

PUBLIC RECORD

Dates: 17/06/2024 - 26/06/2024 and 30/08/2024

Medical Practitioner's name: Dr Annamalaikani JEYAPRAGASH

GMC reference number: 2398686

Primary medical qualification: MB BS 1975 Madurai University

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Not Impaired

Summary of outcome

Warning

Tribunal:

Legally Qualified Chair:	Mrs Remi Alabi
Lay Tribunal Member:	Mr Keith Moore
Medical Tribunal Member:	Dr Carol Roberts

Tribunal Clerks:	Miss Emma Saunders (17/06/2024 - 26/06/2024) Ms Angela Carney (30/08/2024)
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Attendance and Representation:

Medical Practitioner:	Present, not represented
GMC Representative:	Ms Amy Rollings, Counsel

Attendance of Press / Public

In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held partly in public and partly in private.

Overarching Objective

Throughout the decision making process the tribunal has borne in mind the statutory overarching objective as set out in s1 Medical Act 1983 (the 1983 Act) to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

Determination on Facts - 25/06/2024

Background

1. Dr Jeyapragash qualified as a doctor in 1975 at Madurai University in India and was registered with the General Medical Council (GMC) from 1977. At the time of the events and on an ongoing basis, Dr Jeyapragash's work has included private practice at rooms at the Professional Cosmetic Surgery and Healthy Ageing Clinic Ltd, on Harley Street ('the Clinic').
2. The allegations that have led to Dr Jeyapragash's hearing relate to his conduct towards Patient A. It is alleged by the GMC that, between September 2020 and October 2021, on one or more occasions during post-operative consultations, Dr Jeyapragash inappropriately touched Patient A in that he held her down against an examination bed by pushing on to her shoulders with his hands. Further, that Dr Jeyapragash attempted, at a consultation on a date between August and October 2021, to prevent Patient A from speaking by holding his hand over her mouth and/or holding her lips together with his fingers. It is alleged by the GMC that Dr Jeyapragash's actions were conducted without Patient A's consent and amounted to physically controlling behaviour.
3. Patient A attended an initial consultation with Dr Jeyapragash in August 2019 to discuss a possible breast reduction. Patient A attended this initial appointment following a recommendation by a friend. Patient A took time to think about whether to proceed with the surgery and decided to go ahead with it around August 2020.
4. Dr Jeyapragash performed Patient A's surgery, a bilateral breast reduction, on 15 September 2020 at the London Welbeck Hospital ('the Hospital'). The surgery went well but there were complications during Patient A's recovery, with delayed wound healing.

5. As a result of the delayed wound healing, Patient A saw Dr Jeyapragash for follow up appointments after the surgery. There were said to have been around 30 appointments between 20 October 2020 and 13 October 2021, and Dr Jeyapragash did not charge Patient A extra for any of these appointments. The follow up appointments were held at Dr Jeyapragash's rooms at the Clinic. Patient A's husband, Mr B, drove her to these appointments and occasionally went in with her. During those times, Mr B would sit behind a screen to allow Patient A some privacy.

6. Ms C, Patient Coordinator and Personal Assistant to Dr Jeyapragash at the Clinic, acted as chaperone during the appointments apart from one appointment on 1 October 2021 when she was on holiday and another chaperone was present instead.

7. Patient A's wounds did not heal as expected despite Dr Jeyapragash's treatment and advice on what she should do to support the healing process. She was concerned that the wound on her right breast had not healed and was concerned that Dr Jeyapragash seemed to blame her for this. Following advice from a friend, Patient A saw a nurse at her General Practitioner (GP) Practice on 21 October 2021, who helped treat the wound on Patient A's breast. Patient A said the nurse was horrified by it, and when Patient A told the nurse about Dr Jeyapragash's treatment, she was advised not to return to him. On the advice of the nurse and GP, Patient A made a complaint about Dr Jeyapragash to the GMC on 4 November 2021.

The Outcome of Applications made before the Facts Stage

8. The Tribunal granted the GMC's application, made pursuant to Rule 17(6) of the GMC (Fitness to Practise Rules) 2004 as amended ('the Rules'), for an amendment of the Allegation. The Tribunal's full decision on the application is included at Annex A.

9. The Tribunal refused Dr Jeyapragash's application, made pursuant to Rule 34(1) of the Rules, for an adjournment to allow time to obtain further sections of Patient A's GP records. The Tribunal's full decision on the application is included at Annex B.

10. The Tribunal granted Dr Jeyapragash's application, made pursuant to Rule 29(2) of the Rules, for a short adjournment to allow Dr Jeyapragash to put together an additional bundle of evidence and serve his case. The Tribunal's full decision on the application is included at Annex C.

11. The Tribunal granted Dr Jeyapragash's request to allow him to be assisted by a suitable support person within the parameters of the role of a McKenzie Friend. The Tribunal's full decision on the application is included at Annex D.

The Outcome of an Application made during the Facts Stage

12. The Tribunal refused Dr Jeyapragash's application, made pursuant to Rule 34(1) of the Rules, for the admission of a further bundle of evidence. The Tribunal's full decision on the application is included at Annex E.

The Allegation and the Doctor's Response

13. The Allegation made against Dr Jeyapragash is as follows:

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

1. On one or more occasion between September 2020 and October 2021, during post-operative consultations with Patient A at the Professional Cosmetic Surgery and Healthy Aging Clinic ('the Clinic'), you inappropriately touched Patient A in that you held her down against an examination bed by pushing on to her shoulders with your hands.

To be determined

2. In respect of your conduct as described in ~~2~~ 1, you knew Patient A was vulnerable in that her breasts were exposed.

Amended under Rule 17(6)

To be determined

3. On a date between August and October 2021, during a consultation with Patient A at the Clinic, you attempted to prevent Patient A from speaking by:

a. holding your hand over Patient A's mouth; and/or

To be determined

b. holding Patient A's lips together with your fingers.

To be determined

4. Your actions as set out in paragraphs ~~2 and 4~~ 1 and 3:

Amended under Rule 17(6)

a. were conducted without Patient A's consent;

To be determined

b. amounted to physically controlling behaviour.

To be determined

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct.

To be determined

Witness Evidence

14. The Tribunal received evidence on behalf of the GMC from the following witnesses:

- Patient A, who gave oral evidence on 19 June 2024. Her witness statement was dated 9 May 2022;
- Mr B, who gave oral evidence on 19 June 2024. His witness statement was dated 9 June 2023;
- Ms C, who gave oral evidence on 20 June 2024. Her witness statement was dated 4 July 2022.

15. Dr Jeyapragash provided a witness statement dated 20 June 2024 and a number of letters and emails as part of his evidence. Dr Jeyapragash gave oral evidence at the hearing on 20 June 2024.

Documentary Evidence

16. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included, but was not limited to, the following:

- Patient A's complaint to the GMC dated 4 November 2021;
- A surgery appointment letter dated 7 September 2020;
- A list of medications and dressings, and a list of vitamins and minerals, that were recommended for Patient A by Dr Jeyapragash;
- WhatsApp messages between Patient A and Ms C from November 2020 to November 2021;
- A list of the appointments that Patient A had with Dr Jeyapragash when Ms C was present, exhibited by Ms C;
- Patient A's GP records from 15 September 2021 to 16 February 2022;
- Patient A's medical records from the Hospital;

- Additional Patient A treatment notes, including Dr Jeyapragash's treatment notes from 17 November 2020, letters to Patient A's GP, prescriptions, and various photographs;
- Positive patient feedback forms and colleague testimonials on behalf of Dr Jeyapragash.

17. The Tribunal received submissions from Ms Rollings, Counsel on behalf of the GMC, and from Dr Jeyapragash as to the conclusions to be drawn from the evidence by the Tribunal.

The Tribunal's Approach

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

19. The Legally Qualified Chair (LQC) gave legal advice to the Tribunal. She stated that the Tribunal must consider all of the evidence, both oral and documentary, that it considers to be fair and relevant. The Tribunal must be mindful to assess the overall evidence of each witness, including Dr Jeyapragash, and consider the details of such evidence. The LQC reminded the Tribunal that it cannot 'cherry pick' the evidence to fit any pre-formed view or particular theory that may have been formed in their minds; it must not venture into speculation. The LQC stated that the Tribunal can draw reasonable inferences from the facts using common sense and from experience. She referred to the fallacy of a confident witness in that just because a witness has come across as confident did not necessarily mean that the evidence given was reliable. The LQC stated that demeanour was not a reliable indicator as to whether the evidence was being given honestly or not.

20. The LQC stated that the Tribunal must consider the evidence of Dr Jeyapragash's conduct in full, which includes the extent of his knowledge of the requirements to be a fit and proper person to practise as a doctor in the UK. The Tribunal must also consider what he did, or what he did not do, in terms of this conduct.

21. In terms of cross-admissibility, the LQC reminded the Tribunal that each disputed part of the Allegation must be considered separately and on its own merit. She stated that the

Tribunal should not ignore the evidence of background circumstances as this may be evidence that will assist the Tribunal in reaching a decision. The LQC stated that the Tribunal's decision on one part of the Allegation may assist it in coming to a conclusion about another part of the Allegation, however, it did not necessarily follow that the finding of fact in relation to one part would lead the Tribunal to automatically conclude that another part of the Allegation must also be found proved.

