

Dates: 05/02/2019 –22/02/2019
13/03/2019 – 15/03/2019
03/09/2020

Medical Practitioner's name: Dr Malleswara VEMURI
GMC reference number: 4471752
Primary medical qualification: MB BS 1976 Andhra
Type of case **Outcome on impairment**
New - Misconduct Not Impaired

Summary of outcome

No action (warning not considered)

Tribunal:

Legally Qualified Chair	Mr Julian Weinberg
Lay Tribunal Member:	Mrs Jillian Alderwick
Medical Tribunal Member:	Dr Ann Wolton

Tribunal Clerks:	Ms Lauren Culkin (5 – 8 February 2019; 13-22 February 2019) Mr Michael Murphy (11 February 2019; 13 – 15 March 2019) Ms Emma Saunders (11 February 2019) Ms Sarah Ryan (12 February 2019) Mr Stuart Peachey (13 February 2019) Ms Angela Carney (18 February 2019) Ms Keely Crabtree (3 September 2020)
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Record of Determinations – Medical Practitioners Tribunal

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner’s Representative:	Miss Sarah Forshaw , QC, instructed by BCL Solicitors
GMC Representative:	Ms Chloe Hudson, Counsel - 5 – 22 February 2019; 13-15 March 2019 Mr Adam Lodge, Counsel – 3 September 2020

Attendance of Press / Public

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

Overarching Objective

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

Determination on Facts – 15 March 2019

Background

1. Dr Vemuri graduated from Andhra University in India in 1976. Prior to the events which are the subject of this hearing, Dr Vemuri continued his post-graduate studies in Anaesthetics and obtained his qualification for this in 1980. Dr Vemuri went on to work as a doctor in various hospitals in Delhi. From India, he moved to Iran to work for the Ministry of Health. Dr Vemuri then took up a role as a Specialist Anaesthetist in Saudi Arabia, where he rose to the position of Head of Department of Anaesthetics, Intensive Care and Pain Management.
2. In 1995, Dr Vemuri moved to the UK to work in Anaesthetics. He initially took up a post at a hospital in Ilford. Approximately one year later, he moved to North Middlesex University Hospital NHS Trust (the ‘Trust’).

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3. At the time of the allegations, Dr Vemuri was practising as a Senior Anaesthetist at the Trust. Dr Vemuri also ran the Pain Management Clinic ('the Clinic') at North Middlesex Hospital, where he worked a number of days each week in addition to working as an anaesthetist. It is in relation to his work at the Clinic were the facts alleged are said to have occurred

4. In summary the Allegation that has led to Dr Vemuri's hearing is that following a laparoscopic appendectomy in 2013 Patient A suffered abdominal pain. She was referred to Dr Vemuri at the Clinic April 2014 and 20 June 2014 and for two further unscheduled consultations on 28 June 2014 and 11 June 2014. It is alleged that during any or all of those consultations, Dr Vemuri acted inappropriately and in a sexually motivated manner by:

- requesting and removing Patient A's clothing;
- touching her genitals and breasts when not clinically indicated;
- failing in his obligations to offer and record arrangements for a chaperone;
- making inappropriate comments to Patient A about her looks;
- inviting her to lunch;
- locking the consultation room;
- offering unscheduled appointments and;
- Providing his private mobile phone number.

5. These concerns were raised with the GMC on 14 July 2014 by the Trust following a police investigation into an allegation of sexual assault made against Dr Vemuri by Patient A.

The Outcome of Applications Made during the Facts Stage

6. The Tribunal granted Ms Forshaw's application, on behalf of Dr Vemuri, made pursuant to Rule 34(1) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to admit several further pieces of evidence, but refused one piece of evidence. The Tribunal's full decision on the application is included at Annex A.

7. The Tribunal granted Ms Hudson's application, on behalf of the GMC, made pursuant to Rule 34(13) of the Rules, for Detective Sergeant ('DS') D and Ms E to give their oral evidence via video-link. The Tribunal's full decision on the application is included at Annex B.

8. The Tribunal granted Ms Forshaw's application, on behalf of Dr Vemuri, made pursuant to Rules 34(13), (14) and sub-rule 14(b), for the following witnesses to give their oral evidence via video-link, namely: Mr H, Mr I, Mr F; and also Dr K if he were to become available to give evidence. All these witnesses are doctors at the Trust who were unable to attend the hearing in person due to their professional commitments. The GMC did not object to the application.

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The Allegation and the Doctor's Response

9. The Allegation made against Dr Vemuri is as follows:

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

1. On one or more occasions between December 2013 and July 2014, including the dates set out in Schedule 1 you consulted ('the consultations') with patient A. **To be determined**
2. On one or more occasions you behaved inappropriately during the consultation/s with Patient A in that you: **To be determined**
 - a. failed to offer Patient A a chaperone prior to conducting an intimate examination; **To be determined**
 - b. conducted an intimate examination that was not clinically indicated; **To be determined**
 - c. asked Patient A to remove her clothing and underwear; **To be determined**
 - d. physically removed Patient A's clothing; **To be determined**
 - e. touched Patient A's breasts; **To be determined**
 - f. kissed Patient A's breasts; **To be determined**
 - g. sucked Patient A's breasts; **To be determined**
 - h. touched Patient A's genitals; **To be determined**
 - i. penetrated Patient A's genitals with your fingers; **To be determined**
 - j. locked the door of the examination room without Patient A's permission; **To be determined**
 - k. referred to Patient A as "pretty" or "beautiful", or words to that affect; **To be determined**
 - l. offered Patient A unscheduled clinic appointments; **To be determined**

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- m. consulted with Patient A during unscheduled appointments; **To be determined**
 - n. arranged unscheduled appointments with Patient A using her mobile telephone number; **To be determined**
 - o. offered Patient A your private telephone number; **To be determined – but facts in this particular sub-paragraph have been admitted**
 - p. offered to take Patient A out for lunch. **To be determined**
3. On one or more occasions, you failed to record that you had conducted an intimate examination of Patient A during the consultation/s. **To be determined**
4. Your conduct as described at paragraph 2 was sexually motivated. **To be determined**

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

The Admitted Facts

10. At the outset of these proceedings, through his Counsel, Ms Forshaw, Dr Vemuri made an admission to sub-paragraph 2(o) of the Allegation. However, Dr Vemuri did not accept that by offering his private telephone number to Patient A that he behaved inappropriately. Whilst therefore noting that the facts of sub paragraph 2(o) are admitted, given the denial that he acted inappropriately, the Tribunal made no finding in accordance with Rule 17(2)(c) that this particular of the allegation was found proved.

The Facts to be Determined

11. In light of Dr Vemuri's response to the Allegation made against him, the Tribunal is required to determine whether Dr Vemuri behaved inappropriately as alleged towards Patient A during outpatient consultations and whether such behaviour, if found proved, was sexually motivated.

Factual Witness Evidence

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

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- Patient A, the complainant, in person;
- Mr B, the boyfriend of Patient A at the time of the alleged behaviour, in person;
- Mr C, Associate Director of Governance at the Trust, who was on secondment to NHS Improvement at the time of the Allegation, in person;
- DS D, Metropolitan Police, via video-link;
- Ms E, a registered nurse in the Clinic at time of the Allegation, via video-link.

13. Dr Vemuri gave oral evidence before the Tribunal, and provided his own witness statements dated 7 January 2019 and 7 February 2016 (the latter was prepared for the Trust in relation to his disciplinary hearing). In addition, the Tribunal received evidence from the following witnesses on Dr Vemuri's behalf:

- Mr F, Consultant Orthopaedic Surgeon at the Trust, via video-link;
- Mr H, General & Vascular Surgeon at the Trust, via video-link;
- Mr I, Divisional Director of Pain Management, Cancer Services and Orthopaedic Surgeons at the Trust, via video-link.

