

PUBLIC RECORD

Dates: 28/03/2022 - 30/03/2022

Medical Practitioner's name: Dr Cheedella LAKSHMINARAYANA
GMC reference number: 2268558
Primary medical qualification: MB BS 1966 Andhra

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	No facts found proved	Consideration of impairment not reached

Summary of outcome

Voluntary erasure

Tribunal:

Legally Qualified Chair	Mr Simon Bond
Medical Tribunal Member:	Dr Leigh-Anne Hill
Medical Tribunal Member:	Dr John Garner
Tribunal Clerk:	Miss Maria Khan

Attendance and Representation:

Medical Practitioner:	Not present and not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Mr Tom Orpin-Massey, 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 voluntary erasure - 30/03/2022

1. This determination will be read in private. However, as this case also concerns Dr Lakshminarayana's alleged misconduct, a redacted version will be published at the close of the hearing XXX.
2. Dr Lakshminarayana had initially submitted an application for voluntary erasure ('VE') on 7 March 2022. As he was the subject of fitness to practice concerns, Dr Lakshminarayana's application was referred to the General Medical Council ('GMC') Case Examiners for consideration. The application was refused on 24 March 2022.
3. Prior to the opening of this hearing, via an email to the GMC dated 26 March 2022, Dr Lakshminarayana requested that his name be erased from the Medical Register. As it was unclear if Dr Lakshminarayana was requesting a referral of his refused VE application for the Tribunal's consideration, the GMC contact emailed Dr Lakshminarayana and asked him to clarify his position. He replied on the morning of 28 March 2022, day one of this hearing and before the commencement of the fact finding stage, confirming that it was his wish to have the Tribunal consider his VE application.
4. Due to XXX, which is part of the context of this hearing and the subject of some paragraphs of the Allegation, the GMC contacted XXX, Dr A, XXX. Dr A, who had been communicating with the GMC in the lead up to the hearing on [Dr Lakshminarayana's] behalf, stated:

"I can confirm that [Dr Lakshminarayana] has requested voluntary erasure from the GMC and would like this to be considered by the tribunal. [XXX]."

5. On the afternoon of 28 March 2022, the Tribunal received a newly submitted VE application for determination, referred by the Assistant Registrar in accordance with paragraph 3(8) of the GMC (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations 2004, as amended ('the Regulations') which states:

'Where, on the date the Registrar receives an erasure application, an allegation against the practitioner has been referred to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal under the Fitness to Practise Rules and the hearing before the Medical Practitioners Tribunal has commenced, the Registrar shall refer the application to the MPTS for them to arrange for it to be determined by

the Medical Practitioners Tribunal, and the application shall be determined by the Medical Practitioners Tribunal accordingly.'

Background

6. The Allegation against Dr Lakshminarayana in this case relates to impaired fitness to practise by reason of misconduct and XXX.
7. Dr Lakshminarayana was referred to the GMC on 25 June 2019 by Dr B, Responsible Officer for locum agency Cygnet Healthcare ('Cygnet'). It was alleged that Dr Lakshminarayana had failed to disclose certain health conditions, XXX, while completing pre-employment checks. According to Dr B's statement dated 6 May 2021, staff at the Cygnet unit where Dr Lakshminarayana was working raised concerns XXX. His affiliation with Cygnet was terminated in July 2019.
8. As a result of the concerns raised by Dr B, the GMC obtained a copy of the medical questionnaire completed by Dr Lakshminarayana in February 2019 and ascertained those matters relating to XXX that, it is alleged, had been inaccurately completed.
9. The GMC subsequently received information from Derbyshire Healthcare NHS Foundation Trust, for whom Dr Lakshminarayana had worked on a part time basis for a short period of time. The GMC requested the application and health assessment forms completed by Dr Lakshminarayana for DRC Locums; the agency used to employ him. The GMC allege that, whilst he did disclose a number of health concerns, he made no reference to the particular health issue XXX.
10. During the course of the GMC's investigation, it transpired that Dr Lakshminarayana had secured a further post through locum agency Pertemps, at Sheffield Health and Social Care NHS Trust. He was scheduled to work for the Trust from 8 April – 31 July 2019, however the placement was terminated on 18 April 2019. Pertemps provided the pre-employment documents completed and signed by Dr Lakshminarayana to the GMC. It is alleged that these also had omissions similar to those on the documents provided to Cygnet and DRC Locums by Dr Lakshminarayana.
11. The above constitute the misconduct element of the Allegation and the GMC assert that Dr Lakshminarayana's actions in completing the relevant forms for Cygnet, DRC Locums and Pertemps were dishonest.
12. XXX
13. XXX
14. XXX

