

PUBLIC RECORD

Dates: 08/03/2024
18/03/2024

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

Suspension, 6 months

Tribunal:

Legally Qualified Chair	Mr Duncan James Ritchie
Lay Tribunal Member:	Ms Gail Mortimer
Medical Tribunal Member:	Dr Ranjana Rani

Tribunal Clerks:	Ciara Fogarty Mr Michael Murphy
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Attendance and Representation:

Medical Practitioner:	Not present, not represented
GMC Representative:	Mr Lewis Kennedy, 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 Impairment - 08/03/2024

1. At this review hearing the Tribunal now 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 the GMC's application, made pursuant to Rule 31 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to proceed with the hearing in Dr Eshwari's absence. The Tribunal's full decision on the application is included at Annex A.

Background

3. Dr Eshwari qualified in 1969 at the University of Madras, India.

4. Dr Eshwari practised in adult psychiatry and general psychiatry until 2001, since 2001 she has not worked consistently apart from some short locum placements.

The February 2023 Hearing

5. The facts found proved at Dr Eshwari's hearing, which took place in February and March 2023 ('the February 2023 Tribunal'), related to her conduct on 8 November 2019 towards Dr A. Dr A, an international training fellow, who 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 had rejected Dr Eshwari's explanation that she was looking for sausages in the refrigerator and saying '*where are my sausages*'.

6. It was found that Dr Eshwari took the 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 had found that Dr Eshwari had behaved in an aggressive manner when she took the kettle and poured the contents into the sink.

7. 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.
8. The February 2023 Tribunal found that, given the context of the case, Dr Eshwari’s actions breached tenets of Good Medical Practice (‘GMP’) and would be considered by fellow professionals as deplorable. The February 2023 Tribunal determined that Dr Eshwari’s actions amounted to serious misconduct.
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 his type of behaviour was not acceptable.
11. The February 2023 Tribunal ordered a review of the case. It was of the view that the reviewing tribunal would be assisted by the following:
- Dr Eshwari’s reflections of the impact her actions had on Dr A, together with her understanding of how her actions had damaged the reputation of the medical profession;
 - Evidence of her reflections on the findings of the February 2023 Tribunal and any remediation she had undertaken to address the concerns identified in this case;
 - Any other evidence which Dr Eshwari considered would be of assistance to the reviewing Tribunal.

The September 2023 Hearing

12. The first review of Dr Eshwari’s case took place on 27 September 2023. Dr Eshwari did not attend and was not represented.

13. The September 2023 Tribunal were unable to find evidence of any remediation undertaken by Dr Eshwari or any steps taken to address her misconduct. For example, there was no evidence of reading or discussions with a mentor or others about 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.

14. 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 a genuine remorse that Dr A was offended by what she had said, but no reflection on what had happened to bring about the offence or any of the underlying issues. The Tribunal found that there was inadequate reflection on the discriminatory nature of the comments and the consequences of discriminatory behaviour towards those discriminated against and the wider society. The 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.

15. 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 Tribunal concluded that the risk remained the same. It concluded that Dr Eshwari's fitness to practise remained impaired by reason of her misconduct.

16. The September 2023 Tribunal determined that Dr Eshwari's fitness to practice remained impaired by reason of her misconduct. The Tribunal directed to suspend Dr Eshwari's registration for a further six months. The September 2023 Tribunal concluded that Dr Eshwari should be afforded the opportunity to demonstrate remediation and insight and to take steps toward a return to medical practice.

17. The September 2023 Tribunal determined to direct a review of Dr Eshwari's case. The September 2023 Tribunal determined 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 2023 Tribunal and any remediation she has undertaken to address the concerns identified in this case.

18. The September 2023 Tribunal stated that if Dr Eshwari failed to demonstrate adequate development of insight and remediation at the next review hearing, the reviewing Tribunal may determine that it has little option other than to erase her name from the Medical Register.

This Hearing

19. This is the second review hearing of Dr Eshwari's case. The Tribunal now 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 remains impaired by reason of misconduct.

The Evidence

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

- Record of Determination of the MPT hearing dated 27 February - 2 March 2023
- Record of Determination of the MPT Review Hearing dated 27 September 2023
- Various correspondence sent by the GMC to Dr Eshwari's registered address
- Dr Eshwari's letter to the GMC dated 16 February 2024

Submissions

21. On behalf of the GMC, Mr Lewis Kennedy, Counsel, outlined the background and the specific circumstances of Dr Eshwari's case. He referred to the relevant law throughout.

