

PUBLIC RECORD

Dates: 13/09/2024

Medical Practitioner's name: Dr Colathor ESHWARI
GMC reference number: 2296911
Primary medical qualification: MB BS 1969 University of Madras

Type of case Outcome on impairment
Review - Misconduct Impaired

Summary of outcome
Erasure

Tribunal:

Legally Qualified Chair	Mrs Claire Lindley
Lay Tribunal Member:	Ms Marianne O'Kane
Medical Tribunal Member:	Dr Shri Babarao
Tribunal Clerk:	Mrs Jennifer Ireland

Attendance and Representation:

Medical Practitioner:	Not present, not represented
GMC Representative:	Ms Linzi McQuade, Counsel

Attendance of Press / Public

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

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 Impairment - 13/09/2024

1. At this review hearing the Tribunal has to decide in accordance with Rule 22(1)(f) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules') whether Dr Eshwari's fitness to practise is impaired by reason of misconduct.

The Outcome of Applications Made during the Impairment Stage

2. The Tribunal granted an application made by Ms McQuade, Counsel on behalf of the GMC, pursuant to Rules 15 and 40 of the Rules and determined that notice of this hearing had been properly served on Dr Eshwari. It also granted the GMC's application made pursuant to Rule 31 of the Rules to proceed with the case in Dr Eshwari's absence. The Tribunal's full decision is included at Annex A.

Background

3. Dr Eshwari qualified in 1969 from the University of Madras, India. She practised in adult psychiatry and general psychiatry until 2001. Since then, she has not worked consistently apart from some short locum placements.

The February 2023 Tribunal

4. Dr Eshwari's case was first heard at a Medical Practitioners Tribunal hearing which took place in February and March 2023 ('the February 2023 Tribunal'). The facts found proved related to her conduct on 8 November 2019 towards Dr A. Dr A, an international training fellow, had moved into accommodation arranged by the Wye Valley NHS Trust ('the Trust') where Dr Eshwari was also living. It was found proved that Dr Eshwari had said '*porky sausages*' on one or more occasion whilst alone in the kitchen with Dr A, and when she was in the corridor and Dr A was in her room. The February 2023 Tribunal rejected Dr Eshwari's explanation that she was looking for sausages in the refrigerator and saying '*where are my sausages*'.

5. The February 2023 Tribunal found that Dr Eshwari took a kettle, which Dr A had just filled with mineral water, and threw the water into the sink and said '*don't make this kettle dirty with your dirty water*' or words to that effect. It also found that Dr Eshwari had behaved in an aggressive manner when she took the kettle and poured the contents into the sink.

6. The February 2023 Tribunal found proved that Dr Eshwari's actions had the potential to cause offence to Dr A and demonstrated hostility towards Dr A based on Dr A's membership or presumed membership of a racial and/or religious group.

7. The February 2023 Tribunal found that, given the context of the case, Dr Eshwari's actions breached tenets of Good Medical Practice (2013) ('GMP') and would be considered by fellow professionals as deplorable. The February 2023 Tribunal determined that Dr Eshwari's actions amounted to serious misconduct.

8. The February 2023 Tribunal recognised that Dr Eshwari's misconduct was a single episode and that there was no evidence to suggest, nor had it been advanced by the GMC, that Dr Eshwari had any previous relevant adverse history with the GMC.

9. The February 2023 Tribunal had taken account of Dr Eshwari's expression of apology, which it considered genuine, and was encouraged by this. However, it could not ignore the fact that it had no evidence of Dr Eshwari's reflection or insight into the misconduct found, nor was there evidence as to any remediation. In the circumstances, the February 2023 Tribunal could not be satisfied that there was no risk of Dr Eshwari repeating her misconduct. The February 2023 Tribunal determined that Dr Eshwari's fitness to practise was impaired by reason of her misconduct.

10. The February 2023 Tribunal determined to suspend Dr Eshwari's registration for six months. It considered that this period of time would properly mark the seriousness with which the Tribunal viewed Dr Eshwari's misconduct, appropriately protect the public interest, and uphold and maintain professional standards in the medical profession. Further, a period of suspension would send out a clear message to the public, the medical profession and Dr Eshwari that this type of behaviour was not acceptable.

The September 2023 Tribunal

11. The first review of Dr Eshwari's case took place on 27 September 2023 ('the September 2023 Tribunal'). Dr Eshwari did not attend and was not represented at the hearing.