Expert Witness Evidence

14. The Tribunal received evidence from an expert witness on behalf of the GMC, Dr M, Consultant in Anaesthesia and Pain Management. He gave oral evidence before the Tribunal, and provided three reports, dated March 2017, September 2017 and 8 August 2018.

Evidence

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

- Witness statements from the witnesses who gave oral evidence at this hearing;
- Witness statements from witnesses who did not give oral evidence at this hearing, for example Patient A's parents;
- Dr Vemuri's medical notes regarding Patient A at the time of the Allegation;
- Various medical history records of Patient A;
- Videos of ABE Police interviews with Patient A on 30 June 2014, 14 and 22 July 2014 and transcripts;
- Screenshots of text messages between Patient A, her friend Ms J and Mr B;
- CCTV Schedule by the Metropolitan Police, prepared on 11 July 2014;
- CCTV footage from the Clinic and the Trust hospital pharmacy from 11 July 2014;
- Transcripts from Dr Vemuri's Crown Court trial from May to June 2016;
- Various letters and notes in relation to Dr Vemuri's disciplinary hearing by the Trust of 2013, 2016 to 2017;

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- Various testimonials relating to Dr Vemuri;
- Photographs and floor map plans of the layout of the Clinic.

The Tribunal's Approach

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

17. The Tribunal reminded itself of the factors to be taken into account when assessing the probability of an event occurring and considered this in the case of *In Re H & Ors (minors), Re [1995] UKHL 16 (05 April 2000)*, which states:

'74. Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred.'

Therefore the more improbable the event, the more cogent evidence is required to be for that matter to be found proven. Neither the seriousness of the allegation nor the seriousness of the consequences makes any difference to the standard of proof to be applied.

18. The Tribunal further reminded itself of the balancing exercise that was succinctly set out in the case of *Pope v GDC [2015] EWHC 278 (Admin)*, which states:

'The evidence in favour of one party is put in one pan of the scales and that of the other in the other pan. As the case progresses, one pan may rise as the other falls and vice versa. When the evidence has concluded, the scales will have tipped in one direction or another or will have ended up evenly balanced. The fact that one party bears the burden of proof means that he will lose not only if the pan has fallen in favour of the other party but also if the scales end up evenly balanced.'

19. The Tribunal also took into account the importance of assessing the whole of the evidence which includes the consideration of the credibility and character of the witnesses in a balanced way, as referred to in the case law of *Suddock v NMC 2015 EWHC 3612 (Admin)*, which states:

'Whilst demeanour is not an irrelevant factor for a court or tribunal to take into account, the way in which the witness's evidence fits with any non-

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contentious evidence or agreed facts, and with contemporaneous documents, and the inherent probabilities and improbabilities of his or her account of events, as well as consistencies and inconsistencies (both internally, and with the evidence of others) are likely to be far more reliable indicators of where the truth lies. The decision-maker should therefore test the evidence against those yardsticks so far as is possible, before adding demeanour into the equation.'

20. As referred to below in the next section, although the Tribunal was aware that Dr Vemuri was acquitted at the Crown Court on 8 June 2016, and the Trust's disciplinary hearing outcome was to take no disciplinary action against Dr Vemuri as confirmed on 16 February 2017, the Tribunal was mindful of its role to reach its own conclusions independently of those determinations.

The Tribunal's Analysis of the Evidence and Findings

The context and background of the Allegation

21. The Tribunal considered all the evidence presented to it, in which the background of the alleged events is as follows:

22. On 18 May 2013, Patient A underwent a laparoscopic appendectomy (keyhole surgery) at the Trust to remove her appendix. At the time, she was 17 years old. Following the surgery, Patient A complained of ongoing abdominal pain around her umbilicus. The pain from the surgery scars were radiating in a "tear-shape" and described as burning and stinging.

23. Due to this, Patient A saw a variety of medical practitioners at the Trust regarding her chronic pain, including appointments at her GP surgery, which resulted in her being referred for physiotherapy. She also attended a number of counselling sessions regarding her mental health. On 18 September 2013, Patient A had a consultation with Mr H, General & Vascular Surgeon at the Trust, whose team had operated on her. Without there being a formal diagnosis of the cause of her chronic pain, Mr H made an internal referral of Patient A to Dr Vemuri at the Clinic.

24. Prior to the referral of Patient A, Dr Vemuri had met with Professor L, Medical Director of the Trust, on two occasions of 9 and 22 July 2013. This related to chaperoning issues which occurred at the Clinic on 1 March 2013 which was reported by another patient. The facts of that matter are unrelated to this case. However, in his letter dated 9 August 2013, Professor L conveyed the decision made by the Trust that outlined five provisions of the "Conversation of Concern" or undertakings for Dr Vemuri to adhere to, which would be kept on Dr Vemuri's file for 12 months. The five provisions required Dr Vemuri, amongst other things, to record offering chaperones to patients. The provisions are as follows:

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'1. That I formally record this communication to you as a "Conversation of Concern" regarding your failure to document that every patient you wish to examine has been offered a chaperone, and the patient's response. This is contrary to Trust policy.

2. You must forthwith ensure there is a chaperone whenever you have to examine a patient who needs to remove any piece of clothing and whenever the occasion demands even if the patient is fully clothed, irrespective of the knock-on impact on the speed of seeing patients in his clinic. The chaperone must be documented in the patient's notes or on a specific Clinic Book secured for that purpose. It is important that you familiarise yourself with the Trust policy on chaperoning and GMC guidance on the same issue.

3. Random audits will be conducted of patients you have seen in the clinic over the coming months to ensure you have embedded this practice.

4. You are advised that your unblemished record may be tarnished by failure to observe these simple measures which leave you vulnerable to allegations, founded or otherwise, and which will lead to a disciplinary process that may end in dismissal.'

5. If the patient changes her mind and decides to participate in a formal investigation, then this case will be reopened in case there is further information from him.'

25. Patient A's consultation dates at the Clinic of the Trust, were as follows:

- 2 December 2013 – first appointment, scheduled
- 4 April 2014 – second appointment, scheduled
- 20 June 2014 – third appointment, scheduled
- 28 June 2014 – fourth appointment, unscheduled
- 11 July 2014 – fifth appointment, unscheduled

26. On 13 July 2014 at 13:10, Patient A attended Tottenham Police Station and gave her first account alleging sexual assaults by Dr Vemuri.

27. On 14 July 2014, the first of three video recorded police interviews were conducted with Patient A, by the Sexual Offence Investigative Technique ('SOIT')

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team. Dr Vemuri was referred to the GMC by the Trust on the same day because of the nature of the allegations that had been made to the police.

28. On 22 July 2014, the police conducted a second interview with Patient A. A third and final interview took place on 30 June 2015.
29. On 15 July 2014 at approximately 07:10 a.m., three officers of the Metropolitan Police attended the home address of Dr Vemuri where he was arrested. Later on that same day, Dr Vemuri was interviewed under caution.
30. Professor L subsequently suspended Dr Vemuri from work pending the outcome of a disciplinary process.
31. On 10 July 2015, Dr Vemuri was charged by the police.
32. The Crown Court Indictment contained two counts of assault by penetration and one count of sexual assault. The Crown Court trial was originally listed to commence on 29 February 2016, but was subsequently adjourned until 23 May 2016 and further adjourned until 8 June 2016.
33. On 8 June 2016 the Crown Court jury unanimously acquitted Dr Vemuri on the counts he faced on indictment.
34. Whilst he remained suspended from work, on 19 July 2016, Dr Vemuri was informed by the Trust of its intention to carry out a disciplinary hearing in order to investigate his alleged failure to have a chaperone present during his consultation with Patient A on 11 July 2014.
35. Having concluded its investigations, by a letter dated 16 February 2017, the Trust confirmed to Dr Vemuri that no disciplinary action would be taken against him. Even though he had been subject to undertakings regarding offering chaperones, the Trust deemed that on the occasion in question, a chaperone was not required because, on the balance of probabilities, it concluded that only an abdominal examination took place during that consultation.