22. Mr Kennedy submitted that it is a matter for the Tribunal to determine if Dr Eshwari has demonstrated sufficient insight and remediation into her misconduct. Mr Kennedy submitted that there has been no change whatsoever to the material circumstances. He submitted that the letter which the GMC had recently received from Dr Eshwari (dated 16th February 2024) demonstrated that, if anything, her insight had "gone backwards" since the September 2023 review hearing. Therefore, given the absence of any new evidence of

remediation and insight, he submitted that Dr Eshwari's fitness to practise continues to be impaired.

Written Submissions from Dr Eshwari

23. Dr Eshwari was not present or represented at the hearing. She had sent a letter to the GMC, with regard to the hearing, on 16 February 2024 which was relevant to impairment. In the letter Dr Eshwari stated:

"As I have repeatedly mentioned there has never been any intentional discriminatory behaviour by me."

The Relevant Legal Principles

24. The Tribunal reminded itself that the decision of impairment is a matter for the Tribunal's judgement alone. As noted above, the previous Tribunals had set out the matters that a future Tribunal may be assisted by. This Tribunal is aware that it is for the doctor to satisfy it that she would be safe to return to unrestricted practise.

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

26. The Tribunal acknowledged that there is no statutory definition of impairment, but 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 in which she identified 4 questions that should be specifically considered in determining whether a doctors' fitness to practise is impaired:

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 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. Whether the registrant has in the past acted dishonestly and/or is liable to act dishonestly in the future.'

27. The tribunal were guided that when considering insight, the Tribunal should not equate the maintenance of innocence with a lack of insight, a doctor who maintains their innocence may nevertheless show that they fully appreciate the gravity of the offence alleged.

The Tribunal's Determination on Impairment

Misconduct

28. The Tribunal considered whether Dr Eshwari's fitness to practise is currently impaired by reason of misconduct.

29. The Tribunal had regard to the findings of the February and September 2023 Tribunals, including the documentation that it suggested might be of assistance for Dr Eshwari to provide to this Tribunal. This Tribunal had regard to the short statement provided by Dr Eshwari, as quoted in full above.

30. The Tribunal considered to what extent Dr Eshwari had demonstrated insight into the misconduct which had led to the finding of impairment. The Tribunal considered that cultural differences and a doctor's circumstance can affect how they express insight. For example, how they frame and communicate an apology or regret. The Tribunal noted that Dr Eshwari had been able to communicate clearly with the various tribunals in writing, despite not having access to IT equipment or email facilities.

31. The 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, but 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.

32. The 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 the letter from Dr Eshwari of 16th February 2024 in which she denied that she had intentionally discriminated against anyone. The 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.

33. Considering remediation, the 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. For example, there was no evidence of reading or discussions with a mentor or others about her misconduct. There is no evidence of Dr Eshwari seeking to proactively develop her understanding of the misconduct or address the findings of the February and September 2023 Tribunals.

34. The Tribunal had regard to the findings of the previous Tribunal. The Tribunal noted that there has been no material change in the circumstances of this case since it was heard by the September 2023 Tribunal. There has been no evidence provided by Dr Eshwari as recommended by the 2023 Tribunal to inform its view as to the current state of Dr Eshwari's insight, reflection or remorse into her misconduct.

35. Whilst there was no evidence that Dr Eshwari had come to the attention of her regulator since the allegations in 2019, the 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.

36. The Tribunal considered that no evidence has been received to indicate that Dr Eshwari's fitness to practice was no longer impaired by reason of her misconduct. In the absence of any new information from Dr Eshwari, the Tribunal determined that the need to meet the overarching objective required a finding of impairment in order to maintain public confidence and to uphold standards in the medical profession.

37. The Tribunal has therefore determined that Dr Eshwari's fitness to practise remains impaired by reason of misconduct.

Determination on Sanction - 18/03/2024

1. 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 Dr Eshwari's registration.

The Evidence

2. The Tribunal has taken into account the background to the case and the evidence received during the earlier stage of the hearing where relevant to reaching a decision on what action, if any, it should take with regard to Dr Eshwari's registration.

Submissions

3. On behalf of the GMC, Mr Kennedy submitted that the appropriate sanction is one of suspension. Mr Kennedy referred to the relevant paragraphs of the Sanctions Guidance (February 2024) (the ‘SG’), Good Medical Practice (GMP) and the Tribunal’s determination on impairment.

4. Mr Kennedy invited the Tribunal to consider the aggravating and mitigating factors. He submitted that the continued absence of insight and remediation could be characterised as an aggravating factor.

