Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 11/04/2017 – 12/04/2017

Medical Practitioner’s name: Dr Nandini BANERJEE
GMC reference number: 7023741
Primary medical qualification: MB BS 2005 Kasturba Medical College (Manipal)

Type of case Outcome on impairment
Restoration following Voluntary Erasure N/A

Summary of outcome
Restoration application granted. Restore to Medical Register.

Tribunal:

<table>
<thead>
<tr>
<th>Role</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legally Qualified Chair</td>
<td>Mr Andrew Lockley</td>
</tr>
<tr>
<td>Lay Tribunal Member</td>
<td>Mr Michael Turner</td>
</tr>
<tr>
<td>Medical Tribunal Member</td>
<td>Professor Robert Mansel</td>
</tr>
<tr>
<td>Tribunal Clerk</td>
<td>Ms Esther Morton</td>
</tr>
</tbody>
</table>

Attendance and Representation:

<table>
<thead>
<tr>
<th>Role</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical Practitioner</td>
<td>Present and represented</td>
</tr>
<tr>
<td>Medical Practitioner’s Representative</td>
<td>Mr Michael Hayton, QC (direct access)</td>
</tr>
<tr>
<td>GMC Representative</td>
<td>Mr Carlo Breen, Counsel, instructed by GMC Legal</td>
</tr>
</tbody>
</table>

Attendance of Press / Public
The hearing was all heard in public.
Determination on Application for Restoration following Voluntary Erasure
- 12/04/2017

Dr Banerjee:

1. You have applied to the General Medical Council ('GMC') for the restoration of your name to the Medical Register following your Voluntary Erasure ('VE') in July 2011.

2. The Tribunal has considered your application in accordance with the provisions set out in The General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004, as amended ('the Regulations') as well as Rule 24 of The General Medical Council (Fitness to Practise) Rules 2004 ('the Rules').

3. This is your third application for your name to be restored to the Medical Register.

Background

4. Prior to your VE your last post in the UK was at the Royal Berkshire Hospital NHS Foundation Trust ('the Trust'), where you were employed as a Foundation Year 2 doctor ('FY2'). In February 2011 it was alleged that you had falsified three items within your e-portfolio record of training. Between 4 and 11 February 2011 you attended three meetings with the Trust regarding these e-portfolio entries; at the last meeting on 11 February 2011 you were informed that the Trust would be investigating concerns regarding your e-portfolio entries.

5. On 14 February 2011 you emailed the Chief Medical Officer at the Trust and admitted tampering with e-portfolio entries. On 25 and 27 January 2011 you had created three assessments into which you entered above average grades and positive comments purporting to be from colleagues; you then emailed the colleagues in question stating that the automatically generated acknowledgment emails they had received were sent in error due to a system malfunction.

6. An internal capability and conduct investigation was carried out by the Trust. As part of this investigation, all your e-portfolio entries were checked, and it was confirmed that you had made three false entries. Further concerns were raised regarding your communication, team-working skills, and alleged
Record of Determinations –
Medical Practitioners Tribunal

inappropriate/incompetent clinical practice. On 23 May 2011 a disciplinary hearing was held, and you were dismissed from the Trust on the grounds of gross misconduct in relation to the falsified entries in your e-portfolio.

7. You were subsequently referred to the GMC XXX. However, before the fitness to practise matters progressed any further you informed the GMC that you were moving abroad, and that you no longer wished to pursue a career in medicine. You applied for VE, and this was granted on 18 July 2011. You were informed that, should you apply to re-join the register, then the matters referred to the GMC by the Trust would again be considered. On 7 March 2012 you applied to restore your name to the medical register.

First application for restoration

8. Your restoration application was first considered by a Fitness to Practise Panel in February 2013 (‘the 2013 Panel’).

9. The 2013 Panel noted that your VE was granted partly because of your assurance that you no longer wished to pursue a career in medicine. It noted that from April 2011, alongside your application for VE, you had been considering working in Australia. Further, you also applied to sit the clinical examination in New Zealand in August 2011. In addition, you applied for (and were granted) registration as a doctor in the Maldives in August 2011, and secured medical employment in the Maldives in September 2011. You informed the 2013 Panel that you had changed your mind about not pursuing a career in medicine following a short period of reflection, and discussion with family and friends. The 2013 Panel did not consider that there was sufficient evidence to suggest that this was evidence of a lack of probity, and therefore drew no inference – positive or negative – from this matter.

