

PUBLIC RECORD

Date: 27/09/2023

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
Review hearing directed

Tribunal:

Legally Qualified Chair	Mr Nathan Moxon
Lay Tribunal Member:	Mr Andrew Galliford-Yates
Medical Tribunal Member:	Dr Joanne Topping

Tribunal Clerk:	Miss Emma Saunders
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Attendance and Representation:

Medical Practitioner:	Not present and not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Mr Andrew Molloy, 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 - 27/09/2023

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 Application Made during the Impairment Stage

2. The Tribunal determined that service of the notice of this hearing had been effected in accordance with Rule 40 of the Rules, and paragraph 8 of Schedule 4 to the Medical Act 1983, as amended. The Tribunal determined to proceed with the hearing in Dr Eshwari's absence in accordance with Rule 31 of the Rules. The Tribunal's full decision on this matter is included at Annex A.

Background

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

4. 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, 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*'.

5. 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.

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 ('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 his type of behaviour was not acceptable.
11. This is the first review hearing of Dr Eshwari's case. The February 2023 Tribunal was of the view that it might assist this Tribunal to receive from Dr Eshwari, 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 Evidence

12. The Tribunal has taken into account all of the evidence received.

13. The GMC sent Dr Eshwari a number of letters in the period since the February 2023 Tribunal hearing, including correspondence on 19 April 2023 and 24 May 2023. The GMC reminded Dr Eshwari of the various information that the February 2023 Tribunal considered would be helpful to this reviewing Tribunal, as quoted above. The MPTS Case Management Team also sent Dr Eshwari correspondence with various directions on 21 April 2023.

Submissions

Submissions on behalf of the GMC

14. Mr Molloy, Counsel on behalf of the GMC, stated that the reflective statement provided by Dr Eshwari, as quoted below, does not cover what the GMC and the Tribunal would have expected. Mr Molloy stated that the February 2023 Tribunal had already expressed concerns about the level of Dr Eshwari's insight and wanted to see reflection covering the impact of her conduct. Mr Molloy submitted that this, and any remediation, appeared to be missing from the one page of reflection provided by Dr Eshwari. He submitted that the GMC view was that Dr Eshwari's fitness to practise remains impaired today.

Written Submissions from Dr Eshwari

15. Dr Eshwari was not present or represented at the hearing. She had sent a letter to the GMC with regard to the hearing on 5 June 2023, which was relevant to impairment. In the letter Dr Eshwari stated:

"I have given much thought to the findings of the Tribunal and very much regret that the other doctor was offended by my actions although it was never my intention to cause any such offence.

I also regret that anything I have said or done has damaged the reputation of the medical profession and will most certainly be taking much more care in the future should I ever find myself in a similar situation.”

The Relevant Legal Principles

16. 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 the doctor to satisfy it that she would be safe to return to unrestricted practise.

17. 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.

The Tribunal’s Determination on Impairment

Misconduct

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

19. The Tribunal had regard to the findings of the February 2023 Tribunal, including the documentation that it thought might be of assistance. This Tribunal had regard to the short statement provided by Dr Eshwari, as quoted in full above.

20. The Tribunal 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 2023 Tribunal.

21. In respect of insight, the Tribunal had regard to the statement from Dr Eshwari from June 2023. It provides an acknowledgement that Dr A had been upset by her actions and that there had been harm to the profession, but appeared to go no further than Dr Eshwari’s apology to the February 2023 Tribunal. This Tribunal noted that there appeared to be a

genuine expression of 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. There also appeared to be limited analysis or understanding of the misconduct and what the impact on others had been. 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 last six months, and considered her level of insight to be low.

22. Having regard to the risk of repetition, the Tribunal noted the lack of insight and remediation. Given the conclusions of the February 2023 Tribunal, this Tribunal concluded that the risk remains the same - it had not been mitigated as yet.

23. The February 2023 Tribunal was of the view that, given the nature of the matters which led to the finding of misconduct, Dr Eshwari's behaviour would undermine public confidence in the profession if a finding of impairment were not made. It also considered that a finding of impairment was needed to uphold proper professional standards. This Tribunal determined that, especially given the lack of adequate development of insight or remediation, these two limbs of the overarching objective remain engaged in this case.

24. In all the circumstances, this Tribunal has therefore determined that Dr Eshwari's fitness to practise is impaired by reason of misconduct.

