Record of Determinations
Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 25/06/2019

Medical Practitioner’s name: Dr Mihai BALANICA

GMC reference number: 7088105

Primary medical qualification: Doctor - Medic 1979 Carol Davila

Type of case: New - Non-compliance with a performance assessment

Outcome on non-compliance: Non-compliance found

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

Tribunal:

<table>
<thead>
<tr>
<th>Role</th>
<th>Name</th>
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</thead>
<tbody>
<tr>
<td>Legally Qualified Chair</td>
<td>Mr Andrew Webster</td>
</tr>
<tr>
<td>Lay Tribunal Member:</td>
<td>Mrs Jillian Alderwick</td>
</tr>
<tr>
<td>Medical Tribunal Member:</td>
<td>Prof Tony Redmond</td>
</tr>
<tr>
<td>Tribunal Clerk:</td>
<td>Mrs Sam Montgomery</td>
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Attendance and Representation:

<table>
<thead>
<tr>
<th>Role</th>
<th>Name</th>
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<tr>
<td>Medical Practitioner:</td>
<td>Not present and not represented</td>
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<tr>
<td>Medical Practitioner’s Representative:</td>
<td>NA</td>
</tr>
<tr>
<td>GMC Representative:</td>
<td>Ms Elizabeth Dudley-Jones, 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 partly in public and partly in private.

Background and findings on non-compliance

‘On 20 July 2016 the GMC were notified by DRC Locums that concerns had been raised about you whilst working as a locum Cardiology SHO at Blackpool Victoria Hospital. These concerns related to your knowledge, performance and attitude.

On 20 September 2016 the GMC received correspondence from The East Lancashire Hospitals Trust in which concerns were raised regarding your skills, experience and understanding.

On 18 November 2016 you were directed under Rule 7(3) and Schedule 1 of the Fitness to Practise Rules 2004 to undertake an assessment of your performance. You were asked to consent to the performance assessment and complete an assessment portfolio and return it to the GMC by 16 December 2016.

On 21 December 2016 the GMC sent you correspondence again asking you to consent to undergo a performance assessment and requested that the assessment portfolio be returned by 4 January 2017.

On 19 January 2017 the GMC sent you further correspondence again asking you to consent to undergo a performance assessment and requested that the assessment portfolio be returned by 26 January 2017.

On 25 January 2017 you confirmed that you would respond to the GMC’s request for consent to undertake a performance assessment.

On 27 January 2017 you returned the assessment portfolio and asked the GMC to take into account your financial problems when arranging the performance assessment.

On 9 March 2017 the GMC sent you a performance assessment confirmation letter requesting that you confirm your attendance.

During a telephone call with the GMC on 30 March 2017 you explained that you were experiencing financial difficulties and you were not in a position to pay for flights. The GMC advised that unless you responded by 13 April 2017 it would be assumed that you would not be attending the performance assessment.

On 18 April 2017 you responded stating ‘if the circumstances are favourable I will attend the meeting’. You asked whether the assessment could be held in London.
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On 20 April 2017, in response, the GMC informed you that it was not possible to move the location of the assessment to London as the designated skills centre is in Manchester. You were asked to confirm by 4 May 2017 whether you would attend the performance assessment. To date a response has not been received.

On 21 September 2017 the GMC wrote to you confirming that an Assistant Registrar had referred you to the MPTS for a hearing.

On 11 October 2017 during a telephone call with the GMC you confirmed that you be unable to come to the UK to undertake the assessment as you worked in Spain and required money to live.

A hearing date was set for 20 November 2017, this was adjourned and the subsequent relisted hearing was cancelled as you had instructed representatives who indicated your willingness to comply with the direction to undergo a performance assessment.

On 19 January 2018 you were directed under Rule 7(3) and Schedule 1 of the Fitness to Practise Rules 2004 to undertake an assessment of your performance. You were asked to consent to the performance assessment and complete an assessment portfolio and return it to the GMC by 16 February 2018.

On 14 February 2018 you provided an updated portfolio.

On 19 March 2018 the GMC sent you information about your performance assessment and requested a translated version of your CV.

On 22 March 2018 the GMC wrote to your Legal Representatives requesting confirmation of your attendance at the performance assessment.

On 5 April 2018 the GMC wrote again requesting confirmation of your attendance.

On 13 April 2018 during a conversation with the GMC you advised that your Legal Representatives were still instructed to act on your behalf and that you intended to provide an updated CV.

