PUBLIC RECORD

Dates: 28/10/2022 - 03/11/2022

Medical Practitioner's name:	Dr Sivasailam Anand SUBRAMONY
GMC reference number:	6048749
Primary medical qualification:	MB BS 1990 Calicut University

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Impaired

Summary of outcome

Conditions, 12 months.
Review hearing directed
Immediate order imposed

Tribunal:

Legally Qualified Chair	Mrs Oluremi Alabi
Lay Tribunal Member:	Mr Robert McKeon
Medical Tribunal Member:	Dr Barry Adams-Strump

Tribunal Clerk:	Ms Lauren Clark

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Marios Lambis, KC, instructed by Weightmans
GMC Representative:	Mr Ciaran Rankin, 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 Facts - 31/10/2022

Background

1. Dr Subramony qualified in 1990 from Calicut University in Kerala, India. Dr Subramony worked in Malaysia until 2002 after which he moved to the UK. He commenced his General Practice ('GP') training in the UK in 2005 and joined the Medina Medical Centre ('the Practice') in 2006, becoming a partner in 2007.

2. The allegation that has led to Dr Subramony's hearing can be summarised as: on a number of occasions between 4 July 2019 and 13 September 2019, Dr Subramony failed to provide good clinical care to Patient A.

3. Dr Subramony self-referred himself to the GMC on 20 July 2020. In his email, he informed the GMC of his involvement in the inquest of Patient A's death that raised criticisms of his prescribing medication to Patient A. Further, he stated that he was no longer working as a GP principal and had left the Practice where he saw Patient A.

The Allegation and the Doctor's Response

4. The Allegation made against Dr Subramony is as follows:

    1. On 4 July 2019 Patient A attended a consultation with you. You failed to provide good clinical care in that you prescribed 84 5mg diazepam tablets to Patient A which was not clinically indicated in that this was a considerable increase in the:

a. dosage; To be determined

b. number of tablets previously prescribed to Patient A. Admitted and found proved

2. On 1 August 2019 Patient A attended a consultation with you. You failed to provide good clinical care in that:

a. you prescribed 84 5mg diazepam tablets which was not clinically indicated in that it:

i. was excessive; Admitted and found proved

ii. created a risk that Patient A would take additional doses. Admitted and found proved

b. you did not make a clear record of the consultation as no information was recorded as to your thoughts and actions after receiving a call from the adult safeguarding team. Admitted and found proved

3. On 2 September 2019 Patient A attended a consultation with you. You failed to provide good clinical care in that you increased Patient A's prescription to 112 5mg diazepam tablets which was not clinically indicated in that it:

a. was excessive; Admitted and found proved

b. created a risk that Patient A would take additional doses. Admitted and found proved

4. On 11 September 2019 Patient A attended a consultation with you. You failed to provide good clinical care in that you did not record the advice given to Patient A that Patient A should not take diazepam, zopiclone or melatonin when taking morphine. Admitted and found proved

5. On 13 September 2019 Patient A reported losing her medication. You failed to provide good clinical care in that you:

a. prescribed repeat medication to Patient A and you did not:

i. make any enquiries as to how Patient A had lost the medication; To be determined

ii. record any enquiries that you made with Patient A regarding the alleged loss of medication. Admitted and found proved

b. prescribed diazepam and zopiclone when it was not clinically indicated to do so as Patient A was on treatment with morphine. Admitted and found proved

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

5. At the outset of these proceedings, through his counsel, Mr Marios Lambis, KC, Dr Subramony made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

The Facts to be Determined

6. In light of Dr Subramony's response to the Allegation made against him, the Tribunal is required to determine whether, during his consultation with Patient A on 4 July 2019, he failed to provide good clinical care in that he prescribed 84 5mg diazepam tablets to Patient A which was not clinically indicated in that this was a considerable increase in the dosage. Further, the Tribunal will need to determine whether, on 13 September 2019, Dr Subramony failed to provide good clinical care in that he prescribed repeat medication to Patient A in that he did not make any enquires as to how Patient A had lost the medication.

Witness Evidence

7. Dr Subramony provided his own witness statement dated 26 September 2022. He also gave oral evidence at the hearing. No other live witnesses were called on behalf of the doctor.

Expert Witness Evidence

8. Dr B was called to give evidence on behalf of the GMC. He provided an expert medical report, dated 7 August 2021 ('the first report'). He provided an additional report, dated 23 August 2022 ('the second report'). Dr B also gave oral evidence at the hearing. Until the end of September 2013, Dr B was a full time General Practitioner working in Fowey, Cornwall. Since his retirement from the Practice, he has continued to work for the organisation providing Out of Hours services in Cornwall. Until recently, he was also a member of the Council of the MDU. Dr B also has experience in providing medical expert reports and provides approximately 100 reports per year.

Documentary Evidence

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

- Self-referral email from Dr Subramony to the GMC dated 20 July 2020;
- Coroner's letter to Dr Subramony dated 13 July 2020;
- Inquest report of Patient A which included a statement from Dr Subramony;
- Patient A's medical records; and
- The expert reports prepared by Dr B dated 7 August 2021 and 23 August 2022

The Tribunal's Approach

10. 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 Subramony 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.

11. The Legally Qualified Chair advised the Tribunal that it must consider all of the evidence before it that it considers to be fair and relevant.

12. The Tribunal was advised that it may draw reasonable inferences from the facts but that it must not speculate or consider what other evidence may or may not have been available to it.