12. The September 2023 Tribunal was unable to find evidence of any remediation undertaken by Dr Eshwari or any steps taken to address her misconduct. There was no

evidence of Dr Eshwari seeking to proactively develop her understanding of the misconduct or address the findings of the February 2023 Tribunal.

13. The September 2023 Tribunal had regard to Dr Eshwari's insight. It had regard to the statement from Dr Eshwari from June 2023. It provided an acknowledgement that Dr A had been upset by her actions and that there had been harm to the reputation to the profession but appeared to go no further than Dr Eshwari's apology to the February 2023 Tribunal. The September 2023 Tribunal considered that Dr Eshwari's letter presented genuine remorse that Dr A was offended by what she had said, but no reflection on what had happened to bring about the offence caused or any of the underlying issues. It found that there was inadequate reflection on the discriminatory nature of the comments and the consequences of discriminatory behaviour towards individuals and the wider society. The September 2023 Tribunal determined that there had been no evidence of any progression in Dr Eshwari's insight during the six months of suspension and considered her level of insight to be low.

14. The September 2023 Tribunal took the view that failing to provide any of the requested evidence demonstrated insufficient engagement with the GMC. Having regard to the risk of repetition, the September 2023 Tribunal noted the lack of insight and remediation. Given the conclusions of the February 2023 Tribunal, the September 2023 Tribunal concluded that the risk remained the same. It concluded that Dr Eshwari's fitness to practise remained impaired by reason of her misconduct.

15. The September 2023 Tribunal directed to suspend Dr Eshwari's registration for a further six months. It concluded that Dr Eshwari should be afforded the opportunity to demonstrate remediation and insight and to take steps toward a return to medical practice.

The March 2024 Tribunal

16. The next review of Dr Eshwari's case commenced on 8 March 2024 and concluded on 18 March 2024 ('the March 2024 Tribunal'). Dr Eshwari did not attend and was not represented at the hearing.

17. The March 2024 Tribunal noted the expressions of regret which Dr Eshwari had provided to the previous tribunals and considered that these appeared to represent genuine expressions of regret. However, it was of the view that they only demonstrated a very limited degree of insight into the effect of her misconduct on Dr A and wider society and on public confidence in the medical profession.

18. The March 2024 Tribunal was unable to identify any evidence that Dr Eshwari had further reflected on her misconduct and the effect of it. The only further evidence which had been provided was a single sentence in a letter from Dr Eshwari, dated 16 February 2024, in which she denied that she had intentionally discriminated against anyone. The March 2024 Tribunal determined that this did not demonstrate any further degree of insight on Dr Eshwari's part and considered that her degree of insight remained low.

19. The March 2024 Tribunal considered that Dr Eshwari's conduct was remediable but was unable to find evidence of any remediation undertaken by Dr Eshwari or any steps taken to address her misconduct. There was no evidence before it of Dr Eshwari seeking to proactively develop her understanding of the misconduct or address the findings of the previous Tribunals.

20. The March 2024 Tribunal considered that in the absence of any meaningful insight or remediation it could not be satisfied that there was no risk of Dr Eshwari repeating her misconduct.

21. The March 2024 Tribunal considered that no evidence had been received to indicate that Dr Eshwari's fitness to practise was no longer impaired by reason of her misconduct. In the absence of any new information from Dr Eshwari, the Tribunal determined that her fitness to practise remained impaired by reason of misconduct.

22. The March 2024 Tribunal directed to suspend Dr Eshwari's registration for a further period of six months. It concluded that it was in the public interest to allow Dr Eshwari a further opportunity to demonstrate the development of insight and remediation. It considered that Dr Eshwari's persistent failure to demonstrate insight and remediation was a serious aggravating factor and supported the need for a significant period of suspension.

23. The March 2024 Tribunal directed a review of Dr Eshwari's case. It determined that it would assist the next reviewing tribunal if Dr Eshwari were to provide:

- Reflections on the impact her discriminatory actions had on Dr A and the impact that discriminatory behaviour has on people who are discriminated against;
- Her understanding of the way discriminatory behaviour by doctors damages the reputation of the medical profession;

- Evidence of her reflections on the findings of the February and September 2023 Tribunals and any remediation she has undertaken to address the concerns identified in this case.

Today's Hearing

24. This is the third review of Dr Eshwari's case. The Tribunal now has to decide in accordance with Rule 22(1)(f) of the Rules whether Dr Eshwari's fitness to practise remains impaired by reason of her misconduct.