5. Mr Kennedy submitted that the GMC’s concern lies with Dr Eshwari’s lack of engagement and insight. He submitted that this Tribunal may not be able to ignore the absence of appropriate evidence of Dr Eshwari’s reflection or insight into the misconduct found. He submitted that there was also a marked absence of evidence as to remediation. He further submitted that the lack of evidence of insight and remediation bears negatively on the Tribunal’s assessment of whether Dr Eshwari may repeat her misconduct, because Dr Eshwari cannot be said to have properly acknowledged her misconduct.

6. Mr Kennedy reminded the Tribunal that Dr Eshwari does not have a licence to practice so there is no issue of risk to patient safety in this case. He submitted that the previous reviewing Tribunal noted that if Dr Eshwari failed to demonstrate development of insight and remediation for this review hearing, this reviewing Tribunal may determine that they have little option, other than to erase Dr Eshwari’s name from the medical register.

7. Mr Kennedy submitted that nature of Dr Eshwari’s misconduct is not at the most serious end of the spectrum and the initial misconduct would not have led to erasure. Mr Kennedy referred the Tribunal to paragraph 56 of GMP, which states;

“56 You must not abuse, discriminate against, bully, or harass anyone based on their personal characteristics, or for any other reason. By ‘personal characteristics’ we mean someone’s appearance, lifestyle, culture, their social or economic status, or any of the characteristics protected by legislation – age, disability, gender reassignment, race, marriage and civil partnership, pregnancy and maternity, religion or belief, sex and sexual orientation.”

8. Mr Kennedy reminded the Tribunal that Dr Eshwari’s breach of good medical practice occurred in a non clinical setting over four years ago. This is a case which involves no performance issues and thus no risk to patient safety.

9. Mr Kennedy referred the Tribunal to paragraphs 92, 96, 100 and 109 of the SG, which state:

‘92 Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (ie for which erasure is more likely to be the appropriate sanction because the tribunal

considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession).'

96 *The doctor may, however, have contact with patients if supervised by a registered doctor, provided that the patients have been informed of the doctor's registration status and the events that resulted in the doctor's registration being suspended, and have given their full consent.*

100 *The following factors will be relevant when determining the length of suspension:*

a the risk to patient safety/public protection

b the seriousness of the findings and any mitigating or aggravating factors

c ensuring the doctor has adequate time to remediate

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

a A particularly serious departure from the principles set out in Good medical practice where the behaviour is difficult to remediate.

b A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety.

c Doing serious harm to others (patients or otherwise), either deliberately or through incompetence and particularly where there is a continuing risk to patients regarding failure to provide an acceptable level of treatment or care).

d Abuse of position/trust

e Violation of a patient's rights/exploiting vulnerable people

f Offences of a sexual nature, including involvement in child sex abuse materials.'

10. Mr Kennedy submitted that whilst Dr Eshwari's misconduct was deeply unpleasant and distressing for Dr A, it did not represent the most serious departure from GMP.

11. Mr Kennedy submitted the sanction of erasure would be excessive and disproportionate, particularly in the circumstances where Dr Eshwari has already served a period of 12 months suspension.

12. Mr Kennedy invited the Tribunal to give Dr Eshwari the benefit of the doubt in the circumstances in which Dr Eshwari was absent, not represented and apprehended (by Mr Kennedy) to be XXX.

13. Mr Kennedy invited the tribunal to impose a further six-month suspension period as opposed to erasure. Particularly in terms of section 35 E 5/8 the Medical Act 1983, the

Tribunal should direct that the current period of suspension shall be extended for such further periods from the time when it would otherwise expire.

The Tribunal's Determination

Relevant Legal Principles

14. The Tribunal's decision as to the appropriate sanction, if any, is a matter for the Tribunal's own independent judgment. In making its determination the Tribunal should consider the least restrictive sanction first, before moving on to consider the other available sanctions in ascending order of severity. The Tribunal was aware that the main purpose of imposing a sanction is to protect the public. Its purpose is not to punish, although a sanction may have a punitive effect. The Tribunal should also weigh the public interest against the interests of the doctor.

15. In reaching its decision, the Tribunal should assess any mitigating and aggravating features in the case, in the context of the SG and the statutory overarching objective.

Aggravating and Mitigating factors

16. The Tribunal accepted and adopted the aggravating and mitigating factors set out by the previous tribunals. This Tribunal identified the passage of time since the allegations as being an additional mitigating factor. This Tribunal determined that Dr Eshwari's insight remained low and that she has not demonstrated that she has reflected on her misconduct despite the findings of the February 2023 Tribunal. Neither has she acted upon the clear suggestions made by the tribunals in February 2023 and September 2023 about how she could demonstrate insight and remediation. The Tribunal was of the view that the continued lack of insight, after a period of twelve months, and after two previous clear indications of the kind of material the Tribunal would expect to see, was a matter of aggravation.

