

PUBLIC RECORD

Dates: 17/11/2020 - 24/11/2020

Medical Practitioner's name: Dr Sri Hari Charan THIGUTI

GMC reference number: 6094658

Primary medical qualification: MB BS 2004 NTR University of Health Sciences

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

Summary of outcome

Suspension, 12 months
Review hearing directed
Immediate order imposed

Tribunal:

Legally Qualified Chair	Mr Sean Ell
Lay Tribunal Member:	Dr Nigel Westwood
Medical Tribunal Member:	Mr Julian Williams
Tribunal Clerk:	Mr Andrew Ormsby

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Stephen Brassington, Counsel, instructed by BLM Law
GMC Representative:	Mr Nick Walker, Counsel, instructed by GMC Legal

Attendance of Press / Public

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

Overarching Objective

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

Determination on Facts - 19/11/2020

1. This determination will be handed down in private as it includes references to Dr Thiguti's personal circumstances. A redacted version will be published at the close of the hearing.

Background

2. Dr Thiguti qualified as a doctor at the NTR University of Health Sciences, Andhra Pradesh, India in 2004. Prior to the events which are the subject of the hearing, Dr Thiguti joined the West Midlands General Psychiatry Higher Training Scheme, from February 2016 to February 2019. At the time of the events, Dr Thiguti was employed by North Staffordshire Combined Healthcare NHS Trust ('the Trust') as a Registrar in Psychiatry. As part of his role within the Trust, he was also employed by Sutherland Centre Community Mental Health team. From 3 February 2019, Dr Thiguti worked as a Consultant Psychiatrist at Harplands Hospital ('the Hospital')
3. The allegation that has led to Dr Thiguti's hearing can be summarised as sexually motivated behaviour towards Patient A, who was under his care for mental health treatment, between 28 August 2017 to 26 June 2018 ('the period'). During this period, Dr Thiguti had approximately eight consultations with Patient A. It is alleged that during these consultations, Dr Thiguti made inappropriate comments about Patient A in that he told Patient A, that she was attractive and pretty; asked Patient A, to show a tattoo on her breast and whether she thought about him when she masturbated. It is also alleged that on 26 June 2018, during the consultation, Dr Thiguti asked Patient A to meet him

that evening. Dr Thiguti then met Patient A at a Tesco car park that evening, during this meeting, he asked Patient A to attend his home as his wife was away and kissed Patient A without her consent.

4. Patient A complained to the Trust and they carried out an investigation into Dr Thiguti's conduct, which resulted in Dr Thiguti's dismissal for gross misconduct. Dr Thiguti referred himself to the GMC in relation to the alleged conduct.
5. XXX.

The Outcome of Applications Made during the Facts Stage

6. The Tribunal granted an application made on behalf of Dr Thiguti for parts of the hearing to be heard in private, made pursuant to Rule 41 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'). The Tribunal determined that the hearing would be heard in private when matters concerning XXX were discussed.
7. The Tribunal also accepted the application made by the GMC which was not opposed that the evidence relating to the sexual abuse suffered by Patient A should also be heard in private.

The Allegation and the Doctor's Response

8. The Allegation made against Dr Thiguti is as follows:

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

1. On 28 August 2017, you consulted with Patient A and you told her that she was:
 - a. attractive; **Admitted and Found Proved**
 - b. pretty; **Admitted and Found Proved**or words to that effect.
2. During consultations with Patient A between 28 August 2017 and 26 June 2018, on one or more occasion you:

- a. put your hand on top of Patient A's hand and stroked her hand with your thumb as she was speaking; **Admitted and Found Proved**
- b. held Patient A's hand for five to ten minutes; **Admitted and Found Proved**
- c. said:
 - i. 'I'm just comforting a patient, that's what doctors do, it's okay doctors can do that if a patient is suffering', when Patient A asked you whether it was ethical for you to hold her hand; **Admitted and Found Proved**
 - ii. you're really pretty; **Admitted and Found Proved**
 - iii. you're really good looking; **Admitted and Found Proved**
 - iv. any rich man in India would want you; **Admitted and Found Proved**or words to that effect;
- d. asked Patient A:
 - i. whether she found you attractive; **To be determined**
 - ii. whether she would paint a portrait of you; **Admitted and Found Proved**
 - iii. if she had tattoos; **Admitted and Found Proved**
 - iv. if you could see her tattoos, after she said she had one on her breast and one on her shoulder; **To be determined**
 - v. what she would do if you knocked on her front door; **Admitted and Found Proved**

- vi. about coming around to her house; **Admitted and Found Proved**
 - vii. if she ever masturbated; **Admitted and Found Proved**
 - viii. whether she thought about you when she masturbated; **Admitted and Found Proved**
- or words to that effect;
- e. told Patient A that:
 - i. you liked white women; **Admitted and Found Proved**
 - ii. your relationship with your wife was not a good one; **Admitted and Found Proved**
 - iii. she needed to masturbate because it would be good for her pain; **Admitted and Found Proved**
 - iv. she should try and masturbate to orgasm; **Admitted and Found Proved**
 - v. you thought about her when you masturbated; **To be determined**
 - vi. you could take her pain away, when talking about orgasms; **Admitted and Found Proved**
- or words to that effect.
- 3. On 26 June 2018 you:
 - a. consulted with Patient A and during the consultation you:
 - i. asked to meet her that evening; **To be determined**

ii. said ‘oh I could get in trouble for this, but I’d really like to see you later’; **To be determined**

or words to that effect;

b. met Patient A at or around 19:00 and:

i. drove Patient A around in your car; **Admitted and Found Proved**

ii. said:

1. you like white women; **Admitted and Found Proved**

2. that you and Patient A could go to your house, but it would have to be a one-time only thing and can’t happen again; **Admitted and Found Proved**

or words to that effect;

iii. after walking Patient A back to her car, you:

1. put your hands at either side of her upper arms; **Admitted and Found Proved**

2. kissed her on the lips; **Admitted and Found Proved**

3. tried to put your tongue in her mouth. **To be determined**

4. At all material times Patient A was vulnerable due to her mental health. **Admitted and Found Proved**

5. Your actions as described at paragraph 3.b.iii were carried out without Patient A's consent. **To be determined**

6. Your actions as described at paragraphs 1 to 3 were sexually motivated.
Admitted and Found proved in relation to paragraph 1, 2 (a), 2 (d) i, 2 (d) iv, 2 (d) v, 2 (d) vi, 2 (d) vii, 2 (d) viii, 3 (b) i, 3 (b) iii 1, 3 (b) iii 2
To be determined in relation to paragraphs 2 (d) ii, 2 (d) iii, 3 (a) i, 3 (a) ii, 3 (b) iii 3

7. XXX

8. XXX

And that by reason of the matters set out above your fitness to practise is impaired because of your:

- a. misconduct in respect of paragraphs 1 to 6; **To be determined**

- b. XXX

The Admitted Facts

9. At the outset of these proceedings, through his Counsel, Mr Brassington, Dr Thiguti 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.

Evidence

10. The Tribunal received a witness statement dated 21 July 2019 and heard evidence from Patient A on behalf of the GMC.

11. Dr Thiguti provided the Tribunal with two witness statements dated 9 February 2020 and 22 September 2020. Dr Thiguti also gave oral evidence at the hearing.

XXX

12. XXX.

Documentary Evidence

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

- Patient A’s complaint letter to North Staffordshire Combined Healthcare NHS Trust (‘the Trust’) dated 20 March 2019;
- First Interview Transcript for the Trust and Patient A, dated 11 April 2019;
- Handwritten statement of Patient A for the second Trust interview on 2 May 2019;
- Second Interview Transcript for the Trust and Patient A, dated 2 May 2019;
- Medical records for Patient A, various dates;
- Dr Thiguti’s Curriculum Vitae.

The Tribunal’s Approach

14. 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 Thiguti 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.

15. The Tribunal has considered all of the evidence before it and taken into account the submissions made by Mr Walker, on behalf of the GMC, and Mr Brassington, on behalf of Dr Thiguti.

The Tribunal’s Analysis of the Evidence and Findings

16. Patient A’s evidence is a matter of record. In summary, Patient A explained that from the outset of her consultations with Dr Thiguti, she told him that XXX. She told Dr Thiguti that XXX. Patient A also disclosed to Dr Thiguti that XXX.

17. Patient A’s evidence was that Dr Thiguti would hold her hand “for 5 or 10 minutes” and stroke her hand when she was upset; Dr Thiguti told her that she was “attractive and pretty” and that “he would also stare at me and hold a glare which felt intimate,

something your partner would do”. Dr Thiguti also told patient A that he liked white women.

18. Patient A alleged that Dr Thiguti asked her whether she masturbated; advised her to “masturbate to orgasm” and at a subsequent consultation asked Patient A if she had masturbated and, when told “yes” asked Patient A if “she thought of him whilst masturbating”.
19. Dr Thiguti had, according to Patient A, asked her if she would paint his portrait. On another occasion Dr Thiguti had asked what she would do if he knocked on her door. Patient A also described another occasion in which Dr Thiguti asked to see her tattoos, one of which was on her breast.
20. Patient A gave evidence regarding a meeting between her and Dr Thiguti at a local Tesco on 26 June 2018. This was not a chance encounter but had, according to Patient A, been prearranged during a brief consultation earlier that day. Patient A described meeting Dr Thiguti at a Tesco car park and then being taken for a drive in Dr Thiguti’s car in search of a coffee shop. It was patient A’s evidence that during that car journey, Dr Thiguti proposed that they go to his home to have sex.
21. Patient A described feeling cheap and disgusted at being propositioned in this way. Patient A’s evidence was that following the proposition for sex they returned to Tesco. Dr Thiguti accompanied Patient A back to her car, he held her by the arms, kissed her and tried to insert his tongue into her mouth.
22. Dr Thiguti at the outset apologised to patient A and her family through his Counsel, Mr Brassington. Dr Thiguti adopted his witness statements. He explained to the Tribunal that he now accepted his actions towards Patient A to have been sexually motivated. On reflection, his behaviour towards Patient A had been to seek validation in her finding him to be attractive. He told the Tribunal that he had been pushing the boundaries with Patient A and that it had become like a drug to him. Dr Thiguti said he did not wish to excuse his actions but that he realised that he had over-identified with the patient due to XXX.
23. Dr Thiguti accepted that patient A had always been a vulnerable patient and that he was wrong to have acted in the way that he did towards her. XXX. He accepted that he had manipulated Patient A for his own personal gains and in doing so had let the profession,

public and Patient A down. Dr Thiguti told the Tribunal that alarm bells had sounded for him when he and Patient A were driving around and she had mentioned “wild animal sex”. At that point he turned the car around and returned to the Tesco car park. On walking Patient A back to her car they had shared a mutual kiss. Following Patient A’s complaint he had referred himself to the GMC.