The Evidence

25. The Tribunal has taken into account all of the documentary evidence received. This included, but was not limited to:

- MPTS Record of Determination, dated 27 February to 2 March 2023;
- MPTS Record of Determination, dated 27 September 2023;
- MPTS Record of Determination, dated 8 and 18 March 2024;
- Various postal correspondence sent by the GMC to Dr Eshwari; and
- Dr Eshwari's letter to the GMC, dated 21 August 2024 ('the August 2024 letter').

Submissions

26. On behalf of the GMC, Ms McQuade submitted that Dr Eshwari's fitness to practise remains impaired by reason of misconduct.

27. Ms McQuade directed the Tribunal to the August 2024 letter, which is the only new document placed before this Tribunal since the last hearing. She submitted that this letter does not contain what would be expected by the Tribunal and GMC to demonstrate insight and remediation. Ms McQuade stated that the August 2024 letter does reference Dr Eshwari consulting a mentor and taking on board advice she has been given, but she does not say what advice was given to her or how she has taken this on board. Ms McQuade submitted that this information does not demonstrate that Dr Eshwari is seeking to proactively develop her understanding of her misconduct.

28. Ms McQuade submitted that the August 2024 letter does contain an acknowledgement of regret that Dr A had been upset by Dr Eshwari's actions and that there had been harm to the profession, but again appears to go no further than simply stating this. Ms McQuade submitted that Dr Eshwari does not analyse the reasons why Dr A would have been upset by her behaviour, or why in general her behaviour would cause an individual to

be upset. Further, Dr Eshwari does not analyse why her behaviour was wholly inappropriate in both professional life and in general society. Ms McQuade submitted that Dr Eshwari provides no assessment of the way discriminatory behaviour by doctors damages the reputation of the medical profession beyond simply stating that it could have done so. Ms McQuade stated that discriminatory behaviour will always damage the reputation of the medical profession and that there is simply no place for discriminatory behaviour in the medical profession or in society at large.

29. Ms McQuade submitted that there is simply an inadequate reflection from Dr Eshwari on the discriminatory nature of her comments and the consequences of discriminatory behaviour. Further, she submitted that there is no evidence of any progression in her insight during the last six months and her level of insight appears still to be low. Ms McQuade stated that there is no evidence that Dr Eshwari is seeking to challenge or work on any discriminatory views that she has, but rather she says that she will take much more care in the future. Ms McQuade submitted that this statement does not go far enough in terms of demonstrating insight or remediation.

30. Ms McQuade reminded the Tribunal that previous Tribunals have already expressed concerns about Dr Eshwari's level of insight. She stated that Dr Eshwari has had numerous opportunities and been told what would be required to demonstrate insight, and she has still failed to show any remediation, reflection or insight.

31. Ms McQuade submitted that there has been no change to the material circumstances of the case since the previous review hearing. Given the absence of any new evidence of remediation or insight, Ms McQuade submitted that Dr Eshwari's fitness to practise remains impaired.

The Relevant Legal Principles

32. The Tribunal reminded itself that the decision of impairment is a matter for the Tribunal's judgement alone. As noted above, the previous Tribunal set out the matters that a future Tribunal may be assisted by. This Tribunal is aware that it is for Dr Eshwari to satisfy it that she would be safe to return to unrestricted practice. Whilst there is no statutory definition of impairment, the Tribunal was assisted by the guidance provided by Dame Janet Smith in the *Fifth Shipman Report*, as adopted by the High Court in *CHRE v NMC and Paula Grant* [2011] EWHC 297 Admin.

33. This Tribunal must determine whether Dr Eshwari's fitness to practise is impaired today, taking into account her 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.

The Tribunal's Determination on Impairment

34. The Tribunal, in making its decision, referred to the various items that the March 2024 Tribunal considered that this Tribunal would be assisted by.

35. The Tribunal first considered the seriousness of Dr Eshwari's misconduct. It noted that the February 2023 Tribunal had found that Dr Eshwari had made a number of inappropriate comments to Dr A, a colleague, while residing in the same hospital accommodation. This was found to have had the potential to cause offence to Dr A and demonstrated hostility towards her based on her membership or presumed membership of a racial and/or religious group. This Tribunal noted and accepted the previous Tribunals decision that this amounted to serious misconduct. The Tribunal decided that this misconduct of itself was not incompatible with registration and was remediable.