10. With regard to capability concerns raised by the Trust, the 2013 Panel found that these were not serious enough to raise any issue regarding your fitness to practise. However, the 2013 Panel made a number of adverse findings in relation to your probity. It bore in mind that you had falsified three e-portfolio records, and did not bring your actions to the Trust’s attention of your own volition, despite having had three opportunities to do so. It found that, not only did you attempt to cover up your dishonesty by telling colleagues that the automated emails were sent in error, but that you only admitted your dishonesty after being told that the Trust would be formally investigating the matter. The 2013 Panel therefore found that your actions were a deliberate and calculated attempt to deceive.
Record of Determinations – Medical Practitioners Tribunal

11. In evidence, you informed the 2013 Panel that – had the matter not come to light – you would have undertaken more assessments in order to make up for the false assessments, and even with hindsight, your evidence was that you would not have gone to your supervisors and admitted your dishonesty. The 2013 Panel therefore had concerns about your level of insight into your dishonesty.

12. Bearing the above in mind, the 2013 Panel refused your application to restore your name to the medical register, concluding that:

   ‘The Panel has determined that your dishonest actions in relation to falsifying three e-portfolio assessments are sufficiently serious such that if the Panel were to restore your name to the Register it would be likely to undermine public confidence in the profession. It would also fail to meet its obligation to declare and uphold appropriate standards of conduct and behaviour required of registered medical practitioners’.

Second application for restoration

13. Your second application for restoration was considered by a Fitness to Practise Panel in July 2014 (‘the 2014 Panel’). The 2014 Panel was provided with CPD documentation, but it was concerned that your CPD activities did not directly relate to the probity concerns. Furthermore, it commented that it was not provided with any detailed documentation regarding supervision received during your period working as a volunteer medical officer in India.

14. The 2014 Panel considered that the nature of your original dishonesty, together with your attempt to conceal it, was a ‘very serious’ departure from the standards of behaviour expected of a doctor. The 2014 Panel found that your dishonesty was triggered because you perceived there to have been unjustified criticisms of your work which might have impacted upon your career, and in evidence you made reference to capability issues being ‘fabricated’ by colleagues who had conspired against you. The 2014 Panel found that this continued inability to recognise and respond to criticism demonstrated a lack of insight and understanding into the serious nature of your behaviour, and it was concerned that, given this, there was a risk of repetition.

15. The 2014 Panel determined not to restore your name to the medical register, concluding:

   ‘...the Panel has heard your expressions of regret at your dishonest falsification of documents, but has insufficient evidence to reassure it that you have fully appreciated the serious implications of your dishonest behaviour,'
which would, but for your VE, almost without doubt have resulted in a FTP Panel imposing a severe sanction. On this basis it has to conclude that it would not be safe or in the public interest for you to be deemed fit to practise. To restore you at this point would damage public confidence in the profession.’

16. The 2014 Panel directed that a period of 24 months must elapse before you be permitted to make another application for restoration, stating that this period was proportionate and sufficient ‘to allow you to reflect further on your dishonest actions and to be able to demonstrate that you are fit to practise’.

17. You brought Judicial Review proceedings against the decision of the 2014 Panel, but these proceedings were unsuccessful in both the High Court and the Court of Appeal.

18. On 4 July 2016 you applied to the GMC for your name to be restored to the medical register for the third time.

Evidence before this Tribunal

19. The Tribunal had regard to the supporting documentation provided on your behalf, which includes evidence of the following:

- A certificate of good standing from the Maldives Medical and Dental Council, dated 10 May 2016;

- Articles authored by you published on GlobalData;

- A Master of Science (‘MSc’) degree in Infectious Diseases awarded by the University of London on 1 November 2015;

- Continuing Professional Development (‘CPD’) documentation, including a certificate of attendance at a course entitled ‘Advanced Team Communication for Doctors’ (March 2015), a self-assessment document for an MDU-approved course on Ethics and Law, and a certificate for a course entitled ‘Fundamentals of Medical Ethics’ (January 2013);

- A letter dated 26 February 2016 from the Calcutta School of Tropical Medicine confirming you had observed at the Institute, which included attending ward rounds and seeing patients in the outpatient clinic under observation;
Record of Determinations – Medical Practitioners Tribunal

- An updated Personal Development Plan ('PDP'), including a reflective statement;

- A 2016 Alternative Certificate confirming achievement of foundation competencies signed by the Superintendent of Philadelphia Leprosy Hospital, India;

- An email dated 23 December 2016 from JRCPTB Specialty Recruitment confirming your eligibility for a 2017 CT1 training post.