The Tribunal’s findings

24. 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 2 (d) i

25. The Tribunal considered both Patient A and Dr Thiguti to have been truthful witnesses. They both sought to be helpful when answering questions and made clear when they could not recall something accurately.

26. The Tribunal noted that Dr Thiguti accepted much of Patient A’s account. There were only a small number of discrete areas of dispute as to what was said between them.

27. The Tribunal took into account that a truthful witness could nevertheless be mistaken. It noted the passage of time between the consultations and the initial complaint. Dr Thiguti in his evidence accepted that he found Patient A attractive but that he never explicitly said this to her. Dr Thiguti, however, did accept making a number of other sexually motivated comments to Patient A.

28. Having considered all of the evidence the Tribunal concluded that it could not be satisfied on the balance of probabilities that Dr Thiguti had said to Patient A that he found her attractive or words to that effect rather than merely giving that impression to Patient A.

29. The Tribunal therefore found Paragraph 2 (d) i not proved

Paragraph 2 (d) iv

30. Dr Thiguti accepts asking Patient A if he could see her tattoos but that he did not know their location on Patient A’s body when he asked. He provided an explanation to the Tribunal as to why he would ask to see his patients’ tattoos. Dr Thiguti told the Tribunal

that it was helpful to see the tattoos to get insight into a patient’s mind at the time they got them.

31. The Tribunal noted that Patient A gave slightly different accounts as to whether or not she had told Dr Thiguti where her tattoos were before he asked to see them. In her initial complaint letter, Patient A sets out that Dr Thiguti asked to see the tattoos before he knew where they were. Patient A also told the Tribunal that she thought that she had shown Dr Thiguti the tattoo on her shoulder at the end of their appointment, but she could not be certain.
32. The Tribunal was not satisfied on the balance of probabilities that Dr Thiguti did know that Patient A’s tattoos were on her shoulder and breast before he asked to see them.
33. The Tribunal therefore found Paragraph 2 (d) iv not proved.

Paragraph 2 (e) v

34. Both Dr Thiguti and Patient A agreed that she had asked him if he thought about her whilst he masturbated. Patient A said that Dr Thiguti answered positively whilst Dr Thiguti told the Tribunal he merely smiled in response. Dr Thiguti said this conversation took place in the car after they had met at Tesco. Patient A initially said this conversation took place during one of their consultations. However, in her evidence to the Tribunal, Patient A said this conversation actually took place in the car.
35. Given the evidence the Tribunal concluded it could not be satisfied on the balance of probabilities that this conversation took place during the consultation as alleged. Further, the Tribunal was not satisfied this was something that Dr Thiguti said, but rather he had acknowledged something Patient A had said to him.
36. The Tribunal therefore found paragraph 2 (e) v not proved.

Paragraph 3 (a) i

37. Dr Thiguti did not contest this sub paragraph of the allegation. Although he did not explicitly invite Patient A to meet him that evening, he accepted that it was implied in what he had said. Dr Thiguti had told Patient A where he would be that evening in the hope that she would meet him. Patient A and Dr Thiguti did meet that evening.

38. The Tribunal was satisfied that the conversation that Dr Thiguti had with Patient A was, in effect, him inviting Patient A to meet him. The Tribunal therefore found Paragraph 3 (a) i proved.

Paragraph 3 (a) ii

39. Dr Thiguti accepted in his evidence that he said to Patient A “I will get in trouble for this” but he disputed this was said during the consultation. Dr Thiguti told the Tribunal that he said this to Patient A whilst they were in the car together that evening. Dr Thiguti accepted in his evidence that he knew that meeting a patient outside of work could get him into trouble.

40. Patient A told the Tribunal that the consultation on that day was exceedingly brief. It was so short that neither she nor the doctor had the opportunity to even sit down. Patient A informed the Tribunal she was unable to recall exactly what was said during the consultation.

41. Having considered all of the evidence the Tribunal concluded that it was not satisfied on the balance of probabilities that the comment was made by the doctor during the consultation rather than later in the evening. Therefore, the Tribunal found paragraph 3 (a) ii not proved.

Paragraph 3 (b) iii 3

42. Both Dr Thiguti and Patient A agreed that they kissed. Patient A mentions the kiss in her initial complaint and in her first interview with the Trust. Patient A did not mention the kiss in her second interview to the Trust until it was raised at the end of the interview. Patient A does not mention Dr Thiguti trying to put his tongue in her mouth until her witness statement provided to the GMC in July 2019. Dr Thiguti denied trying to put his tongue into Patient A’s mouth.

