

PUBLIC RECORD

Date: 28/09/2020

Medical Practitioner's name: Dr Pandeshwar GURURAJ

GMC reference number: 4684583

Primary medical qualification: MB BS 1986 Mangalore University

Type of case Outcome on impairment

Review - Misconduct Not Impaired

Summary of outcome

Suspension to expire

Tribunal:

Legally Qualified Chair	Ms Christina Moller
Lay Tribunal Member:	Dr Nigel Westwood
Medical Tribunal Member:	Dr Saqib Anwar
Tribunal Clerk:	Miss Jan Smith

Attendance and Representation:

Medical Practitioner:	Present and not represented
GMC Representative:	Mr Paul Williams, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Impairment - 28/09/2020

Background

1. The Tribunal has been informed of the background to Dr Gururaj's case which was first considered by an MPT Tribunal in September 2019 ('the 2019 Tribunal'). Dr Gururaj qualified in India in 1986 and started working in the United Kingdom in 1998. In 2005, Dr Gururaj was employed as a Consultant Anaesthetist at Grampian NHS. In 2006 he commenced private practice at the Albyn Hospital, part of the BMI Healthcare Group.

2. The facts admitted and found proved at Dr Gururaj's hearing in September 2019 can be summarised as follows. Between November 2015 and February 2018, on approximately 23 occasions, Dr Gururaj added his name as the named anaesthetist on operation theatre charge sheets when he had not provided anaesthetic services for those operations. He was aware that, by adding his name to the charge sheets, he would receive financial remuneration to which he was not entitled. Dr Gururaj admitted the allegation in its entirety and accepted that his actions had been dishonest. When this matter came to light, Dr Gururaj's practising privileges were suspended and, in May 2018, he was referred to the GMC.

2019 Tribunal

3. The 2019 Tribunal noted that, on 23 occasions over a period of more than two years, Dr Gururaj had added his name as the anaesthetist to theatre charge sheets when he had not been present and for which he had received financial remuneration which he knew he was not entitled to. The 2019 Tribunal considered this conduct was dishonest and amounted to theft. It was of the view that, had he not been caught, Dr Gururaj may have continued his dishonest behaviour, particularly as the frequency of his false claims had increased significantly in the year prior to his actions being discovered. The 2019 Tribunal concluded that Dr Gururaj's conduct fell far short of the standards expected of a doctor and that it amounted to misconduct.

4. In considering whether Dr Gururaj's fitness to practise was impaired by reason of his misconduct, the 2019 Tribunal noted that, initially, Dr Gururaj said that his conduct was "*a slip up*" and "*an error of judgement*". However, in June 2018, Dr Gururaj sent an email to the GMC in which he stated "*Yes, the allegation is true. Yes, I am seriously ashamed and disappointed, I feel at no point that anybody should be dishonest especially a medical*

professional. I have apologised and offered to pay back the sum owed to Albyn Hospital.” In his witness statement, dated 20 September 2019, Dr Gururaj stated *“I fully admit that over a period of time I acted badly and made serious errors of judgement in acting dishonestly.”*

5. The 2019 Tribunal took account of Dr Gururaj’s apology, offer and attempt to repay the monies owed. However, it noted that, whilst Dr Gururaj had taken some steps to remediate his behaviour, he had not developed full insight into his dishonest behaviour. The 2019 Tribunal could not be satisfied that there was not a significant risk of repetition should Dr Gururaj find himself in similar circumstances in the future.

6. In light of the need to demonstrate further insight and remediation, the 2019 Tribunal determined that Dr Gururaj’s fitness to practise was impaired by reason of misconduct. Further, it considered that if a finding of impairment were not made, the need to uphold proper professional standards and public confidence in the medical profession and its regulator would be undermined.

7. In reaching its decision on the appropriate sanction to impose, the 2019 Tribunal took into account all the testimonial evidence provided to it, as well as Dr Gururaj’s own oral evidence in which he apologised for his behaviour and expressed his shame and remorse. The 2019 Tribunal noted the steps that Dr Gururaj had taken to remediate his dishonesty including a 3-day boundaries course and a 1-day course which dealt with motivation, honesty, guilt and self-deception.

