

PUBLIC RECORD

Date: 11/10/2024

Medical Practitioner's name: Dr Nadarajah NIRANJAN

GMC reference number: 4188111

Primary medical qualification: MB BS 1980 University of Colombo

Type of case Outcome on non-compliance

Review - Non-compliance with a performance assessment Non-compliance found

Summary of outcome

Suspension for 12 months
Review hearing directed

Tribunal:

Legally Qualified Chair	Miss Samantha Gray
Lay Tribunal Member:	Mrs Susan Fishburn
Medical Tribunal Member:	Dr John Smith

Tribunal Clerk:	Mrs Jennifer Coakley
-----------------	----------------------

Attendance and Representation:

Medical Practitioner:	Not present, not represented
GMC Representative:	Mr Alan Taylor, 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 consideration of Non-compliance 11/10/2024

1. This is a review of Dr Niranján's case following a Medical Practitioners Tribunal (MPT) hearing which took place on 26 May 2023 and 28 September 2023.

The Outcome of Applications Made

2. The Tribunal accepted the General Medical Council (GMC)'s submissions, made pursuant to Rule 40 of the GMC (Fitness to Practise) Rules 2004, as amended ('the Rules'), that notice of this hearing had properly been served on Dr Niranján, and granted its application, made pursuant to Rule 31 of the Rules, that this hearing should proceed in his absence. The Tribunal's full decision is included at Annex A.

Background

3. In November 2020, Dr Niranján was working as a GP Partner at Victoria Medical Centre ('the Centre'). On 2 November 2020, the GMC received a referral from NHS England and NHS Improvement – London Region ('NHSE') in relation to patient safety concerns raised during a Care Quality Commission inspection at the Centre.

4. On 18 May 2021, the GMC wrote to Dr Niranján to inform him that he was directed under Rule 7(3) and Schedule 1 of the Fitness to Practise Rules 2004 ('the Direction') to undertake an assessment of his performance ('PA').

5. On 20 May 2021, the GMC's Assistant Registrar added further allegations to the GMC investigation relating to Dr Niranján favouring Sri Lankan patients, involvement in a XXX incident, working at Barking Hospital whilst on bereavement leave from the Centre, allowing a healthcare assistant to work as a doctor at the Centre when they were not qualified to do so and editing consultations of his clinical colleagues at the Centre.

**Record of Determinations
Medical Practitioners Tribunal**

6. On 20 July 2021, Dr Niranjan XXX. On 21 July 2021, the GMC cancelled the PA due to XXX.

7. XXX

8. XXX

9. XXX

10. Further reminders were sent to Dr Niranjan by the GMC on 15 and 23 September 2022, in which he was formally warned that failure to undergo a PA may result in the case being referred to the Medical Practitioners Tribunal Service ('MPTS') for a non-compliance hearing.

11. On 17 October 2022, the GMC wrote to remind Dr Niranjan of the Direction.

12. Further reminders were sent to Dr Niranjan on 31 October 2022, 14 November 2022, 10 January 2023, 8 February 2023 and 3 March 2023, in which he was warned that failure to undergo a PA may result in the case being referred to the MPTS for a non-compliance hearing.

13. Accordingly, it was alleged that Dr Niranjan had failed to comply in full with the GMC's direction and further alleged that there was no good reason for his failure to comply with the GMC's direction.

The 2023 Tribunal

14. At a hearing which took place on 26 May 2023 and 28 September 2023 ('the 2023 Tribunal'), it was found that the GMC had properly notified Dr Niranjan of the requirement to undergo an assessment of his performance, that he had not done so, and therefore had failed to comply. The 2023 Tribunal went on to find that there was no good reason for Dr Niranjan's failure to comply and therefore determined that non-compliance had been found.

15. The 2023 Tribunal determined that an order of suspension was appropriate and proportionate and would uphold the overarching objective. It determined that suspending Dr Niranjan's registration for a period of 12 months was necessary, appropriate and proportionate for the protection of the public and in the public interest.

16. The Tribunal in 2023 indicated in its determination that the onus would be on Dr Niranjan to demonstrate compliance at a review hearing.

Today's Review

17. This Tribunal has met to review Dr Niranjan's case. It has considered, under Rule 22A of the Rules, whether there has been a failure to comply with an assessment under Schedule 1 of the Rules. It is alleged by the GMC that Dr Niranjan's failure to comply with the Direction continues, and that there is no good reason for his failure to comply with the Direction.

18. In reaching its decision, the Tribunal has given careful consideration to all of the documentary evidence adduced in this case.

