Record of Determinations – Medical Practitioners Tribunal

PUBLIC RECORD

**Dates:** 22/03/2019

**Medical Practitioner’s name:** Mr Godwin ONWUEJEOGWU

**GMC reference number:** 3428588

**Primary medical qualification:** LMS 1974 Universidad de Navarra

**Type of case**

Review – Misconduct

**Outcome on impairment**

Impaired

**Summary of outcome**

Erasure

**Tribunal:**

<table>
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<tr>
<th>Legally Qualified Chair:</th>
<th>Mr Leighton Hughes</th>
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| Medical Tribunal Members: | Dr Farah Yusuf  
  Dr Anjali Ahluwalia |

| Tribunal Clerk: | Ms Esther Morton |

**Attendance and Representation:**

<table>
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<tr>
<th>Medical Practitioner:</th>
<th>Not present and not represented</th>
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<tbody>
<tr>
<td>GMC Representative:</td>
<td>Ms Laura Barbour, Counsel, instructed by GMC Legal</td>
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**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.

**DETERMINATION ON IMPAIRMENT - 22/03/2019**
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Background

2017 Hearing

1. Mr Onwuejeogwu’s case was first considered by a Medical Practitioners Tribunal in June 2017. The hearing adjourned part-heard on two occasions, concluding in September 2017 (‘the 2017 Tribunal’). Mr Onwuejeogwu was neither present nor represented at that hearing.

2. The 2017 Tribunal found that, in July 2015 and January 2016, Mr Onwuejeogwu issued two prescriptions, despite not having a licence to practice. It further found that Mr Onwuejeogwu knew, or ought to have known, that he did not have a licence to practise at the time of issuing these prescriptions, having been notified by the GMC in October 2014 that his licence to practise had been withdrawn. The 2017 Tribunal found Mr Onwuejeogwu’s conduct in issuing these prescriptions to be misleading, but not dishonest.

3. The 2017 Tribunal further found proved that Mr Onwuejeogwu failed to provide the GMC with a completed Work Details Form (‘WDF’) on four separate occasions.

4. Turning to impairment, the 2017 Tribunal determined that Mr Onwuejeogwu’s failure to provide a completed WDF was a breach of his professional duty, and that Mr Onwuejeogwu’s actions in issuing two prescriptions without first ascertaining whether or not he was entitled to do so amounted to misconduct. The 2017 Tribunal found that Mr Onwuejeogwu’s actions in prescribing without a licence posed a risk of harm to patients and seriously undermined public trust and confidence in the medical profession.

5. The 2017 Tribunal found that Mr Onwuejeogwu’s actions were potentially remediable, however it was not provided with any evidence to suggest that he appreciated the gravity of his misconduct, nor that he had taken any steps toward remediation. Given this, the 2017 Tribunal determined that there was an ongoing risk of repetition, and accordingly, it found that Mr Onwuejeogwu’s fitness to practice was impaired by reason of misconduct.

6. Turning to sanction, the 2017 Tribunal determined to suspend Mr Onwuejeogwu’s registration for a period of 12 months, determining that 12 months’ suspension would afford Mr Onwuejeogwu the opportunity to remedy his misconduct, develop insight, and to demonstrate remediation.
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2018 Hearing

7. Mr Onwuejeogwu’s case was first reviewed by a Medical Practitioners Tribunal in September 2018 (‘the 2018 Tribunal’). The 2018 Tribunal noted that, since his initial hearing, Mr Onwuejeogwu had failed to engage with the GMC. The 2018 Tribunal was not provided with any of the information the 2017 Tribunal suggested he provide, nor was it provided with any evidence in relation to his insight or remediation. Accordingly, the 2018 Tribunal determined that Mr Onwuejeogwu’s fitness to practice remained impaired by reason of his misconduct.

