that she would make submissions about the facts if the impairment stage was reached.

13. The Tribunal invited the GMC to indicate whether it was relying on Rule 34(4) of the Rules, noting that there appeared to be no signed certificate from the MCI. Ms Ferrario indicated that the GMC was not relying on that provision. She later submitted that the certificate from the High Court in Ireland was analogous. The Tribunal, however, notes that the High Court certificate does not meet the requirements of Rule 34(4), in that it is not a *signed* document and it did not set out the facts found proved.

The Tribunal's Analysis of the Evidence and Findings

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

15. The Tribunal had regard to all of the evidence presented in this case by the GMC as well as the supporting documentation provided.

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16. The Tribunal noted, as was conceded by Ms Ferrario in her submissions, that no official written determination of the MCI Fitness to Practise proceedings against Dr Zulichowski has been provided by the GMC. A detailed report was referred to in the transcripts, but it had not been provided to the Tribunal. The Tribunal was informed that the GMC had not sought to obtain it. Ms Ferrario submitted that the transcripts that had been prepared of those proceedings were sufficient to prove the three paragraphs of the Allegation. The Tribunal considered the transcripts carefully and concluded, on the balance of probabilities, that they did represent a true account of the matters contained within them insofar as they are an accurate record of parts of the proceedings before the Fitness to Practise Committee and the MCI.

Paragraph 1 of the Allegation

17. The Tribunal considered the full transcript of the MCI hearing on 18 May 2018 regarding sanction.

18. It clearly states that, following an inquiry in Ireland between 11 September 2017 and 11 December 2017, the Fitness to Practise Committee determined that Dr Zulichowski's conduct amounted to professional misconduct. The Tribunal was specifically mindful of the following excerpts.

The heading, which states:

THE MEDICAL COUNCIL, SECTION 71, DR. STANISLAW ZULICHOWSKI – 345613, HELD AT THE MEDICAL COUNCIL, KINGRAM HOUSE, KINGRAM PLACE, DUBLIN 2 ON FRIDAY, 18TH MAY 2018.

*I hereby certify the following to be a true and accurate transcript of my shorthand notes of the above-named matter.
Ms B, STENOGRAPHY SERVICES*

A later paragraph beginning:

The Inquiry took place over four days, between the 11th of September 2017 and the 11th of December 2017.

An extract summarising the findings of the Fitness to Practise Committee in respect of professional misconduct and the proven MCI allegations:

There were five findings of professional misconduct and these related to Allegations 3 (A) to (F) inclusive. Allegation 4, Allegation 6, Allegation 7 and Allegation 9 (B) and (C).

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19. In light of the documentary evidence provided by the GMC, the Tribunal was satisfied that the Fitness to Practise inquiry did take place between the dates alleged and that the findings set out in the GMC Allegation were indeed reached. Therefore, it found the first paragraph of the Allegation proved.

20. For completeness the Tribunal was taken to the formal wording of the allegations found proved, which were as follows:

3. Carried out a digital examination of the Patient's vagina in a manner which, by reason of its nature, was not in keeping with normal clinical practice in circumstances where during the course of the said examination, on one or more occasions you:

- a. Touched the Patient's clitoris; and/or,*
- b. Touched and/or massaged the Patient's labia; and/or,*
- c. Moved our hand back and forward penetrating the Patient's vagina deeply with your fingers; and/or*
- d. Made circular movements with your fingers inside the Patient's vagina; and/or,*
- e. Touched the Patient's left breast and/or nipple with your left hand while carrying out a digital examination of the Patient's vagina with your right hand; and/or,*
- f. Attempted to hold the Patient's right hand with your left hand while carrying out a digital examination of the Patient's vagina with your right hand; and/or,*

4. Carried out a digital examination of the Patient's vagina in a manner in a manner which was inappropriate by reason of the fact that it was sexually motivated and in circumstances where, during the course of the examination, on one or more or occasions, you:

- a. Touched the Patient's clitoris; and/or,*
- b. Touched and/or massaged the Patient's labia; and/or,*
- c. Moved your hand back and forward penetrating the Patient's vagina deeply; and/or,*
- d. Made circular movements with your fingers inside the Patient's vagina; and/or,*
- e. Touched the patient's left breast and/or nipple with your left hand while carrying out a digital examination of the patient's vagina with your right hand; and/or,*
- f. Attempted to hold the Patient's right hand with your left hand while carrying out a digital examination of the Patient's vagina with your right hand; and/or,*