43. The Tribunal took into account that both Dr Thiguti and Patient A described the kiss as lasting for only a short period of time. The Tribunal was not satisfied on the evidence that Dr Thiguti did try to put his tongue in Patient A’s mouth when they kissed. The Tribunal therefore found paragraph 3 (b) iii 3 not proved.

Paragraph 5 in relation to Paragraph 3 (b) iii 1 & 2

44. The Tribunal noted neither Patient A nor Dr Thiguti suggested there had been any explicit consent for the kiss. Patient A described the kiss as unexpected and unwelcome. In her complaint letter she described feeling physically sick afterwards. Dr Thiguti described it as a mutual kiss.
45. The Tribunal took into account Patient A's vulnerabilities, that they were together in a car park and that Dr Thiguti put his hands on the side on Patient A's upper arms to kiss her. The Tribunal considered that in those circumstances it was more likely than not that patient A did not consent. The Tribunal therefore found paragraph 5 proved.

Paragraph 6 in relation to 2 (d) ii

46. Dr Thiguti explained in his evidence that it was not uncommon for him to try and humanise his appointments by discussing his patients' hobbies with them. He explained that he would ask, for example, a patient who liked baking if they would bake for him as a way of trying to build rapport. The Tribunal noted that Dr Thiguti accepts many of his interactions with Patient A were sexually motivated but that asking her to paint a portrait was not.
47. The Tribunal accepted Dr Thiguti's evidence that this was one of the ways in which he sought to build a rapport with patients and that his conduct was not sexually motivated. The Tribunal found paragraph 6 in relation to 2 (d) ii not proved.

Paragraph 6 in relation to 2 (d) iii

48. Dr Thiguti told the Tribunal it was not uncommon for him to ask to see a patient's tattoos. He explained it gave him the opportunity to gain insight into the mind of his patients at the time they got their tattoo. Dr Thiguti accepted there was no textbook basis for his approach.
49. The Tribunal has found that Dr Thiguti asked to see Patient A's tattoos before he knew where they were located. The Tribunal accepted Dr Thiguti's evidence that his inquiry about Patient A's tattoo was in order to gain insight into Patient A. Particularly given Patient A's evidence that she had told Dr Thiguti that she did not like the tattoos. The

Tribunal therefore concluded that Dr Thiguti's request was not sexually motivated. The Tribunal found paragraph 6 in relation to paragraph 2 (d) iii not proved.

Paragraph 6 in relation to 3 (a) i

50. Dr Thiguti accepted that his actions leading up to, and during, his meeting with Patient A on the evening of 26 June 2018, were sexually motivated. Having considered all the evidence and the circumstances around Dr Thiguti's behaviour towards Patient A, the Tribunal was satisfied that Dr Thiguti's behaviour in asking Patient A to meet him outside of a consultation was sexually motivated.

51. Accordingly, the Tribunal found Paragraph 6 in relation to 3 (a) i to be proved.

The Tribunal's Overall Determination on the Facts

52. The Tribunal has determined the facts as follows:

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

1. On 28 August 2017, you consulted with Patient A and you told her that she was:

a. attractive; **Admitted and Found Proved**

b. pretty; **Admitted and Found Proved**

or words to that effect.

2. During consultations with Patient A between 28 August 2017 and 26 June 2018, on one or more occasion you:

a. put your hand on top of Patient A's hand and stroked her hand with your thumb as she was speaking; **Admitted and Found Proved**

b. held Patient A's hand for five to ten minutes; **Admitted and Found Proved**

c. said:

- i. 'I'm just comforting a patient, that's what doctors do, it's okay doctors can do that if a patient is suffering', when Patient A asked you whether it was ethical for you to hold her hand; **Admitted and Found Proved**
 - ii. you're really pretty; **Admitted and Found Proved**
 - iii. you're really good looking; **Admitted and Found Proved**
 - iv. any rich man in India would want you; **Admitted and Found Proved**
- or words to that effect;
- d. asked Patient A:
 - i. whether she found you attractive; **Found not proved**
 - ii. whether she would paint a portrait of you; **Admitted and Found Proved**
 - iii. if she had tattoos; **Admitted and Found Proved**
 - iv. if you could see her tattoos, after she said she had one on her breast and one on her shoulder; **Found not proved**
 - v. what she would do if you knocked on her front door; **Admitted and Found Proved**
 - vi. about coming around to her house; **Admitted and Found Proved**
 - vii. if she ever masturbated; **Admitted and Found Proved**
 - viii. whether she thought about you when she masturbated; **Admitted and Found Proved**

or words to that effect;

- e. told Patient A that:
 - i. you liked white women; **Admitted and Found Proved**
 - ii. your relationship with your wife was not a good one; **Admitted and Found Proved**
 - iii. she needed to masturbate because it would be good for her pain; **Admitted and Found Proved**
 - iv. she should try and masturbate to orgasm; **Admitted and Found Proved**
 - v. you thought about her when you masturbated; **Found not proved**
 - vi. you could take her pain away, when talking about orgasms; **Admitted and Found Proved**

or words to that effect.