19. The Tribunal had regard to the determinations of the 2023 Tribunal. It also took into account the documents, dated 24 November 2023, 2 January 2024, 27 February 2024, 2 April 2024, 24 April 2024 and 2 July 2024, reminding Dr Niranjan of his requirement to comply with the Direction.

20. The Tribunal took into account the emails sent by Clyde & Co on Dr Niranjan's behalf. This included emails sent to the GMC on 28 August 2024 regarding voluntary erasure and to the MPTS on 3 October 2024 in relation to today's hearing. In the email to the MPTS, it was confirmed that Dr Niranjan would not be attending today's hearing, nor would he be represented. It stated that Dr Niranjan does not contest the imposition of a suspension and confirmed that he had applied for voluntary erasure from the Medical Register on 28 August 2024 (The Tribunal also had sight of the application for voluntary erasure). The email also stated that Dr Niranjan had retired from clinical practice in October 2020 and has no intention of returning to clinical practice.

21. Dr Niranjan's representative made reference to a letter XXX (The Tribunal also had sight of this letter XXX).

22. The email from Clyde & Co went on to state that *'Dr Niranjan apologises to the GMC for not having communicated the difficulties he was experiencing, which are the central reason for him not having undertaken a Performance Assessment as requested. Whilst it is acknowledged that the concerns originally raised were with regard to professional performance it is clear that [XXX] is the overwhelming basis for Niranjan's inability to complete a performance assessment or return to work, and in light of those ongoing issues*

and Dr Niranjan's age, a return to clinical practice is neither realistic, nor something Dr Niranjan has any desire to pursue.' On behalf of Dr Niranjan, it was submitted that: *'It is accepted that this Tribunal must proceed whilst Dr Niranjan's application is still being processed. We can confirm that Dr Niranjan does not object to the extension of his suspension from the register whilst his application for removal from the same remains outstanding.'*

Submissions

23. The Tribunal has considered the submissions made by Mr Alan Taylor, Counsel, on behalf of the GMC. Mr Taylor submitted that no performance assessment has been undertaken since the previous hearing and there is no good reason why there has been no performance assessment. He submitted that there has been continued disengagement from the proceedings and there is continued non-compliance. Mr Taylor submitted that Dr Niranjan has continued to fail to comply with the GMC's direction to undergo a performance assessment and there is no good reason for failure to comply with the direction.

24. The Tribunal also had regard to the submissions on behalf of Dr Niranjan in the email from Clyde & Co dated 3 October 2024, as outlined above.

The Tribunal's Approach

25. Whilst the Tribunal has borne in mind the submissions made, the decision regarding non-compliance is one for it to reach, exercising its own judgement.

26. In reaching its decision on non-compliance, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove non-compliance. Dr Niranjan does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely, the balance of probabilities.

27. Throughout its deliberations, the Tribunal had regard to the MPTS *Non-compliance guidance for medical practitioners tribunals* ('the Guidance') and considered all of the documentary evidence adduced in this case.

The Tribunal's Decision

28. The Tribunal had regard to the relevant paragraphs of the Guidance, including A16 to A24. In particular, it noted paragraph A17, which states:

'A17 There does not need to be culpability on a doctor's part for the tribunal to conclude there is evidence that the doctor has 'failed to comply.' At this stage, the tribunal is simply considering whether there is evidence to show, as a matter of fact, the doctor has not complied with the GMC's direction or request to provide information.'

'A18 A doctor may have failed to comply with a GMC direction or request to provide information where they have:

...

d failed to respond to a direction to undergo an assessment or request to provide information ...'

29. The Tribunal was of the view that the GMC had taken all reasonable steps to encourage Dr Niranjan to comply, as evidenced by the reminders sent to him. These included letters sent to both him and his representatives.

30. The Tribunal was satisfied that there has been no progress since the last hearing, and that Dr Niranjan has continued to fail to comply with the direction to undergo a performance assessment. It took into account that Clyde & Co, on Dr Niranjan's behalf, had conceded that Dr Niranjan has not complied with the direction to undertake a performance assessment.

31. The Tribunal considered whether there was a good reason for Dr Niranjan's continued failure to comply. The Tribunal took into account the information provided which confirms that Dr Niranjan has retired from clinical practice and has made an application to the GMC for voluntary erasure from the Medical Register. Nevertheless, the Tribunal bore in mind the concerns which informed the decision to direct a performance assessment including concerns of clinical competence arising from a CQC report. The Tribunal was of the view that, whilst Dr Niranjan's name remains on the Medical Register, there are clear risks to the public if no wider assessment of Dr Niranjan's performance is obtained and the extent of potential impairment is not fully or adequately understood.

32. In the circumstances, the Tribunal has determined that Dr Niranjan has continued to fail to comply with the direction to undergo a performance assessment.