6. Failed to respond adequately when the Patient queried the nature of the internal vaginal examination referred to at Allegation 2 and/or 3 and/or 4 above and asked 'What are you doing?'; and/or,

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7. Failed to respond appropriately when the Patient asked you to stop the internal vaginal examination referred to at allegations 2 and/or 3 and/or 4 above by asking if she was sure; and/or,

9. Made one or more remarks of an inappropriate and/or sexual nature after you had carried out the examination on the patient to include but not limited to:

b. Responded to the Patient's question '...what was the purpose of that?' by stating 'well, I just kind of started liking it and got carried away', or words to that effect; and/or,

c. Following the response at allegation 9(b) above, responded to the Patient's question 'what?', by stating 'well you know I am just a man, not only a doctor' or words to that effect,

Paragraph 2 of the Allegation

21. The Tribunal further considered the transcripts provided. The contents confirm that, on 18 May 2017, the MCI did indeed decide to cancel Dr Zulichowski's registration following the inquiry by the Fitness to Practise Committee detailed at paragraph 1 of the GMC Allegation.

22. This relevant section of the transcript of the MCI hearing on 18 May 2018 states:

The Council has decided to invoke its powers under Section 71(F) of the Act to cancel the doctor's registration.

23. Accordingly, the Tribunal found this paragraph of the Allegation proved.

Paragraph 3 of the Allegation

24. The Tribunal had regard to the Order from the High Court of Ireland, dated 9 July 2018, which was provided by the GMC and which confirmed the cancellation of Dr Zulichowski's registration with the MCI.

25. In light of this evidence, the Tribunal found this paragraph of the Allegation proved.

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The Tribunal's Overall Determination on the Facts

26. The Tribunal has determined the facts as follows:

That being registered under the Medical Act 1983 (as amended):

1. Following an inquiry in Ireland between 11 September 2017 and 11 December 2017, the Fitness to Practise Committee determined that your conduct amounted to professional misconduct. **Determined and found proved**
2. As a consequence of the determination set out at paragraph 1, on 18 May 2018 the Medical Council of Ireland ('the MCI') decided to cancel your registration. **Determined and found proved**
3. On 9 July 2018 the High Court of Ireland confirmed the decision of the MCI to cancel your registration. **Determined and found proved**

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

Determination on Impairment - 29/07/2020

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

The Evidence

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

Submissions

3. On behalf of the GMC, Ms Ferrario, Counsel, submitted that the Tribunal should find that Dr Zulichowski's fitness to practise is impaired on the strength of the determination of the MCI. She submitted that, whilst the regulatory process is different in Ireland in that impairment is not considered separately, the finding by the MCI that Dr Zulichowski's registration should be cancelled also constitutes, by necessary implication, a finding of impairment. In Ireland, a decision of that nature must be considered by the High Court as standard. Therefore the fact that there were High Court proceedings did not mean that the doctor appealed the decision, it was an inevitable consequence of the decision of the MCI.

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4. Ms Ferrario submitted that the allegations found proved, as detailed within the transcripts, clearly show that Dr Zulichowski's actions placed a patient at risk, brought the reputation of the profession into disrepute, and breached fundamental tenets of the profession. His actions represent a serious breach of trust and are wholly incompatible with Good Medical Practice (2013 edition) ('GMP').

5. Ms Ferrario invited the Tribunal to consider the following factors;

- (a) the serious nature of the findings against the doctor including that his actions were sexually motivated,
- (b) the fact that the decision by the MCI was in 2018 and hence relatively recent,
- (c) there has been no engagement from the doctor in respect of the current proceedings other than his limited communication requesting a further adjournment, and,
- (d) there is no evidence of insight or remediation on his part.

6. Ms Ferrario submitted that Dr Zulichowski remains a risk to patients and the medical profession as whole. Whilst he is now in his 70s and does not currently have a licence to practise, there is nothing to stop him applying to restore his licence if he wished to do so. Therefore, it remains necessary to make a finding of impairment in order to uphold each of the limbs of the overarching objective.

The Relevant Legal Principles

7. 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.

8. In approaching the decision, the Tribunal followed a two-stage process,

- (a) Firstly, it must consider whether there has been a determination by another regulatory body within the meaning of section 35C(2)(e) of the Medical Act 1983.
- (b) Secondly, it must determine whether Dr Zulichowski's fitness to practise is impaired today, taking into account his conduct at the time of the events and any relevant factors since then, including whether the matters that gave rise to the determination are remediable, have been remedied, and whether there is any likelihood of repetition.