- 3. On 26 June 2018 you:
 - a. consulted with Patient A and during the consultation you:
 - i. asked to meet her that evening; **Found proved**
 - ii. said ‘oh I could get in trouble for this, but I’d really like to see you later’; **Found not proved**

or words to that effect;

- b. met Patient A at or around 19:00 and:

- i. drove Patient A around in your car; **Admitted and Found Proved**

- ii. said:
 1. you like white women; **Admitted and Found Proved**

 2. that you and Patient A could go to your house, but it would have to be a one-time only thing and can't happen again; **Admitted and Found Proved**or words to that effect;

- iii. after walking Patient A back to her car, you:
 1. put your hands at either side of her upper arms; **Admitted and Found Proved**

 2. kissed her on the lips; **Admitted and Found Proved**

 3. tried to put your tongue in her mouth. **Found not proved**

4. At all material times Patient A was vulnerable due to her mental health. **Admitted and Found Proved**

5. Your actions as described at paragraph 3.b.iii were carried out without Patient A's consent. **Found proved in relation to 3(b) iii 1 & 2**

6. Your actions as described at paragraphs 1 to 3 were sexually motivated. **Admitted and Found proved in relation to paragraph 1, 2 (a), 2 (d) i, 2 (d) iv, 2 (d) v, 2 (d) vi, 2 (d) vii, 2 (d) viii, 3 (b) i, 3 (b) ii 1, 3(b) ii 2**
Found proved in relation to paragraphs, 3 (a) i
Found not proved 2 (d) ii, 2 (d) iii

7. XXX

8. XXX

And that by reason of the matters set out above your fitness to practise is impaired because of your:

- a. misconduct in respect of paragraphs 1 to 6; **To be determined**
- b. XXX

Determination on Impairment - 23/11/2020

1. This determination will be handed down in private as it includes references to Dr Thiguti's personal circumstances. A redacted version will be published at the close of the hearing.
2. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved as set out before, Dr Thiguti's fitness to practise is impaired by reason of misconduct XXX.

The Evidence

3. 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 evidence as follows:
 - A bundle from Dr Thiguti which included a reflective statement, character references and a CPD Log with certificates.

Submissions

GMC Counsel's Submissions

4. On behalf of the GMC, Mr Walker submitted that Dr Thiguti's actions constituted serious misconduct and that his fitness to practise was impaired as a result. Mr Walker submitted that Dr Thiguti's behaviour was inappropriate from day one and he did more than just push the boundaries with Patient A. Mr Walker submitted that Dr Thiguti accepted his

actions were sexually motivated, albeit at a late stage, after he signed his witness statement dated 22 September 2020. Mr Walker reminded the Tribunal that Dr Thiguti had continued with his conduct even after Patient A had questioned whether his behaviour was ethical.

5. Mr Walker submitted that Dr Thiguti knew Patient A's background, but put his own needs above those of Patient A. Dr Thiguti asked Patient A about sexual matters in circumstances which fell outside the boundaries of acceptable behaviour for a member of his profession. He submitted that Dr Thiguti, met Patient A outside of a clinical setting and disclosed to Patient A his own personal problems and circumstances. Dr Thiguti had invited Patient A to his home and made an issue of knowing where her home was.
6. Mr Walker submitted that although Dr Thiguti had described to the Tribunal his journey from denial to acceptance of his behaviour, Dr Thiguti was still fully culpable and had caused harm to Patient A. Mr Walker submitted that Dr Thiguti's misconduct fell short of the proper standards of conduct expected of medical practitioners. Whilst Dr Thiguti had done a lot of Continued Professional Development ('CPD'), this type of conduct was unlikely to be remediated by attendance at a course and needed to be put into practice. Mr Walker reminded the Tribunal that Dr Thiguti had known his conduct was wrong at the time but had continued anyway. He submitted that, to protect the public and maintain public confidence in the profession a finding of impairment on the ground of misconduct should be made.
7. XXX.

Doctor's Counsel's Submissions

8. On behalf of Dr Thiguti, Mr Brassington, Counsel, acknowledged that Dr Thiguti's conduct would be viewed by fellow professionals as deplorable and therefore would amount to serious misconduct. Mr Brassington conceded that in order to maintain public confidence in the profession a finding of impairment would be appropriate.
9. Mr Brassington submitted that Dr Thiguti had embarked upon a significant package of continued professional development and reflection. Dr Thiguti was remorseful for his actions. He had written a letter of apology to Patient A but had been advised by his legal team it would be inappropriate to send it. Mr Brassington reminded the Tribunal that he

had given, on behalf of Dr Thiguti, a full apology to Patient A and her family at the start of cross examination.

10. Mr Brassington submitted that Dr Thiguti in his reflective statement set out: what impact he thought his behaviour had on Patient A; the impact and acknowledgment of his own behaviour and how it had impacted his colleagues in the medical profession. Mr Brassington submitted that Dr Thiguti had accepted that XXX made him vulnerable, however it was not an excuse for his behaviour.