The Tribunal's evaluation of the witnesses

Patient A

36. The Tribunal had regard to the fact that Patient A has maintained her allegation of sexual assaults at the Pain Clinic by Dr Vemuri, since 2014. The Tribunal noted the journey Patient A has had to go through in making this allegation namely three police interviews, a Crown Court trial in 2016 and finally giving evidence before this Tribunal in person.

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37. The Tribunal further noted that Patient A's account as to the general nature of Dr Vemuri's sexually inappropriate behaviour, remained consistent throughout.

38. The Tribunal was mindful that a truthful account can still be given by individuals with mental health issues and further that Patient A's medical history which includes self-harming, is not determinative of credibility and therefore whether the facts of this case can be proved. Rather, the Tribunal focused on the reliability and credibility of the evidence presented to it.

39. The Tribunal noted that Patient A was willing to engage in the hearing. She responded directly to questions. When pressed to account for inconsistencies in her evidence, she stated that she must have been mistaken.

40. The Tribunal identified a number of factors undermining the overall reliability and credibility of Patient A's evidence which are addressed in relation to the Tribunal's findings of fact below.

Mr B

41. Mr B was Patient A's boyfriend at that time of the Allegation. He accompanied her to the last consultation with Dr Vemuri on 11 July 2014, although he remained outside of the consultation room in the waiting area. Mr B was also the first person Patient A confided in about having been allegedly sexually assaulted by Dr Vemuri after the last appointment on 11 July 2014.

42. Mr B confirmed that 'on occasion' Patient A would demand his immediate attention and 'on occasions' Patient A had made things up. However, Mr B confirmed that after her consultation with Dr Vemuri on 28 June, she did not seem "fine" because "she wished not to say anything whilst on hospital grounds" and that "she was uneasy".

43. It was not until the evening of 11 July, after they had seen Patient A's younger sister's play, that Patient A broke down and told him what had happened. It was Mr B who encouraged Patient A to tell her parents.

44. Until the Crown Court case, Mr B had not known that the sexual assaults were alleged to have taken place on previous appointments. He believed Patient A was referring solely to the consultation of 11 July 2014.

45. The Tribunal considered that Mr B gave as helpful an account as possible and that he was neither prone to exaggeration nor malice.

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Mr C

46. Mr C provided the police with CCTV footage and sought out Dr Vemuri's handwritten medical notes at the Pain Clinic.

47. Mr C confirmed that he eventually found Dr Vemuri's original notes of the consultation on 28 June 2014, although they had previously been thought to have been lost. Mr C confirmed he never found Dr Vemuri's original notes in relation to the final 11 July 2014 appointment.

48. The Tribunal had no reason to conclude that his evidence was anything other than reliable and credible.

DS D

49. DS D of the Metropolitan Police gave his oral evidence via video-link. On 15 July 2014, DS D was one of the three police officers who arrested and interviewed Dr Vemuri. He was also the officer who informed Dr Vemuri that he would be charged under the Sexual Offences Act 2003 and that there would be a criminal court case.

50. The Tribunal had no reason to conclude that his evidence was anything other than reliable and credible.

Ms E

51. Ms E was a Nurse at the Pain Clinic at the time of the Allegation. She was the Nurse who had tried to access Consultation Room 12 during the appointment of Patient A with Dr Vemuri on 11 July 2014.

52. The Tribunal considered that Ms E gave credible and consistent evidence with the sole intention of assisting the Tribunal. There was no reason to believe that her evidence was prone to exaggeration or motivated by malice.

Mr F

53. Mr F was the Clinic Lead of the Pain Clinic at the time of the Allegation. He stated that he knows Dr Vemuri professionally but not socially, although he finds Dr Vemuri friendly and they regularly converse at work. Regarding Dr Vemuri's ability as a Pain Specialist, Mr F believes he is of a level that would be expected of a Senior Consultant. Mr F testified to Dr Vemuri's character and that he was not aware of any issues regarding his reputation or performance at the hospital. Mr F had seen Dr Vemuri with his family on a few occasions. He considered there was nothing "amiss" and that Dr Vemuri and his wife just seemed to have 'a normal relationship'.

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54. Regarding the Allegation, Mr F said it came a surprise to him and he was “absolutely taken aback when he first heard” about it and that he “just couldn’t believe it”.

55. The Tribunal had no reason to conclude that his evidence was anything other than reliable and credible.

Mr H

56. It was Mr H and his team who conducted Patient A’s appendectomy in 2013 and he was the surgeon who referred Patient A to Dr Vemuri. Before referring Patient A to Dr Vemuri, Mr H informed the Tribunal that he had got to a point where he thought Patient A’s chronic pain was possibly psychosomatic as he could find no physical abnormality that might be the cause of Patient A’s pain.

57. The Tribunal had no reason to conclude that his evidence was anything other than reliable and credible.

Mr I

58. Mr I is the current Divisional Director of Pain Management, Cancer Services and Orthopaedic Surgeons. Dr Vemuri and he frequently work together at present, perhaps once a month. He stated that Dr Vemuri anaesthetises for his trauma lists and sometimes for his elective surgical work.

59. Mr I stated in relation to the period of Dr Vemuri’s suspension, that the Pain Management Service had suffered from his absence. Mr I said that he knows of Dr Vemuri’s interaction with patients and that he cares deeply about his patients.

60. Mr I described Dr Vemuri’s demeanour as “a quiet man, quite humble, not an alpha-person like some ... intelligent, able, good medical knowledge, helpful, team-player. All positive attributes.” He only knows Dr Vemuri from within the workplace and not socially. He recognises Dr Vemuri as “a solid guy, works hard, good team player, someone that is valued in the department.”

61. The Tribunal had no reason to conclude that his evidence was anything other than reliable and credible.

Dr Vemuri

62. As with Patient A, the Tribunal had regard to the fact that Dr Vemuri has been consistent in maintaining his position in that the allegations against him are denied.

63. The Tribunal considered Dr Vemuri in his oral evidence on many occasions to not be direct when giving answers, or providing much by way of any explanation.

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The Tribunal has identified a number of inconsistencies in his evidence and matters that lack credibility which impact on the overall credibility of his evidence. Again, these will be addressed in the Tribunal's specific determinations as to facts.

64. The Tribunal has taken in to account the evidence that it has received in relation to his good character and the Tribunal has followed the legal advice it has received as to how that should be treated.

The Tribunal's findings of Fact

65. Having taken all the context into account, the Tribunal has considered each paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts.

66. In considering whether or not the facts have been found proved, the Tribunal has looked at all the evidence in the round having at the forefront of its mind that the burden of proof lies with the GMC. The Tribunal has identified that there were a number of weaknesses in both the evidence of Patient A and Dr Vemuri undermining the credibility of the evidence they gave. The Tribunal has reminded itself of the test set out in the case of *Pope v GDC* referred to at paragraph 18 above. Having balanced both the consistencies and weaknesses of both witness' evidence, the Tribunal has concluded that the GMC has not discharged its burden of proof in establishing that a number of those matters alleged by Patient A are more likely than not to have happened as set out below.

Paragraph 1

'On one or more occasions between December 2013 and July 2014, including the dates set out in Schedule 1 you consulted ('the consultations') with Patient A'

67. As drafted, this paragraph merely reflects the dates of the five consultations Patient A had with Dr Vemuri. Having heard the evidence, it is an agreed position between the parties that these consultations did occur on the dates in question and the documentary evidence before the Tribunal reflects this position. In the circumstances the Tribunal finds the facts of this paragraph proved.