No action

17. In coming to its decision as to the appropriate sanction, if any, to impose in Dr Eshwari's case, the Tribunal first considered whether to conclude the case by taking no action.

18. The Tribunal determined that, in view of the Tribunal's findings on impairment, it would be neither sufficient, proportionate nor in the public interest to conclude this case by taking no action. It was unable to identify any exceptional circumstances such as to justify taking no action.

Conditions

19. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Eshwari's registration. It has borne in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable.

20. The Tribunal determined that it would be insufficient and inappropriate to direct the imposition of conditions on Dr Eshwari's registration. It noted that Dr Eshwari no longer holds a licence to practise and is not working as a doctor. It would not be possible for the Tribunal to formulate any workable or appropriate conditions which would adequately address the concerns and issues in this case.

Suspension

21. The Tribunal then went on to consider whether suspending Dr Eshwari's registration would be appropriate and proportionate.

22. The Tribunal had regard to the findings of the two previous tribunals and its own conclusions in respect of impairment. It was mindful of the SG, including paragraph 56 in respect of discrimination:

“Conduct in a doctor's personal life

56 *Tribunals are also likely to take more serious action where certain conduct arises in a doctor's personal life, such as (this list is not exhaustive):*

...

b *discriminating in relation to characteristics protected by law: age, disability, gender reassignment, race, marriage and civil partnership, pregnancy and maternity, religion or belief, sex and sexual orientation...”*

23. The Tribunal had been unable to find evidence of any remediation undertaken by Dr Eshwari or any steps taken to address her misconduct. Further, there had been no evidence of any progression in Dr Eshwari's insight during the last six months, and it considered her level of insight to be low.

24. The Tribunal took account of the relevant paragraphs of the SG regarding suspension. It was conscious that suspension could be appropriate where there had been:

“a serious breach of Good medical practice, but where the doctor's misconduct is not fundamentally incompatible with their continued registration”.

25. The Tribunal considered whether Dr Eshwari should be erased from the medical register. The Tribunal noted paragraph 141 of SG which suggests that more serious action is appropriate where a doctor has discriminated against others outside of the professional context. The Tribunal considered that erasure would not be proportionate to the seriousness of the misconduct in this case. The Tribunal considered that the misconduct, whilst serious, would not usually result in erasure. The Tribunal considered paragraph 109 of the SG which describes circumstances which are more likely to result in erasure and noted that only one of

those circumstances is relevant in this case, namely paragraph J – “*persistent lack of insight into the seriousness of their actions or the consequences*”.

26. In all the circumstances, the Tribunal determined to suspend Dr Eshwari’s registration for a further period. It was of the view that this would provide Dr Eshwari with a further opportunity to engage with remediation and the development of insight, and to demonstrate that she has reflected on her discriminatory comments and actions.

27. The Tribunal determined that Dr Eshwari’s behaviour was not fundamentally incompatible with continued registration at this point. The Tribunal noted the content of the various letters which Dr Eshwari had sent to the GMC. The Tribunal considered that, given the expressions of regret contained in the correspondence, Dr Eshwari appeared to be capable of developing insight into her misconduct and of remediating it, although this will require Dr Eshwari to engage with the regulatory proceedings in a way which she has not done so far. The Tribunal considered that it was in the public interest to allow Dr Eshwari a further opportunity to demonstrate the development of insight and remediation.

28. The Tribunal determined to suspend Dr Eshwari’s registration for a period of six months. The Tribunal considered paragraphs 99-102 of SG and the table which follows in the SG in determining the length of the suspension. Dr Eshwari’s persistent failure to demonstrate insight and remediation was considered by the Tribunal to be a serious aggravating factor and supported the need for a significant period of suspension.

Review hearing directed

29. The Tribunal determined to direct a review of Dr Eshwari’s case. A review hearing will convene shortly before the end of the period of suspension. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Eshwari to demonstrate how she has developed further insight and remediated the misconduct. It therefore may assist the 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.

Dr Eshwari will also be able to provide any other information that she considers will assist.

30. The Tribunal wish to repeat the warning given by the September 2023 Tribunal, namely that Dr Eshwari must understand that if she fails to demonstrate adequate

development of insight and remediation at the next review hearing, the reviewing Tribunal may determine that it has little option other than to erase her name from the Medical Register. The Tribunal considered that it would be helpful if Dr Eshwari were to engage with the GMC and submit any material which she would like the Tribunal to have sight of when considering the review of her case. It is a matter entirely for Dr Eshwari to decide whether to engage with these proceedings and to either submit information or attend the review hearing, but this Tribunal considered that it would be in Dr Eshwari's interests to engage with the proceedings if possible.