On 30 April 2018 you were sent a draft timetable for your assessment.

On 5 May 2018 you advised that XXX you didn’t think you wouldn’t be able to attend your assessment.

On 17 May 2018 the GMC wrote to you requesting an update on your attendance. You responded the same day confirming that you had XXX.
On 18 May 2018 the GMC wrote to you requesting XXX evidence to support your reasons for not attending your assessment.

On 7 June 2018 the GMC wrote again requesting XXX evidence. XXX.

On 15 June 2018 the GMC received confirmation that your Legal Representatives were no longer instructed to act on your behalf. The same day the GMC wrote to you confirming that the assessment had been cancelled due XXX and your failure to engage in the Performance Assessment process. The email also advised that you would need to provide evidence supporting XXX.

On 19 October 2018 the GMC wrote to you requesting XXX along with an explanation of the non-compliance process.

On 12 November 2018 you provided further documents to the GMC in Spanish. XXX.

On 15 January 2019, the GMC wrote to you again to XXX and provide you with details of the Performance Assessment that you had been directed to undergo and explaining the non-compliance process.

On 17 January 2019 you wrote to the GMC to state that you did not plan to work in the UK and that stress is harmful to any human after 50 years.

On 14 March 2019 the GMC wrote to you confirming that an Assistant Registrar had referred you to the MPTS for a hearing.

On 16 April 2019 you were notified that the hearing of your non-compliance would commence on 25 June 2019.

You have failed to comply in full with the request to undertake an assessment of your performance as directed by the GMC.

There is no good reason for your failure to comply with the GMC's request.

**Determination on consideration of non-compliance 25/06/2019**

**Background**

1. Dr Balanica was a locum Cardiology SHO at Blackpool Victoria Hospital when concerns were raised regarding his professional performance, including his lack of
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knowledge, performance and attitude. Dr A, Consultant Cardiologist, in his referral letter of 22 June 2016, set out concerns which had come to light during a ward round with Dr Balanica, including:

- A failure to work effectively and/or collaboratively with colleagues,
- Inadequate ward-round notes,
- A failure to recognise what was wrong with a patient,
- Refusal to discuss a case with microbiology,
- Standards of hygiene (he wore the same gloves throughout the ward round).

2. Dr A was of the opinion that Dr Balanica was not ready to be employed in the NHS in any capacity and certainly not as a Cardiology SHO.

3. In a letter dated 20 September 2016, further concerns were raised by the East Lancashire Hospitals (ELH) NHS Trust regarding Dr Balanica’s skills, experience and understanding during his locum position at F2 level in the Medicine for the Older People (MfoP) directorate. In particular that Dr Balanica:

- appeared to have limited experience/understanding of the practice of UK medicine,
- appeared to have limited experience/understanding of geriatric medicine,
- appeared to have limited experience/understanding of how to practice in a junior role in a UK hospital.

4. The ELH NHS Trust concluded that Dr Balanica was functioning at the level of clinical attachee (i.e. a doctor in a clinical observation role only) and would need significant supervision before he reached a level consistent with working at the level expected of a junior ward doctor.

5. The allegations were of such concern that both locum positions were terminated early.

6. Dr Balanica provided a detailed response to the allegations made against him by Dr A. He stated that he does not accept any of the criticisms made.

The Outcome of Applications Made

7. The Tribunal granted the GMC’s application, made pursuant to Rule 31 of the GMC (Fitness to Practise) Rules 2004 (the Rules), to proceed with the hearing in Dr Balanica’s absence. The Tribunal’s full decision is included at Annex A.

Today’s proceedings

8. The Tribunal has considered the non-compliance matter referred to it in respect of Dr Balanica, as follows:
On 20 July 2016 the GMC were notified by DRC Locums that concerns had been raised about you whilst working as a locum Cardiology SHO at Blackpool Victoria Hospital. These concerns related to your knowledge, performance and attitude.

On 20 September 2016 the GMC received correspondence from The East Lancashire Hospitals Trust in which concerns were raised regarding your skills, experience and understanding.

On 18 November 2016 you were directed under Rule 7(3) and Schedule 1 of the Fitness to Practise Rules 2004 to undertake an assessment of your performance. You were asked to consent to the performance assessment and complete an assessment portfolio and return it to the GMC by 16 December 2016.