Determination on Sanction 11/10/2024

1. Having determined that there is non-compliance by reason of Dr Niranjan's failure to comply with a performance assessment in accordance with Schedule 1 of the Rules, the Tribunal has considered whether a sanction should be imposed.

Submissions

2. The Tribunal has considered the submissions made by Mr Alan Taylor, Counsel, on behalf of the GMC. Mr Taylor submitted that the appropriate and proportionate sanction would be a suspension for a period of 12 months.

3. Mr Taylor drew the Tribunal's attention to paragraphs C22-C26 of the Guidance, which he submitted were of relevance at this stage. He submitted that there is no evidence that Dr Niranjan would comply with the direction in the future, nor that conditions would be sufficient to meet the regulatory purpose of protecting the public. He submitted that an order of conditions would not be appropriate because Dr Niranjan has shown a history of non-compliance and there has been minimal communication.

4. Mr Taylor submitted that suspension would meet the regulatory purpose of protecting the public. With regards to promoting and maintaining public confidence in the profession, Mr Taylor submitted that the public would expect a doctor whose performance is in question and who has failed to undertake an assessment of his performance since 18 May 2021, and who has subsequently been out of work, to be suspended from practice. In terms of promoting and maintaining proper professional standards and conduct for members of the profession, Mr Taylor submitted that suspension would have a deterrent effect and would meet this limb.

5. Mr Taylor submitted that no progress has been made at all since the last hearing and suspension for a further 12 months would be appropriate. He noted that Dr Niranjan does not seek to contest the imposition of a further suspension. He has indicated that he has no intention to return to clinical practice and is not on the NHS GP Performers List.

6. The Tribunal also had regard to the submissions made on behalf of Dr Niranjan in the email from Clyde & Co dated 3 October 2024. The email stated that '*...Dr Niranjan does not object to the extension of his suspension from the register whilst his application for removal from the same remains outstanding.*'

The Tribunal's Decision

7. The Tribunal is aware that the decision as to the appropriate sanction, if any, to impose on Dr Niranján's registration is a matter for this Tribunal exercising its independent judgment. In reaching its decision, the Tribunal has taken account of the Guidance. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Niranján's interests with the public interest.

8. Throughout its deliberations, the Tribunal considered its overarching objective which includes:

- a. protecting, promoting and maintaining the health, safety and well-being of the public,
- b. maintaining public confidence in the profession,
- c. promoting and maintaining proper professional standards and conduct for the members of the profession.

9. The Tribunal has also borne in mind that the purpose of a sanction is not to punish or discipline doctors, but they may have a punitive effect.

10. The Tribunal bore in mind its finding of continued non-compliance, alongside the evidence already adduced and the submissions made.

No Action

11. The Tribunal first considered whether to conclude Dr Niranján's case and take no further action. However, it determined that, in view of the performance concerns and its findings on non-compliance, it would not be sufficient, proportionate, nor in the public interest to conclude this case by taking no action.

Conditions

12. The Tribunal next considered whether it would be appropriate to impose a period of conditions on Dr Niranján's registration. It has borne in mind that any conditions must be appropriate, proportionate, workable and measurable.

13. The Tribunal noted that Dr Niranján has failed, without good reason, to comply with a reasonable request by the GMC that he undergo a performance assessment. In addition, the

Tribunal noted that Dr Niranjan has not been working in a clinical setting for some considerable time, and the Tribunal has not seen any evidence from him in relation to any ongoing continuing professional development ('CPD'). The Tribunal also noted Dr Niranjan's disengagement from the investigation process. The Tribunal was not satisfied that an order of conditions would be workable, appropriate or proportionate in the circumstances. It was also not satisfied that Dr Niranjan would comply with any conditions imposed upon his registration.

Suspension

14. Having determined that the imposition of conditions would not be appropriate, the Tribunal considered whether to suspend Dr Niranjan's registration for a further period. It considered the following paragraphs of the Guidance were of particular relevance:

'C23 When considering whether a period of suspension is a proportionate response to a doctor's non-compliance, the tribunal may want to consider the previous opportunities the doctor has had to comply and the level of the doctor's engagement with the fitness to practise process.'

'C24 Suspension is likely to be appropriate where a doctor has explicitly refused to comply with a direction or request to provide information or has failed to respond to a direction or request to provide information, and there is no mitigating information to suggest that conditions are likely to be sufficient.'

'C25 Suspension has a deterrent effect and can be used to send a signal to the doctor, the profession and public about what behaviour is expected from a registered doctor. Suspension from the 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 period of suspension, although this is not its purpose.'

