Record of Determinations
Medical Practitioners Tribunal

PUBLIC RECORD

**Dates**: 20/12/2019

**Medical Practitioner’s name**: Dr Kestutis SALCIUS

**GMC reference number**: 6121361

**Primary medical qualification**: Gydytojas 1980 Kauno Medicinos Universiteto

**Type of case**: New - Non-compliance with an English language assessment

**Outcome on non-compliance**: Non-compliance found

**Summary of outcome**
- Suspension for 12 months
- Review hearing directed
- Immediate order imposed

**Tribunal**:

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<th>Role</th>
<th>Name</th>
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<tr>
<td>Legally Qualified Chair</td>
<td>Mr Robert Ward</td>
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<tr>
<td>Lay Tribunal Member</td>
<td>Mr Gareth Davies</td>
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<td>Medical Tribunal Member</td>
<td>Dr Caroline Colaco</td>
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**Tribunal Clerk**: Jacqueline Kramer

**Attendance and Representation**:

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<th>Role</th>
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<tr>
<td>Medical Practitioner:</td>
<td>Not present and not represented</td>
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<tr>
<td>GMC Representative:</td>
<td>Ms Shirlie Duckworth, Counsel</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 in public.

Determination on preliminary procedural matters 20/12/2019

1. Dr Salcius is neither present nor represented today. The Tribunal has considered Ms Duckworth’s submission that notification of this hearing has been properly served upon Dr Salcius.

2. Ms Duckworth informed the tribunal that the GMC’s information letter, dated 5 November 2019, was sent by DX to Dr Salcius’ registered address XXX where it was signed for on 8 November 2019. Notice of this hearing, sent by the Medical Practitioners Tribunal Service in accordance with Rule 20(1)(a) of the Fitness to Practise Rules 2004, dated 7 November 2019, was sent by DX to Dr Salcius’ registered address where it was signed for on 11 November 2019.

3. Dr Salcius emailed the MPTS on 7 November 2019 stating that he had retired and was not planning to work in the UK. As such, he stated that he was not going to attend this hearing.

4. The Tribunal has determined that notice of this hearing has been served in accordance with Rule 40 of the General Medical Council (Fitness to Practise) Rules 2004 and paragraph 8 of Schedule 4 of the Medical Act 1983.

5. Ms Duckworth invited the Tribunal to proceed in Dr Salcius’ absence in accordance with Rule 31. She invited the Tribunal to apply the principles in R v Jones. She informed the Tribunal that Dr Salcius had not asked for an adjournment nor had he given any indication that if such an adjournment was granted that he would attend. Ms Duckworth submitted that Dr Salcius has been clear; he is now resident in Lithuania and has no intention of returning to the UK. In fact, in his most recent correspondence with the GMC and MPTS, he confirmed that he has now retired from medical practice.

6. Ms Duckworth went on to address the Tribunal on whether it would be fair and appropriate to proceed in Dr Salcius’ absence. She referred the Tribunal to the GMC’s letter to Dr Salcius dated 28 November 2019 in which he was informed that the GMC would make an application to proceed in his absence at today’s hearing, should he not attend. In all of the circumstances Ms Duckworth submitted that it was fair and just to proceed in Dr Salcius’ absence.
7. In accordance with Rule 31, the Tribunal has determined to proceed in Dr Salcius’ absence. It took account of all of the information before it, in particular Dr Salcius’ latest correspondence with the GMC and MPTS on 7 November 2019 in which he stated that he did not intend to be present at today’s hearing. Dr Salcius has made no application to adjourn today’s proceedings and the Tribunal concluded that it was not likely that Dr Salcius would attend at a future date, should it determine to adjourn the hearing today. It concluded, therefore, that Dr Salcius had deliberately chosen not attend today’s hearing and that it was in the public interest to proceed in his absence.