9. The Tribunal was also 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]:

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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.*

The Tribunal's Determination on Impairment

Determination by a Regulatory Body

10. The Tribunal first considered whether there had been a determination of a relevant regulatory body. In that regard, it considered section 35C(2) of the Medical Act 1983 (as amended) ('the Act'), which states:

A person's fitness to practise shall be regarded as "impaired" for the purposes of this Act by reason only of –

...

(e) a determination by a body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession to the effect that his fitness to practise as a member of that profession is impaired, or a determination by a regulatory body elsewhere to the same effect.

11. Section 35C(3) provides that an allegation may be based on a matter that is alleged to have occurred outside the United Kingdom:

*3) This section is not prevented from applying because—
(a) the allegation is based on a matter that is alleged to have occurred—
(i) outside the United Kingdom,*

12. Section 35C(9) provides:

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...“regulatory body” means a regulatory body which has the function of authorising persons to practise as a member of health or social care profession...

13. The Tribunal noted that the regulatory framework in Ireland appears to differ from that in the UK in that there is no stage at which the question of impairment is separately considered. The Tribunal was informed that a Fitness to Practise Committee would first consider the case, make findings of facts, and then make recommendations as to sanction to the MCI. The MCI would then determine the sanction in the light of the recommendations received. Finally, the High Court of Ireland must approve the outcome for it to formally take effect.

14. The Tribunal noted that the MCI made its decision in the light of the following legal advice,

*...the Council will be aware of the criteria laid down in the Hermon case which in turn recites the **Medical Council -v- Michael Murphy** case where Mr. Justice Finlay in the later case said the issues of public safety, sending the appropriate messages to the practitioner himself, the profession as a whole and the general public are what the Council should have regard to. And subject to those matters to have as much leniency as possible in the circumstance. I don't propose to go any further with that having regard to the lack of any dispute or disagreement in terms of what the Council should do in this case.*

The Tribunal noted the obvious similarity between the criteria set out and the overarching objective.

15. The Tribunal was satisfied that the decisions taken in Ireland in relation to Dr Zulichowski's conduct involved, by necessary implication, a finding that he was impaired. That is because,

- (a) The matters proved against him in the proceedings before the Fitness to Practise Committee were very serious in nature,
- (b) The sanction imposed was cancellation of registration which was recognised by counsel acting on behalf of Dr Zulichowski to be career-ending and hence of the utmost seriousness,
- (c) The factors considered by the MCI correlate closely with the limbs of the overarching objective. It must therefore follow that the MCI took the view that the requirements of public safety and/or sending an appropriate message to the practitioner, the profession and general public were only met by imposing the most serious of sanctions.

16. The Tribunal was therefore satisfied that the decisions of the Fitness to Practise Committee, MCI and High Court of Ireland, taken together, constitute a “*determination*”

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of a regulatory body elsewhere [than in the United Kingdom] to the same effect” as an impairment determination made by a regulator within the United Kingdom.

Impairment

17. The Tribunal then considered whether Dr Zulichowski’s fitness to practise is currently impaired. In doing so, it reminded itself of the guidance of Dame Janet Smith, as set out above.

18. The Tribunal was satisfied, on the strength of the findings of the Fitness to Practise Committee, the MCI and High Court of Ireland, that Dr Zulichowski had acted in such a way to put a patient (Patient A) at unwarranted risk of harm, had brought the medical profession into disrepute, and had breached the fundamental tenets of the profession.

19. That is because,

- (a) Dr Zulichowski undertook examinations of Patient A that were not in line with normal clinical practise, one of which was specifically found to have been sexually motivated. He had also failed to respond adequately when challenged,
- (b) Matters of that nature are liable to cause serious harm to patients,
- (c) They also cause serious reputational damage to the medical profession,
- (d) They are a breach of the fundamental tenets of the profession. Those tenets require good doctors to make the care of patients their first concern (GMP, paragraph 1), to do their best to ensure that all patients receive good care and treatment (GMP, paragraph 2), to ensure the dignity of the patient is respected (GMP, paragraph 47) and which require a doctor to respond promptly, fully and honestly to complaints (GMP paragraph 61).

It is not said that Dr Zulichowski had acted dishonestly and therefore the Tribunal did not consider this factor further.

20. The Tribunal considered whether Dr Zulichowski had shown any insight or remediation in relation to the findings. Serious misconduct of the nature found proven against him is very difficult to remediate, even after the passage of time. In this case, there was no evidence that any remediation at all had taken place.