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On 18 April 2017 you responded stating ‘if the circumstances are favourable I will attend the meeting’. You asked whether the assessment could be held in London.
On 20 April 2017, in response, the GMC informed you that it was not possible to move the location of the assessment to London as the designated skills centre is in Manchester. You were asked to confirm by 4 May 2017 whether you would attend the performance assessment. To date a response has not been received.

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XXX

On 19 October 2018 the GMC wrote to you requesting XXX along with an explanation of the non-compliance process.

XXX

On 12 November 2018 you provided further documents to the GMC in Spanish. XXX.

On 15 January 2019, the GMC wrote to you again to XXX and provide you with details of the Performance Assessment that you had been directed to undergo and explaining the non-compliance process.

On 17 January 2019 you wrote to the GMC to state that you did not plan to work in the UK and that stress is harmful to any human after 50 years.

On 14 March 2019 the GMC wrote to you confirming that an Assistant Registrar had referred you to the MPTS for a hearing.

On 16 April 2019 you were notified that the hearing of your non-compliance would commence on 25 June 2019.

You have failed to comply in full with the request to undertake an assessment of your performance as directed by the GMC.

There is no good reason for your failure to comply with the GMC's request.’

Evidence
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9. 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, including, but not limited to:

- The email referral from Mr B, DRC Locums, dated 20 July 2016,
- A letter from Dr A, Consultant Cardiologist to Medacs, dated 22 June 2016,
- An email chain, dated 20-21 July 2016, between Dr Balanica and DRC Locums,
- A letter, dated 17 July 2016, from Dr Balanica to Medacs,
- A letter, dated 20 September 2016, from East Lancashire Hospitals NHS Trust to the GMC,
- Correspondence between the GMC and Dr Balanica,
- Correspondence between the GMC and Dr Balanica’s legal representatives (who were no longer instructed as of 15 June 2018).

Submissions

10. The Tribunal has taken account of the submissions made by Ms Dudley-Jones, on behalf of the GMC. She submitted that the request for Dr Balanica to undergo a GMC Performance Assessment (PA) was reasonable given the circumstances of the case and the detailed concerns expressed, by two separate hospitals, regarding Dr Balanica’s knowledge, performance and attitude. Ms Dudley-Jones submitted that it is plain that Dr Balanica has completely failed to comply with the direction for a PA. Further, she submitted that there is no good reason for his failure to comply. She took the Tribunal to the details of non-compliance and the constant changing of Dr Balanica’s position including as to his denial of the allegations, the assessment location, financial matters and XXX. She submitted that despite frequent requests as to why it is he is unable to attend the PA Dr Balanica has failed to provide any good reason.

11. Ms Dudley-Jones confirmed that after consideration of the entire chronology of the case the GMC Assistant Registrar determined, on 19 January 2018, to refer the matter to a non-compliance hearing. She submitted that, given the whole range of reasons forwarded by Dr Balanica for not undertaking the PA, XXX provided by Dr Balanica most recently are not reasonable. She submitted that Dr Balanica has provided various reasons to justify not attending the PA and in those circumstances the GMC rely on the entire chronology of the case. She submitted that the Tribunal is presented with a registrant who is refusing or unwilling to provide further information requested in order to assist the GMC.

The Tribunal’s approach
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12. 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.

13. The Tribunal has adopted the approach set out in legal advice and in the MPTS document ‘Non-compliance hearings guidance for the Medical Practitioners Tribunal’ in determining whether to make a finding of non-compliance, namely:

- Was the GMC’s direction to provide information to undergo an assessment reasonable given the circumstances of the case and the evidence available to the decision maker(s)?

- Is there sufficient evidence to show that the doctor has failed to comply with the direction?

- Is there evidence to suggest that there was good reason for the doctor’s failure to comply (i.e. was it unavoidable or otherwise excusable)?

14. The Tribunal has borne in mind the serious concerns raised by two Trusts regarding Dr Balanica’s knowledge, performance and attitude. It notes that there were a number of performance and patient safety concerns. In all the circumstances, the Tribunal considers that the request for Dr Balanica to undergo a PA was reasonable when first made in November 2016 and when repeated in January 2018. It notes that in particular the January 2018 request was made in accordance with the GMC’s powers as laid out in the Medical Act 1983 (as amended) and the Rules. The Tribunal considers that the request was proportionate as the allegations were sufficiently serious to justify the GMC directing a PA. The Tribunal considers that a PA would have been an objective way of assessing Dr Balanica’s performance and would assist the GMC in further investigating matters.