Determination on Sanction - 27/09/2023

25. 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

26. 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

Submissions on behalf of the GMC

27. Mr Molloy referred to the Sanctions Guidance (16 November 2020) ('the SG'). This included reference to paragraph 56 relating to discriminatory behaviour, which will be quoted below by the Tribunal, and the paragraphs in respect of 'lack of insight', including paragraph 51:

"It is important for tribunals to consider insight, or lack of, when determining sanctions. It is particularly important in cases where the doctor and the GMC agree undertakings or the tribunal imposes conditions. The tribunal must be assured that this approach adequately protects patients, in that the doctor has recognised the steps they need to take to limit their practice to remediate."

28. Mr Molloy submitted that there were no exceptional circumstances in this case that would justify taking no actions and it was not a case where undertakings had been submitted. Mr Molloy further submitted that this was not a case where conditions on Dr Eshwari's registration would be appropriate.

29. Mr Molloy referred to the paragraphs of the SG regarding suspension, including paragraph 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."

30. Mr Molloy submitted that the Tribunal might also consider that some of the factors (as identified by the February 2023 Tribunal) set out at paragraph 97 of the SG, notably (a) and (f), as follows:

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

a A serious breach of Good medical practice, but where the doctor's misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any

sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.

...
f No evidence of repetition of similar behaviour since incident.”

31. Mr Molloy submitted that a further period of suspension of Dr Eshwari’s registration would be appropriate and proportionate in the circumstances.

Written Submissions from Dr Eshwari

32. No written submissions on sanction were provided by Dr Eshwari. The Tribunal had regard to the correspondence from Dr Eshwari that it referred to in its determinations on impairment and Annex A.

The Tribunal’s Determination on Sanction

33. The decision as to the appropriate sanction to impose, if any, in this case is a matter for this Tribunal exercising its own judgement.

34. In reaching its decision, the Tribunal has taken account of the SG and of the overarching objective. It has borne in mind that the purpose of the sanctions is not to be punitive, but to protect patients and the wider public interest, although they may have a punitive effect.

Aggravating and mitigating factors

35. The Tribunal accepted and adopted the aggravating and mitigating factors set out by the February 2023 Tribunal. This Tribunal was unable to identify any additional mitigating factors in this case. In terms of aggravating factors, the Tribunal has found 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. The Tribunal was of the view that the continued lack of insight, after a period of six months, was a matter of aggravation.

No action

36. 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.

37. 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

38. 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.

39. 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. The regulatory concerns are attitudinal in nature and are not clinical. Therefore the Tribunal was unable to formulate any workable or appropriate conditions that would adequately address the concerns and issues in this case.

Suspension

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

41. The Tribunal had regard to the findings of the February 2023 Tribunal 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...”

42. The Tribunal reiterated its comments in respect of impairment, including that it 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.

43. The Tribunal took account of the relevant paragraphs of the SG regarding suspension, including paragraphs 91 and 97 as quoted above. 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”*. The Tribunal was also clear that there had been no evidence of repetition of similar behaviour since the incident.

44. 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 thought about the discriminatory comment and actions - with particular reference to paragraph 56(b) as quoted above.

45. The Tribunal determined that Dr Eshwari’s behaviour was not fundamentally incompatible with continued registration at this point. It acknowledged the correspondence that Dr Eshwari has engaged with and the short 5 June 2023 statement. The Tribunal considered this to have been initial steps towards the development of insight and that it was in the public interest to allow Dr Eshwari a further opportunity to demonstrate the development of insight and remediation.

46. The Tribunal determined to suspend Dr Eshwari’s registration for a period of six months. It considered this to be a significant period of time and that this was reflective of the lack of attempts made to remediate and show insight. It was conscious of a number of the aggravating factors that the SG suggests might be relevant to the length of suspension, namely the doctor’s reluctance to undertake remedial action and the extent to which the doctor has failed to address serious concerns over time. As such, the Tribunal determined that six months was an appropriate and proportionate period of time.

Review hearing directed

47. 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 2023 Tribunal 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.

48. 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.

49. The Tribunal noted paragraph 109(j) of the SG, which reads:

“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.”