21. Dr Zulichowski had previously denied the overwhelming majority of the allegations that were before the MCI and there is no evidence that he has accepted them since. On the contrary, in the communications between him and the GMC, which were placed before the Tribunal, he set out his express intention to clear his name. Whilst acceptance of past wrongdoing is not a prerequisite to a finding of remediation, in the circumstances of this case, it is a significant factor in favour of a finding of current impairment.

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22. Throughout its deliberations, the Tribunal was mindful of its responsibility to uphold the over-arching objective. It found that each of the limbs was engaged in this case and dealt with each one in turn.

a. to protect, promote and maintain the health, safety and wellbeing of the public;

23. Dr Zulichowski conducted inappropriate gynaecological and breast examinations of Patient A. These actions were, at least in part, sexually motivated and constituted a serious breach of trust. There can be no doubt that Dr Zulichowski's actions put Patient A at risk of unwarranted harm, and there is a clear inference that she was caused actual harm.

b. to maintain public confidence in the profession;

24. An ordinary member of the public would consider Dr Zulichowski's actions to be unacceptable and would be seriously concerned were a finding of impairment not made in the circumstances of this case.

c. to promote and maintain proper professional standards and conduct for members of the profession.

25. Care for patients is paramount and Dr Zulichowski's actions clearly fell well below the standards expected of a registered practitioner. Proper standards in the profession must be upheld and maintained and a finding of impairment against Dr Zulichowski is necessary to reflect the seriousness of the allegations found proved against him in Ireland and to send a message to the wider profession that such behaviours are unacceptable.

26. The Tribunal has therefore determined that Dr Zulichowski's fitness to practice is impaired by reason of a determination by another regulator.

Determination on Sanction - 30/07/2020

1. Having determined that Dr Zulichowski's fitness to practise is impaired by reason of a determination by an overseas body, 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

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

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Submissions

3. On behalf of the GMC, Ms Ferrario submitted that the only appropriate sanction in this case was one of erasure. She submitted that the case was serious because the misconduct was sexually motivated. Dr Zulichowski had also responded inappropriately when Patient A challenged his behaviour.
4. Ms Ferrario reminded the Tribunal of its findings at the impairment stage. In particular, the Tribunal had noted that the findings against Dr Zulichowski were very serious and that the sanction imposed by the MCI, namely cancellation of registration, was deemed necessary to uphold the objectives of the Irish regulatory scheme which are very similar to the overarching objective of the GMC.
5. Ms Ferrario submitted that there were the following aggravating factors:
 - The sexually motivated nature of Dr Zulichowski’s conduct;
 - The Irish regulatory proceedings concluded in 2018 and hence remain relatively recent;
 - Dr Zulichowski’s actions were a clear abuse of his position of trust, and;
 - Dr Zulichowski has demonstrated no insight or remediation.
6. Ms Ferrario submitted that the only mitigating factors were that the conduct comprised a single incident and there was no evidence before the Irish regulator of any other misconduct or regulatory proceedings in respect of Dr Zulichowski.
7. Ms Ferrario submitted that there are no exceptional circumstances in this case which would warrant taking no action. Furthermore, the imposition of conditions would be disproportionate and unworkable given the absence of any insight or remediation and Dr Zulichowski’s lack of engagement with these proceedings.
8. Ms Ferrario submitted that suspension would not meet the gravity of the case. The findings of the Irish regulator demonstrated that Dr Zulichowski had breached fundamental tenets of the medical profession and both members of the public and fellow practitioners alike would be sufficiently concerned by his actions as to consider them fundamentally incompatible with his continued registration. A sanction of suspension would be insufficient to uphold the overarching objective.
9. Ms Ferrario submitted that the Tribunal should be mindful of the relevant paragraphs of the Sanctions Guidance (November 2019 edition) (‘the SG’), in particular paragraph 55(e) which states:

55 *Aggravating factors that are likely to lead the tribunal to consider taking more serious action include:*

...

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e sexual misconduct

10. Ms Ferrario submitted that in light of the SG, the findings of the MCI, and the determinations of the Tribunal at earlier stages, the Tribunal should determine that the appropriate sanction is one of erasure.

The Tribunal's Determination on Sanction

11. The decision as to the appropriate sanction, if any, to impose in this case is a matter for the Tribunal exercising its own judgement. In reaching its decision, the Tribunal has taken account of the SG, together with the over-arching objective.