13. The Tribunal was advised that, whilst the expert witness was called to give evidence on behalf of the GMC, their duty is to assist the Tribunal. The Tribunal is not bound by the expert's opinion but should give reasons if it decides to depart from it.

14. The Tribunal was reminded that submissions by counsel are not evidence and that it may accept or reject them.

15. The Tribunal was not invited by either party to give a good character direction for Dr Subramony. However, the Legally Qualified Chair did provide a full good character direction during her advice. During the time the Tribunal had retired to determine the facts, parties raised with the Tribunal that Dr Subramony had previously been issued with a warning. Mr Lambis, on behalf of Dr Subramony and Mr Rankin, on behalf of the GMC, submitted that

limited weight should be attached to this at this stage. The Tribunal accepted that limited weight should be attached to the warning at this stage of the hearing.

16. Both Mr Lambis on behalf of Dr Subramony and Mr Rankin on behalf of the GMC were invited by the tribunal to make any submissions on recusal that they felt fit. Neither counsel felt the need to make any such submissions.

The Tribunal's Analysis of the Evidence and Findings

17. The Tribunal has considered each outstanding paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts.

Paragraph 1(a)

18. The Tribunal noted the GMC's submission that, on 4 July 2019, Dr Subramony failed to provide good clinical care to Patient A in that he prescribed 84 5mg diazepam tablets which was not clinically indicated as this was a considerable increase in the number of tablets previously prescribed to Patient A. It is alleged that it was not clinically indicated in that this was a considerable increase in the dosage.

19. The Tribunal had regard to Patient A's medical records which indicated the dose prescribed by Dr Subramony was *'5mg to 10mg To Be Taken At Night – for sleep and anxiety'.*

20. The Tribunal first considered Dr B's evidence. In his first report, he stated:

> *'A review of the records indicates that prior to this consultation, in June and May, Patient A had only been prescribed 28 tablets. There is no indication as to why Dr. Subramony decided to make a considerable increase in the number of diazepam tablets prescribed. In my opinion, in relation to the prescription of diazepam, Dr. Subramony's actions were not the actions that would be supported by a responsible body of GPs. Diazepam should only be prescribed for short periods of time and the guidance in the BNF indicates that diazepam should not be provided for more than 2 weeks' continuous therapy. However, I would make the comment that, in my experience, there are many patients who do suffer from severe anxiety and who cannot be controlled with a simple prescription of 2 weeks of diazepam. It is not unreasonable, in certain situations, to act against the advice of the BNF if a GP considers that a medication such as diazepam is appropriate. I am therefore not critical of the continuing dose of diazepam but I am critical of the considerable*

increase in the dosage and number of tablets provided to patient A. In my opinion, without suitable explanation, Dr. Subramony's actions on 4th July 2019 in increasing the number of diazepam tablets prescribed from 28 to 84 was an action that was seriously below the standard expected of a responsible GP.'

21. In his oral evidence, Dr B highlighted the addictive nature of diazepam. He told the Tribunal that, in his opinion, the dosage was not clinically indicated as the drug should be prescribed starting with the lowest possible dose for the shortest amount of time and any increase should be in small and gradual increases. He gave the example of increasing dosages by 2mg at a time. Further, he highlighted that, when looking at the length of time that Patient A would have been taking this dose of the tablets, this was outside the recommended guidelines. He acknowledged that a Consultant Psychiatrist had previously prescribed Patient A with a higher dose than Dr Subramony (three tablets of 5mg each per day) but stated that this had been for a much shorter period of time and whist Patient A was an in-patient. Dr B also highlighted that there had been other drugs prescribed by Dr Subramony in relation to Patient A's issue with sleep and therefore, in his view, the dosage of 10mg of diazepam prescribed was not clinically indicated.

22. The Tribunal went on to consider Dr Subramony's evidence. In his statement dated 26 September 2022, he stated:

'I accept I increased the maximum dose of diazepam from 5mg at night to 10 mg at night PRN. She had previously been prescribed a higher dose than this by the psychiatrists in the Crystal ward and my colleague Dr C. I did not consider that this was an excessive dose.

I cannot now recall the consultation and I accept that my note is unclear. It is possible that Patient A told me that she needed to take two tablets of diazepam in the evening. As a result I increased the maximum dose.'

23. In his oral evidence, Dr Subramony told the Tribunal that he had seen Patient A on a number of occasions and was familiar with her complex history. He told the Tribunal that Patient A must have told him that taking two tablets in the evening helped with her anxiety and that is why he prescribed the dose he did. He acknowledged that, whilst his notes make reference to the drug being prescribed for sleep and anxiety, he was in actual fact, prescribing the diazepam only for anxiety and this was why he told her this should be taken in the evening. He accepted that, given the passage of time, he has no recollection of the

consultation on 4 July 2019, but maintained that his best recollection is that Patient A would have told him about feeling anxious in the evening and this is the reason he would have prescribed this dose.

24. The Tribunal preferred the evidence of Dr B. The Tribunal accepted Dr B's evidence that, when looking at the length of time Patient A would have been taking this dose, this was outside the recommended guidelines of prescribing the smallest dose for the shortest period of time. Whilst the Tribunal acknowledged that a Consultant Psychiatrist had previously prescribed a higher dose, it accepted Dr B's opinion that this was for a shorter period of time and in the light of the other medications that were being prescribed to Patient A, the Tribunal accepted Dr B's opinion which was '*critical of the considerable increase in the dosage and number of tablets provided to patient A.*'

25. Accordingly, the Tribunal found paragraph 1(a) of the Allegation proved.

Paragraph 5(a)(i)

26. The Tribunal noted the GMC's submissions that, on 13 September 2019, Patient A reported losing her medication and Dr Subramony did not record any enquires that he made regarding the alleged loss of medication. It is alleged that Dr Subramony failed to make any enquires as to how Patient A had lost the medication.