15. The Tribunal had regard to the numerous correspondence between the GMC and Dr Balanica and the chronology of the case, as set out above in the GMC’s allegation of non-compliance. It noted that Dr Balanica initially agreed to undergo the PA and the GMC made arrangements for this take place on 20 and 21 June 2018. However, Dr Balanica confirmed on 15 June 2018 that he would not be attending XXX. The Tribunal has determined that Dr Balanica has explicitly refused to comply with a direction to undergo a PA and XXX.

16. Whilst Dr Balanica has provided some supporting evidence in relation to XXX he has not provided information to substantiate why the XXX would prevent him from attending a PA. In correspondence dated 8 November 2018 the GMC highlighted to Dr Balanica the need for information as to why XXX precluded or made it difficult for him to attend a PA. XXX. In his most recent correspondence, dated 24 June 2019, Dr Balanica refers to his ‘respect for his duties in Spain’ which
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prevent him from travelling to the UK to attend the hearing and makes no reference to XXX.

17. Furthermore, the Tribunal is concerned, from the chronology of the case, that Dr Balanica has provided numerous explanations as to why he should not or cannot undertake a PA despite repeated requests by the GMC. He has not provided supporting evidence to substantiate his explanations, including in respect of the most recent direction to undertake a PA as to why his XXX, financial concerns or ‘duties’ in Spain preclude him from attending. The Tribunal therefore considers that Dr Balanica’s failure to comply was not unavoidable or otherwise excusable.

18. In the circumstances the Tribunal has determined that Dr Balanica has failed to comply with a reasonable direction to undergo an assessment of his performance without reasonable excuse and so finds that there has been non-compliance.

Determination on sanction 25/06/2019

1. Having determined that there is non-compliance by reason of Dr Balanica’s failure to submit to a performance assessment (PA) in accordance with Schedule 1 of the Rules the Tribunal has considered whether a sanction should be imposed.

2. The Tribunal has considered the submissions made by Ms Dudley-Jones, Counsel, on behalf of the GMC regarding the appropriate sanction, if any, that could be imposed on Dr Balanica’s registration.

3. Ms Dudley-Jones submitted that the Tribunal might impose a sanction of suspension with immediate effect. If so, she also invited the Tribunal to revoke the interim order of suspension currently imposed on Dr Balanica’s registration.

4. Ms Dudley-Jones referred to the Non-compliance hearings guidance for medical practitioner tribunals (the guidance). She submitted that Dr Balanica has not provided any mitigation for his non-compliance with the direction to undergo a PA and therefore conditions would not be appropriate. She submitted that Dr Balanica has had ample opportunity to comply and has failed to do so. Furthermore, there is no information to suggest that conditions are likely to be sufficient.

5. The Tribunal is aware that the decision as to the appropriate sanction, if any, to impose on Dr Balanica’s registration is a matter for this Tribunal exercising its independent judgment. In reaching its decision, the Tribunal has taken account of the guidance.

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

7. 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

8. The Tribunal first considered whether to conclude Dr Balanica’s case and take no action.

9. The Tribunal has borne in mind the serious concerns raised regarding Dr Balanica’s professional performance. It considers that the concerns identified present a risk to patient safety and adversely affect the public interest.

10. The Tribunal has therefore determined that it would not be appropriate to conclude this case with no action. Furthermore, it considered that there were no exceptional circumstances to indicate that taking no action would be appropriate.

Conditions

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

12. The Tribunal has borne in mind the serious concerns raised regarding Dr Balanica’s knowledge, performance and attitude and the opinion expressed that Dr Balanica was functioning at the level of a clinical attachee (i.e. a doctor in a clinical observation role only). In the circumstances it considered that conditions would not be workable. Furthermore, given Dr Balanica’s failure to comply with a reasonable direction to undergo a PA the Tribunal was not convinced that Dr Balanica would comply with any restrictions imposed on his registration. The Tribunal has therefore determined that conditions would not be workable or appropriate.

Suspension

13. Having determined that the imposition of conditions would not be appropriate the Tribunal has determined to suspend Dr Balanica’s registration for a period of 12 months. The Tribunal considered that such a period was required in order to
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reflect the concerns relating to his non-compliance. In addition, the Tribunal is aware that it would take approximately six months for the PA process to be completed, should Dr Balanica decide to comply with the GMC's request.