22. With regard to credibility and reliability of witnesses, the LQC stated that the Tribunal must take into account the fact that it is not unusual for an honest witness to give different accounts of the same incident. She stated that, in assessing any variation in the accounts given by the witnesses, the Tribunal must consider not only the passage of time in the general sense and the effect this has on memory, but it must also consider issues such as the time between the occurrence and the first time the witness was asked to provide a written account of the incident, the nature of the variation, and the context in which the incident actually took place.

23. The LQC stated that paragraph 4 of the Allegation includes the wording "*physically controlling behaviour*". She stated that there was no legal definition, and that the Tribunal should use the dictionary definition. The LQC stated that the dictionary meaning of 'control' was to exercise restraint or direct influence over another, i.e. to take over, to manipulate, to take charge, or to have power or authority over another's actions in order to regulate, govern, manage, direct or overcome it. She stated that, in essence, control meant that it limits or prevents the freedom or free will of another.

24. The LQC also referred to the issue of vulnerability. She stated that there were certain persons that are legally classified as vulnerable, such as people under the age of 18, but it can also include adults. The LQC reminded the Tribunal that a person receiving care and support can also be considered as a person who is vulnerable.

25. The LQC reminded the Tribunal that the submissions of both Counsel for the GMC and Dr Jeyapragash did not constitute evidence and that the Tribunal could accept or reject them as it felt fit.

26. The LQC stated that the Tribunal must bear in mind the overarching objective, which is to protect, promote and maintain the health, safety and wellbeing of the public; to promote and maintain public confidence in the medical profession; and to promote and maintain proper professional standards and conduct for members of the profession.

The Tribunal’s Analysis of the Evidence and Findings

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

Paragraph 1

28. The Tribunal considered whether, on one or more occasion between September 2020 and October 2021, during post-operative consultations with Patient A at the Clinic, Dr Jeyapragash inappropriately touched Patient A in that he held her down against an examination bed by pushing on to her shoulders with his hands.

29. The Tribunal had regard to Patient A’s statement dated 9 May 2022, in which she stated:

‘After six months post-surgery, when I came into each appointment, there was a ‘Hello, how are you?’ and I’d go behind the screen and get onto the examination bed and take off the upper part of my clothes and bra so that my breasts were exposed. I’d say that I was upset with my healing, the wound was still oozing and that I didn’t think the healing was progressing as I would like it to. Dr [Jeyapragash] became very cross with me saying in an angry, condescending tone, ‘negative energy’ or, ‘think positive’.

Whilst I was laying with my breasts exposed on the examination bed, Dr [Jeyapragash] would stand on the right side of the bed and putting one hand on each of my shoulders he would push them down with force into the examination bed. Dr [Jeyapragash] did this two or three times. It was a quick act and the pushing down lasted for no more than a minute but it was sufficiently hard that I was pinned down to the bed and stuck. I felt compromised as I was laying down and he was standing over me. I didn’t feel that there was any sexual intent when Dr [Jeyapragash] did this but I felt horrible and totally at Dr [Jeyapragash]’s mercy.

...

[Ms C] definitely witnessed Dr [Jeyapragash] pushing my shoulders down into the examination bed because she was standing at my shoulders right above my head facing me. Dr [Jeyapragash] never told me why he did this to me. When it first happened, I felt like he was trying to give me some of his energy but then I realised, after it happened more than once, that Dr [Jeyapragash] meant it to quieten me and stop me being a moaning woman. It made me think that I should keep quiet and not

say how I am actually feeling. I felt it was very unprofessional and it was a sign that he was getting annoyed with me. His tone when he spoke to me saying ‘negative energy’ and the way he pushed my shoulders down was a little like you might treat a child when you’d lost your patience with them showing them physically that you are in control and that they will do what you say because you know best.”

30. In his witness statement dated 9 June 2023, Mr B stated:

“Patient A informed me that Dr Jeyapragash would push her down on the bed by her shoulders when examining her chest, even on some of the occasions when I was in the room but sat behind a screen. I personally remember this happening once while I was in the room, which I believe was during a consultation appointment in August 2021. Patient A told me about it after the consultation and described how much pain she experienced when Dr Jeyapragash pushed her down on the bed by her shoulders.”

31. In Dr Jeyapragash’s email responding to the allegations dated 16 August 2022, he stated:

“I have never assaulted any patient including [Patient A]. I have never pushed her down. I have never twisted her lips. This paragraph is completely false... I never forced her shoulder or any parts of her body into [the] bed. I have never done that to any of my patients.”

32. Within Patient A’s oral evidence to the Tribunal, she stated that Dr Jeyapragash would push her shoulders into the bed frequently when she was being examined. Patient A stated that she had initially thought that this was Dr Jeyapragash giving her his “positive energy” and she did not think there was anything amiss with it. She stated that Dr Jeyapragash was a man who believed in yoga and meditation. Patient A stated that she had been seeing Dr Jeyapragash for a long time about the healing of the wounds and that he became increasingly frustrated about how long it was taking the wound to heal and each time, he would tell her off. She recounted an occasion where she said he had painfully twisted her lips to prevent her from speaking. As a result, she felt harassed and assaulted and in hindsight concluded that she had been subject to assault by Dr Jeyapragash each time he had pushed her shoulders onto the bed. She said that she was no longer of the opinion that his pushing of her shoulders was a way of Dr Jeyapragash giving her his “positive energy”.

33. During Patient A's oral evidence, Dr Jeyapragash asked her why she continued to come for consultations if she felt harassed by his behaviour. Patient A said that she did not feel harassed by Dr Jeyapragash's behaviour in the beginning and that she had taken his actions of pushing her shoulders into the bed at face value. Patient A said that she did not assume at the time that Dr Jeyapragash was doing anything untoward and that he was giving her positive meditative energy from his healing hands. She reiterated that it was only later on that she realised what was really going on. In response to questions from the Tribunal, Patient A described Dr Jeyapragash's actions as a pressing down of his hands on her shoulders *"very firmly to steady me or keep me still"*.

34. Further, the Tribunal asked Patient A whether Ms C was in attendance when Dr Jeyapragash would press her shoulders. Patient A stated that Ms C would be standing close by and sometimes at the foot of the bed. She explained that it was only a narrow area in terms of distance and that often Ms C would hold her hand as she would cry due to the pain of the wound/s. Patient A confirmed that Ms C could see what was happening at the examination table even if she was sitting at her desk rather than standing at the examination table.

35. When asked by the Tribunal, Patient A said that, when she had referred to being 'manhandled' in her text message of 25 August 2021, this was a reference to being pushed on the shoulders by Dr Jeyapragash.

36. The Tribunal also had regard to Ms C's oral evidence. She said that she had seen Dr Jeyapragash put his hands on patient's shoulders. Ms C said that it was not aggressive but just like a tap on the shoulder when the patient was on the examination bed to say, *"well done"* or *"you've done it"*, or to be reassuring that she would get better. She said she had never felt it was anything aggressive or that he was pushing down, and she was never concerned about it. Ms C was asked whether Dr Jeyapragash, in putting his hand on Patient A's shoulders, was preventing her from getting up or doing anything, and she said that she did not think that it prevented Patient A from doing anything.

37. In his oral evidence, Dr Jeyapragash stated that he had never pressed Patient A or anyone against the examination bed. He said that a patient may get tense before the dressing is changed and he would tell them to relax. Dr Jeyapragash said that he had never assaulted Patient A or any other patient and that he had advised Patient A to do some stress management as stress would slow down the wound healing. He said that he had never claimed to be a *"healer"*.

38. The Tribunal first considered whether there was touching of Dr Jeyapragash's hands onto Patient A's shoulders at various consultations between September 2020 to October 2021. It had regard to Dr Jeyapragash's evidence and his clear acceptance that he did touch her shoulders. The Tribunal noted that it was accepted by both parties that this took place.

39. The Tribunal then considered whether Dr Jeyapragash's behaviour in touching Patient A's shoulders was inappropriate, or if it amounted to holding Patient A down against an examination bed.

40. The Tribunal had regard to the evidence of Patient A, Mr B, Ms C and Dr Jeyapragash as summarised above.

41. The Tribunal noted that Mr B was present in some, but not all, of Patient A's consultations with Dr Jeyapragash. When he was present, he would always sit behind a screen, so Patient A was not visible to him during the examination. He was therefore not able to give direct evidence on this issue and his statement was based on what he was told by Patient A.

42. Within his submissions on the facts, Dr Jeyapragash stated that the hands on the shoulders was to help steady the patient while he was doing the wound treatment. It also had regard to his earlier statements and oral evidence in which he clearly denied pushing Patient A's shoulders.

43. The Tribunal found Ms C's evidence to be the most persuasive and informative. She set out that Dr Jeyapragash would touch the shoulders of patients but that this was a reassuring touching or tapping of the shoulders rather than a holding or pushing down. Ms C said that it was not aggressive and did not prevent the patient from doing anything.