12. 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 Zulichowski's interests with the public interest. It noted however, that where a particular sanction is necessary to uphold the overarching objective, it should be imposed regardless of the difficulties that it may cause a practitioner.

Mitigating and Aggravating Factors

13. The Tribunal went on to identify the aggravating and mitigating factors in the case.

14. The Tribunal identified the following aggravating factors:

- The fact that there was a sexual motivation on the part of Dr Zulichowski;
- The fact that he conducted an examination of Patient A in a way that did not respect her dignity; he violated her trust and this constituted a gross abuse of his position as a doctor;
- The lack of any evidence of insight on the part of Dr Zulichowski;
- The absence of any attempts to remediate the conduct either through an apology or otherwise.

15. In identifying the above factors, the Tribunal was mindful of paragraphs 51 and 52 of the SG, which state:

51 *It is important for tribunals to consider insight, or lack of, when determining sanctions. It is particularly important in cases where the doctor and the GMC agree undertakings or the tribunal imposes conditions. The tribunal must be assured that this approach adequately protects patients, in that the doctor has recognised the steps they need to take to limit their practice to remediate.*

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52 *A doctor is likely to lack insight if they:*

a *refuse to apologise or accept their mistakes*

...

c *do not demonstrate the timely development of insight*

...

16. The Tribunal was also mindful of paragraph 55(e) of the SG, which states:

55 *Aggravating factors that are likely to lead the tribunal to consider taking more serious action include:*

...

f *sexual offences...*

17. The Tribunal identified the following mitigating factors:

- There was no evidence before the Fitness to Practise Committee, MCI, High Court of Ireland, or this Tribunal that Dr Zulichowski had faced any previous regulatory proceedings or had been the subject of any adverse findings,
- That the findings against him, whilst of the utmost seriousness, arose out of a single incident.

The Tribunal noted, however, that matters of that nature will often provide only limited opportunities for mitigation. In this case, the aggravating factors attracted significantly more weight than the mitigating ones. In the judgment of the Tribunal, this remained a very serious case.

No action

18. The Tribunal concluded that there were no exceptional circumstances that would justify taking no action. Such a course would be manifestly inadequate given the serious nature of the findings against Dr Zulichowski.

Conditions

19. Given the particular circumstances, the Tribunal also determined that the imposition of conditions would not meet the gravity of the case. Given the

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seriousness of Dr Zulichowski's actions, and the lack of any evidence of insight and/or remediation, there are no workable or proportionate conditions that could address the significant reputational harm to the profession, the breach of professional standards, and the compromise of patient safety that Dr Zulichowski's actions caused.

Suspension

20. In considering suspension, the Tribunal noted the following paragraphs of the SG;

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

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*

21. The Tribunal considered whether Dr Zulichowski's sexually motivated misconduct was fundamentally incompatible with his continued registration. It concluded, without hesitation, that it was.

22. In the judgment of the Tribunal, this case involved sexually motivated conduct of the utmost seriousness. The lack of any evidence of insight and/or remediation has already been noted. Having considered those matters, the Tribunal was of the view that there remained a real prospect of repetition with a resulting risk to patient safety. A sanction of suspension under those circumstances would cause ongoing reputational damage to the profession and would fail to adequately deal with what was a very serious breach of professional standards. The Tribunal was therefore in no doubt that a suspension would fail to meet the requirements of any of the three limbs of the overarching objective.

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Erasure

23. Having rejected all other sanctions, the Tribunal turned to the sanction of erasure.

24. Paragraph 107 of the SG provides that erasure may be imposed where a Tribunal considers it to be the only means of protecting the public. Paragraph 108 provides that it may be appropriate even in cases where there is no risk to patient safety but where it is necessary nonetheless to maintain public confidence. In the judgment of the Tribunal, erasure was necessary not only for reasons of public safety, but also to maintain the reputation of the profession and to uphold proper professional standards.

25. In reaching that conclusion, the Tribunal had regard to paragraph 109 of the SG, which sets out the particular factors that indicate erasure may be the appropriate sanction. It considered that the following factors were present in this case,

109 *Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).*

a *A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor.*

b *A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety.*

...

d *Abuse of position/trust (see Good medical practice, paragraph 65: 'You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession').*

...

f *Offences of a sexual nature...*

...

j *Persistent lack of insight into the seriousness of their actions or the consequences.*

26. The Tribunal concluded that this case represented a particularly serious breach of paragraph 65 of GMP:

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65 *You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.*

27. Dr Zulichowski abused the trust of Patient A and his position as a doctor in order to pursue his own sexual agenda. Under those circumstances and having had regard to all the circumstances of the case, including the aggravating and mitigating factors, the Tribunal determined to impose the sanction of erasure on Dr Zulichowski. It concluded that no lesser sanction would meet the requirements of the overarching objective.