31. The Tribunal has directed to suspend Dr Eshwari's registration for a further six months. 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 order of suspension will remain in place during the appeal period.

ANNEX A – 08/03/2024

Application on Service & proceeding in absence

1. Dr Eshwari is neither present nor represented today at this Medical Practitioners Tribunal ('MPT') hearing. The Tribunal therefore considered whether the relevant documents had been served in accordance with General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), and paragraph 8 of the fourth Schedule to the Medical Act 1983.

Service

2. Mr Lewis Kennedy, Counsel, on behalf of the General Medical Council ('GMC') made an application on service and proceeding in absence. He referred the Tribunal to the documents relevant to proof of service and submitted that notice of this hearing had been properly served to Dr Eshwari. Mr Kennedy submitted that that his application is to proceed in Dr Eshwari's absence under Rule 31 and invited the Tribunal to proceed in her absence.

3. The Tribunal noted the following documents:

- Proof of Dr Eshwari's registered address;
- MPTS Case Management Letter sent to Dr Eshwari dated 10 November 2023;
- GMC Information Letter and bundle sent to Dr Eshwari dated 30 January 2024
- Proof of delivery of GMC Information Letter and bundle dated 1 February 2024
- Telephone note of call attempt to Dr Eshwari dated 16 February 2024
- Letter from Dr Eshwari confirming receipt of GMC Information Letter and confirming non-attendance at hearing dated 16 February 2024
- MPTS Notice of Hearing sent to Dr Eshwari dated 20 February 2024
- Proof of delivery of MPTS Notice of Hearing dated 21 February 2024

4. The Tribunal took account of all documents provided including the letter from Dr Eshwari dated 16 February 2024 confirming her non-attendance. The Tribunal was satisfied that notice of this hearing had been properly served in accordance with the Rules.

Proceeding in absence

5. As the Tribunal was satisfied that notice had been properly served on Dr Eshwari, the Tribunal then considered whether to proceed in her absence under Rule 31, which states:

'31. Where the practitioner is neither present nor represented at a hearing, the Committee or Tribunal may nevertheless proceed to consider and determine the

allegation if they are satisfied that all reasonable efforts have been made to serve the practitioner with notice of the hearing in accordance with these Rules.'

6. Mr Kennedy submitted that service has been affected in accordance with Rule 40 of the Rules.

7. Having considered the evidence before it and the submissions made by Mr Kennedy, the Tribunal was satisfied that Notice of this Hearing had been served on Dr Eshwari in accordance with Rule 15 and Rule 40 of the GMC (Fitness to Practise) Rules 2004 (the Rules), and paragraph 8 of Schedule 4 to the Medical Act 1983, as amended.

The Tribunal's Decision

8. The Tribunal was mindful that the discretion to proceed in the absence of a doctor should be exercised with the utmost care and caution and with a regard to the overall fairness of the proceedings. In doing so, it considered the need to balance Dr Eshwari's interests with the overarching statutory objective.

9. The Tribunal considered a submission made by Mr Kennedy on behalf of the GMC that XXX. The Tribunal questioned this and Mr Kennedy stated that there was no XXX evidence to support the view XXX – it was only a suspicion of his based partly on the facts of the original allegation. The Tribunal did not consider that there was any reliable evidence XXX. It bore in mind that that she had not participated in either of the previous tribunal hearings.

10. The Tribunal has evidence before it that Dr Eshwari was aware of this hearing taking place on 8 March 2024. The Tribunal noted Dr Eshwari's letter dated 16 February 2024 confirming her non-attendance.

11. The Tribunal determined that Dr Eshwari has chosen to voluntarily absent herself from this hearing. Furthermore, it has not received any indication that Dr Eshwari has requested an adjournment. The Tribunal could not be satisfied that, were there to be an adjournment, Dr Eshwari might attend a hearing on a future date.

12. There was no evidence before the Tribunal to suggest that Dr Eshwari would provide any further information or documentation if the hearing was to adjourn to a later date.

13. The Tribunal has balanced Dr Eshwari's interests with the wider public interest in deciding whether to proceed in her absence. The Tribunal concluded that it is in the public interest and in the interests of justice to proceed with this hearing today.

14. Accordingly, the Tribunal determined that it was fair and reasonable to proceed in Dr Eshwari's absence in accordance with Rule 31.