36. The Tribunal then reviewed the evidence of insight and remediation since the last hearing. The Tribunal was provided with a copy of the August 2024 letter, which was the only new piece of information received from Dr Eshwari since the last hearing.

37. The Tribunal was of the view that the August 2024 letter was materially similar to previous letters referenced by the past Tribunals. It noted that previous Tribunals had found Dr Eshwari's letters did contain expressions of regret, but that they demonstrated low levels on insight as there was no evidence of reflection on her actions and the impact of her behaviour on Dr A and the medical profession.

38. The Tribunal took into consideration the content of the August 2024 letter. The Tribunal noted that Dr Eshwari continues to accept the findings of the previous Tribunals, and that her actions could have had an impact on the reputation of the medical profession. Dr Eshwari also accepted that Dr A was impacted by her behaviour and stated that this was not her intention. The Tribunal also took into account that Dr Eshwari stated in the August 2024 letter that:

'I have been in touch with one of my mentors and discussed this matter at length and taken on board the advice given.'

39. The Tribunal considered that this sentence demonstrated a very limited amount of progress of insight and remediation. The Tribunal noted that there is no evidence before it about who Dr Eshwari's mentor is, when the conversation took place, what was discussed, and how she has implemented the advice she was given. In the absence of any objective evidence, the Tribunal could not be persuaded that this demonstrated sufficient insight. Accordingly, it concluded that Dr Eshwari's level of insight remained low.

40. Further, the Tribunal noted that Dr Eshwari has not provided any evidence of remediation or CPD that she has undertaken since the February 2023 Tribunal to address her behaviour, or to demonstrate that her knowledge and skills are up to date. The Tribunal noted that Dr Eshwari had continued to engage with the GMC in a limited way by sending in the August 2024 letter, and that she had the opportunity to participate in this hearing but had chosen not to attend.

41. Taking into account its assessment of Dr Eshwari's insight and lack of evidence of remediation, the Tribunal could not be satisfied that the risk of repetition had been mitigated. Until further insight had been developed and remediation demonstrated, the Tribunal was of the view that there remains a risk of repetition.

42. In considering whether Dr Eshwari's fitness to practise is currently impaired, the Tribunal balanced her low level of insight and the assessed risk of repetition against the overarching objective. The Tribunal was mindful that there is an onus on Dr Eshwari at a review hearing to demonstrate that she has sufficiently addressed the concerns in the case, which it considered she had not yet done.

43. This Tribunal has therefore determined that Dr Eshwari's fitness to practise is currently impaired by reason of misconduct.

Determination on Sanction - 13/09/2024

44. Having determined that Dr Eshwari's fitness to practise is impaired by reason of misconduct, the Tribunal now has to decide in accordance with Rule 22(1)(h) of the Rules what action, if any, it should take with regard to her registration.

Submissions

45. On behalf of the GMC, Ms McQuade submitted that the appropriate sanction in this case is one of erasure. She referred the Tribunal to the Sanctions Guidance (2024) ('the SG') and its own determination on impairment throughout her submissions.

46. Ms McQuade submitted that it was important for tribunals to consider insight or lack of insight when determining sanctions. She submitted that was the third review hearing in which Dr Eshwari's fitness to practise has been found impaired, and her registration has been suspended for 17 months with no real progress being made in terms of insight and remediation. She submitted that, at this stage, the GMC can see no further option but to submit to the Tribunal that it should direct that Dr Eshwari's name is erased from the medical register. She stated that no other sanction, apart from erasure, is appropriate in this case.

47. Ms McQuade submitted that to take no action would not be appropriate as there were no exceptional circumstances in this case. Further, she submitted that conditions were not appropriate in this case. It would be insufficient and inappropriate to direct the imposition of conditions on Dr Eshwari's registration as she no longer holds a licence to practise and is not working as a doctor. In any event, the regulatory concerns are not clinical in nature, and the Tribunal would be unable to formulate any workable or appropriate conditions that would adequately address the concerns and issues in this case.

48. Ms McQuade submitted that a further period of suspension would be inappropriate at this stage. She submitted that suspension had clearly not had a deterrent effect on Dr Eshwari, and despite being suspended for almost 18 months, no progress has been made in terms of insight and remediation. She submitted that clearly, Dr Eshwari cannot just continue to be suspended from practising on an ongoing basis. Moreover, as Dr Eshwari is not actually working as a doctor at the moment, there is no progressive effect on her and therefore a further period of suspension would simply create a '*revolving door*' of suspension and reviews every six months or so. She submitted that it was not in Dr Eshwari's interests or the interests of the general public for this '*revolving door*' to take place every six months.