The Outcome of Applications Made As A Preliminary Issue.

15. The Tribunal granted the GMC's application, made pursuant to Rules 15, 40 and 31 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that notice had been properly given to Dr Lakshminarayana and that it would be appropriate to proceed with the hearing in his absence. The Tribunal's full decision on the application is included at Annex A.

Submissions

16. On behalf of the GMC, Mr Orpin-Massey referred the Tribunal to the specific guidance on considering VE applications, the GMC's *Guidance on making decisions on voluntary erasure applications and advising on administrative erasure* (updated March 2021) ('the VE Guidance') and advised the Tribunal that the GMC's response to the VE application was to oppose it.

17. Mr Orpin-Massey submitted that, while the GMC had some sympathy with Dr Lakshminarayana's position and accepted that he was a doctor with a long and unblemished career XXX, the allegations were serious and included dishonesty. The GMC's stance was that these needed to be aired at a formal hearing.

18. Mr Orpin-Massey submitted that XXX but that there were live issues of serious misconduct and, on reading the VE Guidance, where there is a presumption of impairment on the papers and in the allegations, VE should usually be refused.

19. Mr Orpin-Massey reminded the Tribunal that if the allegations were found to be proved, there would be a presumption of impairment, particularly with regards to the dishonesty, and it would therefore be inappropriate to grant the VE.

20. Mr Orpin-Massey submitted that formal fitness to practice proceedings were the best safeguard to maintain confidence in both the profession and the regulator, in cases like this, and to let Dr Lakshminarayana bypass this, by way of VE, would not be right in the circumstances of this case.

21. Mr Orpin-Massey submitted that, on the face of it, there were no exceptional circumstances in this case. The dishonesty was not at the lower end of the spectrum and it had been protracted, concerning three separate locum agencies through which Dr Lakshminarayana had secured employment. XXX

Documentary Evidence

22. The Tribunal had regard to the following documentary evidence:

- Hearing bundle, comprising 211 pages and including:
 - XXX

- XXX
- XXX
- XXX
- Supplementary bundle, comprising 8 pages
- Proof of Service bundle
- Dr Lakshminarayana’s emails requesting VE, dated 26 March 2022 and 28 March 2022
- Dr A’s email confirming Dr Lakshminarayana’s wish for VE, dated 28 March 2022,
- UD5 form (VE application), dated 28/03/2022

The Tribunal’s Approach

23. The Tribunal considered Dr Lakshminarayana’s application having regard to the VE Guidance and the key principles within it.

24. The Tribunal reminded itself that it must balance the public interest and the requirements of the overarching objective, against the interests of Dr Lakshminarayana in order to make an overall assessment of whether erasure is in the public interest. It must also consider the risk posed by a future restoration application from Dr Lakshminarayana and the extent to which the GMC could revive any unresolved allegations against the doctor should he make a restoration application in the future. The Tribunal had regard to paragraph 11 of the VE Guidance, which states:

‘Case examiners should be satisfied that it is right in all the circumstances to grant VE [...]. This will involve a careful balancing of the relevant factors to decide whether or not erasure is in the public interest. Case examiners will need to weigh the seriousness of the concerns against any additional information that is available regarding:

- *the doctor’s health and the likelihood of the doctor returning to practice*
- *our ability to revive the allegations should the doctor apply for restoration.’*

25. The Tribunal had regard to the examples set out in the VE Guidance where, except in exceptional circumstances, it would not be in the public interest to allow voluntary erasure; these include cases involving allegations of dishonesty. However, the VE Guidance also sets out examples of exceptional circumstances where it is appropriate to allow voluntary erasure, prior to the conclusion of a fitness to practise process, even if a case was of a type where a voluntary erasure application should, usually, not proceed. Such exceptional circumstances include cases where XXX

26. When considering a multifactorial case such as this, the Tribunal was mindful that it was required, by the VE Guidance, to give the greatest weight to the public interest considerations arising from the most serious allegation.

The Tribunal's Decision

27. In reaching its decision, the Tribunal took into consideration paragraphs 24 XXX 33, and 36 of the VE Guidance, which state XXX

28. The Tribunal gave careful consideration to the seriousness of the Allegation, which included a number of allegations of misconduct, over a period of time, that involved dishonesty. In addition, the Tribunal noted that Dr Lakshminarayana had acknowledged to XXX, because he knew it would affect his chances of working.

29. The Tribunal took into account the evidence, in the main hearing bundle, that there had been XXX, before the alleged misconduct. XXX. In 2017, during a meeting with his Responsible Officer, where concerns were raised about the multiple errors he was making at work, Dr Lakshminarayana had agreed to a suggestion that he should elect to retire. Despite this, he went on to approach different locum agencies and secure work.

30. The conclusion that the Tribunal drew from the evidence presented to it was that, at the time of the alleged misconduct and up to February 2022, Dr Lakshminarayana had potentially lacked insight into XXX, and that he also potentially lacked insight into his need to retire. However, the Tribunal noted that Dr D, stated that Dr Lakshminarayana, during their second interview in February 2022, realised that XXX that would make it difficult for him to practise as a doctor. XXX

31. The Tribunal considered the emails from Dr A, XXX, who had communicated with the GMC on Dr Lakshminarayana's behalf throughout this process and had assisted him with his VE application. In one of her emails, contained within the Service bundle, Dr A wrote:

"[XXX] He has therefore decided to relinquish his GMC registration which I'll be assisting him with, [XXX]. [Dr Lakshminarayana] also has no desire to re-register with the GMC in the future, accepting that it is now time for him to fully retire from his profession.

[XXX]

If acceptable, I'd like to confirm on [Dr Lakshminarayana's] behalf that he will not be attending the hearing, nor will he be making any written representations or have someone else representing him.

If there is a route that the MPTS can take to expedite and facilitate [Dr Lakshminarayana's] decision, it would be very much appreciated. I imagine it would save a lot of time and expense.

Kindest regards

Dr A"(sic)

32. XXX

33. Following the index events, Dr Lakshminarayana has made it clear that he wishes to retire. The Tribunal noted that he is XXX and has been practising medicine for over 50 years; XXX. The Tribunal was satisfied that Dr Lakshminarayana holds a genuine and consistent intention not to seek further employment. Given this fact, together with his age, XXX and stage of his career, the Tribunal considered it highly unlikely that Dr Lakshminarayana would make a restoration application. In the event that a restoration application were made by him, the Tribunal were satisfied, given the GMC's investigation and the extensive bundles of documents, that the unresolved allegations could be revived and considered afresh.

34. The Tribunal was mindful that this case involves allegations of dishonesty, which are serious. The Tribunal noted the VE Guidance states that, except in exceptional circumstances, it would not be in the public interest to allow voluntary erasure in such a case. The Tribunal next considered whether there were any exceptional circumstances and the examples of such circumstances set out in paragraph 24 of the VE Guidance. It considered paragraph 24 XXX of the VE Guidance (referred to above) but determined that the dishonesty allegations, in this case, were not at the *'lower end of the spectrum'*, in that they were repeated and caused a risk to patient safety. The Tribunal also considered paragraph 24 XXX of the VE Guidance and noted Dr A's email XXX. Accordingly, the Tribunal determined that there were exceptional circumstances in this case, that would make it appropriate to allow voluntary erasure, notwithstanding the allegations of dishonesty.