8. Turning to sanction, the 2018 Tribunal noted that Mr Onwuejeogwu had XXX. It further noted that there was no suggestion of any repetition of his misconduct since January 2016 (when Mr Onwuejeogwu was advised by the GMC that he could no longer prescribe), and it considered that this could demonstrate some insight. Bearing these factors in mind, the 2018 Tribunal determined to suspend Mr Onwuejeogwu’s registration for a further period of six months, setting out that this would allow Mr Onwuejeogwu a ‘final opportunity to provide evidence of insight and remediation’.

9. The 2018 Tribunal emphasised that the onus was on Mr Onwuejeogwu to demonstrate insight and remediation at his next hearing, and set out that any future Tribunal reviewing his case may be assisted by the following information:

   • Evidence that he has acquired knowledge and insight into the processes and significance of revalidation, of holding a licence to practice, and of being on the medical register;

   • Evidence that he appreciates the impact of the above on his ability to practise and to prescribe medicines;

   • Evidence that he understands and accepts that a doctor must not prescribe medicines without holding a current licence to practise;

   • XXX;

   • Any information relating to his future intentions to practice as a doctor.

Today’s hearing
10. The Tribunal had regard to the evidence provided at today’s hearing, which includes the Tribunal determinations from Mr Onwuejeogwu’s previous two hearings, as well as letters from the GMC and the MPTS to Mr Onwuejeogwu in respect of this hearing. It has not received any documentation or submissions on behalf of Mr Onwuejeogwu.

Submissions

11. The Tribunal received submissions from Ms Laura Barbour, Counsel, on behalf of the GMC. In summary, Ms Barbour submitted that there remain a number of concerns with regard to Mr Onwuejeogwu’s compliance with Good Medical Practice – she submitted that these concerns have been raised and communicated through the determinations of both the 2017 and 2018 Tribunals, but that Mr Onwuejeogwu has made no effort to allay these concerns. Ms Barbour reminded the Tribunal that the onus is on Mr Onwuejeogwu to demonstrate that his fitness to practice is no longer impaired.

12. Ms Barbour submitted that the 2018 Tribunal made clear that Mr Onwuejeogwu should be afforded ‘one final chance’ to engage and remediate; she described his failure to do so as indicative of a worrying lack of insight and engagement. Ms Barbour submitted that Mr Onwuejeogwu has either read the determinations and failed to act on them, or alternatively, that he has failed to read them altogether. Ms Barbour submitted that either option shows a dangerous lack of interest and motivation, as well as a continuing disregard for his professional responsibilities.

13. Ms Barbour submitted that there is nothing before this Tribunal that would allow it to conclude that Mr Onwuejeogwu’s fitness to practise issues have been resolved, and accordingly, she invited it to find that his fitness to practise remains impaired today.

The Tribunal’s Determination on Impairment

14. In reaching its decision the Tribunal bore in mind that its primary responsibility is to the statutory overarching objective, which is as follows:

- To protect, promote, and maintain the health, safety, and well-being of the public;

- To promote and maintain public confidence in the medical profession;
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- To promote and maintain proper professional standards and conduct for members of that profession.

15. The Tribunal further bore in mind that, as set out in the case of Abrahaem v GMC [2008] EWHC 183 (Admin), at a review hearing the persuasive burden is on the practitioner to demonstrate that he or she has fully acknowledged, and sufficiently addressed, past impairment.

16. The Tribunal bore in mind that Mr Onwuejeogwu’s misconduct is potentially remediable, however it was not satisfied that he has yet made any effort to remediate. This Tribunal has not been provided with any evidence of reflection or insight, nor any evidence to allay the concerns found by both the 2017 and 2018 Tribunals. As set out above, the onus is on Mr Onwuejeogwu to demonstrate remediation.

17. Both the 2017 and 2018 Tribunals provided a number of clear pointers suggesting ways in which Mr Onwuejeogwu could begin to remediate and to develop insight; he has seemingly failed to address any of these points, meaning there has been no real change in circumstances since the 2017 hearing. On the contrary, Mr Onwuejeogwu’s current position has been aggravated by his persistent and ongoing lack of insight and engagement with his regulator.