**Determination on consideration of non-compliance 20/12/2019**

Ms Duckworth

**Background**

1. On 4 January 2019 Mr A, Joint Medical Director for Surgery at Hull and East Yorkshire Hospitals Trust (the Trust) contacted the GMC in relation to Dr Salcius. He stated that on 19 December 2018 he had been the chair of a disciplinary panel which considered evidence relating to serious concerns about Dr Salcius’ ability to communicate in English with fellow staff. Mr A stated that this had raised serious concerns for the safety of patients.

2. Mr A further stated that concerns regarding Dr Salcius’ ability to communicate in English had first come to light in July 2018. In October 2018 Dr Salcius was suspended by the Trust pending an investigation into those concerns. Dr Salcius had stated that he was working on his English. He also told the investigation that his communication difficulties had arisen as a result of the differences in UK hospital procedure. The disciplinary panel determined to dismiss Dr Salcius for gross misconduct and to escalate this matter to the GMC as the Trust was concerned that Dr Salcius may take up employment in another UK hospital.

3. On 16 January 2019, the GMC’s Case Examiner determined to direct that Dr Salcius should undergo a language assessment. The GMC wrote to Dr Salcius on 18 January 2019 to inform him about this decision.

4. The Case Examiner referred Dr Salcius to an Interim Orders Tribunal scheduled to take place on 1 February 2019. Dr Salcius responded to the GMC on 16 January which stated that he had moved to Lithuania and cancelled his GMC direct debit. He also stated that he was not going to attend the Tribunal. The Interim Orders Tribunal determined to suspend Dr Salcius’ registration for a period of 15 months on the grounds of protection of the public and in the public interest.

5. The GMC wrote to Dr Salcius on 20 February 2019 reminding him of the need to book an English language assessment. Dr Salcius replied to the GMC on the same
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day stating that he was in Lithuania and he requested assistance in taking the IELTS examination. The GMC wrote again to Dr Salcius on 21 March 2019 giving him a final reminder to book an English language assessment. It also stated that if the GMC had not received the results of that assessment by 18 April 2019 then he may be referred to a medical practitioners tribunal.

6. On 29 March 2019 the GMC received an email from Dr B, Consultant Physician, Medical Director and Responsible Officer at Basildon and Thurrock University Hospitals NHS Foundation Trust (the Basildon and Thurrock Trust). Dr B stated that Dr Salcius had been employed by the Basildon and Thurrock Trust as a clinical fellow in cardio-thoracic surgery in the period 1 February 2017 to 6 April 2018. Dr B stated that the Basildon and Thurrock Trust had been unable to give Dr Salcius full clinical responsibilities due to issues related to communication and language. He further stated that Dr Salcius’ fixed term contract was not extended, primarily because of concerns about his language skills.

7. The GMC wrote to Dr Salcius on 4 June 2019 in a final attempt to ask him to engage with its investigation. The GMC also informed Dr Salcius that the GMC had the power to refer him to a medical practitioners tribunal as a result of his non-compliance. Dr Salcius replied on 11 July 2019 stating that he was now in Lithuania and was not coming back to the UK this year.

8. The GMC wrote to Dr Salcius on 26 July 2019 confirming the decision of the Assistant Registrar to refer him to a non-compliance hearing.

9. The Interim Orders Tribunal reviewed the interim order of suspension on Dr Salcius’ registration on 19 July 2019 and it determined to maintain the order of suspension.

Today’s proceedings

10. In reaching a decision on the matter of non-compliance, the Tribunal has given careful consideration to all of the documentary evidence adduced in this case. It has also taken account of the submissions made by Ms Duckworth, Counsel, on behalf of the GMC.

Submission

11. In relation to whether it was reasonable for the GMC to direct an English language assessment, Ms Duckworth submitted that the concerns identified in the evidence before the Tribunal demonstrated a link between Dr Salcius’ language and competency skills and, therefore, it was reasonable to direct a test in those circumstances. She submitted that if the concerns related to Dr Salcius’ performance only, then the GMC would have approached his remediation in a different way. She submitted that the fact that two of Dr Salcius’ former employers in the UK had
Identified language concerns reinforced the reasonableness of the GMC’s direction for a language assessment. Ms Duckworth also referred to the admissions made by Dr Salcius to his former employers that he had experienced difficulties with his communication skills. In the circumstances, Ms Duckworth submitted that it was reasonable for the GMC to direct an English language assessment in Dr Salcius’ case.