44. The Tribunal preferred the evidence of Dr Jeyapragash and Ms C on this point, which was that Patient A was stressed, and Dr Jeyapragash and Ms C were putting her at ease to allow him to continue the wound dressing.

45. The Tribunal considered it was relevant that Patient A originally saw no issue with the touching of her shoulders prior to the 'mouth incident'. The Tribunal is using the term 'mouth incident' for ease, to encompass the allegations set out in paragraph 3, which states that Dr Jeyapragash held his hand over Patient A's mouth and/or held Patient A's lips together with

his fingers. Patient A initially considered the touching of her shoulders as part of Dr Jeyapragash's actions in calming her down or transferring his "positive energy" to her. It appears from Patient A's evidence that following the 'mouth incident', she reframed her interpretation of what Dr Jeyapragash was doing regarding touching her shoulders. The Tribunal took the view that this was Patient A's understandable conclusion rather than inaccuracy in Patient A's evidence.

46. In all the circumstances, the Tribunal determined that there was insufficient evidence on which it could conclude that it was more likely than not that on one or more occasions, Dr Jeyapragash held Patient A against an examination table bed by pushing on to her shoulders with his hands. Accordingly, the Tribunal found this paragraph of the Allegation not proved.

Paragraph 2

47. This paragraph related to whether, in respect of Dr Jeyapragash's conduct as described in paragraph 1 of the Allegation, he knew Patient A was vulnerable in that her breasts were exposed.

48. The Tribunal noted the GMC's submissions that the fact that Patient A's breasts were exposed spoke for itself in terms of her vulnerability. The Tribunal considered the general issue of a patient's vulnerability in a position where private body parts were exposed. The Tribunal bore in mind that Patient A's breasts were exposed in a patient/doctor setting and noted that she had the benefit of a chaperone as would be expected.

49. The Tribunal has found paragraph 1 of the Allegation not proved. As such, and given its link with paragraph 1, the Tribunal found paragraph 2 of the Allegation not proved.

Paragraph 3

50. The Tribunal considered whether, on a date between August and October 2021, during a consultation with Patient A at the Clinic, Dr Jeyapragash attempted to prevent Patient A from speaking by holding his hand over Patient A's mouth; and/or holding Patient A's lips together with his fingers.

51. The Tribunal had regard to Patient A's statement dated 9 May 2022, in which she stated:

“On 1 October 2021, I was lying on the examination bed with my breasts exposed and Dr [Jeyapragash] was standing on the right side of the bed. Dr [Jeyapragash] asked me how the wound was and I said that I was fed up with travelling to see him and all the breast discomfort and the ugly hole in my new breast. Before I could even draw breath to finish my sentence, Dr [Jeyapragash] grabbed my lips with his right hand and twisted them really hard together like they were in a vice. Dr [Jeyapragash] did this with force and to shut me up. It really hurt. I was humiliated. As soon as Dr [Jeyapragash] did this, I burst into tears and couldn’t speak. It happened quite quickly and he released me within a few seconds but that was enough. I then rolled to the right to push myself up off the examination bed and this took me quite a while as I have back issues. I got up as soon as I could and said very firmly, ‘How dare for you to touch me like that?’ I got dressed and Dr [Jeyapragash] apologised profusely just saying he was sorry. I didn’t want to listen and fled the room half-dressed and in tears. I went to the toilet and got myself together and then left the Clinic. [Ms C] was in the room at the time and either saw or sensed what had happened. My husband was waiting in the car for me and saw how upset I was. He was furious and told me never to return to see Dr [Jeyapragash].”

52. In his witness statement dated 9 June 2023, Mr B stated:

“I was sat in the car waiting for Patient A when she came out of the Clinic crying her eyes out and was virtually hysterical. When I asked her what was wrong, Patient A told me that during the consultation, Dr Jeyapragash had pinched her lips.

...

I understand that while Patient A was talking, Dr Jeyapragash became so angry with her that he assaulted her by pinching her lips tightly, as though to tell her to shut up. Patient A said she immediately got up from the bed once Dr Jeyapragash had let go of her lips and said something along the lines of “how dare you do this to me”. Patient A described how angry and upset she was and that Dr Jeyapragash began to apologise. Patient A said that she was so upset and angry that she could not listen to Dr Jeyapragash’s apology and fled from the consultation room half-dressed, before coming outside to meet me in the car.”

53. The Tribunal had regard to Ms C’s witness statement dated 4 July 2022, in which she stated:

“During one of the two appointments in August 2021, I remember Patient A on arrival, telling Dr Jeyapragash that she is not healing fast enough. She was also expressing her frustration to me about this. Patient A’s demeanour was agitated. Dr Jeyapragash kept telling Patient A to calm down, but she continued to express her frustrations. Whilst Dr Jeyapragash was examining Patient A’s breast wound and she was laying on the examination bed, Dr Jeyapragash was repeatedly saying to her that it will take time and that it had already improved a lot. Dr Jeyapragash was standing right next to the examination bed, and I was standing on the other side of the bed, about half a metre from the examination bed. My back was turned away from Dr Jeyapragash and Patient A as I was looking for the dressing Dr Jeyapragash was to put on her breast wound. As I turned back, I briefly saw that Dr Jeyapragash put one hand over Patient A’s mouth telling her to calm down. Patient A was annoyed. I cannot remember which hand Dr Jeyapragash used. Everything happened so fast and Dr Jeyapragash’s hand was only there for a split second.

I remember Dr Jeyapragash repeatedly saying, “I am sorry. I am sorry” a few times to Patient A. Dr Jeyapragash apologised again before Patient A left the consultation and he said he was sorry if she felt he upset her.

...

I believe we treated Patient A with utter respect, kindness, and care. Dr Jeyapragash cares about Patient A and showed this throughout her long journey with us.”

54. In Dr Jeyapragash’s letter responding to the allegations dated 16 December 2021, he stated:

“On the 6th of August 2021, patient attended the clinic. She was very stressed about the healing. While I was trying to calm her down, I put my hand on to her mouth and was explaining [to] her about the nature of the healing. She was upset that I used my hand to settle her down. I apologised [a] few times. She accepted the apology and had the dressing for two tiny spots and left quietly. My pure intention was to calm her down not to upset her.”

55. In an email marked for the attention of the Tribunal dated 10 June 2024, Dr Jeyapragash stated:

“Regarding the incident where Patient A alleges I grabbed and twisted her lips, I want to clarify that I put my hand over her mouth to calm her down and immediately

apologized for any distress caused. After this, I proceeded to dress her wound. Although she was not pleased with this, she subsequently calmed down, had some water, and made another appointment for two weeks later. A copy of this appointment is attached, as recorded in our Clinico appointment system, clearly showing the appointment made on that date.

Patient A's claim that she left the Clinic half-dressed and in tears is not accurate. On October 1st 2021, she attended an appointment with her husband, who did not mention the alleged incident from August 6th 2021."

56. The Tribunal took account of Dr Jeyapragash's statement dated 20 June 2024, in which he stated:

"My only intention was to calm the patient down, not to be aggressive or disrespectful. If this were my nature, I would not have apologised immediately after seeing her response. I realise now that the way I chose to calm her down on the 6th of August 2021 appointment, was inappropriate in her eyes. However, the patient accepted my apology, dressed, drank some water, and made another appointment. This appointment is recorded in our clinic appointment data, and I have attached a copy for your review.

...

I want to reiterate that my sole aim was to provide care and ensure her well-being, and I deeply regret that my actions were misinterpreted. I am committed to maintaining the highest standards of professional conduct, as evidenced by my long-standing practice and the support of many other patients."

57. Within Patient A's oral evidence to the Tribunal, she stated that on 1 October 2021, Dr Jeyapragash got hold of her lips and twisted them in a vice-like manner. She stated that he twisted her lips tightly and that in doing so, Dr Jeyapragash had hurt her, had embarrassed her, and had humiliated her. Patient A said that she could not believe Dr Jeyapragash would do such a thing. She told the Tribunal that she got up, grabbed her clothes, and went out of the room crying to the toilet nearby where she was able to dress. Patient A said that Ms C followed her to make sure she was okay. Patient A said that, after dressing, she walked to her husband's car and that she was still sobbing. Patient A said that despite the fact that Dr Jeyapragash had twisted her lips and assaulted her causing her to run from his room, she came back to see him again for further appointments *"like an idiot"*. She said that a lightbulb

moment finally came when she decided to walk away but this took a lot of guts and nerve as Dr Jeyapragash was treating her wound and she was at his mercy.

58. During Patient A's oral evidence, Dr Jeyapragash asked the Tribunal to question that if Patient A was as hurt, humiliated and afraid of him as she said she was, why did she continue to come for consultations after the day of the 'mouth incident'.

59. The Tribunal asked Patient A where Ms C was when the 'mouth incident' took place. Patient A stated that the chaperone was in attendance at either the examination bed or at her desk. Patient A further stated that Dr Jeyapragash had not put his hand over her mouth but rather had harshly twisted her lips in a vice like manner. She said that Dr Jeyapragash had said that he was sorry a number of times. She stated that her husband was not present for the consultation when this happened.