27. The Tribunal first considered Dr Subramony's witness statement, dated 26 September 2022 in which he stated:

> *'Patient A contacted the practice on 13 September 2019 reporting that she had lost her medication. I recall that I saw her at the end of my patient list. Patient A seemed content. I recall her smiling and she discussed the fact that she had the house to herself and she was going to meet a friend that evening. She said that she kept her drugs in a box and the box had gone missing. She appeared to be in a good mood and was chatting with the receptionist while she was waiting to see me. I did not ask Patient A directly about her mood at this stage but I had no concerns given my discussions with her and her general presentation. I did consider whether she was telling me the truth. I had never had reason to doubt her in the past and I believed her on this occasion.'*

28. The Tribunal also noted that this was the same information that Dr Subramony had provided in his statement to the Coroner as included in the inquest report.

29. The Tribunal went on to consider Dr Subramony's oral evidence. He told the Tribunal that he was first told that Patient A had lost her medication by the practice staff and, before seeing her, he made a note in her medical records stating that she had lost the medication and needed a repeat prescription. He explained that Patient A waited until the end of his patient list (around 2 hours) before he was then able to speak with her. He told the Tribunal that this consultation lasted around 10 minutes and it was during this consultation that Patient A also told him that she had lost her medication. He also told the tribunal that although not recorded in the notes, Patient A further told him that she suspected that her sister-in-law may have taken and hidden the medication. He told the Tribunal that this was after 6pm and he did not have time to note the detail of the conversation in her medical notes but that he planned on updating the notes the next working day. However, before he got the chance to update the notes, he found out about Patient A's death. He told the Tribunal he did not feel it was appropriate to update the notes following this news.

30. The Tribunal had regard to Patient A's medical records and noted the record from 16.40 on 13 September 2019 states '*History: says lost meds. needs repeat presc'* which is consistent with Dr Subramony's account.

31. The Tribunal acknowledged Dr Subramony's concession that, given the passage of time, he did not have a clear recollection of the consultation with Patient A. The Tribunal also noted that Dr Subramony's written account of events did not go into as much detail as his oral account. The Tribunal considered the possibility that Dr Subramony had not made sufficient enquires. However, in light of his knowledge of Patient A and her history, the Tribunal was of the view that there was some evidence to demonstrate that Dr Subramony did have a conversation with Patient A and made some enquires as to how she had lost medication before issuing her with the repeat prescription. The Tribunal considered Dr Subramony a credible witness who was doing his best to assist the Tribunal.

32. In all the circumstances, the Tribunal did not, on balance of probabilities, find the GMC to have discharged its burden of proof in respect of this paragraph of Allegation 5(a)(i).

33. Accordingly, the Tribunal found paragraph of the Allegation 5(a)(i) not proved.

The Tribunal's Overall Determination on the Facts

34. The Tribunal has determined the facts as follows:

1. On 4 July 2019 Patient A attended a consultation with you. You failed to provide good clinical care in that you prescribed 84 5mg diazepam tablets to Patient A which was not clinically indicated in that this was a considerable increase in the:

    a. dosage; Determined and found proved

    b. number of tablets previously prescribed to Patient A. Admitted and found proved

2. On 1 August 2019 Patient A attended a consultation with you. You failed to provide good clinical care in that:

    a. you prescribed 84 5mg diazepam tablets which was not clinically indicated in that it:

        i. was excessive; Admitted and found proved

        ii. created a risk that Patient A would take additional doses. Admitted and found proved

    b. you did not make a clear record of the consultation as no information was recorded as to your thoughts and actions after receiving a call from the adult safeguarding team. Admitted and found proved

3. On 2 September 2019 Patient A attended a consultation with you. You failed to provide good clinical care in that you increased Patient A's prescription to 112 5mg diazepam tablets which was not clinically indicated in that it:

    a. was excessive; Admitted and found proved

    b. created a risk that Patient A would take additional doses. Admitted and found proved

4. On 11 September 2019 Patient A attended a consultation with you. You failed to provide good clinical care in that you did not record the advice given to Patient A that Patient A should not take diazepam, zopiclone or melatonin when taking morphine. Admitted and found proved

5. On 13 September 2019 Patient A reported losing her medication. You failed to provide good clinical care in that you:

    a. prescribed repeat medication to Patient A and you did not:

i. make any enquiries as to how Patient A had lost the medication; **Not proved**

ii. record any enquiries that you made with Patient A regarding the alleged loss of medication. **Admitted and found proved**

b. prescribed diazepam and zopiclone when it was not clinically indicated to do so as Patient A was on treatment with morphine. **Admitted and found proved**

Determination on Impairment - 01/11/2022

1. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Fitness to Practice Rules (as amended) whether, on the basis of the facts which it has found proved as set out before, Dr Subramony'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. In addition, the Tribunal received further documentary evidence on behalf of Dr Subramony which included:

- Letter from Dr D, Dr Subramony's clinical supervisor, dated 4 October 2022;
- CPD Certificate in Good Practice in Record Keeping for GP's dated 8 November 2021;
- Dependence Forming Medications course certificate;
- Reducing Opiate Prescribing in Chronic Pain course certificate;
- Dr Subramony's Reflections Letter to NHSE dated 7 August 2020; and
- Dr Subramony's unredacted witness statement dated 26 September 2022.