Paragraph 2

'On one or more occasions you behaved inappropriately during the consultation/s with Patient A in that you:'

68. The Tribunal first considered the factual allegations contained in each of the sub paragraphs. Only if those facts are found proved has the Tribunal gone on to consider whether or not Dr Vemuri had acted inappropriately on one or more

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occasions. The Tribunal is mindful that this case has not been put on the basis of Dr Vemuri undertaking a legitimate intimate examination, but rather that his conduct, regardless of Patient A's initial perception, reflects a sexually motivated assault by Dr Vemuri on Patient A. In this respect the evidence of Patient A and Dr Vemuri are wholly at odds and inconsistent with each other. In the circumstances the Tribunal has first considered whether Dr Vemuri intimately touched Patient A. In that regard in the absence of independent corroborative evidence, the Tribunal has balanced the reliability and credibility of Patient A's evidence with that of Dr Vemuri to determine whether the GMC has discharged its burden of proof.

Sub paragraph 2(a)

'failed to offer Patient A a chaperone prior to conducting an intimate examination'

69. The issue of whether Dr Vemuri intimately and inappropriately touched Patient A is relevant to a number of allegations. The Tribunal, in considering this paragraph, has therefore first considered whether Dr Vemuri intimately touched Patient A. Given the relevance of Patient A's and Dr Vemuri's credibility as witnesses, the Tribunal has, where appropriate, looked at the reliability of the evidence in the round.

Scheduled Consultation - 2 December 2013

70. The Tribunal noted that Patient A was accompanied throughout the first consultation by her father, as recorded in Dr Vemuri's medical notes; and with no dispute.

71. In his oral evidence, as at the Crown Court trial, Dr Vemuri stated that when he explained to both Patient A and her father that he would carry out an abdominal examination on Patient A and gained their verbal consent, he requested the father to act as an informal chaperone for the examination although his clinical note does not reflect this. However, Dr Vemuri stated that the father remained seated by the desk without a response.

72. Dr Vemuri said he proceeded to carry out the abdominal examination of Patient A on the examination table. He did this after he had pulled the curtain around them, subsequently 'separating' them from the father in the small consultation room. Patient A alleged he digitally penetrated her vagina on this occasion.

73. In her written statement and as reflected in her oral evidence, Patient A stated that following this first appointment with Dr Vemuri, as follows:

"When Dr Vemuri said he knew what it was, I was happy because it was

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so nice that he said that there was treatment for it. I had been seeing other doctors and getting no answers and being discharged. I now know that nerve damage can take 2 -4 years to recover or regenerate."

74. Shortly after the appointment, on the same day, Patient A then texted her friend as follows:

Patient A: "I was basically just fingered by my doctor..."

...

"It was a questionable experience ngl" ('not gonna lie')

...

Friend: "Why was it necessary?"

...

Patient A: "I have no idea"

Friend: "He just fancied you"

...

Patient A: "He didn't say much tbh" ('to be honest')

Scheduled Consultation - 4 April 2014

75. On 4 April 2014, Patient A attended her second scheduled outpatient consultation with Dr Vemuri, accompanied by her mother and younger sister. The Tribunal noted that Dr Vemuri had recorded in his clinical notes the presence of Patient A's mother only. Besides this, the Tribunal noted that there is no further mention of Patient A's younger sister for example, if she waited outside the consultation room in reception during the appointment.

76. Dr Vemuri maintained that Patient A's mother had been present throughout the whole of the consultation. Whereas Patient A was unsure at first whether her mother went into the consultation room with her or waited outside, or latterly as in her oral evidence, Patient A thought her mother was perhaps in the consultation room with her and Dr Vemuri for part of the appointment, which was during Patient A's examination; albeit with the curtain "separating" them from Patient A's mother.

77. In his oral evidence, Dr Vemuri stated that he did not believe he physically examined Patient A on that occasion. Patient A alleged that Dr Vemuri did examine her and digitally penetrated her vagina and felt her breasts. Patient A's mother did not suggest in her statement for the Crown Court that she suspected that Dr Vemuri had conducted himself inappropriately.

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78. It was at this appointment that Patient A presented with a rash on her hands, which she and her mother suspected at the time could have been a bee sting. Dr Vemuri was not sure and recommended Patient A go to A&E.

79. Shortly after this appointment, on the same day and whilst sat in A&E with her mother, Patient A texted her friend as follows:

Patient A: "So I just had an interesting hospital check up"

Friend: "Did the doctor finger you again?"

Patient A: "Legit

He might as well fucking had sex with me

With all the vagina [sic] and boob action he got"

...

"He kinda just went

Open your legs

Then bam"

...

"And boob squeezing"

...

"But last time he legit just shoved his hand up there"

...

Scheduled Consultation - 20 June 2014

80. Patient A stated that she attended this appointment alone. Dr Vemuri, in his oral evidence, stated that he did not believe that he physically examined Patient A on that occasion.

81. Patient A recalled that Dr Vemuri suggested that she have blood tests, as she informed him on this occasion that her period had been ongoing for approximately two months or more. Dr Vemuri made no record of this in his clinical notes of this appointment.

82. Dr Vemuri recalled in his oral evidence, as he had stated in his police interview and during the Crown Court Trial, that a student nurse had been present

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throughout the whole of the consultation and that Dr Vemuri regarded her as acting as a chaperone at this appointment. However, despite enquiries being made it had not proved possible to trace the individual to establish whether she was present during the consultation. Ms Forshaw informed the Tribunal that Dr Vemuri's solicitor at the time was criticised by the Crown Court Judge for the delay in trying to establish who this student nurse was.

Unscheduled Consultation - 28 June 2014

83. Following a phone call made to Patient A by an unknown individual, from the Trust, Patient A went to the Clinic for an unscheduled appointment regarding her blood test results. Patient A was not sure if it had been Dr Vemuri who made the call to her or not. Dr Vemuri denied calling Patient A.

84. She was accompanied by her then boyfriend, who did not go into the consultation room with her and Dr Vemuri, but remained waiting outside in reception. Both described their formed impression that the clinic did not look like it was open and that they did not see medical staff but perhaps volunteers or charity workers.

85. This is the appointment where Patient A also alleged that Dr Vemuri asked her if her boyfriend was ever physically abusive towards her.

86. Due to the pain Patient A was experiencing, Dr Vemuri also prescribed her Oxycodone at this appointment, although he made no clinical note of this. It was also at this consultation, Dr Vemuri offered his mobile telephone number to Patient A. He said this was in case she suffered any side effects of the Oxycodone medication he prescribed her. Dr Vemuri instructed her to contact him only in his clinic times on Fridays at the Clinic. At the time of one of the police interviews, Patient A expressed that she thought this was "*very nice ... really helpful and ... lovely*".

Unscheduled Consultation - 11 July 2014

87. Following one of the telephone calls made by Patient A to Dr Vemuri, Patient A went to the Clinic alone for an unscheduled appointment. This was because Patient A stated that Dr Vemuri had instructed her to call him beforehand if she needed his help. Having done so, he told her she could come to see him at the Clinic.

88. At this consultation, Patient A alleged that Dr Vemuri locked the door and sexually assaulted her. Patient A stated that someone tried to gain access into the room but was unable to do so. She further alleges that Dr Vemuri told her she was beautiful and invited her out for lunch with him.

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89. Patient A alleges this physical examination was sexual and not a legitimate medical examination. At this consultation, Patient A alleged that Dr Vemuri again called her beautiful or words to that effect, and asked her if he could kiss/suck her nipples, to which she said no. It is alleged that he then grabbed her breasts and began sucking her nipples, as well as penetrating her vagina digitally.

90. Dr Vemuri stated there was an abdominal and back examination without removal of any clothes. He also denied locking the consultation room door.