60. The Tribunal also had regard to Ms C's oral evidence. This included that the 'mouth incident' happened on 6 August 2021 and not 1 October 2021. She said she had not been present at the appointment on 1 October 2021 and another chaperone had been present instead. Regarding the 'mouth incident', Ms C stated that Patient A had been upset at the beginning of the consultation because she was frustrated that she was not healing fast enough, and that she had supported Patient A. Ms C told the Tribunal that she briefly turned her back to get a dressing and, on turning back, fleetingly saw Dr Jeyapragash's hand on Patient A's mouth. Ms C said that Dr Jeyapragash and Patient A had both been talking at the same time and that it all happened very quickly, "in a split second". She said that Patient A stopped talking momentarily, and that she seemed shocked and upset. She said, that she passed Patient A's clothes to her and gave her a glass of water. Patient A then made another appointment before leaving the clinic.

61. Ms C also referred to a text message exchange that she had with Patient A on 25 August 2021, which read:

"[Patient A] Hi I feel very upset the way he manhandled me! How much does he want me to pay for the PRP injection? I feel it should be free after a year of my post op trauma. Don't tell him I said this but my husband doesn't want me to go back to him.

*[Ms C] Hello Patient A, I am really sorry you feel bad!
We charge £650 for a PRP treatment, but Dr Jeyapragash will do a treatment free of charge. You only need to pay for the Arthrex syringe..."*

62. Ms C stated that she believed that Patient A's reference to 'manhandling' in the text of 25 August 2021 was in relation to the 'mouth incident', which happened on 6 August 2021. Ms C also said that by saying "*I am sorry you feel bad*", she was referring to the fact that Patient A had not accepted Dr Jeyapragash's apology and not the manhandling alleged.

63. In his oral evidence, Dr Jeyapragash denied that there was a heated conversation or that he was frustrated and said that Patient A was very stressed. Dr Jeyapragash agreed that he had put his hand to Patient A's mouth, as set out in his statement. He said that he did not want to stop Patient A from talking but that he asked her to calm down because she was stressed. Dr Jeyapragash denied that he had twisted Patient A's lips.

64. The Tribunal noted that Patient A says that the 'mouth incident' occurred on 1 October 2021 but that Dr Jeyapragash and Ms C say that it took place on 6 August 2021. The Tribunal noted differences in the evidence, and that it appeared that Patient A had mixed up some points in her evidence regarding the timeline of events. However, whilst the Tribunal recognised the differences between the evidence of the various witnesses, it determined that the precise date the incident took place was not relevant or material to the allegation itself, which was claimed to have occurred between August and October 2021, a timeframe which includes both possible dates.

65. The Tribunal considered that Patient A, Dr Jeyapragash and Ms C all agree that Dr Jeyapragash's hand was near or on Patient A's mouth.

66. Ms Rollings stated that it was the GMC's case that Dr Jeyapragash's action in the 'mouth incident' was intended to prevent Patient A from speaking. The Tribunal had regard to Patient A's evidence that he did not put his hand on her mouth but instead twisted her lips with his fingers.

67. Dr Jeyapragash stated that he put his hand on Patient A's mouth and that this was to calm her down.

68. Ms C had said that the putting of the hand over/on the mouth was quick and took place while she was turning to get the wound dressing. The Tribunal was clear that Ms C said that it "*happened in a blur*" and "*in a split second*". The Tribunal found that any twisting of the mouth would have taken longer to happen than just a cover of the mouth and it would have been more likely that Ms C would have seen this happen.

69. The Tribunal was not persuaded by Dr Jeyapragash's evidence that he put his hand on Patient A's mouth to calm her down. It did not consider it logical that putting a hand over someone's mouth would calm them down. Whether Dr Jeyapragash intended it or not, his actions of putting his hand on Patient A's mouth even momentarily had the effect of stopping Patient A speaking.

70. The Tribunal did not draw conclusions on what Patient A did after the 'mouth incident' and determined that it did not assist in determining whether or not the incident took place as it had heard other relevant evidence on the fact of the issue.

71. The Tribunal determined, on the balance of probabilities, that it was more likely than not that Dr Jeyapragash put his hand over Patient A's mouth and this had the effect of stopping her speaking. Accordingly, the Tribunal found paragraph 3(a) of the Allegation proved.

72. In contrast, and given the evidence of Ms C particularly, the Tribunal determined that there was insufficient evidence on which it could conclude that it was more likely than not that the twisting of the lips or holding together of the lips (paragraph 3(b)) occurred in the manner alleged. It was not able to conclude, on the balance of probabilities, that it was more likely than not that it happened as alleged. Accordingly, the Tribunal found paragraph 3(b) of the Allegation not proved.

Paragraph 4

73. The Tribunal considered whether Dr Jeyapragash's actions as set out in paragraphs 1 and 3 were conducted without Patient A's consent and/or amounted to physically controlling behaviour.

74. The Tribunal has found paragraphs 1 and 3(b) of the Allegation not proved. As such, the Tribunal found paragraph 4 of the Allegation not proved in respect of paragraphs 1 and 3(b).

75. Accordingly, the Tribunal considered paragraph 4 in respect of paragraph 3(a) only, and whether the holding of the hand over Patient A's mouth was conducted without Patient A's consent and/or amounted to physically controlling behaviour.

76. The Tribunal has found that Dr Jeyapragash's actions in putting his hand over Patient A's mouth took place within a "*split second*" whilst Ms C was turning to pick up the wound dressing. There was no twisting or holding together of the lips.

77. The Tribunal concluded that Patient A did not permit this action and there was no evidence that Dr Jeyapragash asked for consent or anything similar prior to his actions. Furthermore, he recognised this position by immediately apologising for his actions. The Tribunal determined that the holding of the hand over Patient A's mouth was conducted without Patient A's consent.

78. In terms of 'physically controlling behaviour', the Tribunal applied the ordinary dictionary definition of these words.

79. The Tribunal considered the earlier advice given by the LQC regarding the dictionary definition of 'physical control'. In this instance the Tribunal determined that Dr Jeyapragash's physical act of putting his hand on Patient A's mouth had the practical effect of controlling her ability to speak. The Tribunal considered that this was a single episode of physical control and recognised that the term 'controlling behaviour' is often used to refer to a pattern of behaviour. The Tribunal chose to interpret the term 'physically controlling behaviour' in the literal sense and considered the ordinary meaning of those words.

80. The Tribunal therefore determined that the holding of the hand over Patient A's mouth was physical conduct (behaviour) which prevented Patient A from speaking, and that Dr Jeyapragash's action amounted to a single episode of 'physically controlling behaviour'.

81. Accordingly, the Tribunal found paragraph 4 of the Allegation proved in respect of 3(a).

The Tribunal's Overall Determination on the Facts

82. The Tribunal has determined the facts as follows:

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

1. On one or more occasion between September 2020 and October 2021, during post-operative consultations with Patient A at the Professional Cosmetic Surgery and Healthy Aging Clinic ('the Clinic'), you inappropriately touched Patient A in that you

held her down against an examination bed by pushing on to her shoulders with your hands.

Not proved

2. In respect of your conduct as described in ~~2~~ 1, you knew Patient A was vulnerable in that her breasts were exposed.

Amended under Rule 17(6)

Not proved

3. On a date between August and October 2021, during a consultation with Patient A at the Clinic, you attempted to prevent Patient A from speaking by:

a. holding your hand over Patient A's mouth; and/or

Determined and found proved

b. holding Patient A's lips together with your fingers.

Not proved

4. Your actions as set out in paragraphs ~~2 and 4~~ 1 and 3:

Amended under Rule 17(6)

a. were conducted without Patient A's consent;

Determined and found proved in respect of paragraph 3(a)

Not proved in respect of paragraphs 1 and 3(b)

b. amounted to physically controlling behaviour.

Determined and found proved in respect of paragraph 3(a)

Not proved in respect of paragraphs 1 and 3(b)

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct.

To be determined

Determination on Impairment - 26/06/2024

83. The Tribunal has to decide in accordance with Rule 17(2)(l) of the Rules whether Dr Jeyapragash's fitness to practise is impaired by reason of misconduct.

The Evidence

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

This consisted of a statement dated 11.12.2023 from Mr D, Dr Jeyapragash's Responsible Officer, a written submission from Dr Jeyapragash dated 25 June 2024, and a number of documents from Dr Jeyapragash regarding the Responsible Officer information.

85. Within the written submission, Dr Jeyapragash stated that his conduct during the 'mouth incident' was not an attempt to control Patient A but to calm her down, as previously explained. He referred to Ms C's evidence that the incident happened in "*a split second*" and Patient A was free to talk and was not restricted in her movements. Dr Jeyapragash stated that, when he realised that Patient A had misinterpreted his action, he immediately apologised without hesitation. He stated that Patient A accepted the apology, allowed him to proceed with the wound dressing, had a glass of water, made another appointment, and then left.

86. Dr Jeyapragash stated that, since the time of the incident and during the GMC investigation, he had reflected and had learned a significant lesson such that he understood that he should not use his hands to calm a patient down as this gesture could be wrongly misinterpreted.