50. The Tribunal has directed to suspend Dr Eshwari’s registration for six months. The MPTS will send Dr Eshwari a letter informing Dr Eshwari 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 - 27/09/2023

Service and Proceeding in Absence

Service

51. Dr Eshwari is neither present nor legally represented at this hearing.

52. The Tribunal was provided with a Service bundle from the General Medical Council (GMC). This included a letter from Dr Eshwari to the GMC dated 26 July 2023. Dr Eshwari stated that she noted that the GMC wished the hearing to be 'virtual' however she was unable to deal with it in this way as she did not use computers and did not have anyone who could assist her with it. Dr Eshwari stated: *"In the circumstances I understand that any hearing will have to proceed without my attendance either in person or online"*.

53. On 28 July 2023, the MPTS Case Management Team wrote to Dr Eshwari - in response to her letter to the GMC on 26 July 2023. The letter stated that Dr Eshwari's request for an in-person hearing had been noted and confirmed that the MPTS Case Manager had granted the request. It stated that final venue confirmation would be provided in the MPTS notice of hearing in due course.

54. The Tribunal has been provided with a GMC information letter dated 9 August 2023 and the MPTS notice of hearing letter dated 10 August 2023. Both letters were sent to Dr Eshwari by post. The Tribunal has been provided with tracking information that showed that the letters were delivered on 14 August 2023 and 15 August 2023, respectively.

55. In a letter dated 12 September 2023, Dr Eshwari returned the 'MPT attendance form', which had been attached to the notice of hearing letter. Dr Eshwari had ticked the box that read: *"I am: c. Not attending the hearing"*. Within the letter itself, Dr Eshwari stated that *"I do not do online i.e. Virtual"* and referred to the various instances of previous communication in the case.

56. On 21 September 2023, the MPTS Case Management Team wrote to Dr Eshwari - in response to her letter dated 12 September 2023 and the return of the 'MPT attendance form'. The letter stated that the hearing would still take place in person at the MPTS hearing centre and the address details were repeated. It also stated: *"I would like to highlight that it is open to you to engage with the hearing via a telephone if that would assist. If this is*

something you would like to consider, please could you contact me on the number below and I [will] provide details of the number to call to join the hearing”.

57. Mr Molloy, Counsel on behalf of the GMC, stated that the GMC had a duty to communicate with the doctor at their registered address and the discretion to proceed in their absence should be exercised with great care and caution, balancing the interests of the doctor with the wider public interest.

58. Mr Molloy submitted that the GMC had carried out its duty to communicate with Dr Eshwari at her registered address and that a further opportunity to attend, via telephone, had also been provided to Dr Eshwari. Mr Molloy submitted that Rule 40 of the Rules had been satisfied as far as service and notice of the hearing was required.

59. The Tribunal determined that notice of this hearing had been served on Dr Eshwari in accordance with Rule 40 of the GMC’s (Fitness to Practise) Rules 2004, as amended, (‘the Rules’), and paragraph 8 of Schedule 4 to the Medical Act 1983, as amended.

Proceeding in Absence

60. The Tribunal then went on to consider whether it would be appropriate to proceed with this hearing in Dr Eshwari’s absence pursuant to Rule 31 of the Rules. The Tribunal was conscious that the discretion to proceed in the absence of a doctor should be exercised with the appropriate care and caution, balancing the interests of the doctor with the wider public interest.

61. Mr Molloy submitted that Dr Eshwari’s absence today was voluntary and no application for adjournment had been made. He stated that, in any event, an adjournment would be unlikely to serve any useful purpose. Mr Molloy submitted, in those circumstances, the Tribunal could and should exercise its power to proceed in Dr Eshwari’s absence.

62. In deciding whether to proceed with this hearing in Dr Eshwari’s absence, the Tribunal carefully considered all the information before it.

63. In the circumstances, the Tribunal determined that it was appropriate to proceed in Dr Eshwari’s absence. It was of the view that Dr Eshwari had voluntarily absented herself from this hearing given her clear written communication with the GMC and MPTS. The Tribunal noted that different methods of attendance, including telephone attendance, were

offered to Dr Eshwari. It also noted that Dr Eshwari indicated that she did not intend to attend the hearing, but did not give a reason for that non-attendance. She did not attend the February/March 2023 hearing. The Tribunal was clear that an adjournment would be unlikely to result in Dr Eshwari's participation in the hearing and, on balance, it is in the public interest for this hearing to proceed today.