91. In order to prove that she had seen Dr Vemuri on this day as it was an unscheduled appointment, Patient A took a prescription from Dr Vemuri of Oxycodone; and immediately after the consultation went to the in-house pharmacy at the Trust to dispense this medication although she did not collect it, but retained “the sticker with the number on it” as proof that she had attended the Clinic. It was her view that there would otherwise be no record of her having attended the pain clinic.

92. So far as Patient A’s evidence is concerned the Tribunal has identified a number of inconsistencies and credibility issues in her account. These relate to:

- The Tribunal has noted that Patient A sent text messages, very shortly after the consultations in question, in which she said that Dr Vemuri ‘fingered her’. Whilst this supports the GMC’s case it has balanced the content of her texts with an inconsistent account she subsequently gave to the police. In her first video interview Patient A stated that Dr Vemuri did not intimately touch her on the first two occasions she met him. She subsequently stated that that behaviour occurred at her first consultation with him and at each subsequent consultation;
- Patient A initially stated that she was certain that she saw Dr Vemuri before she was 18, but later changed her position;
- she changed her account as to whether or not her mother was present during her second consultation with Dr Vemuri on 4 April 2014;
- she stated that, having been given Dr Vemuri’s phone number, he repeatedly telephoned her every week, but telephone records showed that he had not telephoned her.

93. When considering the credibility of Patient A’s evidence the Tribunal noted that she had stated that she had been inappropriately and sexually touched by Dr Vemuri in her first two consultations on 3 December 2013 and 4 April 2014 when her father and mother respectively were present in the room, whilst Patient A was behind the curtain. Neither Patient A’s mother nor father in their evidence to the

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Crown Court stated that they had any reason to think that Dr Vemuri had inappropriately and intimately touched their daughter.

94. The Tribunal has taken into account the probability of Dr Vemuri acting as alleged having had an unblemished career of approximately 40 years in circumstances where he had chosen to molest this patient knowing that one or other of her parents was sitting feet away. At that time, being the first appointment Patient A had had with Dr Vemuri, he would have had no idea whether Patient A would be submissive and compliant or whether she would immediately challenge him or call out to her parent.

95. The Tribunal also considered the reliability and credibility of Dr Vemuri's evidence generally. In doing so it considered:

- Dr Vemuri's explanation that, at his first consultation with Patient A, he explained to Patient A not only that the curtain would be drawn to protect her dignity and privacy, but because: *'Firstly, the door is opposite and outside the waiting area and reception area. Second on the other side is a window of opposite rooms where sometimes CPR trainings are going.'* The Tribunal did not believe that it was credible that he would go into such a detailed explanation particularly in circumstances where Dr Vemuri had repeatedly been lax in noting in Patient A's records that a chaperone had been offered and declined.
- he gave inconsistent accounts regarding the consultation on 11 July 2014 having initially stated that he had left the consultation room to find a chaperone when this was not borne out by the CCTV evidence;
- he gave Patient A his mobile phone number so that she could contact him in the event that she had an adverse reaction to the medication he had prescribed for her yet he was only contactable for half an hour a week on a Friday morning. Dr Vemuri accepted in evidence that in any event he would have been overburdened with work, that he would have little time to deal with Patient A. In any event he stated that he would refer Patient A to colleagues to deal with any issues she might have.

96. Having weighed up all the evidence before it, the Tribunal has therefore concluded that it is not more likely than not that Dr Vemuri intimately touched or examined Patient A as alleged on one or more occasions.

97. The Tribunal considered that the GMC has therefore failed to discharge its burden that an intimate examination took place. The facts of this paragraph are therefore not proved. In the absence of having established that an intimate examination took place, Dr Vemuri cannot be said to have failed to have offered

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Patient A a chaperone.

98. The Tribunal determined on the balance of probabilities that this sub paragraph was not proved.

Sub paragraph 2(b)

'conducted an intimate examination that was not clinically indicated'

99. Due to the Tribunal's rationale for its finding in relation to paragraph 2(a) where an intimate examination has not been found to have taken place, the Tribunal therefore finds that the facts of this paragraph are not proved for the same reasons.

Sub paragraph 2(c)

'asked Patient A to remove her clothing and underwear'

100. Patient A stated that once she was on the examination table, behind the drawn curtain with Dr Vemuri, that there was never any conversation but that he communicated to her to, for example, pull her trousers down by way of hand gestures, indicating for her to lower them down. The Tribunal noted Dr Vemuri's maintained position is that he never asked Patient A to remove her clothing or underwear either verbally or by using gestures.

101. The Tribunal considered the contents of Patient A's father's witness statement dated 24 July 2014 when he accompanied his daughter to her first consultation with Dr Vemuri. It also considered the evidence of Patient A's mother who attended the second outpatient consultation on 4 April 2014. Neither parent recalled Dr Vemuri asking Patient A to remove her clothing nor did they consider, given the brevity of the consultation, that anything inappropriate had taken place behind the curtain.

102. Given the evidence of Patient A's parents at the Crown Court Trial, the Tribunal is satisfied that Dr Vemuri did not verbally request Patient A remove her clothing. It then considered whether or not he gestured for her to do this. The Tribunal also considered the probability that the facts alleged took place with one or other parent seated nearby. The Tribunal concluded it was improbable that he acted as alleged for the reasons set out at paragraph 94. The Tribunal has already accepted that Dr Vemuri did not intimately touch Patient A and given that finding it is satisfied on the balance of probabilities that he did not request Patient A remove her clothing either by word or by gesture. In all the circumstances the Tribunal determined on the balance of probabilities that this paragraph has not been proved.

Sub paragraphs 2(d) to (i)

'physically removed Patient A's clothing;

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touched Patient A's breasts;

kissed Patient A's breasts;

sucked Patient A's breasts;

touched Patient A's genitals;

penetrated Patient A's genitals with your fingers'

103. The Tribunal considered sub-paragraphs (d) to (i) together as these collectively relate to specific inappropriate actions by Dr Vemuri.

104. For the reasons set out in paragraph 66, the Tribunal has concluded that in relation to the inappropriate conduct alleged that where Patient A and Dr Vemuri presented irreconcilable versions of events that the GMC had not discharged its burden of proof. In the circumstances, in respect of these sub paragraphs, the Tribunal finds the facts of each of them not proved.

Sub paragraph 2(j)

'locked the door of the examination room without Patient A's permission'

105. The Tribunal was presented with independent corroborative evidence in relation to Patient A's allegation that the consultation room door had been locked. In its consideration, the Tribunal watched CCTV footage that the police had retained from the Trust of 'OPD Consultation Room Corridor' at the Clinic. The sequence was as follows on the final consultation of 11 July 2014:

<i>12:34:50</i>	<i>Patient A is seen crossing the corridor (from the reception area) and going straight across into Consultation Room 12 to see Dr Vemuri.</i>
<i>12:47:10 – 12:47:14</i>	<i>Nurse E is seen trying to gain entry to Consultation Room 12. She is seen to try the handle and to also try in pushing the door open with her right foot twice. The nurse is unable to open the door.</i>
<i>12:48:08</i>	<i>Nurse E returns to the door of Consultation Room 12 and is able to open the door and enter the room immediately with no issues.</i>

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106. During her oral evidence, Nurse E watched the CCTV footage and stated that she believed that she could not enter the room as the door had been locked.

107. The Tribunal determined that it was a proper inference to draw that Consultation Room 12 was locked. The Tribunal has noted Dr Vemuri's explanation that he stated that he did not have the key to the room in any event. However having requested and seen photographs of the inside of the door to Consultation Room 12, it is apparent that the door simply locks by turning a knob rather than by using a key. Dr Vemuri has not suggested that Patient A either locked the room herself or that she gave permission for him to lock the room.

108. In the circumstances, the Tribunal finds, on the balance of probabilities, that Dr Vemuri locked the door and not Patient A.