Submissions

Submissions on behalf of the GMC

87. Ms Rollings submitted that the term 'fitness to practise' also referred to a doctor's suitability to practice by reference to their character and conduct. She set out a number of relevant legal principles. Ms Rollings submitted that Dr Jeyapragash's conduct fell below the standards required of a medical practitioner. She submitted that Dr Jeyapragash was guilty of serious misconduct. Ms Rollings reminded the Tribunal that he had put his hand over Patient A's mouth to prevent her from speaking, it was unwanted touching, it was inappropriate and had the effect of preventing her from speaking.

88. Ms Rollings referred to the Tribunal's determination on the Facts. She stated that the Tribunal had found proved that Dr Jeyapragash's conduct had amounted to 'physically controlling behaviour'. Ms Rollings also submitted that Dr Jeyapragash had not shown any insight as he had not admitted actual or intentional prevention of Patient A from speaking. She said that it was accepted that Dr Jeyapragash admitted that he physically touched Patient A but he did not admit the entirety of that paragraph of the Allegation as he stated it was an attempt to calm the patient down. Ms Rollings stated that this action in preventing Patient A

from speaking had now been proven. She submitted that, for all of these reasons, Dr Jeyapragash's conduct amounts to serious misconduct.

89. Ms Rollings drew the attention of the Tribunal to its determination on the Facts, and that it was not persuaded as to Dr Jeyapragash's evidence that he put his hand on Patient A's mouth to calm her down, and that his action amounted to a single episode of 'physically controlling behaviour'.

90. Ms Rollings referred to the approach set out by Dame Janet Smith in the Fifth Shipman Report, as referred to in the case of *CHRE v NMC & Grant* [2011] EWHC 927 (Admin), as follows:

"Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d. has in the past acted dishonestly and/or is liable to act dishonestly in the future."*

91. Ms Rollings submitted that limbs (a) to (c) of this test were engaged in Dr Jeyapragash's case.

92. Ms Rollings stated that it had been found proved that Dr Jeyapragash had touched Patient A inappropriately. She submitted that Dr Jeyapragash's conduct had brought the medical profession into disrepute because it breached a fundamental tenet of the medical profession. Ms Rollings stated that the Tribunal had heard the evidence of Patient A that it had the effect of humiliating her and affecting her dignity.

93. Ms Rollings referred the Tribunal to a number of paragraphs of Good Medical Practice (2013) ('GMP'):

- “46. *You must be polite and considerate.*
47. *You must treat patients as individuals and respect their dignity and privacy.*
48. *You must treat patients fairly and with respect whatever their life choices and beliefs.*
- ...
55. *You must be open and honest with patients if things go wrong. If a patient under your care has suffered harm or distress, you should:*
- a. put matters right (if that is possible)*
 - b. offer an apology*
 - c. explain fully and promptly what has happened and the likely short-term and long-term effects.”*

94. Ms Rollings submitted that the guidance was relevant as it demonstrated the breaches in respect of patient care and acting with integrity.

95. Ms Rollings submitted that the Tribunal must consider the overarching objective. She submitted that all three limbs of the objective were engaged. Ms Rollings stated that Dr Jeyapragash had been found to have touched Patient A without her consent in the mouth area, which amounted to ‘physically controlling behaviour’. She submitted that the Tribunal has to question whether, if a member of the public knew about this conduct, they would feel confident in the medical profession and the upholding of proper professional standards and conduct for the members of the profession.

96. Ms Rollings referred to Dr Jeyapragash’s evidence. She submitted that he had sought to explain away what he had done without showing any insight or remediation. She also submitted that Dr Jeyapragash’s evidence that Patient A had accepted his apology at the time, and the manner in which she left after the incident, was such that it demonstrated his lack of insight. Ms Rollings submitted that Dr Jeyapragash had not really understood what had been found at the Facts stage and had not really addressed what had happened. She also submitted that there was a lack of apology towards Patient A.

97. She submitted that the seriousness of Dr Jeyapragash’s misconduct demonstrated a propensity to act in such a way that placed future patients at an unwarranted risk of harm and therefore should lead to a finding of impairment of his fitness to practise.

Submissions from Dr Jeyapragash

98. Dr Jeyapragash referred to his written submission dated 25 June 2024. Dr Jeyapragash submitted that he genuinely believed that his actions did not amount to serious misconduct. He stated that it was an earnest attempt to communicate and calm the patient, not to upset her. Dr Jeyapragash submitted that he deeply regretted that the incident caused Patient A distress and that this had never been his intention.

99. Dr Jeyapragash submitted that the Tribunal should ask itself why Patient A continued to see him if she was upset and why nothing was mentioned about the incident in the three appointments that followed. He stated that Patient A had taken three months to report him, and only did so after being asked to pay for tests. He believed that the reason why Patient A reported him to the GMC was because she did not want to pay for the tests and not because he had done anything untoward. Dr Jeyapragash stated that he had been generous with his time and had spent his own finances on consumables and various dressings, etc. Dr Jeyapragash stated that he had trusted Patient A and felt betrayed that she had turned against him.

100. Dr Jeyapragash stated that he would like to continue to practice and said that he had a large number of patients who had continued to follow him for many years. Dr Jeyapragash stated that he had worked hard to establish this trust and loyalty, and this was supported by 45 recent testimonials from patients and nine from reputed colleagues, which were within the documentation before the Tribunal. He stated that he genuinely loved his practice.

101. Dr Jeyapragash submitted that the incident did not represent his conduct in dealing with patients with whom he had built trust over 47 years of practice. He submitted that it was not misconduct and rather it was a misinterpretation. He stated that his submission reflected his sincere hope that the Tribunal understood the context and circumstances of the incident and requested a fair and just consideration of his case. Dr Jeyapragash stated that he genuinely felt that his fitness to practise should not be found to be impaired.

The Relevant Legal Principles

102. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision of impairment is a matter for the Tribunal's judgement alone.

103. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted, as set out in *Cheatle v GMC* [2009] EWHC 645 (Admin): first whether the facts as

found proved amounted to misconduct, and that the misconduct was serious, and then whether the finding of that misconduct which was serious, could lead to a finding of impairment.

104. In respect of misconduct, the LQC referred to the comments of Lord Clyde in the case of *Roylance v GMC [No 2]* [2000] 1 AC 311, that:

“Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances. The misconduct is qualified in two respects. First, it is qualified by the word “professional” which links the misconduct to the profession of medicine. Secondly, the misconduct is qualified by the word “serious”. It is not any professional misconduct which would qualify. The professional misconduct must be serious.”

105. With regards to what is ‘serious’, the LQC referred to the Court of Appeal (in the case of *Meadows v GMC* [2006] EWHC 146 (Admin)) which approved the words of Mr Justice Collins in the case of *Nandi v GMC* [2004] EWHC (Admin), in that ‘serious’ is referred to as *“conduct which would be regarded as deplorable by fellow practitioners”*. The Tribunal must determine whether Dr Jeyapragash’s conduct would amount to an *“elementary and grievous failure”* of GMP (*Preiss v GDC* [2001] 1 WLR 1296).

106. The LQC also stated that misconduct must be more than mere negligence. She stated that mere negligence did not constitute ‘misconduct’ within the meaning of s35C(2)(a) of the Medical Act 1983. Nevertheless, and depending on the circumstances, negligent acts or omissions which are particularly serious may amount to ‘misconduct’. A single negligent act or omission is less likely to cross the threshold of misconduct than multiple acts or omissions. Nevertheless, a single negligent act or omission, if particularly grave, could amount to misconduct.

107. The LQC stated, on the issue of the doctor’s insight, the case of *Satwani v GMC* [2022] EWHC 283 (admin), set out that denial of misconduct is not an absolute bar to a finding of insight. Admitting misconduct is not a condition precedent to establishing that the doctor understands the gravity of the offending and is unlikely to repeat it. Attitude into the underlying allegation is properly to be taken into account when weighing up insight. Where a doctor continues to deny impropriety, it may make it more difficult for him to demonstrate

insight however, the assessment of the extent of insight is a matter for the Tribunal weighing all the evidence and having regard to the doctor.

108. The LQC also referred to the case of *Hindmarch v NMC* [2016] EWHC 2233 (Admin). On appeal, HHJ Gosnell said that the panel failed to give sufficient weight to the nature of the omission and how the error occurred. He went on to say that a panel should ask itself how grave the omission was as it is often the case in a medical setting that a minor mistake can have grave consequences but that does not mean that the misconduct by itself amounts to a serious one. The judge further stated that the panel was wrong to criticise as misconduct a singular omission in the long and unblemished career of the registrant.

109. In deciding whether Dr Jeyapragash's fitness to practise is impaired or not, the Tribunal must take into consideration: the nature and seriousness of facts found proved; the serious or persistent departure from GMP; the attitude of the practitioner and any admissions of responsibility for the misconduct; the practitioner's insight, and the overall risk to the public.

110. The Tribunal must determine, with reference to the case of *Cohen v GMC* [2008] EWHC 581 (Admin), whether Dr Jeyapragash's fitness to practise is impaired today, taking into account Dr Jeyapragash's conduct at the time of the events and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.

111. The LQC referred to the four limbs of the approach set out by Dame Janet Smith in the Fifth Shipman Report, as referred to in the case of *Grant* and quoted in full above in Ms Rollings' submissions.