Determination on Immediate Order - 30/07/2020

1. Having determined to erase Dr Zulichowski's name from the medical register, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Zulichowski's registration should be subject to an immediate order.

Submissions

2. On behalf of the GMC, Ms Ferrario, Counsel, submitted that an immediate order is necessary in this case.

3. Ms Ferrario submitted that given the findings of the Tribunal that there is a risk to patient safety and a real prospect of repetition, an immediate order is necessary both to protect the public and to uphold public confidence in the profession.

4. Ms Ferrario submitted that although there is only a slight possibility that Dr Zulichowski could have his licence to practise revalidated within the 28 day appeal period, prior to the substantive sanction of erasure taking effect, an immediate order is nonetheless warranted in the circumstances of this case.

5. Ms Ferrario submitted that the Tribunal ought to be mindful of the relevant paragraphs of the SG when reaching its decision.

The Tribunal's Determination

6. In reaching its decision, the Tribunal had regard to its previous determinations and the submissions made on behalf of the GMC.

7. In reaching its decision the Tribunal considered paragraph 173 of the SG:

173 *An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety. For example, where they have provided poor clinical care or abused a doctor's special position of trust, or where immediate action must be taken to protect public confidence in the medical profession.*

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8. The Tribunal noted that it had determined that Dr Zulichowski's actions were an abuse of his professional position and a breach of trust, and that erasure was necessary in order to protect patients, maintain public confidence in the profession and uphold proper professional standards. Given these serious findings and taking account of the above paragraph of the SG, the Tribunal determined that the imposition of an immediate order was appropriate in this case.

9. The Tribunal therefore determined that it was necessary to impose an immediate order of suspension.

10. This means that Dr Zulichowski's registration will be suspended from when notification is deemed to have been served. The substantive direction, as already announced, will take effect 28 days from when written notice of this determination has been served upon Dr Zulichowski, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.

11. There is no interim order to revoke.

12. That concludes this case.

Confirmed

Date 30 July 2020

Mr Geoffrey Payne, Chair

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ANNEX A - 27/07/2020

Service & Proceeding in Absence

1. Dr Zulichowski was neither present nor represented at the hearing. Ms Ferrario, Counsel, on behalf of the GMC, therefore made an application, pursuant to Rule 31 of the GMC (Fitness to Practise) Rules 2004 (the Rules), for the Tribunal to proceed to consider Dr Zulichowski's case in his absence.

Service

2. Ms Ferrario first invited the Tribunal to find, in accordance with Rules 15 and 40 of the Rules, that all reasonable efforts had been made to serve Dr Zulichowski with notice of this hearing.

3. Ms Ferrario submitted that notification of the hearing has been properly served upon Dr Zulichowski, both by post at his registered address and via email to his registered email address. Ms Ferrario submitted that it only needs to be proved that the Notice of hearing (NOH) was sent to the registered correspondence addresses, not that it was received, although confirmation of the delivery of the Notice of Hearing to his registered postal address has been provided.

4. Ms Ferrario provided the Tribunal with a Service bundle which included screenshots of Dr Zulichowski's current correspondence addresses on the GMC Case Management system, as provided by Dr Zulichowski, dated 17 July 2020. It also included a copy of an email communication between the GMC and Dr Zulichowski, dated 27 and 29 January 2020, showing that this registered email address was in use by Dr Zulichowski.

5. The service bundle also included the following documentary evidence:

- Notice of allegation sent by email and delivery receipt, dated 9 June 2020;
- Notice of allegation sent via post and proof of service (first class post), dated 9 June 2020;
- Notice of Hearing sent by email and delivery receipt, dated 11 June 2020;
- Chaser email forwarding copy of Notice of Hearing and delivery receipt, dated 12 June 2020;
- Notice of hearing sent by post (recorded delivery), dated 16 June 2020, and;
- Proof of service for Notice of Hearing sent by post, dated 22 June 2020.

6. Having considered the evidence, the Tribunal was satisfied that Notice of this Hearing had been served on Dr Zulichowski in accordance with Rule 15 and Rule 40 of the Rules, and paragraph 8 of Schedule 4 to the Medical Act 1983, as amended and, in particular, that he had been notified of all the matters that Rule 15 requires.