Submissions

3. On behalf of the GMC, Mr Rankin reminded the Tribunal that it should follow the two-stage process. Firstly, it should consider whether the facts found proved amount to serious misconduct. He submitted that the facts admitted and found proved in this case amounted to serious misconduct.

4. Mr Rankin referred the Tribunal to Dr B's expert reports. He stated that Dr B was of the view that, overall, Dr Subramony's conduct fell seriously below the standard expected. Mr Rankin referred to the consultation on 13 September 2019 and submitted that a *'cocktail*

of drugs' was issued to Patient A and submitted that this is one example of Dr Subramony's conduct falling seriously below the standard expected.

5. Mr Rankin referred the Tribunal to Good Medical Practice (2013 edition) ('GMP') and submitted that Dr Subramony had breached paragraph 19 (set out below).

6. In relation to whether Dr Subramony's fitness to practise is currently impaired, Mr Rankin referred the Tribunal to the case of *Grant* (set out below) and submitted that Dr Subramony's misconduct in excessively prescribing medication put Patient A at potential risk of harm. He submitted that the absence of proper records of the consultations also had the potential to compromise patient safety. Mr Rankin also referred to Dr B's conclusions that Dr Subramony's conduct was unsafe and fell seriously below the standard expected. Further, he submitted that Dr Subramony had breached a fundamental tenet of the medical profession in not appropriately recording the consultations.

7. Mr Rankin referred the Tribunal to the overarching objective and submitted that all three limbs are engaged in this case. He submitted that it is necessary for the Tribunal to make a finding of current impairment to protect patients, maintain public confidence in the medical profession and to uphold proper professional standards.

8. On behalf of Dr Subramony, Mr Lambis submitted that the factual backdrop of this case is important. He submitted that Patient A had been well known to Dr Subramony as well as the Practice and had actively engaged in a patient participation group to keep the practice open. He submitted that this demonstrates that it was a Practice she trusted and supported. Further, he submitted that there is no evidence that Patient A's sister-in-law shared her concerns about Patient A with Dr Subramony, the Practice or with Patient A. He submitted that the Tribunal should also take into account that the Coroner did not have the benefit of hearing from Dr Subramony. Notwithstanding this context, Mr Lambis submitted that Dr Subramony accepts there was a tragic outcome in this case, and he does not resile from the admissions made.

9. In relation to whether Dr Subramony's conduct amounts to misconduct, Mr Lambis reminded the Tribunal that it is a matter for the Tribunal to determine and he made no further submissions.

10. In relation to whether Dr Subramony's fitness to practise is currently impaired, Mr Lambis reminded the Tribunal that Dr Subramony has engaged with the regulatory process

and made admissions at the outset of the hearing. He referred to paragraphs 31 and 32 in the case of *Zygmunt v GMC [EWHC] 2643 (Admin)* and highlighted that at paragraph 31 it was stated, that *'it may well be, especially in circumstances in which the practitioner does acknowledge his deficiencies and take prompt and sufficient steps to remedy them, that there will be cases in which a practitioner is no longer any less fit to practise than colleagues with an unblemished record.'*

11. Mr Lambis also referred to paragraphs 8 and 30 of *the Professional Standards Authority for Health and Social Care V the NMC ('Scottish case')* and submitted that a finding of misconduct did not have to lead to a finding of impairment

12. Mr Lambis referred to Dr Subramony's reflections and submitted that Dr Subramony has changed his practice significantly since this incident and is now more cautious when prescribing controlled drugs. Further, Mr Lambis referred to the letter from Dr D, Dr Subramony's clinical supervisor, and submitted that this demonstrates that Dr Subramony has been proactive in seeking independent verification of his remediation to assist the Tribunal.

13. Mr Lambis submitted that this case is an example of the regulatory process achieving that which it is designed. He submitted Dr Subramony has learnt from his mistake and that a well-informed member of the public, cognisant of all the facts, would take the view that Dr Subramony has done all he can to correct his misconduct.

The Relevant Legal Principles

14. 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.

15. In approaching the decision, the Tribunal was advised to be 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 which was serious, could lead to a finding of impairment.

16. The Tribunal was advised that for misconduct to be found it must not be merely negligent but of such seriousness that it brings the medical profession into disrepute. With regards to what is *'serious'*, the Court of Appeal [in Meadow] approved the words of Mr Justice Collins in the case of *Nandi v GMC ([2004] EWHC (Admin)* that serious is referred to it

as *'conduct which would be regarded as deplorable by fellow practitioners'* or as illustrated in *Meadow* at [200], and *Preiss v GDC [2001] 1 WLR 1296* at [28], would amount to *'an elementary and grievous failure.'*

17. The Tribunal was advised that it must determine whether Dr Subramony's fitness to practise is impaired today, taking into account his 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.