112. The LQC stated that the public was entitled to expect that their doctor is fit to practise and follows the principles and standards set out in GMP. Where a doctor has not met the standards expected of them, their fitness to practise may be found to be 'impaired', therefore, in all the Tribunal's deliberations, it must bear in mind the overarching objective.

The Tribunal's Determination on Impairment

Misconduct

113. The Tribunal first considered whether Dr Jeyapragash's actions in the fact found proven amount to misconduct.

114. The Tribunal had regard to its findings at the Facts stage. It concluded that Dr Jeyapragash's actions were a single act of 'physically controlling behaviour'. The Tribunal noted that Dr Jeyapragash's actions were in respect of a single patient, and that he had apologised immediately on the day and during this hearing. The Tribunal referred to its previous findings that the duration of the act was in "*a split second*".

115. The Tribunal noted that the actions in question should not have happened but had regard to the surrounding circumstances and context. It concluded that Dr Jeyapragash was not being malicious and while his intention may have been to stop Patient A from speaking for a moment in attempting to calm her down, whilst this was ill judged, there was nothing malicious in his actions.

116. The Tribunal noted that Dr Jeyapragash had an otherwise unblemished career and was of the view that he had a clear understanding that such actions could never be repeated. It considered there to have been an immediate recognition by Dr Jeyapragash at the time that he had upset Patient A and apologised to her. The Tribunal determined that the risk of repetition was therefore very low.

117. The Tribunal concluded that paragraphs 46 and 47 of GMP, quoted above, were relevant and had been significantly breached. The Tribunal concluded that Dr Jeyapragash's actions amounted to a misconduct in that it fell short of the conduct expected of a doctor as set out in these paragraphs. However, with reference to relevant case law, the Tribunal did not find that the misconduct fell so far short that it was grievous or deplorable.

118. In finding that Dr Jeyapragash's actions were misconduct but not serious enough to lead to an impairment, it had regard to the relevant legal principles regarding misconduct and impairment, as referred to above.

119. The Tribunal considered that the misconduct was such that all three limbs of the overarching objective were engaged.

120. In considering its overarching objective, the Tribunal determined that a reasonable and well-informed member of the public with knowledge of the facts of this case would conclude that this decision did not mean that patients were being put at risk, that public

confidence in the profession might be affected, or that the standards for doctors were not being maintained.

121. As such, the Tribunal has therefore determined that Dr Jeyapragash's fitness to practise is not impaired by reason of misconduct.

Determination on Warning - 30/08/2024

122. As the Tribunal determined that Dr Jeyapragash's fitness to practise was not impaired, it considered whether in accordance with s35D(3) of the Medical Act 1983, a warning was required.

123. The Tribunal invited submissions from the parties as to whether a warning was appropriate and necessary.

Submissions

Submissions on behalf of the GMC

124. Ms Rollings referred to relevant paragraphs of the GMC's 'Guidance on warnings' document (April 2024) and the Sanctions Guidance (5 February 2024).

125. Ms Rollings submitted that a warning was appropriate in Dr Jeyapragash's case. She referred to the Tribunal's determination on Impairment, including its comments that paragraphs 46 and 47 of GMP were relevant and had been significantly breached.

126. Ms Rollings stated that a warning was also appropriate given that Dr Jeyapragash has shown limited insight into why the facts had been found proved. She submitted that he continued to maintain his innocence and reiterate that his hand over the mouth was an attempt to calm Patient A down. Ms Rollings submitted that taking no action against Dr Jeyapragash was not appropriate because he has shown no insight and there had been a serious departure from GMP.

127. Ms Rollings submitted that, in all of the circumstances, a warning was the appropriate way forward as it meant that the warning would be recorded against Dr Jeyapragash's registration and should there be a repetition of this, or similar behaviour by him, it would likely result in a finding of impairment of his fitness to practise.

Submissions from Dr Jeyapragash

128. Dr Jeyapragash stated that his position on the facts found proved had been consistent throughout the hearing and the investigation, which had been going on for two and half years. He stated that his ability to practise had been restricted throughout the time of the investigation to date. He submitted that this had already taken a great toll on his financial and emotional wellbeing. He submitted that he had already paid a high price for the misconduct found.

129. Dr Jeyapragash stated that he has suffered a great deal over the past two years as a result of these proceedings. He submitted that a warning would remain on his registration for two years which would cause him further stress and hardship, Therefore, taking no further action against him would be the appropriate way forward.

130. Dr Jeyapragash submitted that, in view of the above and considering that the Tribunal has found no impairment on his fitness to practise, it would be unfair to issue him with a warning. He concluded that the Tribunal should take no further action against him.

The Relevant Legal Principles

131. The Tribunal received and accepted the legal advice of the LQC.

132. The Tribunal was advised that whether a warning should be given was a matter for the Tribunal having regard to all the evidence, representations made, and any relevant guidance.

133. The Tribunal was directed to s35D(3) of the Medical Act 1983, which says:

"Where the Tribunal find that the person's fitness to practise is not impaired they may nevertheless give [the practitioner] a warning regarding [their] future conduct or performance."

134. The LQC reminded the Tribunal that its central role was to protect the public which includes protecting patients, maintaining public confidence in the profession, and declaring and upholding proper standards of conduct and behaviour. Therefore, it must consider under

Rule 17(2)(n) of the Rules whether to take no action or issue a warning if the doctor's conduct significantly departed from the guidance in GMP.

135. The Tribunal was advised to have regard to the warnings guidance, specifically paragraphs 10, 11, 16, 20 and 32 which state:

Paragraph 10:

“The power to issue warnings, together with other powers available to the GMC and to MPTS tribunals, is central to their role of protecting the public which includes protecting patients, maintaining public confidence in the profession and declaring and upholding proper standards of conduct and behaviour.”

Paragraph 11:

“Warnings allow the GMC and MPTS tribunals to indicate to a doctor that any given conduct, practice or behaviour represents a departure from the standards expected of members of the profession and should not be repeated. They are a formal response from the GMC and MPTS tribunals in the interests of maintaining good professional standards and public confidence in doctors. The recording of warnings allows the GMC to identify any repetition of the particular conduct, practice or behaviour and to take appropriate action in that event. Breach of a warning may be taken into account by a tribunal in relation to a future case against a doctor, or may itself comprise misconduct serious enough to lead to a finding of impaired fitness to practise.”

Paragraph 16:

“A warning will be appropriate if there is evidence to suggest that the practitioner's behaviour or performance has fallen below the standard expected to a degree warranting a formal response by the GMC or by a MPTS tribunal. A warning will therefore be appropriate in the following circumstances:

- *there has been a significant departure from Good medical practice, or*
- *there is a significant cause for concern following an assessment of the doctor's performance.”*

Paragraph 20:

“The decision makers should take account of the following factors to determine whether it is appropriate to issue a warning.

- a. There has been a clear and specific breach of Good medical practice or our supplementary guidance.*
- b. The particular conduct, behaviour or performance approaches, but falls short of, the threshold for the realistic prospect test or in a case before a tribunal, that the doctor’s fitness to practise has not been found to be impaired.*
- c. A warning will be appropriate when the concerns are sufficiently serious that, if there were a repetition, they would likely result in a finding of impaired fitness to practise. Warnings may be an appropriate response to any type of allegation[...]; the decision makers will need to consider the degree to which the conduct, behaviour or performance could affect patient care, public confidence in the profession or the reputation of the profession. If the decision makers consider that a warning is appropriate, the warning should make clear the potential impact of the conduct, behaviour or performance in question, accordingly.*
- d. There is a need to record formally the particular concerns (because additional action may be required in the event of any repetition).”*

Paragraph 32:

“If the decision makers are satisfied that the doctor’s fitness to practise is not impaired or that the realistic prospect test is not met, they can take account of a range of factors to determine whether a warning is appropriate. These might include:

- a. the level of insight into the failings*
- b. a genuine expression of regret/apology*
- c. previous good history*
- d. whether the incident was isolated or whether there has been any repetition*
- e. any indicators as to the likelihood of the concerns being repeated*
- f. any rehabilitative/corrective steps taken*
- g. relevant and appropriate references and testimonials.”*

The Tribunal’s Determination on Warning

136. The Tribunal had regard to the submission made by Ms Rollings and Dr Jeyapragash, and the relevant guidance.

137. The Tribunal had regard to its determination on Impairment, including its comments that paragraphs 46 and 47 of GMP were relevant and had been significantly breached.

138. With reference to paragraph 20 of the warnings guidance, the Tribunal determined that, although Dr Jeyapragash's fitness to practise has not been found to be impaired, his actions represented a "*clear and specific breach*" of GMP. It was of the view that the concerns were sufficiently serious that a formal response was necessary in the interest of protecting patients, maintaining good professional standards and maintaining public confidence in doctors.

139. The Tribunal had regard to the factors at paragraph 32 of the warnings guidance. The Tribunal noted that, while Dr Jeyapragash continued to maintain that his intention towards Patient A was to calm her down and not prevent her from speaking, it noted that he had immediately recognised at the time of the incident that he had upset Patient A and apologised to her. The Tribunal was also clear that this was a single incident and had determined that the risk of repetition was very low. The Tribunal also noted that Dr Jeyapragash had an otherwise unblemished career.