109. The Tribunal had regard to Expert Witness Dr M's first report of March 2017 regarding this issue, where he stated:

"In my opinion, whether a door should be locked during an examination depends very much on the layout of the examination room and consultation suite.

Assuming that there is more than one door into an examination area and if one door were to open into a public access area, then a justification could be offered to locking the door that opens directly into the public area to minimise the risk of the examination being inadvertently disturbed by a member of the public entering the room inappropriately.

However, such circumstances would be very unusual and, in my opinion, the examining physician should warn the patient before taking this course of action.

...

I would anticipate in such circumstances that a chaperone would be present."

110. Also in his oral evidence, Dr Vemuri told the Tribunal that he went to look for a chaperone on this occasion. He could not recollect however whether he crossed the threshold of the doorway going from the consultation room, stepping out into the corridor to see if a chaperone was available at the reception area. However, on watching the CCTV footage there was no evidence that showed Dr Vemuri stepping out of the room.

111. The Tribunal determined that it would not necessarily be inappropriate for Dr Vemuri to have locked the door, had there been a chaperone also present in the consultation room with Patient A and him.

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112. However, the Tribunal finds that having locked the door without Patient A's permission and without there being a chaperone in the room that Dr Vemuri behaved inappropriately. It therefore finds this sub paragraph proved.

Sub paragraph 2(k)

'referred to Patient A as "pretty" or "beautiful", or words to that affect'

113. The Tribunal has noted the evidence of Mr B who stated that Patient A had previously told him Dr Vemuri had referred to her as 'pretty' or 'beautiful'. The Tribunal accepts Mr B's recollection is accurate but attaches little weight to it as it is dependent on the description given by Patient A. The Tribunal repeats its reasoning as set out in paragraph 66 in concluding that the GMC has failed to discharge its burden of proof in respect of this sub paragraph. It therefore finds the facts of this sub paragraph not proved.

Sub paragraph 2(l)

'offered Patient A unscheduled clinic appointments'

114. The Tribunal did not deem that a doctor offering a patient an unscheduled clinic appointment was in itself inappropriate. The Tribunal notes that patient A attended two unscheduled appointments on 28 June 2014 and 11 July 2014.

115. So far as the unscheduled appointment of 28 June is concerned, Patient A stated that she had been informed that the results of her blood tests were known and that she should come in to collect them. In her evidence she stated that she could not recall to whom she spoke and therefore who offered her the appointment. There was insufficient evidence before the Tribunal for it to conclude that it was Dr Vemuri who offered the appointment. In the circumstances so far as this sub paragraph relates to the unscheduled appointment of the 28 June, the Tribunal finds the facts not proved.

116. In respect of the unscheduled appointment of 11 July, Patient A and Dr Vemuri gave differing accounts as to why Patient A attended the Clinic. However, Dr Vemuri stated that he had informed her during the phone conversation that it would be difficult for him to see her because of his other commitments that morning, but if she wanted, she could come and wait. Given the health issues that Patient A described, the Tribunal does not find that it was inappropriate for Dr Vemuri to offer to see Patient A in an unscheduled clinic appointment if he had time to do so.

117. In the circumstances the Tribunal finds the facts of this particular paragraph in respect of both unscheduled appointments, not proved.

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Sub paragraph 2(m)

'consulted with Patient A during unscheduled appointments'

118. It is not disputed that Dr Vemuri consulted with Patient A during the unscheduled appointments on 28 June and 11 July 2014. However the Tribunal did not consider that in the circumstances it was inappropriate to have consulted with her. The Tribunal therefore finds the facts of this particular paragraph in respect of both unscheduled appointments, not proved.

Sub paragraph 2(n)

'arranged unscheduled appointments with Patient A using her mobile telephone number'

119. The Tribunal considered the telephone call schedule of Patient A's two calls to the Clinic, as follows:

*04/07/2014 at 09:44:26, duration: 00:05:06;
11/07/2014 at 09:43:56, duration: 00:01:03.*

120. The Tribunal noted Dr Vemuri's oral evidence that he advised Patient A that she could contact him if needed but only when he was working at the Clinic on Fridays. He said he did this in Patient A's case due to the possibility of Patient A suffering side effects from the Oxycodone pain medication he had prescribed for her given that, he stated, the side effects could be quite significant.

121. From the documentary evidence supplied, the Tribunal is satisfied that when Patient A phoned Dr Vemuri she did so using her mobile telephone number. However, so far as the unscheduled appointment of 28 June 2014 is concerned, the Tribunal noted that Patient A was not sure who called her from the Clinic regarding her blood test results. In the circumstances, the Tribunal does not find that Dr Vemuri arranged the unscheduled appointment of 28 June with Patient A using her mobile telephone number.

122. So far as the unscheduled appointment of 11 July is concerned, for the reasons set out in relation to sub paragraph 2(l), the Tribunal finds that whilst Dr Vemuri as a matter of fact arranged this unscheduled appointment with patient A using her mobile telephone number, it was not inappropriate for him to have done so.

123. In the circumstances the Tribunal finds paragraph 2(n) not proved in its entirety.

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Sub paragraph 2(o)

'offered Patient A your private telephone number'

124. At the outset of these proceedings, Dr Vemuri admitted the sub-paragraph alone but denied that in doing so he acted inappropriately. Dr Vemuri confirmed that this was his practice from time to time.

125. The Tribunal heard evidence that at the Trust where Dr Vemuri worked, this had been common practice amongst professionals, as confirmed by Mr H in his oral evidence, where he stated that some of his colleagues did this and that it does not surprise him if Dr Vemuri also did.

126. The Tribunal took into account expert witness Dr M's report, where he stated that this would be inappropriate in any circumstance and that it breached the professional boundary between doctor and patient. However, upon learning this was the Trust's practice at the time, he now considered that this would not be inappropriate.

127. The Tribunal has carefully considered the circumstances in which Dr Vemuri offered Patient A his private telephone number. He stated that because of the potential serious side effects of Oxyconton, he offered Patient A his mobile number so that he could contact her. However this was limited to him asking her to call only on a Friday morning between 9:30 and 10:00am. Dr Vemuri stated however that his clinic was very busy and that he was overburdened with work. In any event, he stated that all he would be able to do would be to refer Patient A to a colleague. This potentially left Patient A in a situation where she might consider herself being able to rely on Dr Vemuri's help to address serious side effects of the drug he had prescribed for her in circumstances where she might have to wait several days to speak to him, only to be referred to a colleague. This, the Tribunal finds, posed a risk to Patient A and as such, the Tribunal finds that in all the circumstances it was inappropriate for him to have offered Patient A his private telephone number.

128. The Tribunal therefore finds the facts of this sub paragraph proved.

Sub paragraph 2(p)

'offered to take Patient A out for lunch'

129. Patient A stated that during the consultation of 11 July 2014 Dr Vemuri offered to take her out for lunch. She did not clarify whether or not she understood him to refer to lunch that day or any other day. Given the wholly contradictory positions taken by Patient A and Dr Vemuri, and having assessed the reliability and credibility of their respective evidence, the Tribunal finds that the GMC has not discharged its burden of providing the facts of its sub paragraph.

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130. The Tribunal therefore finds the facts of this sub paragraph not proved.

Paragraph 3

'On one or more occasions, you failed to record that you had conducted an intimate examination of Patient A during the consultation/s.'

131. Given its rationale as set out above for its finding that Dr Vemuri had not conducted an intimate examination of Patient A during her consultations, it follows that Dr Vemuri cannot be said to have failed to record that fact.

132. In the circumstances, the Tribunal finds the facts of this paragraph not proved.

Paragraph 4

'Your conduct as described at paragraph 2 was sexually motivated.'