11. Mr Brassington submitted that Dr Thiguti had now done the 'gold standard course' on Maintaining Professional Boundaries. Mr Brassington accepted that Dr Thiguti's journey of remediation is not yet complete. However, Dr Thiguti had set out mechanisms in his reflective statement on how he would avoid repeating this behaviour and had done a lot of remediation work and CPD. Mr Brassington submitted that Dr Thiguti is deeply ashamed for what he had done and had apologised for his behaviour. Dr Thiguti's reflective statement, as well as the way he gave his evidence, demonstrated insight into his behaviour.

12. XXX.

The Relevant Legal Principles

13. 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.

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

15. The Tribunal must determine whether Dr Thiguti's fitness to practise is impaired today, taking into account Dr Thiguti'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.

16. With regard to impairment, the Tribunal had regard to the case of CHRE v NMC and Grant [2011] EWHC 927 where Dame Janet Smith's observations in the Fifth Report of the Shipman Inquiry were reiterated:

‘an appropriate test for panels considering impairment of a doctor’s fitness to practise, [...].

Do our findings of fact in respect of the doctor’s misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/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

17. The Tribunal had regard to the overarching objective as set out in s1 (1A) Medical Act 1983 (the 1983 Act) as amended:

- 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 the profession*

18. The Tribunal also had regard to the following paragraphs of Good Medical Practice (2013) (‘GMP’), namely:

‘53. You must not use your professional position to pursue a sexual or improper emotional relationship with a patient or someone close to them.’

'65. You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.'

19. Dr Thiguti admitted from the outset of the hearing that he had pursued an inappropriate relationship with Patient A whom he knew to be a vulnerable patient. He accepted that he put his own interests ahead of those of Patient A and that his motivation for the behaviour was sexual. His behaviour included holding Patient A's hand during consultations; discussing masturbation with her; meeting Patient A outside of a consultation and kissing her without her consent. Dr Thiguti accepted that members of the medical profession would find this behaviour deplorable.
20. The Tribunal considered that Dr Thiguti's sexually motivated behaviour towards Patient A breached a fundamental tenet of the profession and would be considered deplorable by fellow members of the profession. Dr Thiguti's behaviour amounted to a serious departure from GMP.
21. The Tribunal concluded that Dr Thiguti's conduct towards Patient A fell so far short of the standards reasonably expected of a doctor as to meet the threshold of misconduct.

XXX

22. XXX.

23. XXX.

24. XXX.

25. XXX.

26. XXX.

Impairment

27. Having found that the facts found proved amounted to misconduct, the Tribunal went on to consider whether, as a result of that misconduct, Dr Thiguti's fitness to practise is currently impaired.

28. The Tribunal considered that Dr Thiguti had shown insight into the inappropriateness of his behaviour towards Patient A. The Tribunal considered that Dr Thiguti had made open and frank admissions of his sexually motivated behaviour and misconduct. It was of the view that although he had provided some explanation as to the circumstances surrounding his behaviour, he did not seek to use this as an excuse for his conduct. The Tribunal noted that Dr Thiguti's abject and frank admissions provided evidence of a clear understanding of what he did. It considered that Dr Thiguti gave a reasonable account of what he considered sexually motivated behaviour to be and noted that his understanding of such behaviour had evolved as he completed boundaries courses and relevant CPD. The Tribunal took account of this explanation when noting Dr Thiguti's late full admission of sexually motivated conduct towards Patient A.
29. The Tribunal had regard to Dr Thiguti's attempts at remediation and considered his progress to be genuine and focused. Dr Thiguti has made an effective plan which he set out in his reflective statement to be put into practice when he returns to work. Dr Thiguti has offered an apology to Patient A and her family and also undertaken a number of relevant courses in order to understand and amend his behaviour in the future. The Tribunal considers that he has taken significant steps towards remediating his behaviour.
30. The Tribunal further noted that Dr Thiguti had not tried to minimise the seriousness of his sexually motivated conduct towards Patient A and was frank in his remorse.
31. The Tribunal concluded that Dr Thiguti was still developing insight and remediation and, as such, there remains a risk of repetition.
32. The Tribunal considered Dr Thiguti's behaviour towards Patient A, a vulnerable patient, to be unacceptable. Such conduct amounts to an abuse of a position of power and falls far below the standard to be expected from a medical practitioner. The Tribunal is of the view that Dr Thiguti's misconduct engaged all three limbs of the overarching objective in that he jeopardised the health and wellbeing of Patient A, undermined public confidence in the medical profession and a finding of impairment is needed in order to promote and maintain proper professional standards and conduct of members of the profession. The Tribunal therefore concluded that a finding of impairment was necessary.
33. The Tribunal has therefore determined that Dr Thiguti's fitness to practise is currently impaired by reason of his misconduct.

34. XXX.

35. XXX.

36. XXX.

37. XXX.

Determination on Sanction - 24/11/2020

1. This determination will be handed down in private as it includes references to Dr Thiguti's personal circumstances. A redacted version will be published at the close of the hearing.
2. Having determined that Dr Thiguti's fitness to practise is impaired by reason of misconduct XXX, the Tribunal now has to decide in accordance with Rule 17(2)(n) of the Rules on the appropriate sanction, if any, to impose.