20. The Tribunal further had regard to your letter dated 4 July 2016 in which you raised concerns about the capability of the 2014 Panel, as well as email correspondence between yourself and the GMC. You gave oral evidence to this hearing, and answered questions put to you by the Tribunal, as well as those put to you by both advocates.

21. Your evidence at this hearing is that you have remediated your dishonesty, have appraised yourself of the principles set out in Good Medical Practice ('GMP'), and have reflected on your conduct and behaviour. You repeated that you deeply regretted your dishonest actions, and told the Tribunal that you have tried to learn from those actions to ensure that they do not happen again. You explained that you understand that doctors are expected to behave in an honest way, and that your dishonest behaviour had fallen short and had let the profession down. You stated that you understood the importance of maintaining public confidence in the medical profession, and accepted that you took full responsibility for everything you had done wrong.

22. In relation to your clinical and teaching experience in India, you gave the Tribunal examples of issues that had been at the forefront of your mind. This included the need for detailed clinical examinations, the need for informed consent, the need for full patient notes, difficulties that can arise when treating patients with language and cultural differences, and the need to manage patient expectations.

23. Asked what had prompted your apologies to GMC staff for accusations made in email correspondence, you stated that you were generally a polite person, and that you had realised that your behaviour had ‘fallen short’.
Record of Determinations –
Medical Practitioners Tribunal

Submissions

24. The Tribunal does not intend to rehearse the submissions in full, as these are a matter of record.

GMC submissions

25. Mr Breen, for the GMC, reminded the Tribunal that on two previous occasions you have expressed contrition and remorse for your actions. He stated that you told both the 2013 and 2014 panels that you had gained insight into your dishonesty, and had assured both panels that your actions would not be repeated. On both occasions the panel rejected your assurances. Mr Breen questioned whether anything of significance has occurred between 2014 and this hearing, such that this Tribunal could be satisfied that you have gained sufficient insight into your dishonesty, and have remediated that dishonesty.

26. However, Mr Breen submitted that your letter of 4 July 2016 (‘the July letter’) is a ‘far cry’ from your evidence, and raises issues regarding your credibility. He submitted that, whilst a doctor may well criticise the findings of a tribunal or its approach to the law, in the July letter you made ‘scandalous’ allegations about the 2014 Panel, particularly with regard to their probity and their academic status. Mr Breen invited the Tribunal to consider, as an example, your comparison of the 2014 Panel with supermarket checkout assistants. He submitted that this behaviour should cause the Tribunal to question whether you have actually reflected on your behaviour, and whether you actually have insight into how doctors should conduct themselves. Mr Breen submitted that a reasonable and well-informed member of the public looking at the July letter would conclude that your comments undermined the fundamental tenets of the profession, and he submitted that your comments brought the medical profession as a whole into disrepute.

27. Whilst accepting that you may have been under a great deal of stress at the time of writing the July letter, Mr Breen submitted that stress is not an excuse for your behaviour. He submitted that the Tribunal may take the view that, once exposed to stress, you ‘lash out’ with outrageous allegations, and he submitted that such behaviour demonstrated a wholesale lack of insight. Mr Breen drew the Tribunal’s attention to the accusations of racism made in the July letter, and submitted that you were ‘throwing around’ harmful allegations that you knew were not meritorious.

28. With regard to your supporting documentation provided at this hearing, Mr Breen submitted that your reflective statement lacked detail. He submitted that you
Record of Determinations – Medical Practitioners Tribunal

should have had the foresight to provide more detail, particularly given the criticisms made by the 2014 Panel. In relation to CPD, Mr Breen submitted that it was ‘somewhat far-fetched’ to suggest that the courses you have attended are relevant to probity, also describing some course certificates as ‘antique’.

29. Mr Breen took the Tribunal to sections of the Sanctions Guidance dealing with remediation and insight, and he questioned whether you are a doctor who has learnt from the past. Mr Breen submitted that the July letter, as well as your email correspondence with the GMC, all indicate that you have not learnt from past mistakes. He submitted that, if you had truly reflected on the principles set out in GMP, you would not have written the letter and emails in the manner which you did. Furthermore, you would have done more in terms of relevant remediation, and you would have written a detailed reflective statement. Mr Breen submitted that the Tribunal could not, in confidence, be satisfied that you have remediated, and accordingly, he submitted that it would not be in the spirit of the statutory overarching objective to restore your name to the Medical Register. He therefore invited the Tribunal to reject your application for restoration.