8. The 2019 Tribunal considered the mitigating factors in Dr Gururaj’s case, including:

- Dr Gururaj made full admissions at the commencement of the 2019 hearing
- Dr Gururaj made a full apology and expressed his shame and remorse
- Dr Gururaj offered to repay the monies owed
- Personal and professional pressures
- Dr Gururaj is highly regarded by his colleagues for his clinical competence
- Dr Gururaj was of previous good character
- Dr Gururaj had developed insight and had made efforts to prevent a recurrence of his previous behaviour

9. The 2019 Tribunal noted that Dr Gururaj did not admit his dishonest behaviour at the earliest opportunity and was of the view that he may have continued to behave dishonestly if he had not been caught. It also noted that, initially, Dr Gururaj dismissed his behaviour as “an error of judgement” and a “silly mistake”. The 2019 Tribunal bore in mind that Dr Gururaj had acted dishonestly on 23 occasions over a period of more than two years, 20 of those occasions occurred in the 12-month period prior to his being discovered in February 2018. It was in no doubt that Dr Gururaj’s misconduct was in breach of a number of principles of *Good Medical Practice*.

10. The 2019 Tribunal took into account the courses that Dr Gururaj attended in an effort to remediate his dishonest behaviour. It noted that he meditated every day and continued to reflect on his behaviour, demonstrating a commitment to continued learning and remediation. The 2019 Tribunal considered that Dr Gururaj had developed better understanding of and gained insight into how he should take responsibility for his own behaviour.

11. The 2019 Tribunal recognised that there were no patient safety issues in this case and that Dr Gururaj was highly regarded by his clinical colleagues. It noted that there had been no repetition of his misconduct and that Dr Gururaj had demonstrated developing insight and had taken some steps to remediate his previous behaviour. The 2019 Tribunal concluded that there was not a significant risk of repetition.

12. The 2019 Tribunal accepted that dishonesty was difficult to remediate and that Dr Gururaj's misconduct could be considered fundamentally incompatible with continued registration. It bore in mind that Dr Gururaj had developed some insight, although it was not complete, and that he appeared committed to remediating his behaviour. The 2019 Tribunal took into account that Dr Gururaj was a clinically competent doctor and his removal from the Medical Register was not in the public interest. Therefore, the 2019 Tribunal determined that suspension was the appropriate sanction at that stage.

13. In considering the appropriate period of suspension, the 2019 Tribunal had regard to the seriousness of the misconduct and determined that the maximum period of 12 months would send a clear message to the doctor, the public and the profession about what is regarded as behaviour unbecoming a registered doctor. Furthermore, a 12-month period of suspension would serve to promote and maintain public confidence in the profession and promote and maintain proper professional standards and conduct for members of the profession.

14. The 2019 Tribunal determined to direct a review of Dr Gururaj's case. It was of the view that it would assist the reviewing Tribunal if Dr Gururaj provided:

- A journal/diary which reflects his recognition of the cause of his misconduct, his continued reflection, evidence of his learning and understanding and which addresses the impact of his misconduct on the public and profession;
- Written or oral evidence that the level of his insight has developed;
- Written or oral evidence from any person(s) that can speak of his insight and remediation;
- Evidence of Continued Professional Development and how he has kept his clinical knowledge and skills up to date;
- Recent testimonials from any paid or unpaid work.

Today's Review Hearing

15. The Tribunal has to decide in accordance with Rule 22(1)(f) of the General Medical Council (GMC) Fitness to practise) Rules 2004, as amended, ('the Rules') whether Dr Gururaj's fitness to practise remains impaired by reason of misconduct.

The Evidence

16. The Tribunal has taken account of all the written evidence provided, which includes but is not limited to:

- Record of Determinations from the 2019 hearing
- Email correspondence between Dr A and the GMC dated April and May 2020
- Testimonial from Dr A dated 13 August 2020
- Testimonial evidence from consultant colleagues/associates
- Testimonial evidence from a charity shop and a corner shop (voluntary work)
- Testimonial evidence from close friends, a family member and neighbours
- Evidence of courses applied for and courses attended
- Bank statement showing payment to Albyn Hospital
- Multi-source feedback
- Evidence of educational activities
- Dr Gururaj's curriculum vitae
- Evidence of Continued Professional Development
- Evidence of online study including mindfulness and meditation
- Evidence of BMJ learning
- Dr Gururaj's statement of reflection
- Dr Gururaj's diary / journal
- Dr Gururaj's Personal Development Plan
- Covid-19 self-learning and reflections

17. Dr Gururaj addressed the Tribunal at today's hearing and answered the questions put to him by the Tribunal, although he did not give oral evidence under oath.