18. Given the lack of any new information before this Tribunal today, the Tribunal had no option but to conclude that Mr Onwuejeogwu has not addressed the concerns found by the 2017 and 2018 Tribunals, nor has he gained insight into his misconduct or attempted to remediate that misconduct in any way. Accordingly, there remains an ongoing risk of repetition which could pose a real risk to patients and which could seriously undermine public confidence in the medical profession.

19. Bearing all of the above in mind, the Tribunal determined that Mr Onwuejeogwu’s fitness to practise remains impaired by reason of his misconduct.

DETERMINATION ON SANCTION - 22/03/2019

1. Having determined that Mr Onwuejeogwu’s fitness to practise remains impaired by reason of misconduct the Tribunal now has to decide the appropriate sanction, if any, to impose in this case.

Submissions
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2. Ms Barbour took the Tribunal through the Sanctions Guidance (‘SG’), and submitted that a sanction lesser than erasure would not meet the statutory overarching objective, as set out in the Tribunal’s determination on impairment. Ms Barbour invited the Tribunal to have particular regard to paragraph 108 of the SG which, she submitted, could have been ‘written for this case’. Paragraph 108 sets out that:

‘Erasure may be appropriate... if a doctor has shown a blatant disregard for the safeguards designed to protect members of the public and maintain high standards within the profession that is incompatible with continued registration as a doctor.’

3. Ms Barbour submitted that, as set out in the Tribunal’s earlier determination on impairment, Mr Onwuejeogwu has shown a persistent lack of insight into the seriousness of his failings, and has failed to demonstrate respect for either his regulator or for these proceedings. Ms Barbour submitted that the only real change in circumstances since Mr Onwuejeogwu’s initial hearing is that, as set out by this Tribunal, his position has been aggravated by his continued and persistent lack of engagement. Ms Barbour reminded this Tribunal that the 2018 Tribunal made clear that they were giving Mr Onwuejeogwu a ‘final opportunity’ to address his failings; she submitted that he has failed to do so. Accordingly, Ms Barbour invited the Tribunal to erase Mr Onwuejeogwu’s name from the Medical Register.

The Tribunal’s Determination on Sanction

4. The decision as to the appropriate sanction to impose, if any, is a matter for this Tribunal exercising its own judgment. In reaching its decision the Tribunal has taken account of the SG, and has borne in mind that the purpose of a sanction is not to be punitive, although a sanction may have a punitive effect. The Tribunal has applied the principle of proportionality, weighing Mr Onwuejeogwu’s interests with the wider public interest.

No action

5. The Tribunal first considered whether to conclude Mr Onwuejeogwu’s case by taking no further action. It considered that there were no exceptional circumstances that would warrant it taking no further action, and that doing so would not address the Tribunal’s concerns as identified in its determination on impairment.

Conditions
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6. The Tribunal next considered whether an order of conditions would be appropriate. In so doing, it bore in mind that any conditions imposed would need to be workable and measureable.

7. The Tribunal had regard to paragraph 82 of the SG, which sets out that conditions are likely to be workable in cases where the doctor has insight, and where the Tribunal is satisfied that the doctor will comply with them. The Tribunal has found a persistent lack of insight and engagement in this case, and as such, it determined that workable and measureable conditions could not be formulated; further, even if conditions could be formulated, it could not be satisfied that Mr Onwuejeogwu would comply with them. The Tribunal therefore determined that conditions would neither be appropriate nor proportionate.