35. Throughout the decision-making process, the Tribunal had regard to the overarching objective in Section 1 of the Medical Act 1983, as amended, which involves the pursuit of the following objectives:

- a) to protect, promote and maintain the health, safety and well-being of the public,
- b) to promote and maintain public confidence in the medical profession, and
- c) to promote and maintain proper professional standards and conduct for members of that profession.

36. The Tribunal considered that all three limbs of the overarching objective were engaged in this case. It considered the first limb, namely the protection, promotion and maintenance of the health, safety and well-being of the public. The Tribunal balanced the public interest in determining the Allegation as against the interests of Dr Lakshminarayana, namely his stated wish to retire and be voluntarily erased from the medical register. The Tribunal considered that this was not a case of a doctor seeking to 'evade' allegations against him but, rather, one of a doctor who has made a genuine and consistent intention not to seek further employment given XXX. As already noted, the Tribunal was satisfied that Dr Lakshminarayana has some insight into XXX and the need for him to retire. The Tribunal considered that, as Dr Lakshminarayana was highly unlikely to return to practise, there was little or no risk to public safety and that the first limb of the overarching objective was met by allowing the voluntary erasure application.

37. The Tribunal next considered the second limb of the overarching objective, namely the promotion and maintenance of public confidence in the medical profession. The Tribunal considered that a well-informed member of the public would take note of Dr Lakshminarayana's age, XXX and otherwise unblemished career of over 50 years. Such a member of the public would, in the Tribunal's view, consider that the public interest, in maintaining public confidence in the profession, was met by allowing such a doctor to relinquish his medical registration and to accept his application for voluntary erasure. The Tribunal determined that a well-informed member of the public would take the same view of this case in relation to the third limb of the overarching objective, namely the promotion and maintenance of proper professional standards and conduct for members of the medical profession. Such a member of the public would, in the Tribunal's view take note of Dr Lakshminarayana's lengthy career, the absence of any previous fitness to practise concerns and that the alleged misconduct in this case was inextricably linked to XXX.

38. Having considered all the relevant factors the Tribunal concluded that voluntary erasure is in the interests of both the public and of Dr Lakshminarayana. It was satisfied that, in granting Dr Lakshminarayana's application for voluntary erasure, the public interest in all three limbs of the overarching objective would be met. The Tribunal determined that there were exceptional circumstances in this case such that it was not necessary for the Allegation to be determined.

39. The Tribunal therefore determined to grant Dr Lakshminarayana's application for voluntary erasure and his name will be removed from the Medical Register in due course.

40. The interim order currently in place will be revoked when the VE takes effect

41. That concludes this case.

ANNEX A - 28/03/2022

Application on proof of service and proceeding in absence

Service

1. This Annex will be handed down in private under the provisions of Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004, as amended ('the Rules'). A redacted version will be published at the close of the hearing XXX.
2. Dr Lakshminarayana is neither present nor represented at this hearing.
3. The Tribunal therefore first considered whether notice of this hearing had been properly served on Dr Lakshminarayana in accordance with Rules 20 and 40 of the Rules and paragraph 8 of Schedule 4 of the Medical Act 1983, as amended. In doing so, the Tribunal has taken into account all the information placed before it, together with Mr Orpin-Massey's submissions on behalf of the General Medical Council ('GMC').