14. The effect of this direction is that, unless Dr Balanica exercises his right of appeal, this decision will take effect 28 days from when written notice of this determination is deemed to have been served upon him. A note explaining his right of appeal will be provided to him.

15. A Tribunal will review Dr Balanica’s 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 Balanica will be informed of the date of that meeting, which he will be invited to attend.

**Determination on immediate order 25/06/2019**

1. Having determined that Dr Balanica’s registration be suspended the Tribunal has now considered, in accordance with Section 38 of the Medical Act 1983 as amended, whether to impose an immediate order on Dr Balanica’s registration.

2. Ms Dudley-Jones submitted that, given the reasons for directing a performance assessment included serious clinical concerns, it would be appropriate to impose an immediate order. She submitted that the matters before the Tribunal do pose a risk to patient safety.

3. The Tribunal has determined that, given the serious performance issues raised, it is necessary for the protection of members of the public and in the public interest to suspend Dr Balanica’s registration forthwith.

4. The order of immediate suspension will take effect when notice is deemed to have been served upon Dr Balanica. If Dr Balanica lodges an appeal, the immediate order for suspension will remain in force until the appeal is determined.

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

6. That concludes this hearing.

**Confirmed**
**Date 25 June 2019**

Mr Andrew Webster, Chair
Application on Service and Proceeding in Absence

Service

1. Dr Balanica is neither present nor legally represented at this hearing. The Tribunal has considered the submission made by Ms Dudley-Jones, Counsel, on behalf of the GMC, that notification of this hearing has been properly served upon him.

2. Ms Dudley-Jones provided the Tribunal with a copy of a Service bundle which included a letter from the GMC to Dr Balanica, dated 21 May 2019, confirming the hearing date and including the ‘Details of Non-compliance’. This was successfully delivered to Dr Balanica’s registered address on 24 May 2019 and was signed for by ‘M Balanica’. The letter was also emailed to Dr Balanica on 21 May 2019, to the email address provided by him.

3. Ms Dudley-Jones drew the Tribunal’s attention to a copy of the Notice of Hearing dated 22 May 2019, sent by the Medical Practitioners Tribunal Service, in accordance with the Fitness to Practise Rules 2004 (the Rules). This was successfully delivered to Dr Balanica’s registered address on 24 May 2019 and was signed for by ‘M Williams’. The notice of hearing was also emailed to Dr Balanica on 22 May 2019.

4. Ms Dudley-Jones referred to the email from Dr Balanica, dated 12 June 2019, in which he stated that ‘I consider the matter in your hands. It could be arranged without my presence.’ Further, in an email dated 24 June 2019 Dr Balanica confirmed that he would not be attending the hearing.

5. Having considered the evidence before it, the Tribunal was satisfied that all reasonable efforts have been made to serve Dr Balanica with notice of this hearing in accordance with Rules 15 and 40 of the GMC’s (Fitness to Practise Rules) Order of Council 2004, as amended (‘the Rules’), and paragraph 8 of Schedule 4 to the Medical Act 1983, as amended.

Proceeding in absence

6. Having been satisfied that notice was properly served upon Dr Balanica, the Tribunal then considered whether to proceed with this hearing in his absence, in accordance with Rule 31 of the Rules. The Tribunal is aware that the discretion to proceed in the absence of a doctor should be exercised with the utmost care and caution, balancing the interests of the doctor with the wider public interest.

7. Ms Dudley-Jones invited the Tribunal to proceed with the hearing in Dr Balanica’s absence. She submitted that it is clear that not only is Dr Balanica
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aware of the hearing but he is content that the hearing go ahead in his absence. She submitted that nothing would change if the hearing was adjourned today as Dr Balanica is content for the hearing to go ahead in his absence and he does not make an application to adjourn the matter. Ms Dudley-Jones submitted that, given the clinical concerns, there is a strong public interest in having today’s hearing promptly.

8. The Tribunal has balanced Dr Balanica’s interests with the public interest in deciding whether to proceed in his absence.

9. In so doing it has considered the serious performance concerns raised. Further, the Tribunal was satisfied that Dr Balanica is aware of the hearing today and has not requested a postponement. In the circumstances the Tribunal considers that Dr Balanica has voluntarily absented himself from proceedings and waived his right to be present or represented. The Tribunal considers that no purpose would be served by an adjournment. It has determined that, given the performance concerns raised and the need for such matters to be dealt with expeditiously, it is in the interests of patient safety and in the public interest to proceed in Dr Balanica’s absence.