18. Whilst there is no statutory definition of impairment, the Tribunal was assisted by the guidance provided by Dame Janet Smith in the Fifth Shipman Report, as adopted by the High Court in *CHRE v NMC and Paula Grant [2011] EWHC 297 Admin*. In particular, the Tribunal considered whether its findings of fact showed that Dr Subramony's fitness to practise is impaired in the sense that he:

> *'a. Has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
>
> *b. Has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
>
> *c. Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
>
> *…'*

The Tribunal's Determination on Impairment

Misconduct

19. The Tribunal acquainted itself with the '*Scottish case'* and the case of *Zygmunt* which were referred to by Mr Lambis in his submissions.

20. The Tribunal first considered whether Dr Subramony's actions amounted to misconduct.

21. The Tribunal had regard to paragraphs 15, 16, 19, 20 and 21 of GMP, which states:

'15 You must provide a good standard of practice and care. If you assess, diagnose or treat patients, you must:

a adequately assess the patient's conditions, taking account of their history (including the symptoms and psychological, spiritual, social and cultural factors), their views and values; where necessary, examine the patient

b promptly provide or arrange suitable advice, investigations or treatment where necessary

c refer a patient to another practitioner when this serves the patient's needs.

16 In providing clinical care you must:

…

f check that the care or treatment you provide for each patient is compatible with any other treatments the patient is receiving, including (where possible) self-prescribed over-the-counter medications

19 Documents you make (including clinical records) to formally record your work must be clear, accurate and legible. You should make records at the same time as the events you are recording or as soon as possible afterwards.

20 You must keep records that contain personal information about patients, colleagues or others securely, and in line with any data protection law requirements.

21 Clinical records should include:

a relevant clinical findings

b the decisions made and actions agreed, and who is making the decisions and agreeing the actions

c the information given to patients

d any drugs prescribed or other investigation or treatment

e who is making the record and when.'

22. The Tribunal had regard to its findings of facts, along with Dr Subramony's admissions. During five separate consultations with Patient A, Dr Subramony failed to provide good clinical care. The Tribunal noted that some of the drugs excessively prescribed to Patient A were controlled drugs with the potential for addiction and/or harmful side effects if used inappropriately. Further, Dr Subramony failed to make clear records of some of the consultations with Patient A.

23. The Tribunal also had regard to the evidence of Dr B in that he considered some of Dr Subramony's actions to be seriously below the required standard. In his report, dated 7 August 2021, he stated:

> *'In my opinion, in considering this case, the actions taken by Dr. Subramony and the opinions I have expressed, my consideration is that Dr. Subramony's overall standard of care was seriously below the standard expected of a reasonably competent GP.'*

24. The Tribunal considered that Dr Subramony's actions in his poor record keeping and inappropriate prescribing of medication to Patient A spanned over five consultations and therefore was not an isolated incident. The Tribunal concluded that Dr Subramony's conduct was a sufficiently serious breach of the standards of conduct as set out in GMP as to amount to serious misconduct.

Impairment

25. The Tribunal, having determined that Dr Subramony's conduct amounted to misconduct, went on to consider whether, as a result of that misconduct, his fitness to practise is currently impaired.

26. The Tribunal considered its findings in light of the guidance indicating that a doctor's fitness to practise might be impaired as set out by Dame Janet Smith in the *Grant* case referred to above. The Tribunal considered that Dr Subramony's actions in excessively prescribing the potentially harmful drugs to Patient A and his failure to keep adequate

records had the potential to place Patient A at unwarranted risk of harm. Further, the Tribunal was satisfied that Dr Subramony's conduct brought the medical profession into disrepute and that in doing so, he had breached a fundamental tenet of the medical profession.

27. The Tribunal went on to consider the level of insight that Dr Subramony has shown into his misconduct, its seriousness and its consequences. The Tribunal acknowledged that Dr Subramony had promptly self-referred to the GMC, engaged with the regulatory process and made substantial admissions at the outset of the hearing. The Tribunal also had regard to Dr Subramony's reflection to NHSE dated 7 August 2020 in which he stated:

> *'I have spent considerable time reflecting about this matter, I have discussed this case with the partners of the surgery at Priory Gardens and also with the clinical director of Medway Urgent Care Centre, Dr D…*
>
> *I am now more cautious when prescribing controlled drugs. I do not provide new patients who are already on controlled drugs or who have been assessed to need controlled drugs with more than a week's supply of controlled drugs and request them to have regular reviews. Currently as I work as a locum at the Priory Gardens surgery, I do not deal with repeat prescriptions as they are done by the regular GP's.*
>
> *I now document in my notes, discussions of interactions with drugs where needed…'*

Whilst the Tribunal was satisfied that Dr Subramony had begun to demonstrate some insight into his misconduct, it was of the view that a more in-depth reflection was required for it to be satisfied that Dr Subramony fully understands the seriousness and consequences of his misconduct

28. The Tribunal went on to consider whether Dr Subramony had remediated his misconduct. It was of the view that his misconduct is capable of being remediated. The Tribunal had regard to Dr Subramony's statement dated 26 September 2022, in which he stated:

> *'My practice has changed significantly since I saw Patient A in 2019. I am no longer working as a single-handed GP. I work only at the Urgent Care Centre at Medway*

Healthcare Community Centre. In this role I do not prescribe for patients with longterm addiction problems.'

29. The Tribunal also had regard to the letter dated 4 October 2022 from Dr D, Dr Subramony's clinical supervisor. Dr D stated that Dr Subramony had asked him to audit the case notes he made when prescribing antidepressants, opiate drugs or tranquillisers/ sedatives whilst working at Medway On Call Care ('MedOCC'). In the letter, Dr D stated:

'I am satisfied that Dr Subramony exercises appropriate caution when prescribing these medications. Moreover, it supports my own impression of Dr Subramony's practice, based on my role as his clinical supervisor here at MedOCC. Dr Subramony consistently writes thorough case notes, and I have no concerns whatsoever regarding his clinical performance for us here at MedOCC in this or indeed any other regard.'