49. Ms McQuade submitted that Dr Eshwari's misconduct was not at the more serious at end of the scale which would justify an erasure on that basis alone. However, given the circumstances currently, and the number of opportunities that Dr Eshwari has been given to remediate her behaviour, it is now at the most serious level of the scale. She submitted that

Dr Eshwari's actions at present are fundamentally incompatible with continued registration. She submitted that erasure was necessary to maintain public confidence in the profession. She stated that the previous Tribunal was clear to Dr Eshwari that if she failed to adequately demonstrate insight and provide evidence of remediation that the next Tribunal might have little choice but to direct erasure.

50. Ms McQuade invited the Tribunal to consider the aggravating factors in this case, which included that the conduct contains of discrimination against colleagues, in addition to her continued lack of insight and evidence of remediation. She submitted that, in all the circumstances, the Tribunal has been left with very little option but to erase Dr Eshwari's name from the medical register.

The Tribunal's Determination

51. The Tribunal is aware that the decision as to the appropriate sanction, if any, to impose on Dr Eshwari's registration is a matter for this Tribunal alone, exercising its independent judgement. In reaching its decision, the Tribunal has taken account of the SG.

52. The Tribunal took into account its decision on impairment, the submissions of the GMC and the documentary evidence and information adduced during this review hearing.

53. The Tribunal recognised that the purpose of a sanction is not to be punitive, although it may have a punitive effect. The Tribunal must impose a sanction if it is required in order to protect patients, maintain public confidence in the profession, and/or meet the wider public interest. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Eshwari's interests with the public interest.

54. The Tribunal identified what it considered to be the mitigating and aggravating factors in this case.

Aggravating

55. The Tribunal first considered the aggravating factors in this case. It took into account that Dr Eshwari has only shown very limited insight into her actions. Further, she has provided no evidence of remediation.

Mitigating

56. The Tribunal then went on to consider the mitigating factors in this case. It noted that this was an isolated incident of a non-clinical nature.

57. The Tribunal was satisfied that Dr Eshwari has apologised and expressed regret. It took into account that this had happened in both the August 2024 letter and in letters to previous Tribunals.

58. In deciding what sanction, if any, to direct, the Tribunal reminded itself that it must consider each of the sanctions available, starting with the least restrictive, to establish which sanction is appropriate and proportionate.

No action

59. The Tribunal first considered whether to conclude the case by taking no action. It noted that to take no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances.

60. The Tribunal was satisfied that there were no exceptional circumstances in Dr Eshwari's case which could justify it taking no action. It determined that, given the Tribunal's findings in respect of impairment, to take no action, would not be sufficient, proportionate nor in the public interest.

Conditions

61. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Eshwari's registration. The Tribunal considered the fact that Dr Eshwari has not practised for a long period of time. She has submitted no evidence to demonstrate that she has maintained her knowledge and skills in that time. Dr Eshwari had relinquished her licence to practise and is no longer working in a clinical capacity.

62. The Tribunal noted that conditions may be workable where a doctor has insight into their misconduct, is likely to comply with conditions, and where a doctor is likely to respond positively to remediation or retraining. The Tribunal considered that these factors do not apply in Dr Eshwari's case. Further, no conditions could be formulated that would address the misconduct in this case.

63. The Tribunal therefore concluded that conditions would not be sufficient or appropriate to maintain public confidence in the profession or to promote and maintain standards for members of the profession.

Suspension

64. In considering whether to impose a period of suspension on Dr Eshwari's registration, the Tribunal had regard to paragraphs 91, 93, and 97(a), (e), (f) and (g) of the SG which provide:

'91 *Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention.*

...

93 *Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions (see paragraphs 24–49)*

...

97 *Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.*

a A serious departure from Good medical practice, but where the misconduct is not so difficult to remediate that complete removal from the register is in the public interest. However, the departure is serious enough that a sanction lower than a suspension would not be sufficient to protect the public.

...

e No evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor's unwillingness to engage.

f No evidence of repetition of similar behaviour since incident.

g The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour'

65. The Tribunal acknowledged that, whilst Dr Eshwari's misconduct was serious, on a spectrum of similar cases it was not at the top end.