Suspension

8. The Tribunal next considered whether to impose a further period of suspension on Mr Onwuejeogwu’s registration. As this is an independent Tribunal, it is not bound by either Ms Barbour’s submissions nor by any suggestions made by previous Tribunals. Accordingly, whilst it noted that the 2018 Tribunal set out that that they were giving Mr Onwuejeogwu a ‘final chance’, this Tribunal was not bound by this statement, nor was it obliged to act upon it. Nonetheless, the Tribunal did consider that Mr Onwuejeogwu’s continued lack of engagement in spite of this statement demonstrates his persistent and ongoing lack of insight.

9. In determining whether a further period of suspension would be appropriate, the Tribunal had regard to paragraph 91 of the SG, which sets out that suspension has a deterrent effect and:

‘...can be used to send out a signal to the doctor... about what is regarded as behaviour unbefitting a registered doctor’.

The Tribunal considered that Mr Onwuejeogwu has already been subject to two periods of suspension, and that these periods of suspension do not appear to have helped him develop any insight into his misconduct, nor has he used these periods of suspension to engage in remediation.

10. The Tribunal next had regard to paragraph 93 of the SG, which sets out that:

‘Suspension may be appropriate... where there may have been acknowledgment of fault and where the Tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The Tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions.’
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As previously set out, the Tribunal has not been provided with any evidence to suggest that Mr Onwuejeogwu has taken any steps to mitigate his actions. Further, given his persistent failure to engage or demonstrate insight, the Tribunal could not be satisfied that his behaviour will not be repeated.

11. The Tribunal acknowledged that the misconduct itself fell short of being fundamentally incompatible with Mr Onwuejeogwu’s continued registration until now. However, the Tribunal had regard to paragraph 97 of the SG, which lists a number of factors that suggest suspension may be appropriate. These include:

- [e] No evidence that demonstrates remediation is unlikely to be successful, eg because of previously 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.

The Tribunal determined that neither of these factors are present in Mr Onwuejeogwu’s case. As set out above, he has not shown insight, and therefore poses a risk of repeating the behaviour. Whilst the Tribunal noted that there is no evidence of repetition of similar behaviour since the initial incidents, the Tribunal also noted that Mr Onwuejeogwu has been suspended since September 2017, and therefore determined that this cannot be taken as evidence of insight.

12. Whilst previous Tribunals have found that Mr Onwuejeogwu’s conduct is not fundamentally incompatible with continued registration, this Tribunal had regard to Mr Onwuejeogwu’s continued unwillingness to engage with the GMC or with this process, his continued failure to show insight or reflection, and his continued failure to show any potential for remediation. Accordingly, the Tribunal considered that, with the passage of time and persistent lack of engagement, Mr Onwuejeogwu’s misconduct has now become fundamentally incompatible with continued registration.

Erasure

13. The Tribunal therefore determined to erase Mr Onwuejeogwu’s name from the Medical Register. In reaching this decision, it had regard to paragraph 108 of the SG, as referred to by Ms Barbour above, as well as paragraph 109 of the SG, which sets out that erasure may be appropriate in cases where there is:
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‘[a] persistent lack of insight into the seriousness of their actions or their consequences.’

14. The Tribunal was satisfied that Mr Onwuejeogwu has demonstrated a persistent lack of insight and engagement, as well as a reluctance to take remediable action, a repeated failure to address concerns over a significant period of time, and a persistent lack of regard for his professional body. Despite being given ample opportunity by two previous Tribunals, Mr Onwuejeogwu has made no effort to demonstrate insight or remediation. Accordingly, the Tribunal determined that erasure from the Medical Register is now the appropriate, proportionate, and necessary response.

15. The effect of the Tribunal’s decision is that, unless Mr Onwuejeogwu exercises his right of appeal, the direction will take effect 28 days from when written notice of this determination is deemed to have been served upon him.

16. The sanction currently imposed on Mr Onwuejeogwu’s registration will remain in effect until the appeal period has concluded. If Mr Onwuejeogwu decides to exercise his right of appeal, the sanction currently imposed on his registration will remain in effect until the outcome of the appeal has been decided.

