

PUBLIC RECORD

Date: 05/01/2024

Medical Practitioner's name: Dr Nalindra KARUNARATNE
GMC reference number: 3583162
Primary medical qualification: MB BCh 1992 University of Wales

Type of case **Outcome on impairment**
Review – Misconduct Not Impaired

Summary of outcome
Suspension revoked

Tribunal:

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|--------------------------|---------------------|
| Legally Qualified Chair | Mr Angus Macpherson |
| Medical Tribunal Member: | Dr Aamna Khan |
| Medical Tribunal Member: | Dr Bridget Langham |
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| Tribunal Clerk: | Mr John Poole |

Attendance and Representation:

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| Medical Practitioner: | Present, represented |
| Medical Practitioner's Representative: | Mr Ben Rich, Counsel, instructed by the Medical Protection Society |
| GMC Representative: | Mr Edmund Potts, Counsel |

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

Overarching Objective

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

Determination on Impairment - 05/01/2024

This determination will be read in private but a redacted version will be published at the close of the hearing.

Background

The March 2023 Tribunal

1. Dr Karunaratne qualified in 1992 from the University of Wales and went on to pursue a career in general practice.
2. Between 13 March and 22 March 2023 a Medical Practitioners Tribunal (the March 2023 Tribunal) considered an Allegation of impairment of fitness to practise by reason of misconduct. At the time of the events that gave rise to that hearing, Dr Karunaratne was working as a GP partner at a surgery in Nottinghamshire where he had worked since 2007.
3. The matters before the March 2023 Tribunal related to an allegation that Dr Karunaratne was dishonest in an appraisal meeting, and that he prescribed medication to two patients with whom he had a close personal relationship.
4. In summary Dr Karunaratne made full admissions to the Allegation. It was admitted and found proved that on 29 September 2017 he attended his appraisal meeting with Dr A and told them that he was registered with a GP practice independent of the surgery in which he worked. His statement to Dr A was untrue, he knew it to be untrue, and his actions were dishonest.
5. It was admitted and found proved that on 1 July 2016 Dr Karunaratne prescribed medications to Patient B with whom he had a close personal relationship. He failed to arrange for Patient B to be assessed by another doctor and he failed to record at the time of prescribing the medications that he had a close personal relationship with Patient B and the reasons why it was necessary for him to prescribe the medications rather than a colleague. Further, the prescribing of the medications in combination was not clinically indicated and was outside relevant guidance. Moreover, one of the medications was not clinically indicated at all. In addition, Dr Karunaratne failed to record his rationale for prescribing the medications. It was admitted and found proved that on 15 May 2018 Dr Karunaratne prescribed medications to Patient B when the prescription was not intended for Patient B but intended for Patient C. It was admitted and found proved that on 29 May 2018 he made an inaccurate record in Patient B's medical records that he had consulted with Patient B on 15 May 2018 when he had not and issued the prescription which was in fact intended for use by Patient C.
6. It was admitted and found proved that when Dr Karunaratne issued the Prescription to Patient B, for use by Patient C with whom he had a close personal relationship, he did so

knowing that Patient C was vulnerable, that it was outside relevant guidance and licenced indications. It was admitted and found proved that he failed to arrange for Patient C to be assessed by another doctor who did not have a close relationship with Patient C. Further it was admitted that he failed to record in Patient C's medical records at the same time or as soon as possible after issuing the Prescription that he had issued the Prescription for use by Patient C, and the reason why it was necessary for him and not a colleague to prescribe to Patient C.

7. The March 2023 Tribunal found that Dr Karunaratne's actions breached various paragraphs of *Good medical practice (GMP)* and fell so far short of the standards to be expected as to amount to misconduct which was serious.

8. The March 2023 Tribunal considered that the misconduct was remediable. It considered that Dr Karunaratne had expressed remorse and regret and taken steps to remediate and develop insight. However, it considered that, whilst he had developed some insight, it was incomplete and constrained by a tendency to 'hide behind his embarrassment in order to minimise his own liability and culpability'. The March 2023 Tribunal considered that all four limbs of the test to which Mrs Justice Cox referred in *CHRE v NMC & Paula Grant* [2011] EWHC 927 (Admin) were engaged and determined that a finding of impairment of fitness to practise was necessary in order to uphold all three limbs of the overarching objective.