12. Ms Duckworth went on to make submissions related to whether Dr Salcius had complied with the GMC’s direction. She submitted that Dr Salcius had been afforded numerous opportunities to comply with this direction. However, despite Dr Salcius’ early indication that he was willing to take the IELTS test, he has not done so to date. Ms Duckworth submitted that Dr Salcius has not complied with the GMC’s direction.

13. Finally, Ms Duckworth addressed the Tribunal on whether there had been any good reason for Dr Salcius’ refusal to comply. She referred the Tribunal to Dr Salcius’ evidence at his disciplinary hearing at the Trust in which he had argued that his difficulties stemmed from his lack of knowledge of UK hospital procedures. Nonetheless, Dr Salcius had also informed the Trust that he was taking English lessons and he also told the GMC that he was prepared to take the IELTS test. She also referred to Dr Salcius’ indication to the GMC that he no longer intended to work in the UK and that he was now retired. Ms Duckworth stated that Dr Salcius had made no application for voluntary erasure from the medical register. She stated that there was no information before the Tribunal to suggest that Dr Salcius had been prevented from complying with the GMC’s direction by reason of adverse physical or mental health. Ms Duckworth reminded the Tribunal that all doctors on the register have an ongoing duty to comply with directions made by their regulator, the GMC. In all of the circumstances, Ms Duckworth invited the Tribunal to find that there was no good reason for Dr Salcius’ failure to comply.

The Tribunal’s approach

14. The Tribunal is aware that the burden of proof rests on the GMC and that it is for the GMC to prove non-compliance. The Tribunal is also aware that the standard of proof is that applicable to civil proceedings, which is the balance of probabilities.

15. The Tribunal has considered the non-compliance matter referred to it in respect of Dr Salcius, as follows:

‘On 4 January 2019 the GMC was notified by Hull and East Yorkshire Hospitals NHS Trust that you had been dismissed for gross misconduct due to serious concerns over your ability to communicate in English with your colleagues.

On 18 January 2019 you were directed under Rule 7(3A) and Schedule 3 of the GMC (Fitness to Practise Rules) 2004 (‘the Rules’) to undertake an assessment of your knowledge of English. You were informed that you had to
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sit either the academic version of the International English Language Testing System (‘IELTS’) or the Occupational English Test (‘OET’) and arrange for the results to be sent to the GMC by 18 April 2019, and that if you did not the Assistant Registrar may refer you to a Medical Practitioners Tribunal (‘MPT’) non-compliance hearing.

On 20 February 2019 you were sent a reminder by letter and email that you were required to undertake an assessment of your knowledge of English and arrange for the results to be sent to the GMC by 20 March 2019 (sic). You were informed that if you failed to complete the assessment without good reason the Registrar may refer the matter to the MPTS for a non-compliance hearing.

On 20 February 2019 you notified the GMC that you would try to take a course to prepare for the IELTS test.

On 21 March 2019 you were sent a further reminder by letter and email that there were 30 days remaining for you to complete an assessment of your knowledge of English and arrange for the test centre to send the results directly to the GMC. You were informed that if they were not received by 18 April 2019 you may be referred to a MPT.

On 4 June 2019 the GMC sent a final chaser by letter and email to engage with its investigation. You were informed that failure to provide confirmation of your English language assessment by 18 June 2019 would result in the Assistant Register being asked to consider whether you should be referred to the MPT for a non-compliance hearing.

You have failed to comply in full with the GMC’s direction.”

Was the GMC’s direction reasonable?

16. The Tribunal took account of the decision of the Trust to dismiss Dr Salcius from his post, which largely related to concerns about his level of English language skills and subsequent ability to communicate with his colleagues and patients. It bore in mind that the Trust had found serious incidents relating to Dr Salcius’ communications having caused confusion and, in some cases, a complete breakdown of communication. This had also led to a risk to patient safety.