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Proceeding in Absence

7. The Tribunal then went on to consider whether it would be appropriate to proceed in Dr Zulichowski's absence pursuant to Rule 31 of the Rules. The Tribunal was conscious that its discretion to proceed in the absence of a doctor should be exercised with the utmost care and caution. It bore in mind that fairness to Dr Zulichowski is the prime consideration although fairness to the GMC and the interests of the public should also be taken into account.

8. Ms Ferrario submitted that it would be appropriate for the Tribunal to proceed in Dr Zulichowski's absence. She emphasised that in the preceding several months there had been no contact from Dr Zulichowski but informed the Tribunal that on the morning of 24 July 2020, three days before the current hearing was due to commence, Dr Zulichowski had telephoned the GMC and apologised for the lack of contact over the last few months, making it clear he would not be participating in proceedings and stating that he was aware of the dates of the hearing and did not want to be present.

9. Dr Zulichowski then telephoned again on the afternoon of 24 July 2020 and stated that he wished to apply to postpone the hearing, but gave no reasons. He was advised to submit any information or applications he wished to be put before the Tribunal in writing and was advised that the hearing was to take place via Skype for Business and that if he wished to participate he would be sent a link. Dr Zulichowski stated again that he wished to apply to postpone the hearing, but that it would take until 28 July 2020 to prepare a written application. Dr Zulichowski did not confirm whether he was going to do so at that stage. Ms Ferrario submitted that the GMC still wish to proceed in his absence, irrespective of any application to postpone or adjourn.

10. Ms Ferrario then submitted that on 27 July 2020, the morning of the commencement of proceedings, Dr Zulichowski had emailed the GMC to provide a new email correspondence address but provided no further information in respect of proceedings or any applications. The GMC replied to this email, enquiring whether Dr Zulichowski did intend to attend the hearing or provide any written applications or representations.

11. In light of Dr Zulichowski's assertion that he wished to postpone and the recent email correspondence, the Tribunal determined to allow further time for Dr Zulichowski to confirm if he wished to attend or make representations to the Tribunal. The Tribunal concluded that this was the appropriate step to take in fairness to Dr Zulichowski.

12. The Tribunal therefore allowed a further hour for Dr Zulichowski to make contact and it was confirmed by the GMC that he was notified of this extra time.

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The Tribunal reconvened after that time had elapsed, however, having not heard anything further from Dr Zulichowski in this respect, the Tribunal went on to consider whether to proceed in his absence.

13. The Tribunal noted that an earlier scheduling of this case was postponed at the request of Dr Zulichowski. He had said that he could not travel in the winter. The case was therefore adjourned to the summer. However, since that time he failed to engage with the proceedings, up until three days ago, stating that he would not be participating. There is no indication that any further postponement would result in any serious engagement or attendance on his part. Whilst Dr Zulichowski has raised the matter of a further postponement by telephone, no details or formal confirmation of this have been provided. The Tribunal was not of the opinion that this represented a genuine attempt to constructively engage with these proceedings, as Dr Zulichowski has already been afforded every opportunity to do so, including joining the proceedings remotely.

14. The Tribunal was satisfied that Dr Zulichowski has voluntarily waived his right to be present and that it is in the public interest that the hearing proceed in a timely manner. Having considered all the circumstances, the Tribunal was satisfied that it was appropriate to proceed with the hearing in Dr Zulichowski's absence.

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ANNEX B - 28/07/2020

Application to adjourn proceedings XXX

1. Dr Zulichowski sent an email to the MPTS at 16:12 on 27 July 2020 requesting that the hearing be postponed. It was placed before the Tribunal on 28 July 2020, the second day of the hearing. Given that the proceedings had already commenced, the Tribunal went on to consider this request as an application to adjourn the hearing in accordance with Rule 29(2).

Dr Zulichowski's Submissions

2. In his email to the MPTS, Dr Zulichowski stated:

I wish to maintain my good reputation as a doctor in the GMC, and the UK medical community. I confirm my willingness to participate in the investigation to clear myself of the charges against me by the Irish Medical Council. I regret that due to XXX I could not plan / agree on my participation in the hearing scheduled for today, ie. 27 July 2020, or actively participate in it. However, I'm afraid that the today's virtual remote conversation on line today, in this state of affairs, as well as in the days to come, will not be for MPTS effective or useful. I will inform the MPTS in a separate letter / position paper about the reasons and conditions of this claim, as well as proposal on my part. I'm working on information and proposals for the MPTS, but due to XXX, work is progressing slowly.