9. The March 2023 Tribunal considered that the case was finely balanced between erasure and suspension but went on to impose a sanction of suspension on Dr Karunaratne's registration. It considered that a sanction of suspension would reflect the gravity of Dr Karunaratne's misconduct and that a period of nine months would give Dr Karunaratne adequate time and opportunity to continue his journey of insight and remediation and enable him, in due course, to return to practise.

10. The March 2023 Tribunal advised Dr Karunaratne that his case would be reviewed and the onus would be on him to demonstrate to the reviewing Tribunal that he had remediated his misconduct and that he would be safe to return to unrestricted practice. It advised him that the reviewing tribunal might be assisted if he provided: '*Evidence of Continuing Professional Development and that he has kept his medical knowledge up to date during his period of suspension.*' and '*A detailed reflective statement in relation to his misconduct and in particular the concerns raised by the Tribunal.*'

Today's Review hearing

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

The Evidence

12. The Tribunal has taken into account all the evidence received.
13. The Tribunal had regard to the Record of Determination from the March 2023 MPT hearing. It was also provided with a bundle on behalf of Dr Karunaratne which included a detailed reflective statement, dated 28 November 2023, and a Continuing Professional Development (CPD) bundle and his reflections thereon.
14. Dr Karunaratne also gave oral evidence to the Tribunal. In his evidence he said he had spent a considerable amount of time reflecting on the potential harm he could have caused to Patient B and Patient C, and that he understood that *Good medical practice* guidelines are there for a reason, namely, to protect patients and the doctor.

Submissions

GMC submissions

15. Mr Potts submitted that the GMC was neutral as to the question of whether Dr Karunaratne's fitness to practise is impaired. He reminded the Tribunal that the persuasive burden was on the Dr Karunaratne to satisfy the Tribunal that he was fit to return to practise.
16. Mr Potts acknowledged that Dr Karunaratne's reflective statement shows what might be thought to be a good level of insight. He submitted that Dr Karunaratne explained that his conduct was due to serious breaches and departures of GMP, and he demonstrated a good level of self-awareness and addressed each of the previous Tribunal's findings. Mr Potts submitted that there was a clear focus on the facts of the case, particularly with reference to the serious health concerns of Patient B and Patient C and the potential for serious harm to them as a result of being inappropriately prescribed an array of medication.
17. Mr Potts also observed that Dr Karunaratne had stated that he will never now get involved clinically with anyone with whom he has a close personal relationship as there is always a risk this will cloud his judgement.
18. Mr Potts reiterated that the GMC's stance was neutral in relation to impairment and reminded the Tribunal to have regard to the relevant principles and the overarching objective.

Submissions on behalf of Dr Karunaratne

19. Mr Rich submitted that Dr Karunaratne has been suspended for just short of nine months and has not been idle during this period. He submitted that soon after the original hearing, Dr Karunaratne undertook a large number of courses targeted at the particular concerns identified by the March 2023 Tribunal.
20. Mr Rich submitted that Dr Karunaratne has written a considerable number of detailed reflections. He explained that Dr Karunaratne first reflected on and addressed the concerns

identified by the March 2023 Tribunal before focusing on CPD to show that he has kept his clinical skills and knowledge up to date.

21. Mr Rich took the Tribunal through the reasoning of the March 2023 Tribunal and Dr Karunaratne's reflections in relation to the concerns identified in relation to prescribing and probity.

22. Mr Rich submitted that Dr Karunaratne was committed to not being involved clinically with anyone with whom he has close personal relationship. He submitted that Dr Karunaratne recognises that his prescribing was unethical and against guidelines. He explained that at the time Dr Karunaratne had thought he was doing his best for family members but accepts that this proved to be the opposite. Mr Rich submitted that Dr Karunaratne clearly understands that this would never have happened if he had followed GMP guidelines.

23. Mr Rich submitted that Dr Karunaratne accepted that he had not been a team player and that this was due to his arrogance and a delusion that he had about his capabilities. Mr Rich submitted that Dr Karunaratne knows that these patients should not have been seen by him and should have been treated by another member of his team. He submitted that Dr Karunaratne fully accepts that his actions were below the acceptable, safe and professional standards for a doctor and that he had brought the medical profession into disrepute.

24. Mr Rich submitted that the Tribunal can be reassured by Dr Karunaratne's detailed reflections into his shortcomings that he has addressed the concerns of the previous tribunal. He submitted that over the past eight to nine months Dr Karunaratne has undertaken a comprehensive and brutally frank reassessment of who he is as a person and doctor.