17. Another of Dr Salcius’ former employers at the Basildon and Thurrock Trust informed the GMC that they had serious concerns relating to Dr Salcius’ English language skills which had led to the decision not to renew his employment contract.
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18. The Tribunal also took account of the evidence given by Dr Salcius at his disciplinary hearing that he was taking English language lessons and by his initial agreement to undertake the IELTS test.

19. In all the circumstances of the case, the Tribunal is satisfied that the GMC’s direction was reasonable.

Has the doctor failed to comply with the request?

20. The evidence before the Tribunal demonstrates that Dr Salcius has not complied with the GMC’s direction to undergo an assessment of his English language. The GMC had provided Dr Salcius with several opportunities to comply with its direction. Dr Salcius has not suggested that he had, in fact, complied with this direction and appeared to have made no effort to comply. In the circumstances, the Tribunal concluded that Dr Salcius has not complied with the GMC’s direction.

Was the doctor’s failure to comply unavoidable or otherwise excusable?

21. Dr Salcius has provided neither the GMC nor this Tribunal with any reason for his non-compliance with the GMC’s direction that he undergo an assessment of his English language.

22. In the circumstances the Tribunal has determined that non-compliance has been found.

Determination on sanction 20/12/2019

Ms Duckworth

1. Having determined that there is non-compliance by reason of Dr Salcius’ failure to undertake an assessment of knowledge of English in accordance with Schedule 3 of the Rules, the Tribunal has considered whether a sanction should be imposed.

Submission

2. The Tribunal has considered the submissions made by Ms Duckworth, Counsel, on behalf of the GMC regarding the appropriate sanction, if any, that should be imposed on Dr Salcius’ registration.

3. Ms Duckworth submitted that suspension is the appropriate order. She referred the Tribunal to the Non-compliance guidance for Medical Practitioners Tribunals, which states that where a Tribunal has made a finding of non-compliance, some action against the doctor’s registration is likely to be necessary in order to protect the public.
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4. Ms Duckworth reminded the Tribunal that it should consider the sanctions available in ascending order of seriousness. She submitted that an order of conditions would neither be proportionate nor sufficient to protect the public in the circumstances of Dr Salcius’ case. Furthermore, she submitted that if Dr Salcius were permitted to practise medicine in the UK under conditional registration, this would undermine public confidence in the profession.

5. Ms Duckworth submitted that the imposition of an order for suspension would send a message about the important role played by the regulator to ensure that the public is adequately protected. She also submitted that, taking account of the previous opportunities which the GMC had afforded Dr Salcius to comply with its direction, an order of suspension was proportionate. She reminded the Tribunal that Dr Salcius had stated on a number of occasions that he wanted to address his language difficulties, but that this had not translated into his compliance with the GMC’s direction. Ms Duckworth suggested that there were no mitigating circumstances in this case which would indicate that conditions would likely to be sufficient. She also pointed to the deterrent effect of suspension and submitted that whilst its effect is punitive, that is not its purpose.

6. Ms Duckworth submitted that an order for suspension should be made with immediate effect and that the interim order of suspension in place on Dr Salcius’ registration should be revoked. She informed the Tribunal that no other heads of impairment were under investigation in Dr Salcius’ case.

Tribunal decision

7. The Tribunal is aware that the decision as to the appropriate sanction, if any, to impose on Dr Salcius’ registration is a matter for this Tribunal exercising its judgement.

8. Throughout its deliberations, the Tribunal considered the overarching objective, which includes:

   a. protecting, promoting and maintaining the health, safety and well-being of the public,

   b. maintaining public confidence in the profession,

   c. promoting and maintaining proper professional standards and conduct for the members of the profession.

9. The Tribunal has also borne in mind that the purpose of a sanction is not to punish or discipline doctors, but it may have a punitive effect.