140. In having regard to the principle of proportionality and weighing the interests of the public with those of the doctor, the Tribunal noted Dr Jeyapragash's submissions regarding the impact that these proceedings have had on him. While it acknowledged that this was unfortunate, it was mindful that its overarching objective was of greater concern and the need to protect the public, uphold professional standards and maintain public confidence in doctors, outweighed any hardship that might arise from the issue of a warning.

141. For all of these reasons, the Tribunal determined that a warning was necessary and appropriate.

142. The Tribunal determined to issue the following warning in accordance with s35D(3) of the Medical Act 1983 and Rule 17(2)(m) of the Rules:

"On 24 June 2024 a Tribunal found that, during a consultation on a date between August and October 2021, Dr Jeyapragash attempted to prevent a patient from speaking by holding his hand over their mouth. The Tribunal found that Dr Jeyapragash's actions were conducted without the patient's consent and amounted to a single episode of physically controlling behaviour.

This conduct does not meet with the standards required of a doctor. It risks bringing the profession into disrepute and it must not be repeated. The required standards are set out in *Good medical practice* and associated guidance. In this case, the following paragraphs of *Good medical practice* are particularly relevant:

“46. You must be polite and considerate.

47. You must treat patients as individuals and respect their dignity and privacy.”

Whilst this failing in itself is not so serious as to require any restriction on Dr Jeyapragash’s registration, it is necessary in response to issue this formal warning.

This warning will be published on the medical register in line with our publication and disclosure policy, which can be found at www.gmc-uk.org/disclosurepolicy.”

143. The current interim order on Dr Jeyapragash’s registration is revoked with immediate effect.
144. That concludes this case.

ANNEX A - 19/06/2024

Application to amend the Allegation

145. On 17 June 2024 Ms Rollings, Counsel on behalf of the GMC, made an application for amendment of the Allegation under Rule 17(6) of the GMC (Fitness to Practise Rules) 2004 as amended ('the Rules'), which states:

“Where, at any time, it appears to the Medical Practitioners Tribunal that—
(a) the allegation or the facts upon which it is based and of which the practitioner has been notified under rule 15, should be amended; and
(b) the amendment can be made without injustice,
it may, after hearing the parties, amend the allegation in appropriate terms.

146. The proposed amendments were as follows:

2. *In respect of your conduct as described in ~~2~~ 1, you knew Patient A was vulnerable in that her breasts were exposed.*

...

4. *Your actions as set out in paragraphs ~~2 and 4~~ 1 and 3:*

a. were conducted without Patient A’s consent;

b. amounted to physically controlling behaviour.

Submissions

147. Ms Rollings submitted that the amendments were to correct a typographical error and needed to be remedied. She submitted that the amendments did not change the material substance of the Allegation.

148. Dr Jeyapragash stated that he did not have an objection to the amendments to the Allegation.

Legal Principles

149. The Tribunal was advised that it had the powers to allow an amendment to the particulars of an Allegation under Rule 17(6) provided the amendment did not change the

substance of the allegation and can be made without any injustice, unfairness or undue advantage to either party

150. The legal advice was received and accepted by the Tribunal.

Tribunal's Decision

151. The Tribunal had regard to the submissions from Ms Rollings and Dr Jeyapragash, Rule 17(6) of the Rules, and the documentation before it. It noted Ms Rollings' submissions that the proposed amendments were not substantial in nature and were to correct a typographical error.

152. In all the circumstances, the Tribunal determined to grant the GMC's application for amendment of the Allegation as set out above. It concluded that the amendments could be made without injustice as they were to correct a typographical error that did not change the substance of the Allegation, in a situation where Dr Jeyapragash was clear as to the allegations against him.

ANNEX B - 19/06/2024

Application for adjournment to receive further evidence - PRIVATE

153. The Tribunal agreed, in accordance with Rule 41 of the Rules, that parts of this hearing should be heard in private where the matters under consideration are confidential, namely where they relate to Patient A's identity (XXX). As such, this determination will be read in private but a redacted version will be published following the conclusion of this hearing, with those matters relating to Patient A's identity removed.

154. On 17 June 2024 Ms Rollings explained that Dr Jeyapragash had made a request of the GMC for the provision of an additional part of Patient A's General Practitioner (GP) records, namely from the first time he saw Patient A in September 2019 when she attended for an initial consultation. Ms Rolling stated that the GMC did not hold Patient A's GP records prior to September 2020 and confirmed that the GMC opposed Dr Jeyapragash's application for this evidence to be sought.

155. Dr Jeyapragash submitted that he first consulted with Patient A in September 2019 and undertook an extensive note of her medical history, which included gastric bypass

surgery and mental health issues. He stated that he informed Patient A that her history of gastric bypass surgery may affect her wound healing. Dr Jeyapragash said that he asked Patient A to contact her GP to seek assistance in optimising her nutritional status and mental health issues before the surgery. Dr Jeyapragash said that he asked Patient A about these matters when he saw her again in September 2020 following her decision to go ahead with the surgery, and that she told him that she had stopped taking antidepressants and had improved her nutritional status. Dr Jeyapragash stated that he wrote to Patient A's GP for confirmation of these matters but did not receive a reply. He stated that, given Patient A's XXX, he trusted that she was being honest with him, and agreed to go ahead with the surgery. When Dr Jeyapragash was provided with Patient A's medical records from September 2020, it appeared to him that Patient A had not been truthful with him and had still been taking antidepressant medication when he agreed to operate on her. Dr Jeyapragash stated that, had he known before the surgery that she was still on the medication and was not fully well nutritionally, he would not have taken her for surgery. He submitted that the further medical records requested would enable him to examine Patient A's credibility and establish the truthfulness of Patient A's testimony.

156. The Tribunal had regard to Rule 34(1) of the Rules regarding the admission of further evidence, which states:

“The Committee or a Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law.”

Tribunal's Decision

157. The Tribunal had regard to the submissions from Dr Jeyapragash and Ms Rollings, the documentation before it, and the Allegation in this case.

158. The Tribunal noted that the Allegation in this case relates to Dr Jeyapragash's behaviour towards Patient A at the post-operative consultations between September 2020 and October 2021, including whether he held Patient A down against an examination bed by pushing on to her shoulders with his hands. It was not related to a question of whether Dr Jeyapragash's decision to go ahead with her surgery was an appropriate one or not. The Tribunal determined that the previous GP records, and Dr Jeyapragash's submissions as to affecting the surgery decision, were not sufficiently relevant to the issues that are set out in the Allegation.

159. The Tribunal considered Dr Jeyapragash's submission on Patient A's credibility with regard to the Allegation. It took the view that he was able to adequately explore the issue with the evidence already before the Tribunal, which included both documents and witness statements, without the further need for the additional evidence requested. There would therefore be no unfairness to Dr Jeyapragash in refusing the adjournment for him to request further evidence. The Tribunal took the view that it would not be in the interests of justice to further delay and/or adjourn the proceedings for the material requested to be obtained by the GMC or Dr Jeyapragash.

160. As such, the Tribunal determined to refuse Dr Jeyapragash's application for an adjournment to allow time to obtain further sections of Patient A's GP records.

ANNEX C - 19/06/2024

Application for adjournment to serve Registrant evidence

161. On 17 June 2024 Dr Jeyapragash made an application for a short adjournment to the hearing to allow him to put together a bundle and serve his case. This application was made under Rule 29(2) of the Rules, which states:

"Where a hearing of which notice has been served on the practitioner in accordance with these Rules has commenced, the Committee or Tribunal considering the matter may, at any stage in their proceedings, whether of their own motion or upon the application of a party to the proceedings, adjourn the hearing until such time and date as they think fit."

Submissions

162. Dr Jeyapragash stated that he had been sincerely trying to obtain legal representation for the last five months and had written to the British Medical Association (BMA) and various pro bono solicitors all to no avail. Dr Jeyapragash stated that he has been preparing his case without any legal assistance and did not understand what he was required to do. He stated that it was only after detailed explanation by counsel for the GMC and the Tribunal Chair during the hearing that he understood what was required of him and he asked for time to put all of his evidence into a bundle and serve it as required. He further stated that there were documents missing from the GMC hearing bundle which was in the possession of the

Tribunal such as his statement which he had served in early 2024. Dr Jeyapragash submitted that the further evidence was very relevant, that it showed how he had dealt with Patient A from the first day and included all of the communication between him, his secretary, and Patient A. Dr Jeyapragash asked for one day to allow him to put together his bundle of evidence and serve the missing documents on the GMC.

163. Ms Rollings submitted that Dr Jeyapragash had already been given ample time to provide his evidence. She stated that it was outlined to him in January 2024 that he had not put forward any evidence at that point and, while it was accepted there were other matters involved at the time, Dr Jeyapragash has been reminded about evidence on several occasions. Ms Rollings stated that the GMC legal adviser had emailed Dr Jeyapragash a number of times but that he did not meet any of the dates and deadlines of service. She stated that it appeared that Dr Jeyapragash had used the time to try and obtain legal representation rather than to try and put forward his evidence and to produce a witness statement. Ms Rollings submitted that Dr Jeyapragash had been given ample opportunity and was now asking for further time. She submitted that, for those reasons, the GMC opposed Dr Jeyapragash's application. Ms Rollings stated that, if the application was granted, the GMC would need further time to consider the position as it was unclear about Dr Jeyapragash's response to the Allegation.