The Evidence

3. The Tribunal has taken into account evidence received during the earlier stages of the hearing where relevant in reaching a decision on sanction.

Submissions

GMC Counsel's Submissions

4. On behalf of the GMC, Mr Walker submitted that the appropriate sanction in this case was erasure.
5. He submitted that this case is particularly serious as it involves a breach of trust with a vulnerable patient who was clearly harmed by Dr Thiguti's misconduct. This was a case where all three limbs of the overarching objective were engaged.
6. Mr Walker stated that Dr Thiguti's misconduct represented a serious departure from GMP and involved actions that were fundamentally incompatible with him remaining on the medical register. He further stated that it is difficult to remediate sexual misconduct and that in this case Dr Thiguti had always known that what he was doing was wrong.

7. Mr Walker referred the Tribunal to the Sanctions Guidance (November 2020) ('SG') and submitted that Patient A was a vulnerable patient and that Dr Thiguti's misconduct involved a significant breach of trust. He further submitted that Dr Thiguti's misconduct could be considered to be "grooming" over a period of nine months which culminated in him meeting Patient A outside of work. These were all aggravating factors.
8. Mr Walker submitted that although Dr Thiguti had been a frank and honest witness, that did not mean that the doctor will not engage in similar conduct in the future. Mr Walker submitted that Dr Thiguti seems to be led by his desires and impulses and, as such, the Tribunal cannot be certain that the doctor will not engage in similar conduct in the future.

Doctor's Counsel's Submissions

9. On behalf of Dr Thiguti, Mr Brassington submitted that the appropriate and proportionate sanction in this case was a period of lengthy suspension.
10. Mr Brassington referred to the SG but reminded the Tribunal that it is guidance and not directive in the decision making process, stating that they are '*not tramlines upon which the tribunal must travel*'.
11. Mr Brassington submitted that Dr Thiguti had been frank and honest in his evidence to the Tribunal and has shown very significant insight. He stated that Dr Thiguti had sought to offer heartfelt apologies from the very early stages of the proceedings and to remediate his misconduct to ensure that there would be no repeat of his behaviour.
12. Mr Brassington submitted that prior to his misconduct Dr Thiguti was a professional of good character and that there have been no complaints regarding his conduct before or after Patient A.
13. Whilst not seeking to excuse Dr Thiguti's misconduct, Mr Brassington reminded the Tribunal that XXX. The Tribunal must consider all of the circumstances in the in the case. Mr Brassington submitted that, it was easy to conclude that Dr Thiguti was an individual who was looking for validation and company and overidentified with the similarities with his own childhood and that of Patient A. At the time of his misconduct Dr Thiguti was socially isolated and at a nadir in his life and flirted with Patient A to seek validation. He further submitted that, although this was no excuse or attempt to encourage sympathy

for Dr Thiguti's behaviour, it is clear that his misconduct and the XXX marital situation he was in were inextricably linked.

14. Mr Brassington submitted that Dr Thiguti was deeply ashamed of his behaviour and remorseful for the effect his behaviour has had on Patient A. He further submitted that the doctor was also aware of how far his behaviour had fallen below proper standards and that he recognises the situation he finds himself in is through his own fault.
15. Mr Brassington submitted that the imposition of a significant period of suspension would send a sufficient message to the profession, the public as well as protecting patients. It would also allow Dr Thiguti to continue with his journey of remediation and not deprive the public of an otherwise good doctor. He further stated that the likely repetition of any such behaviour was vanishingly small given the significant insight that Dr Thiguti has into his behaviour, XXX and the consequences of his previous misconduct.
16. Mr Brassington submitted that erasure would be disproportionate given everything that the Tribunal has heard about the doctor and that each case must be considered on its own facts. On the facts of this case suspension is the appropriate and proportionate sanction.

The Tribunal's Determination on Sanction

17. The decision as to the appropriate sanction to impose, if any, is a matter for this Tribunal exercising its own judgement.
18. In reaching its decision, the Tribunal has borne in mind that the purpose of a sanction is not to be punitive, but to protect the public, although a sanction may have a punitive effect.
19. Throughout its deliberations, the Tribunal has taken into account the overarching objective and applied the principle of proportionality, balancing Dr Thiguti's interests with the public interest.
20. The Tribunal has taken into account its earlier determination, the SG and GMP, all the evidence before it together with the submissions of Mr Walker and Mr Brassington.

Aggravating and Mitigating Factors

21. The Tribunal first considered the aggravating factors in relation to Dr Thiguti's misconduct XXX. The Tribunal considered the following to be an aggravating factor:

- Dr Thiguti in his position as a psychiatrist knew Patient A was vulnerable from the outset but despite this, he continued to pursue an emotional relationship with her. Dr Thiguti in his role as a psychiatrist was expected to know the potential impact of blurring professional boundaries with a vulnerable patient.

22. The Tribunal then considered the following to be a mitigating factor:

- Dr Thiguti XXX. This history made him identify with Patient A, XXX. Dr Thiguti's marriage was very strained. Dr Thiguti had no social or professional support networks XXX. The Tribunal determined that Dr Thiguti's misconduct was inextricably linked to XXX. He has subsequently developed a high degree of insight into his own vulnerabilities.