17. That concludes Mr Onwuejeogwu’s case.

Confirmed
Date 22 March 2019  Mr Leighton Hughes, Legally Qualified Chair
DETERMINATION ON SERVICE AND PROCEEDING IN ABSENCE

Service

1. Mr Onwuejeogwu is neither present nor represented at this hearing. The Tribunal had regard to the service bundle, which includes a telephone note dated 12 December 2017. According to this note, Mr Onwuejeogwu confirmed that the GMC could continue to post letters to him, and could also contact him by telephone.

2. On 11 February 2019 the GMC sent Mr Onwuejeogwu a letter to his registered postal address confirming the time and date of today’s hearing, and enclosing a draft GMC hearing bundle. In this letter, Mr Onwuejeogwu was asked to provide the GMC with details of any evidence he wished to adduce at this hearing no later than 22 February 2019. The Tribunal had regard to the Royal Mail ‘Track and Trace’ documentation, which confirms that this letter was signed for at Mr Onwuejeogwu’s registered address on 13 February 2019 by someone named ‘GOODWIN’ [sic].

3. On 15 February 2019 the MPTS sent notice of today’s hearing to Dr Onwuejeogwu’s registered postal address. This notice set out that:

   ‘...If you do not attend, and are not represented, the Tribunal can hear and make a decision about your case in your absence, under Rule 31 of the GMC (Fitness to Practise) Rules. If your fitness to practise is found to be impaired a sanction could be imposed on your registration in your absence...’

The Tribunal had regard to the Royal Mail ‘Track and Trace’ documentation, which shows that this letter was signed for at Mr Onwuejeogwu’s registered address on 16 February 2019.

4. On 8 March 2019 the GMC again wrote to Mr Onwuejeogwu, this time confirming the GMC’s bundle as well as the Case Manager’s directions. The Tribunal again had regard to the Royal Mail ‘Track and Trace’ documentation, which shows that this letter was signed for at Mr Onwuejeogwu’s registered address on 9 March 2019 by someone named ‘GODWIN’.

5. Bearing the above in mind, the Tribunal was satisfied that the GMC and the MPTS have properly served notice of this hearing upon Mr Onwuejeogwu in
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accordance with Rule 40 of the General Medical Council (Fitness to Practise) Rules 2004, as amended (‘the Rules’).

Proceeding in absence

6. Turning to proceeding in Mr Onwuejeogwu’s absence, Ms Barbour, on behalf of the GMC, submitted that this case was characterised by the doctor’s non-engagement. She reminded the Tribunal that Mr Onwuejeogwu did not attend his two previous hearings, and that XXX. She submitted that it would not be appropriate for Mr Onwuejeogwu’s suspension to lapse before he has demonstrated that his fitness to practise is no longer impaired, and that an adjournment would not be in the public interest. She therefore invited the Tribunal to proceed with the case in Mr Onwuejeogwu’s absence today.

7. The Tribunal bore in mind that Mr Onwuejeogwu will be disadvantaged by the case proceeding in his absence, however it also bore in mind that he has not attended his previous two MPT hearings. Further, Mr Onwuejeogwu has had the opportunity to provide written representations, but has not done so. Similarly, he was given an opportunity to XXX, but has not done so. The Tribunal balanced any disadvantage to Mr Onwuejeogwu with the wider public interest, and noted that Mr Onwuejeogwu has not asked for an adjournment of today’s proceedings.

8. The Tribunal bore in mind that the public interest demands that matters be dealt with expeditiously. It further considered that it is in Mr Onwuejeogwu’s own interests for the restriction on his registration to be reviewed in a timely way. Bearing the above in mind, the Tribunal was not satisfied that an adjournment would be in the public interest, or in Mr Onwuejeogwu’s own interests. Accordingly, the Tribunal determined that it was both appropriate and proportionate to proceed with the hearing in Mr Onwuejeogwu’s absence today.