133. Having found sub paragraphs 2(j) and 2(o) proved, the Tribunal went on to consider whether Dr Vemuri's conduct in respect of those allegations alone was sexually motivated.

134. In reaching its decision, the Tribunal did not consider that Dr Vemuri had inappropriately and intimately touched Patient A as alleged. In addition so far as giving Patient A his private telephone number is concerned the Tribunal notes that Dr Vemuri neither instigated nor pursued contact with Patient A. The Tribunal has concluded that Dr Vemuri's motivation, albeit misguided, was to assist Patient A in managing the side effects of her medication. The Tribunal does not find on the balance of probabilities that his actions were motivated by real or potential sexual gratification.

135. So far as sub paragraph 2(j) is concerned, the Tribunal accepts that, had it found that Dr Vemuri sexually molested Patient A, that locking the door as alleged, would be evidence of a sexual motivation for having done so. However, in the absence of a finding of inappropriate intimate contact, the Tribunal is not satisfied on the balance of probabilities that his motivation for locking the door was to engage in sexual activity with Patient A. For the avoidance of doubt the Tribunal is satisfied that his actions in this regard were inappropriate, but it does not follow that it is more likely than not that his actions were sexually motivated.

136. In the circumstances, the Tribunal finds that Dr Vemuri's conduct in relation to sub paragraphs 2(j) and 2(o) was not sexually motivated and therefore finds paragraph 4 not proved.

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The Tribunal's Overall Determination on the Facts

137. The Tribunal has determined the facts as follows:

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

1. On one or more occasions between December 2013 and July 2014, including the dates set out in Schedule 1 you consulted ('the consultations') with patient A. **Determined and found proved**
2. On one or more occasions you behaved inappropriately during the consultation/s with Patient A in that you:
 - a. failed to offer Patient A a chaperone prior to conducting an intimate examination; **Determined and found not proved**
 - b. conducted an intimate examination that was not clinically indicated; **Determined and found not proved**
 - c. asked Patient A to remove her clothing and underwear; **Determined and found not proved**
 - d. physically removed Patient A's clothing; **Determined and found not proved**
 - e. touched Patient A's breasts; **Determined and found not proved**
 - f. kissed Patient A's breasts; **Determined and found not proved**
 - g. sucked Patient A's breasts; **Determined and found not proved**
 - h. touched Patient A's genitals; **Determined and found not proved**
 - i. penetrated Patient A's genitals with your fingers; **Determined and found not proved**
 - j. locked the door of the examination room without Patient A's permission; **Determined and found proved**
 - k. referred to Patient A as "pretty" or "beautiful", or words to that affect; **Determined and found not proved**

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- l. offered Patient A unscheduled clinic appointments; **Determined and found proved – in relation to this particular sub-paragraph ONLY, but determined and found not proved as to the stem of this allegation that this was ‘inappropriate’**
 - m. consulted with Patient A during unscheduled appointments; **Determined and found proved – in relation to this particular sub-paragraph ONLY, but determined and found not proved as to the stem of this allegation that this was ‘inappropriate’**
 - n. arranged unscheduled appointments with Patient A using her mobile telephone number; **Determined and found not proved**
 - o. offered Patient A your private telephone number; **Admitted and found proved**
 - p. offered to take Patient A out for lunch. **Determined and found not proved**
3. On one or more occasions, you failed to record that you had conducted an intimate examination of Patient A during the consultation/s. **Determined and found not proved**
4. Your conduct as described at paragraph 2 was sexually motivated. **Determined and found not proved**

Determination on Impairment - 03/09/2020

1. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved as set out before, Dr Vemuri’s fitness to practise is impaired by reason of misconduct.

The Evidence

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

3. In addition, the Tribunal received further evidence in the form of a bundle of documents from Ms Forshaw on Dr Vemuri’s behalf. This included Dr Vemuri’s Multi

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source feedback from patients and colleagues 2019 and additional testimonial references.

Submissions

4. Mr Adam Lodge confirmed that he had no submissions to make on behalf of the GMC at this stage. He stated that the GMC have a neutral position on impairment. He did not address the Tribunal regarding any breaches of the GMC's *Good Medical Practice*.
5. Ms Forshaw submitted that based on the Tribunal's findings on the facts, if there is anything to identify any conduct that may justify impairment it would have been identified by the GMC. Ms Forshaw stated that it would have been helpful if the GMC could concede this, rather than adopting a neutral position.
6. Ms Forshaw referred to the Tribunal's findings on facts. Ms Forshaw submitted that Tribunal had found all sexually motivated allegations not proved and that this had been the essence of the GMC case.
7. Ms Forshaw stated that the Tribunal had found on the balance of probabilities that Dr Vemuri had locked the door of the examination room without Patient A's permission. Ms Forshaw invited the Tribunal to reach a logical conclusion that if the door was locked then it can only ever have been an error, and that unless accompanied by some prurient motive this can't amount to misconduct.
8. Ms Forshaw stated that Dr Vemuri had admitted that he had offered Patient A his private telephone number. Ms Forshaw submitted that there has been evidence received by the Tribunal that this was common practice at the hospital and not unusual in departments where there is lack of secretarial support. Ms Forshaw submitted that it would not be proportionate to say that this is serious misconduct and that there is nothing in GMP or any GMC guidance to suggest that handing out a mobile phone number is inappropriate or should be avoided.
9. Ms Forshaw gave the Tribunal the chronology of the case. In particular, that Dr Vemuri had been unanimously acquitted of all charges at Crown Court and that the hospital Trust had found no grounds for taking disciplinary action against Dr Vemuri.
10. Ms Forshaw stated that the suggestion that Dr Vemuri's fitness to practise is impaired is not borne out by the facts and invites the Tribunal to find reach that conclusion.

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The Relevant Legal Principles

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

12. In approaching the decision, the Tribunal was mindful of the two stage process to be adopted: first whether the facts as found proved amounted to misconduct and then whether the finding of that misconduct leads to a finding of impairment.

13. The Tribunal must determine whether Dr Vemuri's fitness to practise is impaired today, taking into account Dr Vemuri'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 Misconduct and Impairment

14. The Tribunal first considered whether the factual matters found proved amount to misconduct. The Tribunal had at the forefront of its mind that for such a finding to be made Dr Vemuri's failings should amount to a serious falling short of the standards expected of a medical practitioner.

15. The Tribunal noted that the GMC has not submitted that the matters found proved amount to breaches of the GMP. The Tribunal has taken into account that the allegation regarding the locking of the door was not sexually motivated. Mindful of the doctor's admission to allegation 2(o), it has also noted the evidence that it was not uncommon in the absence of adequate secretarial support for a doctor's mobile number to be given out on occasions.

16. In the absence of any identified breach of the GMP, the Tribunal is satisfied that the matters found proved against Dr Vemuri do not fall so seriously far short of the standard expected of him that they would be regarded as deplorable by fellow members of the profession. As such, the Tribunal has concluded that Dr Vemuri's conduct is not sufficiently serious for it to conclude that it amounts to misconduct. The Tribunal has therefore concluded that Dr Vemuri's fitness to practise is not currently impaired by reason of misconduct.

Confirmed

Date 03 September 2020

Mr Julian Weinberg, Chair

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ANNEX A - 5 February 2019

Application under Rule 34(1) to admit further evidence

1. Ms Forshaw QC, on behalf of Dr Vemuri, made an application to admit further evidence, namely the following:
 - (a) Patient A's first statement to the police;
 - (b) Accounts from Patient A's parents;
 - (c) The Judge's summary addressed to the jury of the Wood Green Crown Court trial, which took place in May to June 2016;
 - (d) A chronology /timeline of extracts from the complaints medical and other records;
 - (e) An agreed schedule of facts;
 - (f) Various medical and counselling records;
 - (g) Text messages between Patient A, Patient A's boyfriend and a friend between 2015 and 2016.
2. The LQC advised that this is an application subject to Rule 34(1) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules').