Legal Principles

164. In considering the application for the admission of further evidence, the Tribunal was advised that the objective of the Tribunal is to ensure that the hearing is fair to both parties. It was also advised that in ensuring that Dr Jeyapragash had a fair hearing, it should have sight of documentary and oral evidence. This however should be measured against the interests of justice especially in respect of any delays to the proceedings, the witness timetable and availability, any previous adjournments, as well as the nature and seriousness of the case.

165. Ensuring fairness requires balancing the interests of one party against those of the other party. An example of such a balancing act may involve considering the weight of allowing one party to present its case fully (even where the case was served late or there has been a case management failing), against any conflict with the ability of the other party to answer that case.

166. In deciding whether to admit or exclude evidence, the Tribunal was advised to consider the following questions:

- a. Has a party failed to comply with a rule or direction pertaining to the evidence in question?
- b. Does the party have a reasonable excuse for that failing?
- c. Has the party deliberately sought to disrupt the proceedings by the manner or timing of the production of the evidence?
- d. What issue in the case does the evidence go to?
- e. Will the other party be prevented from (or be significantly disadvantaged in) addressing the material issues raised by the evidence in question?

167. The Tribunal was advised that it should always consider whether there is any other mechanism which would allow the hearing to proceed fairly which could include adjourning the case to allow the other party time to prepare.

168. The Tribunal received and accepted legal advice from the Legally Qualified Chair.

Tribunal's Decision

169. The Tribunal had regard to the submissions from Dr Jeyapragash and Ms Rollings, Rule 29(2) of the Rules, and the documentation before it. The Tribunal noted that evidence from Dr Jeyapragash had been requested previously, including from the MPTS Case Management Team and from the GMC.

170. The Tribunal noted that Dr Jeyapragash has indicated that he had prepared a witness statement which he had emailed to the GMC in January/February 2024 and that he had various pieces of evidence in support of his case which he had sent to the GMC in respect of previous hearings. The Tribunal considered that Dr Jeyapragash was not legally represented despite efforts he had made to secure representation to assist him. The Tribunal considered that it was important, and in the interests of justice, for Dr Jeyapragash to put his case before the Tribunal. The Tribunal also determined that it was important for the GMC, and the

Tribunal, to know and have a clear understanding of Dr Jeyapragash’s case and his response to the Allegation.

171. In all the circumstances, the Tribunal determined to allow the application but with a shorter adjournment. It determined that Dr Jeyapragash should provide his bundle of evidence and any outstanding material to the GMC by 9am on 18 June 2024 for joint consideration of an agreed bundle and that the hearing would reconvene for an update at 10am on 18 June 2024.

172. The Tribunal made it clear to Dr Jeyapragash that the Allegation did not relate to his clinical management of Patient A but rather it was about his behaviour towards her as specifically set out in the Allegation. The Tribunal advised that any documents he wished to provide should be relevant to the facts and issues of the Allegation.

ANNEX D - 25/06/2024

Application for a McKenzie Friend

173. On 17 June 2024 Dr Jeyapragash made a request to allow him to be assisted by the support of a McKenzie Friend whilst giving his evidence.

Submissions

174. Dr Jeyapragash stated that he had been unable to find legal representation and would find it difficult to keep up with the proceedings, take notes and give evidence at the same time. He stated that he needed someone to assist him with taking notes when he gave his evidence. He stated that he would engage the support of either Mr E, a friend of 25 years, or Dr F, his current Responsible Officer.

175. Ms Rollings stated that the GMC did not oppose Dr Jeyapragash’s request to be allowed the support of a McKenzie Friend provided the McKenzie Friend acted within the legally permitted role, duties and boundaries of a McKenzie Friend. She submitted that anything beyond this should not be permitted.

Legal Principles

176. In considering this application, the Tribunal was reminded that parties have the right to have reasonable assistance from a McKenzie Friend. However, the Tribunal retains the power to refuse to permit such assistance where it is satisfied that in the interest of justice and fairness the assistance is not necessary. It was also advised that, in contrast, the Tribunal should not refuse to permit the assistance of a McKenzie Friend merely because the case is straightforward, the party appears capable of conducting the case without assistance, or the party is unrepresented through choice.

177. The Legally Qualified Chair stated that, when considering whether to allow or refuse such an application, the Tribunal should bear in mind Article 6 of the Equality and Human Rights Commission: *“The Right to a Fair Trial”* and consider the matter carefully.

178. The Tribunal was advised on the role, duties and boundaries of a McKenzie Friend. A McKenzie Friend may provide moral support, take notes, help with case papers, and quietly give advice to the party on any aspect of the conduct of the case. They cannot ask questions of witnesses or speak on behalf of the party. They also cannot advise the party on evidence. They are under a legal duty to maintain confidentiality about the case.

179. The Tribunal received and accepted legal advice from the Legally Qualified Chair.

Tribunal’s Decision

180. The Tribunal had regard to the submissions from Dr Jeyapragash and Ms Rollings, the parameters of the role of a McKenzie Friend, and the relevant legal principles.

181. In all the circumstances, the Tribunal determined to grant Dr Jeyapragash’s request for a suitable support person within the parameters of the role of a McKenzie Friend. It considered it would be helpful for Dr Jeyapragash to have support with him and that it would be in the interests of fairness to allow the request. Dr Jeyapragash was reminded that it was his responsibility to secure the availability of the McKenzie Friend during the time he gives evidence. The McKenzie Friend will be expected to agree to a code of conduct and a MPTS form should be completed and returned to the Tribunal Clerk prior to the attendance of the McKenzie Friend.

ANNEX E - 25/06/2024

Application for the admission of further evidence

182. On 20 June 2024 Dr Jeyapragash made an application to admit a further bundle of evidence. This application was made under Rule 34(1) of the Rules, as previously quoted in full in Annex B.

183. The additional evidence included photographs that Dr Jeyapragash had taken of his consulting room, computer extracts of Patient A's appointment records, and text message communication between Patient A and Ms C, the chaperone/secretary.

Submissions

184. Dr Jeyapragash stated that he was providing the additional evidence as a result of the oral evidence given by Patient A and Mr B, her husband, on 19 June 2024. He stated that the photographs would make it easier for the Tribunal to understand the layout of his consulting room, and the location of the examination bed, screen, desk, etc. Dr Jeyapragash stated that he wanted to use the photographs and the additional information about Patient A's appointments and the text message communications to address Patient A's evidence and respond to her assertion that she had not made an appointment on 1 October 2021. He said that he would also use the documents to address her evidence regarding the incident of the twisting of her lips which she said took place on 1 October 2021.

185. Ms Rollings opposed the application on behalf of the GMC. She submitted that the provision of this evidence was far too late, especially as the Tribunal had already permitted Dr Jeyapragash to admit nearly 300 pages of additional evidence at the start of this hearing. Ms Rollings stated that the hearing had been listed for some time, and the investigations had been going on for almost three years, and Dr Jeyapragash had had ample time to collate his evidence and submit his response to the Allegation. She submitted that the application, at this stage, was extremely out of time. Ms Rollings also submitted that, in weighing up the fairness to both parties, the Tribunal should consider the impact on the GMC who may wish to recall Patient A and Mr B in order to ask them questions about these documents if they were admitted.

Tribunal's Decision

186. The Tribunal had regard to the submissions from Dr Jeyapragash and Ms Rollings, the documentation and Allegation before it in accordance with Rule 34(1), which states that the *"Tribunal may admit any evidence they consider fair and relevant to the case before them"*.

187. The Tribunal was mindful of the late stage at which the application was made, and that Dr Jeyapragash had been permitted to admit nearly 300 pages of additional evidence at the start of this hearing. The Tribunal has heard evidence from Patient A and Mr B and did not find that anything had arisen from their evidence that could not have been foreseen by Dr Jeyapragash.

188. The Tribunal did not find any contention in the evidence about the layout of the room or the position of things within it. It also took the view that any photographs Dr Jeyapragash wished to produce would not be contemporaneous therefore Patient A and Mr B would have to comment on them. This would cause delay in the proceedings which the Tribunal decided was not in the interest of justice.

189. The Tribunal was mindful that it was yet to hear oral evidence from Dr Jeyapragash and Ms C hence there was an opportunity for Dr Jeyapragash to address the evidence regarding the room layout and challenge any assertions regarding the appointments made by Patient A without the admission of the further evidence requested.

190. All the evidence of the text messages between Patient A and Ms C was included in the bundles already before the Tribunal and therefore it was not necessary for Dr Jeyapragash to provide them again as requested in his application.

191. The Tribunal concluded that it would not be in the interests of justice for any of the documents requested to be admitted at this stage.

192. In all the circumstances, the Tribunal determined to refuse Dr Jeyapragash's application for the admission of the further bundle of evidence.