15. The Tribunal bore in mind that the concerns raised about Dr Niranjan's clinical competency remain, and that no performance assessment has been undertaken since the previous hearing. It considered that Dr Niranjan has had opportunities to comply with the performance assessment direction, which was first made in 2021. It bore in mind that Dr Niranjan has said, through his representatives, that he has retired from clinical practice and has submitted an application to the GMC for voluntary erasure. The Tribunal had sight of that application. Dr Niranjan's representatives have also stated that *'Dr Niranjan does not object*

**Record of Determinations
Medical Practitioners Tribunal**

to the extension of his suspension from the register whilst his application for removal from the same remains outstanding.'

16. The Tribunal was of the view that there remains a risk to patient safety in allowing a doctor back to practise who has had questions raised in relation to his clinical competence, whose skills have not been assessed by means of a performance assessment and who has been out of practice for a considerable period of time. The Tribunal has therefore determined to suspend Dr Niranjan's registration for a further period of 12 months. It considered that this was the appropriate and proportionate action to take in this case. In relation to the length of the period of suspension, the Tribunal was mindful of Dr Niranjan's current disengagement and the time realistically required to arrange and undertake a performance assessment, should he choose to do so. In the circumstances, the Tribunal determined that a period of 12 months' suspension was necessary, appropriate and proportionate for the protection of the public and in the public interest.

17. The effect of this direction is that, unless Dr Niranjan exercises his right of appeal, this decision will take effect 28 days from when written notice of this determination is deemed to have been served upon him. The current order of suspension will remain in place during the appeal period. If Dr Niranjan does decide to appeal against this decision, the suspension currently imposed on his registration will remain in force until the appeal is determined. A note explaining his right of appeal will be provided to him.

18. A Tribunal will review Dr Niranjan's case at a hearing to be held before the end of the period of suspension. It will then consider whether it should take any further action in relation to his registration. Dr Niranjan will be informed of the date of that meeting, which he will be expected to attend.

ANNEX A – Service and proceeding in absence – 11/10/2024

Service

1. Dr Niranjan is neither present nor represented at today's Medical Practitioners Tribunal ('MPT') hearing. The Tribunal therefore considered whether the relevant documents had been served in accordance with Rule 40 of the General Medical Council ('GMC') Fitness to Practise Rules 2004 ('the Rules') and paragraph 8 of the fourth Schedule to the Medical Act.
2. Mr Alan Taylor, Counsel, on behalf of the GMC, drew the Tribunal's attention to various documents regarding service of the notice of hearing. These included:
 - Notice of non-compliance sent by the GMC via email on 29 August 2024;
 - Notice of hearing sent by the MPTS via email on 30 August 2024;
 - Email sent by the GMC under Rule 34(9) on 12 September 2024;
 - Email from Clyde & Co Solicitors to the GMC, dated 3 October 2024.
3. Mr Taylor submitted that service has been effected in accordance with Rule 40 of the Rules. He stated that Dr Niranjan knows about today's hearing and there has been no application for an adjournment. Dr Niranjan has voluntarily absented himself and an adjournment would serve no useful purpose. He submitted that there is also a public interest in these matters being heard today.
4. The Tribunal had regard to the documents before it and the submissions made by Mr Taylor. It was satisfied that notice of this hearing has been served in accordance with Rule 40.

Proceeding in Absence

5. Having been satisfied that notice was properly served upon Dr Niranjan, the Tribunal then considered whether to proceed with this hearing in his absence, in accordance with 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 utmost care and caution, balancing the interests of the doctor with the wider public interest.
6. Mr Taylor submitted that Dr Niranjan has voluntarily absented himself from today's proceedings. He has not requested a postponement or adjournment. To the contrary, written

Record of Determinations Medical Practitioners Tribunal

submissions have been provided for consideration today. Mr Taylor submitted that no useful purpose would be served by adjourning today's proceedings. Dr Niranjan has waived his right to be here and to be represented, and there is also a general public interest in hearing today's case and achieving a fair, economical, expeditious and efficient disposal of allegations.

7. The Tribunal has evidence before it that Dr Niranjan was aware of this hearing taking place today. The Tribunal determined that Dr Niranjan has chosen to voluntarily absent himself from this hearing. In particular, the Tribunal had regard to the email from Clyde & Co, dated 3 October 2024, which confirms that *'It is accepted that this Tribunal must proceed whilst Dr Niranjan's application is still being processed. We can confirm that Dr Niranjan does not object to the extension of his suspension from the register whilst his application for removal from the same remains outstanding.'* Furthermore, there has been no request for an adjournment.

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

9. Accordingly, the Tribunal determined that it was fair and reasonable to proceed in Dr Niranjan's absence.