Submissions

18. On behalf of the GMC, Mr Williams outlined the background to Dr Gururaj's case and drew the Tribunal's attention to those matters it must consider when reaching a decision on current impairment of fitness to practise. Mr Williams told the Tribunal that the GMC was "neutral" on the issue of current impairment.

19. Dr Gururaj apologised for his previous misconduct and expressed deep shame and remorse. He told the Tribunal that he had not been thinking clearly when he behaved dishonestly. He was not being paid on time by those he undertook services for and he was unhappy that their systems had let him down. He described the impact of stress at work, as well as tensions within his family life, but recognised that his actions between 2015 and February 2018 were completely unacceptable.

20. Dr Gururaj told the Tribunal of the voluntary work he had undertaken while his registration has been suspended and spoke with pride of the work he had undertaken with the British Red Cross at one of their charity shops. He referred to the amount of educational activities he has undertaken including professional development and private study of Sinhalese. Dr Gururaj said he made an effort to stay motivated throughout the period of his suspension and to learn as much as possible.

21. Dr Gururaj described how he had tried to obtain clinical attachments in hospitals in Glasgow and Middlesbrough, although his efforts have been hampered by the Covid-19 pandemic. He told the Tribunal that he wants to return to his chosen profession and to help those most in need.

Relevant Legal Principles

22. The Tribunal reminded itself that at this stage of proceedings the decision on impairment is a matter for its judgement alone. It was aware that there is a persuasive burden on the doctor to show that he is safe to return to unrestricted practice.

23. The Tribunal must determine whether Dr Gururaj's fitness to practise is impaired today, taking into account his conduct since the previous Tribunal proceedings and any relevant factors since then, such as whether issues of concern have been remedied, whether Dr Gururaj has developed further insight and any likelihood of repetition of his misconduct.

The Tribunal's Determination on Impairment

24. The Tribunal considered whether Dr Gururaj's fitness to practise is currently impaired by reason of his past misconduct. The Tribunal has taken account of all the documentary evidence presented to it, submissions made by Mr Williams on behalf of the GMC, and those made by Dr Gururaj, as well as his answers to questions from the Tribunal.

25. The Tribunal noted Dr Gururaj's full admissions to the Allegation at the outset of his first hearing in 2019.

26. This was a case of financial dishonesty, although the Tribunal recognised that there was an element in Dr Gururaj's behaviour of trying to gain control over other aspects of his life, as described in his statement of reflections and submissions to the Tribunal.

27. The Tribunal has taken account of Dr Gururaj’s expression of genuine remorse as well as his in-depth engagement with the process of reflection. The Tribunal had regard to the degree of insight Dr Gururaj had shown at his last hearing and considered that he has developed his insight significantly since then. It is clear that he now understands why he behaved as he did and what he must do should he face similar stressors in the future.

28. In view of his successful efforts to gain insight, the Tribunal considered that Dr Gururaj has reduced the risk of similar actions, such that his misconduct is unlikely to be repeated. The Tribunal has also had regard to the testimonial evidence which addresses directly Dr Gururaj’s past dishonesty. He should now recognise signs of XXX and be able to deal with issues of concern in his life more appropriately.

29. The Tribunal has received evidence of Dr Gururaj’s continued professional development and how he has kept his clinical skills and knowledge up to date, despite restrictions arising from the Covid-19 pandemic. It has taken account of the substantial training that Dr Gururaj has undertaken.

30. Taking all of the above into account, the Tribunal has found that Dr Gururaj’s insight into his behaviour is substantial and comprehensive; he has taken all reasonable steps to remediate his misconduct and minimise the risk of repetition. The Tribunal is satisfied that Dr Gururaj is safe to return to unrestricted practice and that it is in the public interest that he should be allowed to do so.

31. The Tribunal has therefore determined that Dr Gururaj’s fitness to practise is no longer impaired by reason of misconduct.

32. The suspension of Dr Gururaj’s registration is due to expire on 24 October 2020. The Tribunal has borne in mind the decision of the 2019 Tribunal that, due to the gravity of the serious misconduct, a suspension of 12 months was the appropriate sanction. Therefore, the current period of suspension will be revoked on the date of expiry, on 24 October 2020.

Confirmed

Date 28 September 2020

Ms Christina Moller, Chair