66. The Tribunal had regard to the lack of evidence of remediation in this case as well as its assessment of Dr Eshwari's insight and the risk of repetition. The Tribunal noted that the SG indicated that an absence of evidence of remediation indicated that suspension may not be appropriate. There was no basis or evidence upon which the Tribunal could place any reliance that Dr Eshwari would be prepared to engage in remediation or that any such engagement would be successful.

67. Although a further period of suspension could be considered to be a proportionate response, there is no evidence that the previous orders of suspension have improved Dr Eshwari's insight. The Tribunal was of the view that, on a practical level, the order of suspension has had a limited impact. It was not satisfied that suspension was having the desired effect on Dr Eshwari, as she has not provided any evidence of improved insight or remediation. Further, there still remains a concern of a risk of repetition and consequent damage to the reputation of the medical profession.

68. The Tribunal was therefore of the view that the paragraphs of the SG relating to suspension, as set out above, applied to Dr Eshwari's case. The Tribunal concluded that Dr Eshwari has shown a persistent lack of insight. The absence of any evidence of remediation, and the assessed risk of repetition led the Tribunal to conclude that a sanction of suspension may not be appropriate at this stage.

Erasure

69. The Tribunal therefore went on to consider whether the sanction of erasure was appropriate and proportionate.

70. The Tribunal had regard to paragraphs 109 (j) of the SG and considered they were particularly relevant in Dr Eshwari's case:

'109 Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).

...

j Persistent lack of insight into the seriousness of their actions or the consequences.'

71. The Tribunal was conscious that previous Tribunals had determined that an order of suspension would give Dr Eshwari time to demonstrate insight and remediation for her discriminatory behaviour. This is now the third review of Dr Eshwari's case, and she has not provided any evidence to show that she has addressed the concerns of the February 2023 Tribunal.

72. The Tribunal acknowledged that Dr Eshwari has apologised for her actions at this hearing, and to the previous Tribunals. However, despite the clear suggestions from previous Tribunals of how she might demonstrate insight and remediation, there has been very limited progress since the last hearing.

73. The Tribunal considered that indefinite suspension might be an option for a future reviewing Tribunal, should it determine to impose a further period of suspension. However, in the circumstances of this case, and given the lack of progression since Dr Eshwari was suspended, the Tribunal was not satisfied that further time to reflect at this stage would have any real impact on Dr Eshwari. It is unlikely that any additional period of suspension would improve the likelihood of Dr Eshwari engaging with the regulatory process.

74. The Tribunal considered that a sanction of erasure was now the only sanction that would address Dr Eshwari's persistent failure to demonstrate insight. The Tribunal was satisfied that there was a lack of meaningful engagement from Dr Eshwari and she had failed to demonstrate adequate development of insight or any remediation in the 17 months since she was suspended. It determined, in those circumstances, that erasure was the only

sanction that would be sufficient to uphold the statutory overarching objective, to maintain public confidence in the profession, and uphold proper professional standards.

75. The Tribunal have directed to erase Dr Eshwari's name from the Medical Register. The MPTS will send Dr Eshwari a letter informing her of her right of appeal and when the direction and the new sanction will come into effect. The current suspension will remain in place during the appeal period.

76. That concludes this case.

ANNEX A – 13/09/2024

Service and Proceeding in Absence

77. Dr Eshwari was neither present nor legally represented at this hearing. The Tribunal noted that in order to proceed with the hearing in Dr Eshwari's absence, it needed to be satisfied that Dr Eshwari had been properly served with notice of the hearing and that it was appropriate for the hearing to proceed in her absence.

78. The Tribunal was provided with a copy of a Service Bundle from the General Medical Council (GMC). The Service Bundle indicates that, on 2 August 2024, the GMC sent a letter to Dr Eshwari at her registered address, indicating that her case was due to be reviewed on 13 September 2024 and enclosing a draft copy of the hearing bundle. On 21 August 2024, Dr Eshwari sent a letter in reply to the GMC indicating that she would not be attending the hearing, which was received on 23 August 2024. A further letter was sent to Dr Eshwari on 30 August 2024.

79. The Tribunal also noted that, on 5 August 2024, the MPTS sent Dr Eshwari a Notice of Hearing letter to her registered address, confirming that her hearing would commence on 13 September 2024 and that it was expected to last one day. The MPTS letter also requested confirmation from Dr Eshwari as to whether she would be attending and provided information as to the support available in relation to the hearing. On 21 August 2024, Dr Eshwari sent a letter in reply to the MPTS letter, enclosing a copy of the letter she had sent to the GMC, in which she indicated that she would not be attending the hearing. This was received by the MPTS on 30 August 2024.