Whilst the Tribunal acknowledged the positive outcome of the audit, there was no evidence of Dr Subramony working in the same medical environment and/or under the same conditions, therefore, the Tribunal remained concerned that Dr Subramony has not been tested in a GP environment working with patients who he sees on a regular basis.

30. The Tribunal also took into account Dr Subramony's attendance on three courses relating to prescribing and record keeping. Whilst the Tribunal acknowledged that Dr Subramony has taken an initial step towards demonstrating some remediation, it was of the view that, given the seriousness of the misconduct found, these courses were not sufficient to fully address the concerns as more training and development exercises could have been done.

31. In the absence of satisfactory developed insight and remediation, the Tribunal determined that there remains a risk of repetition in this case.

32. The Tribunal determined that a finding of impairment is necessary in order to satisfy all three limbs of the overarching objective, to protect patient safety, to promote and maintain public confidence in the medical profession and to promote and maintain proper professional standards and conduct for the members of that profession. The Tribunal considered that public confidence would be undermined if a finding of impairment were not made.

33. Accordingly, the Tribunal determined that Dr Subramony's fitness to practise is impaired by reason of his misconduct.

Determination on Sanction - 03/11/2022

1. Having determined that Dr Subramony's fitness to practise is impaired by reason of misconduct, the Tribunal now has to decide in accordance with Rule 17(2)(n) of the Fitness to Practice Rules (as amended) on the appropriate sanction, if any, to impose.

The Evidence

2. The Tribunal has taken into account evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction. The Tribunal was also provided with a copy of the current interim order of conditions imposed on Dr Subramony's registration.

Submissions

3. On behalf of the GMC, Mr Rankin submitted that a period of conditional registration would be the most appropriate sanction in this case. Throughout his submissions, he referred the Tribunal to relevant paragraphs of the Sanctions Guidance (November 2020) ('the SG').

4. Mr Rankin submitted that there are no exceptional circumstances in this case to justify taking no action. He referred the Tribunal to Dr B's report in which he concluded that Dr Subramony's actions were seriously below the standard expected of him.

5. Mr Rankin acknowledged that Dr Subramony has demonstrated some insight and has made attempts to remediate. He referred to the SG and submitted that conditions could be appropriate and proportionate in cases involving issues around the doctor's performance. He submitted that, in this case, there are concerns with Dr Subramony's prescribing and record keeping. He submitted that conditions could help to ensure there is no repetition. He reminded the Tribunal that conditions need to be proportionate, appropriate, workable and measurable.

6. In relation to the specific nature of the conditions, Mr Rankin stated that this is a matter for the Tribunal to determine. He referred to Dr Subramony's witness statement and his comment that his practice has changed significantly since the events with Patient A and

submitted that the Tribunal may feel a focus on retraining and supervision is the appropriate way forward.

7. Mr Rankin submitted that, given Dr Subramony's developing insight and efforts at remediation, it would not be necessary or proportionate to suspend or erase Dr Subramony from the Medical Register.

8. On behalf of Dr Subramony, Mr Lambis agreed that a period of conditional registration is the appropriate and proportionate sanction in this case.

9. Mr Lambis submitted that Dr Subramony has actively engaged with both the inquest into Patient A's death and the regulatory process. He reminded the Tribunal that Dr Subramony self-referred to the GMC, made admissions at the outset of the hearing and has participated by giving oral evidence to this Tribunal. Mr Lambis submitted that Dr Subramony's admissions are a manifestation of his insight. He submitted that Dr Subramony has begun the process of reflection and remediation.

10. Mr Lambis referred the Tribunal to its earlier finding that Dr Subramony's misconduct is remediable. Mr Lambis told the Tribunal that Dr Subramony worked at a GP surgery from October 2019 until the end of July 2022 before starting full time at MedOCC in August 2022. Mr Lambis stated that Dr Subramony was working at a GP surgery for almost three years after Patient A's death without any complaints. Further, he submitted that Patient A's case has always been at the forefront of Dr Subramony's mind.

11. Mr Lambis told the Tribunal that Dr Subramony intends to continue working for MedOCC and does not have plans to do any further locum work at this time.

12. Mr Lambis referred the Turbinal to the current interim order of conditions. He submitted that a broad set of conditions to permit Dr Subramony carrying on practising the way he has been doing would be the appropriate and proportionate response to these matters. He submitted that a condition requiring someone to check, or countersign, prescriptions would be administratively impossible. Mr Lambis submitted that the conditions should be geared towards allowing a degree of regulatory scrutiny whilst Dr Subramony develops his insight and remediation. Mr Lambis submitted that anything beyond this is unnecessary.

Relevant Legal Principles

13. The Tribunal reminded itself that the decision as to the appropriate sanction to impose, if any, is a matter for it exercising its own judgement. In reaching its decision on sanction, the Tribunal had regard to the SG. It bore in mind that the purpose of a sanction is not to be punitive but to protect patients and the wider public interest, although any sanction imposed may have a punitive effect.

14. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Subramony's interests with the public interest. It considered and had regard to the overarching objective, which includes to protect, promote, and maintain the health, safety, and wellbeing of the public, promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of the profession.