Submissions on Dr Vemuri's behalf

3. Ms Forshaw submitted that the admission of all evidence is required because they formed the "central plank" in the Crown Court trial where she defended Dr Vemuri, and in which Dr Vemuri was acquitted of the criminal charges. Some of these documents are referred to in Criminal Court trial.
4. Ms Forshaw submitted that she has to rely on the GMC to retrieve missing evidence, for example, as listed at (a) above and that she has requested the documentation but it has not been provided by the GMC.
5. In relation to (b), Ms Forshaw submitted that the reason for this is because the GMC is not relying upon the parents' witness statements in its case. She submitted, however, that (b) was considered relevant at the Criminal Court trial, as Patient A's father accompanied Patient A to the first consultation with Dr Vemuri on 2 December 2013, and then her mother accompanied Patient A to the second consultation on 4 April 2014.

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6. Regarding (c), Ms Forshaw submitted this would be useful in allowing the Tribunal to know of the basis of Dr Vemuri's unanimous acquittal at the Crown Court, and that they would know how to "treat" or approach this case.
7. Ms Forshaw submitted that (d) would be useful for the Tribunal to have a chronology of events in relation to the Allegation.
8. Ms Forshaw explained evidence (e) consisted of 31 facts listed and, again, this was used in the Crown Court trial and put before the jury. These included the result of enquiries that were undertaken by police officers; DNA results enquiries; unused material in the criminal case, and mental health services material. She submitted that these documents formed the subject matter of comments made at the criminal trial.
9. Ms Forshaw submitted regarding (g), that the text messages would disclose certain personality traits of Patient A, which related to the credibility of her evidence. Ms Forshaw submitted that this would indicate why Patient A made sexual assault claims about Dr Vemuri.

GMC Submissions

10. Ms Hudson submitted in reference to (a), (b) and (f), that the GMC has made every effort to obtain documents from all sources, and that it is not the intention of the GMC to purposely omit evidence in this case.
11. With reference to (a), Ms Hudson submitted that the GMC is currently requesting this document from DS D at the Metropolitan Police, who was one of the investigating officers at Edmonton Police Station at the time of the incidents.
12. In relation to (b), Ms Hudson submitted that Patient A's parents are not being relied upon by the GMC, regarding their police statements and full transcripts of evidence they gave to the Crown Court.
13. Ms Hudson submitted regarding (c) that the summary of the Crown Court Judge to the jury of 2016 is highly irrelevant. It is not the role of the Tribunal to consider how the jury reached its decision or how the Judge's summing up may have directed them as to whether Dr Vemuri acted as alleged. Additionally, Ms Hudson submitted that the Tribunal has not been presented with all the same evidence or witnesses as at that trial. Therefore it would be irrelevant and the admission of the Judge's summing up would be wholly wrong.
14. Ms Hudson submitted that exhibit (d) is not relevant for the Tribunal to consider at stage one of this substantive MPT hearing and that she cannot find all the source material in the evidence that is outlined in this document. Ms Hudson

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further submitted that the original full notes are slightly different from this chronological timeline. She therefore takes issue with this summary.

15. Regarding (e), Ms Hudson submitted that so far both parties have not agreed on 8 or 9 out of 31 of the proposed agreed facts.

16. Regarding (f) in particular, Ms Hudson submitted that the GMC has exercised its power under the Medical Act, which is rare, for Dr Vemuri to supply all records in existence but not all have been presented. Also with regards to (f), Ms Hudson stated that four sources been identified, but for example one of the sources, being the City of Islington Counselling Organisation, has informed the GMC that due to the fact that five years have passed, they have disposed of the documents.

17. Ms Hudson submitted that the provision of (g) would not be fair or relevant to this Tribunal because these are text messages that took place between Patient A, her boyfriend and her friend some 18 months after the events in question. In addition they do not refer to this Allegation. Also, as Ms Forshaw has proposed, Ms Hudson submitted that the text messages would not reveal the personality traits of Patient A. Ms Hudson drew the Tribunal's attention to the Crown Court transcripts where these text messages did not feature in that trial, the issue being decided by the Judge for the same reasons as Ms Hudson has put forward today. Ms Hudson added that the relevant text messages, at the time of and in relation to the Allegation, are presented in the GMC's hearing bundle.

Tribunal's Decision

18. The Tribunal had regard to Rule 34(1) of the Rules, which states:

'Subject to paragraph (2), the Committee or a Panel may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law.'

19. The Tribunal considered the disputed evidence before it and the relevance of the exhibits to the allegations in this case. It had regard to the issues of relevance and fairness and any potential injustice to either party.

20. The Tribunal noted that Ms Hudson did not object to a number of items being admitted. For example, (a), (b), (d) - subject to agreeing all the items, (e) - subject to agreeing its contents, and (f).

21. The Tribunal considered the relevance of (b), as Patient A's father accompanied her to the initial Out-Patient consultation with Dr Vemuri on 2 December 2013 where the first incident is alleged to have taken place. Patient A's mother accompanied her to the second consultation with Dr Vemuri on 4 April 2014, where the second incident was alleged to have taken place. The Tribunal determined

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that this would be important and relevant evidence and that its admission would not cause any unfairness.

22. Regarding (c), the Tribunal deemed the Criminal Court Judge's summary to the jury in 2016 as neither relevant nor fair to its consideration at this substantive MPT hearing. The Judge's summing up would have been based on similar but different allegations to the one before this Tribunal, be based on different evidence in a jurisdiction with a different standard of proof. Whilst being aware that Dr Vemuri was acquitted of all charges at the Crown Court, the Tribunal considered that the Judge's summing up was neither evidence in the Crown Court case nor did it consider that it would assist in understanding the jury's rationale for Dr Vemuri's acquittal.

23. The Tribunal accepted that an agreed chronology/ timeline would assist it as an aide-memoire document to reference throughout the hearing. However the Tribunal did not consider that this document could be formally admitted as evidence.

24. In relation to the proposed agreed schedule of facts, the Tribunal takes a similar view as stated above in relation to the proposed chronology/timeline, for the same reasons.

25. The Tribunal determined that the admission of exhibit (g) would be relevant and fair due to the nature of the Allegation as this evidence potentially goes to the credibility of Patient A. The Tribunal therefore determined that such evidence was relevant and that there was no unfairness in admitting it. The Tribunal was mindful that the messages in question related to a period approximately a year after the incidents in question, but nevertheless might assist the Tribunal in determining Patient A's credibility. However the Tribunal considered that the weight such evidence carries will need to be determined when it reaches its findings of fact.

26. Therefore, the Tribunal acceded to the application for the following further evidence to be admitted in due course, namely (a), (b), (f) and (g). However, the Tribunal refused the application in respect of (c). Items (d) and (e) can be put before the Tribunal to assist it but not formally as evidence.

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ANNEX B - 12 February 2019

Application for oral evidence to be given via video link

1. Ms Hudson, on behalf of the GMC, made an application under Rule 34(13) of the Rules. She applied for Detective Sergeant (DS) D and Ms E to give their oral evidence, albeit separately, at this hearing via video link as opposed to in person. Ms Hudson explained that both DS D and Ms E have other professional duties to attend to today and could not make it to the hearing in person but are available to give their evidence via video link.
2. Miss Forshaw had no objection to this application, providing that the witnesses had access to all of the relevant materials for this case.
3. The Tribunal was of the view that it was appropriate if a witness were not available for good reason to attend a hearing in person to allow them to contribute by giving evidence via video link. It considered that it was fair and appropriate for DS D and Ms E to do so. It therefore granted Ms Hudson's application.

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Schedule One

2 December 2013

4 April 2014

20 June 2014

28 June 2014

11 July 2014