Submissions on your behalf

30. Mr Hayton QC, on your behalf, reminded the Tribunal that your case is unusual in that you are not seeking restoration following erasure by a Fitness to Practise Panel/ Medical Practitioners Tribunal, but are instead seeking restoration following VE.

31. In terms of what has changed since your previous hearing, Mr Hayton submitted that the passage of time is a very significant factor, and he invited the Tribunal to take account of the fact that there has been no repetition of your dishonesty in the six intervening years since 2011.

32. Addressing Mr Breen’s criticism of your documentation, Mr Hayton submitted that it was wrong for the GMC to suggest that the documents you provided were intended solely to deal with remediation in terms of probity. Mr Hayton submitted that, when deciding whether to restore a doctor to the Medical Register, a Tribunal must also consider the doctor’s capability. He submitted that the certificate showing you had completed a two year MSc in Infectious Diseases, as an example, is an impressive document which shows intellect, persistence, and determination to remain engaged in medical work. Likewise, he submitted that the GlobalData material shows that you are working successfully in a medical-related field.
33. With regard to insight, Mr Hayton submitted that you have repeatedly demonstrated that you are aware that your actions were wrong. He invited the Tribunal to consider your reflective statement as well as your live evidence, and to bear in mind that your dishonesty was a ‘foolish’ isolated incident that you have since paid for heavily. Turning to the July letter and your emails to the GMC, Mr Hayton accepted that this correspondence was ‘unattractive’. However, he invited the Tribunal to take into account that you subsequently – and of your own volition – apologised for the comments made. He submitted that it would be ‘hugely disproportionate’ to deprive you of your career on the basis of this correspondence, and he invited the Tribunal to consider your comments in the context of the comments made by Sir Terence Etherton MR in the Court of Appeal (R (on the application of Banerjee) v General Medical Council [2017] EWCA Civ 78), where he referred to the hearing before the 2014 Panel, and set out:

‘I can quite understand why Dr Banerjee was taken by surprise by the course which the hearing took and why she may have felt discomforted and unsettled by it.’

34. Turning to the public interest, Mr Hayton submitted that a reasonable and well-informed member of the public would consider that you did something ‘stupid’ six years ago at a time in your life when you were under immense stress both personally and professionally. He submitted that the member of the public would weigh this isolated error with the fact that there has been no suggestion of any repetition since, the fact that you have reflected and shown insight into your error, and the fact that you are otherwise a competent and well-educated doctor. He submitted that this member of the public would question why the NHS was being continually deprived of your skills because of two ‘stupid’ days six years ago.

35. Mr Hayton submitted that there are no clinical concerns of note, and that subsequent to your VE you have carried out well-respected academic and research work that is relevant to medicine, and have carried out clinical work aboard which has not given rise to any concern. Further, this clinical work has satisfied the appropriate authorities that you are eligible to take up a Core Training Post in the UK. Mr Hayton submitted that, if restored to the Medical Register, you would return to clinical practice as a Core Trainee in a supervised and observed junior position.

36. Mr Hayton submitted that, since 2011, you have worked successfully around the world in medical-related roles, have kept your medical skills and knowledge up to date, have attended relevant courses on ethics, have reflected at length on your dishonesty, and have not shown any sign of repetition. He submitted that these steps should allay any fears the Tribunal may have about risk of repetition, or lack of
insight. Bearing all of the above in mind, Mr Hayton submitted that it is now appropriate to restore your name to the Medical Register, and to allow you to embark once more on your career in medicine.

**The Tribunal’s Decision**

37. Whilst the Tribunal has borne in mind the submissions made, the decision as to whether to restore your name to the Medical Register is a matter for this Tribunal exercising its own judgment.

38. The Tribunal heard the advice of the Legally Qualified Chair, and it bore in mind the statutory overarching objective, which is to:

   a. Protect and promote the health, safety, and wellbeing of the public;

   b. Promote and maintain public confidence in the medical profession;

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

**Health, Performance, or English Language Assessment**

39. The Tribunal first considered whether it was necessary to adjourn under Rule 24(g) to direct a Health, Performance, or English Language assessment. The Tribunal noted that neither party had requested any such assessment, and it determined that an assessment was neither relevant nor necessary in the circumstances of your case.