No Action
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10. The Tribunal first considered whether to conclude Dr Salcius’ case and take no action. In the light of its findings relating to Dr Salcius’ non-compliance with the reasonable direction of the GMC, the Tribunal determined that taking no action was not appropriate.

Conditions

11. The Tribunal next considered whether it would be appropriate to impose a period of conditions on Dr Salcius’ registration. It has borne in mind that any conditions must be appropriate, proportionate, workable and measurable.

12. The Tribunal took account of the evidence before it from two separate Trusts, each of which had significant concerns relating to Dr Salcius’ English language skills. The concerns at one Trust in particular were such that it found Dr Salcius’ lack of English language skills and poor communication had put patients at risk of harm.

13. The Tribunal noted that, in his most recent communication with the GMC and MPTS, Dr Salcius had stated that he had no intention of returning to the UK and that he was now retired from medical practice. It bore in mind, however, that Dr Salcius could in fact return to the UK. In all of the circumstances, the Tribunal concluded that the imposition of conditions was not sufficient to address the risks posed by Dr Salcius.

Suspension

14. The Tribunal has found that, in Dr Salcius’ case, there is no good reason for his non-compliance with the GMC’s direction and that he has failed to address the concerns related to his lack of English language skills and the subsequent potential risk to patients.

15. The Tribunal has identified that all three limbs of its overarching objective are engaged in this case. There is clear and compelling evidence that Dr Salcius’ lack of English language skills have put patients at risk of harm. Public confidence in the profession could be damaged if Dr Salcius was allowed to practise medicine in the UK, even under restrictions, when the evidence suggests that his English language skills are insufficient for safe practice as a doctor in the UK. Finally, the Tribunal has a duty to ensure that standards are upheld. Dr Salcius has failed to comply with a reasonable direction made by his regulator. The Tribunal concluded that a period of suspension sends a message to the public and the profession that such actions are unacceptable.

16. The Tribunal has determined to suspend Dr Salcius’ registration for a period of 12 months.
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17. In determining the appropriate period of suspension, it concluded that this period was necessary to allow Dr Salcius the opportunity to comply with the GMC’s direction that he should take an English language assessment, whilst pragmatically giving the GMC the opportunity to review Dr Salcius’ case within a reasonable period of time.

18. A Tribunal will review Dr Salcius’ case at a hearing to be held before the end of the period of suspension. It will then consider whether it should take any further action in relation to his registration. Dr Salcius will be informed of the date of that meeting. The Tribunal reviewing Dr Salcius’ case would be assisted by evidence demonstrating that he has complied with the GMC’s direction to undergo an assessment of English language.

Immediate sanction

19. Having determined to impose a non-compliance order of suspension for a period of 12 months, the Tribunal went on to determine whether, in accordance with Section 38 of the Medical Act 1983, an immediate order of suspension is necessary to protect the public and is otherwise in the public interest.

20. The Tribunal took account of the Non-compliance guidance for Medical Practitioners Tribunals at paragraphs C38 which states:

“The tribunal may impose an immediate order where it is satisfied that it is:

a. necessary to protect members of the public

b. desirable in the public interest to maintain public confidence and uphold proper standards of conduct and behaviour

c. …”

21. The Tribunal determined that, in the light of the serious matters which led to the GMC’s decision to direct an English language test, and Dr Salcius’ failure to comply with that direction, it is necessary for the protection of members of the public and is in the public interest to suspend Dr Salcius’ registration forthwith.

22. The order of immediate suspension will take effect when notice is deemed to have been served upon Dr Salcius. Dr Salcius has 28 days in which to lodge an appeal against the Tribunal’s decision to suspend his registration for 12 months. If he lodges an appeal, the immediate order for suspension will remain in force until the appeal has been determined.

23. The interim order currently imposed on Dr Salcius’ registration will be revoked when notice is deemed to have been served upon him.

MPT: Dr SALCIUS
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24. That concludes this hearing.

Confirmed
Date 20 December 2019  Mr Robert Ward, Chair