25. In summary, Mr Rich submitted that Dr Karunaratne has shown appropriate insight and remediation to satisfy the Tribunal that his fitness to practise is no longer impaired. He submitted that should the Tribunal find that Dr Karunaratne is no longer impaired, it would be in Dr Karunaratne's interests and the public interest to revoke the current suspension with immediate effect.

The Relevant Legal Principles

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

27. This Tribunal must determine whether Dr Karunaratne's fitness to practise is impaired today, taking into account Dr Karunaratne's conduct at the time of the events and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.

The Tribunal's Determination on Impairment

Misconduct

28. The Tribunal considered whether Dr Karunaratne's fitness to practise remains impaired by reason of misconduct. It reminded itself that the persuasive burden was on Dr Karunaratne to demonstrate that his fitness to practise was no longer impaired.
29. The Tribunal noted that Dr Karunaratne provided the material that the previous Tribunal advised would be of assistance to this Tribunal reviewing his case, namely a detailed reflective statement in relation to his misconduct and evidence of CPD to show that he maintained his medical knowledge up to date during his period of suspension.
30. The Tribunal had regard to Dr Karunaratne's reflective statement. It considered his reflections to be focused and comprehensive. It was satisfied that he has fully reflected on his misconduct and developed insight.
31. The Tribunal considered that Dr Karunaratne has undertaken extensive reflection and remediation into the concerns raised. It noted that he addresses each area of concern in detail. In his conclusion he stated:

'..Overall, I fully accept that I was well below acceptable safe and professional standards for a doctor and thus brought the whole medical profession and GMC into disrepute and rightly received a severe sanction.

It has been deep and painful look into myself and actions and realised quite dramatically that several areas clinically, professional behaviour and personal qualities of openness and honesty were lacking and needed to improve quickly and become ingrained so that I can be a better more trusted doctor and person. I also need to be less deluded in myself, a little less arrogant and humbler and be on my guard to think and reflect before acting, going forwards to avoid reckless and unthinking unsafe and dangerous actions for keeping safety of patients at the forefront.

At my first hearing I was able to get to the stage of telling the truth and offering an apology. Looking back now with great surprise I can't quite believe that I could not see or admit and take responsibility for the long and short-term consequences of my actions, namely putting the patients at risk from prescribing and at risk from incorrect follow up from lack of or incorrect record keeping. Therefore, also at the first hearing because I could not quite grasp or accept my mistakes, I could not see I needed to make improvements in clinical standards and also other standards in professionalism and probity and that I needed to follow the GMP guidelines accurately and not follow my own ideas.

At my first hearing I believe I was still stuck in the old mindset of self-delusion and arrogance and lack of self-reflection and insight.

So, I feel I have come full circle now and feel I'm a different person at the first hearing thanks to the time allowed in my reflective journeys. I can now fully see and accept and apologise where I went wrong and what changes are needed going forward.

The overriding feeling and learning from my CPD and reflection and insight is that I need to feel and be part of the wider team, be a stronger team player, respect the team and its principles and morals, be a part in the team activities of reviews of performance and guidelines, discuss cases and never work in isolation and to avoid self-delusion and be humble and constantly have self-reflection on what you're doing and standards never to stand still and avoid thinking everything is ok so growth and improvements can occur. This will allow the team structure and the team ethos to be ingrained in me. This should be the basis of future safer care of patients and correct professional conduct.'

32. Overall, the Tribunal was impressed by Dr Karunaratne's reflections and oral evidence. It was satisfied that he has developed insight and remediated his misconduct. It concluded that the risk of him repeating similar misconduct in the future was very low.
33. The Tribunal was also impressed by the amount of targeted CPD Dr Karunaratne has undertaken during the period of suspension. It was satisfied that he has kept his medical skills up to date.
34. The Tribunal has reached the conclusion that it can be satisfied that he has demonstrated that he can be a safe practitioner. In these circumstances the Tribunal considers that the overarching objective does not require it to make a finding that Dr Karunaratne's fitness to practise remains impaired.
35. The Tribunal therefore determined that Dr Karunaratne's fitness to practise is no longer impaired by reason of misconduct.
36. Having found that Dr Karunaratne's fitness to practise is no longer impaired, the Tribunal determined that it was appropriate to revoke the current order of suspension with immediate effect.