**Substantive Application for Restoration**

40. The Tribunal next went on to consider whether to restore your name to the Medical Register. In reaching its decision, the Tribunal had regard to the different limbs of the statutory overarching objective, as set out below.

   a. Protect and promote the health, safety, and wellbeing of the public

41. The Tribunal has no reason to believe that you lack capability. Whilst it noted that the Trust investigation raised concerns regarding your clinical practice, the 2013 Panel did not find these concerns to be significant. There is no information before the Tribunal to suggest that you pose a danger to patients, and the Tribunal heard
in evidence that you have kept your medical skills and knowledge up to date by working abroad, including at the Philadelphia Leprosy Hospital in India, and by undertaking research in medical-related fields. It further bore in mind that, whilst any restoration to the Medical Register is unconditional, any return to clinical practice would be at the level of a Core Medical Trainee 1, which by its nature is a supervised training post. Bearing this in mind, the Tribunal determined that there is no evidence that you pose any risk to the health, safety, and wellbeing of the public.

42. The Tribunal considered that a reasonable and well-informed member of the public would accept that even doctors make mistakes, and that your mistake – although serious – was isolated, and has not been repeated in the six years that have since elapsed. The Tribunal further considered that you are a well-educated and competent doctor against whom there are no current capability concerns, and it determined that a reasonable and well-informed member of the public would most likely accept that it was in the public interest for you to return to medical practice.

43. The Tribunal balanced this with your correspondence with the GMC, and particularly with the July letter. It considered that your behaviour as demonstrated in this letter could seriously undermine public confidence in the profession, and could bring the profession as a whole into disrepute. However, the Tribunal also bore in mind that you accepted that your comments were inappropriate. You further apologised of your own volition for the email comments earlier this year, and again in evidence at this hearing. The Tribunal determined that – whilst serious – the comments in your correspondence would almost certainly not meet the threshold for erasure at a Medical Practitioners Tribunal hearing.

44. Bearing the above points in mind, the Tribunal concluded that, leaving aside for the time being the issues relating to probity, it would not be failing in its duty to promote and maintain public confidence in the medical profession if it were to restore you to the Medical Register.

45. The Tribunal was in no doubt that falsifying documentation is a serious failing, and one that falls far below the standards and conduct expected of a medical practitioner. Not only is the falsification of documentation a serious failing in itself, but your dishonesty in attempting to cover up your actions was a serious breach of the most fundamental tenets of the profession. However, the Tribunal bore in mind that your dishonesty took place in the context of substantial professional and
personal stress, and that it has not been repeated in the six intervening years since. Further, you owned up to your dishonesty in early 2011, and have consistently acknowledged that your actions were dishonest and wrong at every hearing since that time.

46. In evidence at this hearing, you explained the value of the courses you have attended by drawing the Tribunal’s attention to your awareness of the ethical principles which underlie different kinds of medical and academic practice. You stated that these principles underlie everything a doctor does, and are not simply a ‘box to tick’. You explained your awareness of the need to abide by strict research ethics, and how you have trained junior staff at the Philadelphia Leprosy Hospital on ethical principles in medical practice. The Tribunal found your evidence to be valuable and convincing, and it was satisfied that you have reflected at length on the proper professional standards and conduct expected of medical practitioners.

47. The Tribunal had regard to the case of Bevan v GMC [2005] EWHC 174 (Admin), which sets out that:

‘...insight is most material to ensure that the doctor has realised that [s]he has indeed gone wrong and therefore will not do anything similar in the future’.

48. The Tribunal noted that you have repeatedly admitted and accepted your dishonesty, and that whilst your reflective statement is brief, you were clear in both your reflective statement and in your evidence to this Tribunal that your actions were wrong, and that you have learnt from them. The Tribunal was satisfied that you have demonstrated insight and that your contrition is genuine.

49. The 2014 Panel directed that a period of 24 months was proportionate and sufficient ‘to allow you to reflect further on your dishonest actions and to be able to demonstrate that you are fit to practise’. The Tribunal is satisfied that, bearing all of the above factors in mind, you now have sufficient insight into your dishonesty, have made all reasonable efforts to remediate your dishonesty, and have demonstrated that you are fit and capable to return to practice. Accordingly, the Tribunal has determined to grant your application.

50. The Tribunal therefore directs that your name be restored to the Medical Register.

51. That concludes your case.
Record of Determinations –
Medical Practitioners Tribunal

Confirmed
Date 12 April 2017

Mr Andrew Lockley, Chair