No action

23. In reaching its decision as to the appropriate sanction, if any, to impose in this case, the Tribunal first considered whether to conclude the case by taking no action.

24. The Tribunal determined that there were no exceptional circumstances to justify taking no action in this case and that to do so would be wholly inappropriate.

Conditions

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

26. The Tribunal XXX determined that the imposition of conditions on his registration would be inappropriate given the seriousness of Dr Thiguti's misconduct. The Tribunal determined that a period of conditional registration would not adequately protect the public confidence or uphold proper standards of conduct for members of the profession.

Suspension

27. The Tribunal then went on to consider whether imposing a period of suspension on Dr Thiguti's registration would be appropriate and proportionate.
28. The Tribunal acknowledged that suspension has a deterrent effect and can be used as a signal to the doctor, the profession, and to the public about what is regarded as behaviour unbecoming a registered doctor.
29. The Tribunal acknowledged Dr Thiguti's significant insight into his behaviour. It took into account Dr Thiguti's XXX and personal circumstances at the time of his misconduct. It noted Dr Thiguti had not sought to use XXX as an excuse but it was clearly a relevant factor. Whilst Dr Thiguti accepted in his evidence that he knew his conduct with Patient A was wrong, the Tribunal considered that this must be viewed in the context of XXX at that time. XXX.
30. Dr Thiguti's XXX at the time was a contributing factor towards his behaviour whereby he over identified with Patient A and sort to seek validation from her. XXX Dr Thiguti had referred to strategies in his reflective statement that he would undertake to ensure he does not over identify with patients in the future.
31. The Tribunal considered that, given the degree of insight Dr Thiguti has into his misconduct, the reasons for it and the significant insight of the effects on Patient A and his own mental state at the time of the incident, the chances of similar conduct happening again was low, XXX. The Tribunal took into account that Dr Thiguti had continued to work after the 26 June 2018 until 11 April 2019 without repeating his misconduct.
32. The Tribunal was of the view that Dr Thiguti had been frank in his admissions from the outset. He has undergone significant remediation and has been open and full in his explanation to the Tribunal. He has offered a full apology to Patient A and her family for his behaviour. The Tribunal accepted Mr Brassington's characterisation that the misconduct took place during a 'perfect storm' of risk factors in Dr Thiguti's life at that time, which are unlikely to be repeated given his significant insight and XXX.
33. The Tribunal considered that Dr Thiguti's misconduct was serious but that suspension could appropriately and sufficiently mark the serious breach of trust involved in Dr Thiguti's misconduct as well as serving a warning to the wider profession.

34. The Tribunal determined that a period of suspension would be sufficient to uphold all three limbs of the overarching objective and would send a message to the profession and the wider public. The Tribunal concluded in all the circumstances, that though serious, Dr Thiguti's misconduct was not fundamentally incompatible with continued registration. Erasure would therefore be disproportionate. A period of suspension is therefore the appropriate and proportionate sanction in this case.
35. The Tribunal determined that suspending Dr Thiguti's registration for a period of twelve months is necessary. The Tribunal took into account Dr Thiguti's insight, remediation and the low risk of repetition however, it considered that a period of less than 12 months would be insufficient to mark the seriousness of the misconduct. A period of 12 months would send a message to the medical profession and to the wider public that such misconduct is not acceptable and it appropriately reflects the seriousness of Dr Thiguti's misconduct.
36. The Tribunal determined to direct a review of Dr Thiguti's case. A review hearing will convene shortly before the end of the period of suspension, unless an early review is sought. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Thiguti to demonstrate how he has remediated and developed further insight into his misconduct XXX. It therefore may assist the reviewing Tribunal if Dr Thiguti attends the review hearing and provides that Tribunal with:
- XXX;
 - XXX;
 - An up to date reflective statement that focuses on his misconduct;
 - Up to date CPD.
37. Dr Thiguti will also be able to provide any other information that he considers might assist in demonstrating that his fitness to practise is no longer impaired.

Determination on Immediate Order - 24/11/2020

1. Having determined to suspend Dr Thiguti's registration for a period of 12 months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Thiguti's registration should be subject to an immediate order.

Submissions

GMC Counsel's Submissions

2. On behalf of the GMC, Mr Walker submitted that an immediate order of suspension was necessary in this case, to protect members of the public and in the public interest.

Doctor's Counsel's Submissions

3. On behalf of Dr Thiguti, Mr Brassington submitted that it was inappropriate to return Dr Thiguti to unrestricted practice given the Tribunal's findings in respect of misconduct XXX. It was therefore unarguable to oppose an immediate order of suspension.

The Tribunal's Determination

4. In all the circumstances, the Tribunal determined it was necessary to impose an immediate order of suspension on Dr Thiguti's registration. The Tribunal determined that this was necessary in order to protect patients and is otherwise in the public interest.
5. This means that Dr Thiguti's registration will be suspended from today. The substantive direction, as already announced, will take effect 28 days from service, 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.
6. The interim order of conditions currently imposed on Dr Thiguti's registration is revoked.
7. That concludes this case.

Confirmed

Date 25 November 2020

Mr Sean Ell, Chair

XXX