15. The case of *Fatnani and Raschid v GMC [2007] 1 WLR 1460, paras. 16 and 18*. *EWCA Civ 46* was cited in the legal advice where, the Court of appeal per Laws LJ made it plain that the functions of a FTP are quite different to a *'court imposing retributive punishment'* since *'the panel...is centrally concerned with the reputation or standing of the profession rather than punishment of [the doctor]'*.

The Tribunal's Determination on Sanction

16. The Tribunal, received, read and considered Dr Subramony's current interim conditions mentioned in Mr Lambis' submissions.

Aggravating and mitigating factors

17. The Tribunal has already set out its decisions on the facts and impairment. It took those decisions into account during its deliberations on sanction. Before considering what action, if any, to take in respect of Dr Subramony's registration, the Tribunal considered and balanced the aggravating and mitigating factors in this case.

18. The Tribunal first considered the aggravating factors. The Tribunal identified the following aggravating factors:

- This was not an isolated incident in that Dr Subramony failed to provide good clinical care during five consultations with Patient A.

- The drugs prescribed had the potential for abuse, serious side effects and serious interactions.
- The Tribunal noted the Coroner's report that concluded Patient A's death was drug related. Patient A was under the care of Dr Subramony at the time of her death and the concerns arose following the circumstances of the death of Patient A.

19. In considering the mitigating factors, the Tribunal identified the following factors:

- Dr Subramony promptly self-referred to the GMC and has actively engaged with both the inquest and the regulatory proceedings.
- Dr Subramony admitted the majority of the Allegation at the outset of the hearing.
- Dr Subramony has begun to demonstrate insight and has made attempts to remediate his misconduct.
- There was evidence that Dr Subramony is adhering to principles of good medical practice and that he is working within his levels of competence.
- The Tribunal acknowledged the lapse of time since the incident and the fact that Dr Subramony has continued to work as a GP and there is no evidence to suggest that Dr Subramony has repeated his misconduct.

20. The Tribunal considered the effect of the aggravating and mitigating factors throughout its deliberations on what the appropriate and proportionate sanction to impose would be, if any. The Tribunal considered each sanction in ascending order of severity, starting with the least restrictive.

No action

21. The Tribunal first considered whether to conclude the case by taking no action. It decided that this would not be an appropriate or proportionate action. It noted that taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances.

22. The Tribunal determined that there were no exceptional circumstances in this case that should lead it to take no action. It considered that, given the seriousness of the misconduct and its findings of impaired fitness to practise, taking no action would not be sufficient, proportionate or in the public interest.

Conditions

23. The Tribunal next considered whether to impose conditions on Dr Subramony's registration. It bore in mind that any conditions imposed should be appropriate, proportionate, workable and measurable.

24. The Tribunal had regard to paragraph 81 and 82 of the SG which states:

'81 Conditions might be most appropriate in cases:

…

b involving issues around the doctor's performance

c where there is evidence of shortcomings in a specific area or areas of the doctor's practice…

82 Conditions are likely to be workable where:

a the doctor has insight

b period of retraining and/or supervision is likely to be the most appropriate way of addressing any findings

c the tribunal is satisfied the doctor will comply with them

d the doctor has the potential to respond positively to remediation, or retraining, or to their work being supervised.'

25. The Tribunal was mindful of the seriousness of the misconduct identified in this case. The Tribunal also had regard to Mr Lambis' submission that Dr Subramony has been working successfully under conditions imposed by an MPTS Interim Orders Tribunal for some time. The Tribunal took the view that whilst Dr Subramony had not yet developed full insight, he has demonstrated some insight and made attempts to remediate his misconduct. The Tribunal was satisfied that Dr Subramony is also likely to comply with any conditions imposed.

26. The Tribunal carefully considered imposing the more serious sanction of suspension. In the circumstances, the Tribunal did not view a period of suspension as necessary to satisfy the three limbs of the overarching objective. The Tribunal was of the view that imposing a period of suspension would be a disproportionate response.

27. The Tribunal concluded that Dr Subramony's misconduct could adequately be marked with a period of conditional registration. The Tribunal determined that conditions would uphold the overarching objective, whilst at the same time, allowing Dr Subramony to continue to work towards completing his journey of remediation, and to be able to demonstrate, with objective evidence, that he has learnt from his past failings and that he has implemented steps to address them.

28. Having determined to impose conditions, the Tribunal considered the length of the order of conditional registration. The Tribunal was of the view that a short period of conditional registration would give Dr Subramony insufficient time to demonstrate that his insight and remediation is fully developed. The Tribunal determined that a period of conditional registration for 12 months was the appropriate and proportionate length as this would provide Dr Subramony with sufficient time to address those issues whilst also addressing the seriousness of the misconduct.

29. The Tribunal determined to impose conditions upon Dr Subramony's registration. The following conditions will be published:

1 He must personally ensure the GMC is notified of the following information within seven calendar days of the date these conditions become effective:

a the details of his current post, including:

i his job title

ii his job location

iii his responsible officer (or their nominated deputy)

b the contact details of his employer and any contracting body, including his direct line manager

c any organisation where he has practising privileges and/or admitting rights

d any training programmes he is in

e of the organisation on whose medical performers list he is included

f of the contact details of any locum agency or out of hours service he is registered with.