GMC's Submissions

80. On behalf of the GMC, Ms McQuade took the Tribunal through the service bundle and highlighted that the Notice of Hearing had been sent to Dr Eshwari by post to her registered address, and the replies received by the GMC and MPTS to those letters. She invited the Tribunal to conclude that service had been effected in accordance with the GMC (Fitness to Practise) Rules 2004, as amended ('the Rules').

81. Ms McQuade submitted that the discretion to proceed in the absence of a doctor by the Tribunal should be exercised with appropriate care and caution. Balancing the interests

of Dr Eshwari with the wider public interest, she submitted that Dr Eshwari's absence today is voluntary and no application for adjournment has been made. Ms McQuade submitted that Dr Eshwari has given clear communication to the GMC in her letter, dated 21 August 2024, that she does not wish to attend. She submitted that, in all the circumstances, it is very reasonable and fair to proceed with Dr Eshwari's absence in accordance with Rule 31 of the Rules.

Tribunal's Determination

Service

82. The Tribunal had regard to Rule 40(2) of the Rules which provides that a notice or document required to be served under the Rules may be served by ordinary post, or by electronic mail to an electronic mail address, that the practitioner had notified to the Registrar as an address for communications.

83. In light of the evidence showing the Notice of Allegation and the Notice of Hearing being served by post to Dr Eshwari, and her responses to those letters, the Tribunal was satisfied that Dr Eshwari had been properly served with the Notice of Hearing in accordance with Rules 15 and 40 of the Rules.

Proceeding in Dr Eshwari's Absence

84. In making its determination the Tribunal noted that the decision as to whether or not the hearing should proceed in Dr Eshwari's absence was a matter for its discretion and that such discretion was to be exercised with care and caution.

85. The Tribunal noted that the letters sent to Dr Eshwari informed her of the date and venue of the hearing, her right to attend it, and to be legally represented. She was also informed that the hearing could proceed in her absence if she did not attend.

86. The Tribunal noted that Dr Eshwari had responded to correspondence sent to her and stated that she would not be attending the hearing. The Tribunal also noted this hearing had been listed to take place as in person hearing, rather than a virtual hearing, in order to accommodate Dr Eshwari's ability to participate. The Tribunal had regard to Dr Eshwari's letter response to the GMC dated 21 August 2024, in which she stated:

'I will not be attending the tribunal hearing, online or in person on the 13th SEPTEMBER 2024. I have no further documents to produce.'

87. The Tribunal concluded, in light of the information before it, that Dr Eshwari had voluntarily absented herself from this hearing.

88. The Tribunal considered whether an adjournment would result in Dr Eshwari attending the hearing. Setting aside that there had been no application for an adjournment, there was no evidence before the Tribunal that an adjournment would result in Dr Eshwari attending. The Tribunal formed the view that Dr Eshwari had made it clear in her correspondence with the GMC and MPTS that she did not intend to participate in this hearing. The Tribunal also took into account that this is Dr Eshwari's third review hearing and that she has not attended any hearing relating to this matter in the past.

89. The Tribunal also considered whether any decision to proceed in Dr Eshwari's absence may result in disadvantage or prejudice to her taking account of the fact that it may not necessarily have all of the information which Dr Eshwari would wish to present. However, the Tribunal considered that any such prejudice must be balanced against other factors including the statutory overarching objective and the public interest. The Tribunal noted that the public interest included the need for a fair, economic, expeditious and efficient disposal of the hearing. These matters should be balanced against any prejudice to Dr Eshwari.

90. The Tribunal noted that part of its role was to ensure a fair hearing notwithstanding Dr Eshwari's absence. The Tribunal observed that all reasonable efforts had been made to inform Dr Eshwari of today's hearing. The Tribunal also noted that no application has been made to adjourn and there was no evidence to indicate that that an adjournment would result in her attendance. The Tribunal balanced these facts against the statutory overarching objective, the fair, economic, expeditious and efficient disposal of the proceedings and the public interest.

91. Having considered each of the relevant factors, the Tribunal determined that it is fair, just, and in both the public and Dr Eshwari's interest to proceed with the hearing in her absence.