...

XXX, I do not propose a specific deferral period.

3. Dr Zulichowski's email then went on to state that he does not currently have a licence to practise in the UK, having failed to meet the requirements for revalidation, and he has no intention to return to practice in the UK. Therefore, he submitted, neither the public interest in the UK nor the medical community or GMC will suffer from a further delay in these proceedings.

GMC Submissions

4. Ms Ferrario, on behalf the GMC, opposed the adjournment application and invited the Tribunal to continue with proceedings. She submitted that Dr Zulichowski had been aware of these proceedings since January, which is when the original February 2020 hearing had been scheduled, and noted that, since the postponement of that hearing, had made no attempt to meaningfully engage before the very last moment.

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5. She further submitted that Dr Zulichowski's assertions XXX are not specific or supported by any evidence. Throughout his contacts with the GMC, since 24 July 2020, he made no reference XXX was able to participate in telephone calls with the GMC without any apparent issues.

6. Ms Ferrario submitted that it would not be appropriate to adjourn proceedings given the lack of evidence or detail provided by Dr Zulichowski in his request. Given his lack of engagement with the GMC and MPTS up until this point, there can be no assurances that a further delay would lead to a different outcome and result in the hearing proceeding effectively in the future. She stated that Dr Zulichowski has voluntarily absented himself and that it was important for proceedings to continue in an expeditious fashion to prevent further delays in order to protect the public interest, particularly given the very serious nature of the findings made against Dr Zulichowski by the MCI.

Tribunal Decision

7. The Tribunal took account of submissions from both parties.

8. The Tribunal considered the nature and circumstances of the adjournment request. Dr Zulichowski submitted that XXX he was unable to participate in the hearing. Whilst acknowledging that such proceedings can be very stressful, the Tribunal must balance the needs of the doctor with upholding the overarching objective, and ensuring proceedings take place as expeditiously as possible whilst maintaining fairness. Dr Zulichowski made this request once the hearing was already underway. He failed to engage meaningfully with the proceedings over the period from February to July 2020; in fact, he only made contact on the Friday before the hearing was listed to commence.

9. Dr Zulichowski has provided no evidence and little detail in support of XXX and, even if taken at face value, there is no indication that such matters will be resolved at any time in the foreseeable future. The Tribunal was mindful of the case of *General Medical Council v Dr Hayat [2018] EWCA Civ 2796* where the court held that:

- the decision to adjourn is a matter for the discretion of the Tribunal, but also taking into account the public interest in the fair, economical, expeditious and efficient disposal of allegations made against medical practitioners;
- XXX

The Tribunal noted that XXX had been received.

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10. The Tribunal carefully considered whether an adjournment would resolve the matters raised in this application. Given the lack of specificity in Dr Zulichowski's email, XXX, remain unclear. There is no certainty that an adjournment would achieve anything and, even if it would, there is no clarity as to the length of the adjournment required. The Tribunal was mindful that the hearing cannot be delayed indefinitely. There is a need to conclude these proceedings within a reasonable time in order to uphold the overarching objective.

11. The Tribunal carefully considered the potential disadvantage to Dr Zulichowski of the hearing proceeding. It noted that, whilst there may be some disadvantage in the doctor being unable to participate and make submissions, the opportunity for him to engage remotely or to provide written submissions has always been available but he has chosen not to take it. Even at this late stage, Dr Zulichowski has indicated that he wishes to make further submissions but the Tribunal cannot be confident that they will be received within a reasonable time given his past record of engagement.

12. In reaching its determination, the Tribunal bore in mind the conclusions of the Court of Appeal in *General Medical Council v Dr Hayat [2018] EWCA Civ 2796* in which the court held that,

there is a difference between continuing a criminal trial in the absence of the defendant and the decision under Rule 31 to continue a disciplinary hearing. This latter decision must also be guided by the context provided by the statutory overarching objective of the GMC...in that regard, the fair, economical, expeditious and efficient disposal of allegations made against medical practitioners is of very real importance

13. The Tribunal bore in mind the public interest and Dr Zulichowski's interests, its duty to ensure a fair hearing, XXX, and the failure of Dr Zulichowski to engage over a considerable period of time following the deferred hearing in February 2020, and it determined not to adjourn at this stage. It remains open to Dr Zulichowski to participate remotely or through the provision of written submissions.

14. The Tribunal therefore determined to refuse Dr Zulichowski's application to adjourn proceedings, in accordance with Rule 29(2) of the Rules.