Submissions

4. Mr Orpin-Massey, Counsel, submitted, on behalf of the GMC, that notification of the hearing has been properly served upon Dr Lakshminarayana at his registered email address and home address.
5. Mr Orpin-Massey referred the Tribunal to the Service Bundle which included the following documentary evidence:
 - Screen shot of Dr Lakshminarayana's registered address and email address from Siebel, undated
 - Notice of Allegation ('NOA') email from the GMC to Dr Lakshminarayana attaching Rule 15 allegations, dated 10 February 2022
 - Email delivery receipt for the NOA, dated 10 February 2022
 - Letter to Dr Lakshminarayana attaching NOA, dated 15 February 2022
 - Proof of service for NOA, dated 17 February 2022
 - Email from the GMC to the Medical Practitioners Tribunal Service ('MPTS') informing that Notice of Hearing ('NOH') is ready to be issued, dated 10 February 2022
 - Email from MPTS to Dr Lakshminarayana attaching copy of NOH, dated 11 February 2022
 - Email from XXX Dr A, to MPTS, dated 12 February 2022
 - Email from the MPTS to operational staff and GMC confirming NOH has been issued to Dr Lakshminarayana, dated 14 February 2022
 - Email from Dr Lakshminarayana to the GMC, dated 24 February 2022

6. Mr Orpin-Massey submitted that in Dr Lakshminarayana's email dated 24 February 2022, Dr Lakshminarayana stated that he was aware of the proceedings and consented to the hearing proceeding in his absence. This echoed an earlier email that had been received by the MPTS from Dr A on 12 February 2022, advising that he would neither be attending the hearing, nor would he have a representative, and that the matter should proceed without him. Therefore, the Tribunal could be satisfied that Dr Lakshminarayana had received the NOA and NOH, and consented to the proceedings going ahead in his absence.

7. Mr Orpin-Massey submitted that there was a pressing public interest in the hearing proceeding, due to the serious allegations. There had been no adjournment application submitted by Dr Lakshminarayana and there was no indication that he would attend on a later date should the Tribunal adjourn of its own volition. Mr Orpin-Massey further submitted that witnesses had been assembled and there would be inconvenience if the matter was not dealt with on this occasion, and he invited the Tribunal to proceed in Dr Lakshminarayana's absence.

Tribunal's Decision

8. Having been satisfied that notice of this hearing has been properly served, the Tribunal then considered, in accordance with Rule 31 of the Rules, whether to proceed with the hearing in Dr Lakshminarayana's absence. In doing so, it considered the need to balance Dr Lakshminarayana's interests with the overarching statutory objective. The Tribunal had borne in mind the judgments in the cases of:

- *Ramaswamy v The General Medical Council [2021] EWHC 1619 (Admin)*
- *GMC v Adeogba and GMC v Visvardis [2016] EWCA Civ 162*

9. The Tribunal noted in particular the following relevant considerations:

- The nature and circumstances of the doctor's behaviour in absenting himself;
- Whether the behaviour was voluntary and therefore that the doctor waived the right to be present;
- Whether an adjournment would result in the doctor attending on a subsequent occasion;
- Whether the doctor, although absent, wished to be represented, or whether he had waived his right to be represented;
- The extent of any disadvantage to the doctor and the GMC;
- The importance of the fair, economical and expeditious disposal of allegations; and
- The general public interest.

10. The Tribunal was satisfied that Dr Lakshminarayana was aware of the investigation and hearing date and that there had been correspondence with the GMC on more than one occasion by email confirming this. Dr Lakshminarayana and Dr A had both made it clear that he would not be attending the hearing, or be represented, and that he would not be

submitting any written representations. The Tribunal noted the request from Dr A that the matter be expedited and dealt with as soon as possible.

11. The Tribunal has balanced Dr Lakshminarayana's interests with the public interest in deciding whether to proceed in his absence. The Tribunal was of the view that Dr Lakshminarayana has voluntarily absented himself from today's proceedings. It noted that Dr Lakshminarayana has not requested an adjournment of this hearing and there is no evidence to indicate that he would attend this hearing on a future date.

12. The Tribunal concluded that it would be fair and in the interests of both the public and Dr Lakshminarayana for this hearing to proceed. The Tribunal was satisfied that it could proceed without any significant risk of injustice to Dr Lakshminarayana. It therefore exercised its discretion to proceed in Dr Lakshminarayana's absence.