2 He must personally ensure the GMC is notified:

a of any post he accepts, before starting it

b that all relevant people have been notified of his conditions, in accordance with condition 11

c if any formal disciplinary proceedings against him are started by his employer and/or contracting body, within seven calendar days of being formally notified of such proceedings

d if any of his posts, practising privileges or admitting rights have been suspended or terminated by his employer before the agreed date within seven calendar days of being notified of the termination

e if he applies for a post outside the UK

3 He must allow the GMC to exchange information with any person involved in monitoring his compliance with his conditions.

4 a He must have a workplace reporter appointed by his responsible officer (or their nominated deputy).

b He must not work until:

i his responsible officer (or their nominated deputy) has appointed his workplace reporter

ii he has personally ensured that the GMC has been notified of the name and contact details of his workplace reporter.

5 a He must design a personal development plan (PDP), with specific aims to address the deficiencies in the following areas of his practice.

- Prescribing controlled drugs and benzodiazepines
- Record keeping

b His PDP must be approved by his responsible officer (or their nominated deputy)

c He must give the GMC a copy of his approved PDP within three months of these substantive conditions becoming effective.

d He must give the GMC a copy of his approved PDP on request.

e He must meet with his responsible officer (or their nominated deputy), as required, to discuss his achievements against the aims of his PDP.

6 a He must only prescribe, administer, and have primary responsibility for drugs under arrangements that have been agreed by his responsible officer (or their nominated deputy)

b He must not work until:

i his responsible officer (or their nominated deputy) has agreed these arrangements

ii he has personally ensured that the GMC has been notified of these arrangements.

7 He must get the approval of the GMC before working in a non-NHS post or setting.

8 He must only work in a group practice setting where there is a minimum of two GP partners or employed GPs (excluding himself). The GPs must be partners or permanently employed GPs who are on the GP register (this excludes locum staff).

9 He must not work in any locum post or fixed term contract of less than four weeks.

10 a He must keep a log detailing every case where he prescribes controlled drugs and benzodiazepines

b He must give the GMC a copy of this log on request.

11 He must personally ensure the following persons are notified of the conditions listed at 1 to 10:

a his responsible officer (or their nominated deputy)

b the responsible officer of the following organisations:

i his place(s) of work, and any prospective place of work (at the time of application)

ii all his contracting bodies and any prospective contracting body (prior to entering a contract)

iii any organisation where he has, or has applied for, practising privileges and/or admitting rights (at the time of application)

iv any locum agency or out of hours service he is registered with.

v If any of the organisations listed at (i to iv) does not have a responsible officer, he must notify the person with responsibility for overall clinical governance within that organisation. If he is unable to identify this person, he must contact the GMC for advice before working for that organisation.

c the responsible officer for the medical performers list on which he is included or seeking inclusion (at the time of application)

d his immediate line manager and senior clinician (where there is one) at his place of work, at least 24 hours before starting work (for current and new posts, including locum posts).

30. The Tribunal determined to direct a review of Dr Subramony's case. A review hearing will convene shortly before the end of the period of conditional registration, unless an early review is sought. The Tribunal wished to clarify that at the review hearing, the onus will be on Dr Subramony to demonstrate his compliance with the conditions imposed. The reviewing Tribunal would also be assisted by:

- evidence of further reflection and remediation; and
- up to date testimonials from colleagues and appraisal documents.

31. Dr Subramony will also be able to provide any other information that he considers will assist.

Determination on Immediate Order - 03/11/2022

1. Having determined to impose conditions on Dr Subramony's registration for a period of 12 months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Fitness to Practice Rules (as amended), whether Dr Subramony's registration should be subject to an immediate order.

Submissions

2. On behalf of the GMC, Mr Rankin submitted that an immediate order should be imposed in this case. He submitted that it would be inappropriate for Dr Subramony to have

a period where no conditions were in place as this would not uphold the overarching objective. He referred the Tribunal to paragraph 173 of the SG (set out below) and submitted that an immediate order is necessary and appropriate.

3. On behalf of Dr Subramony, Mr Lambis acknowledged that, given the interim order of conditions will be revoked, it would be unusual for Dr Subramony to be allowed to practise unrestricted during the appeal period. Mr Lambis made no further submissions.

The Tribunal's Determination

4. The Tribunal has taken account of the relevant paragraphs of the SG, in particular paragraphs 172, 173 and 178 which state:

> *'172 The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor…*
>
> *173 An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety. For example, where they have provided poor clinical care or abused a doctor's special position of trust, or where immediate action must be taken to protect public confidence in the medical profession.*
>
> *178 Having considered the matter, the decision whether to impose an immediate order will be at the discretion of the tribunal based on the facts of each case. The tribunal should consider the seriousness of the matter that led to the substantive direction being made and whether it is appropriate for the doctor to continue in unrestricted practice before the substantive order takes effect.'*

5. The Tribunal considered that, given its findings in respect of Dr Subramony's misconduct, it was necessary to impose an immediate order to protect members of the public. The Tribunal concluded that it would be inappropriate to allow Dr Subramony to practise unrestricted for the duration of any appeal given his impaired fitness to practise. The Tribunal also considered that it was in the public interest, and in Dr Subramony's interest, to impose an immediate order and it would be contrary to public confidence if it were to allow Dr Subramony to return to unrestricted practice.

6. This means that Dr Subramony's registration will be made subject to the immediate conditions from today. The substantive direction, as already announced, will take effect 28 days from the date on which written notification of this decision is deemed to have been served, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.

7. The interim order is hereby revoked.

8. That concludes this case.