Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

17/12/2019

Medical Practitioner’s name: Dr Arvind RENGARAJAN

GMC reference number: 4557159

Primary medical qualification: MB BS 1990 Mangalore University

Type of case
New - Determination by other regulator
Outcome on impairment
Impaired

Summary of outcome
Suspension, 12 months.
Review hearing directed
Immediate order imposed

Tribunal:

<table>
<thead>
<tr>
<th>Legally Qualified Chair</th>
<th>Mrs Aaminah Khan</th>
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<tbody>
<tr>
<td>Lay Tribunal Member:</td>
<td>Ms Sue (Susan) Disley</td>
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<tr>
<td>Medical Tribunal Member:</td>
<td>Dr Amir Zafar</td>
</tr>
</tbody>
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Tribunal Clerk: Miss Evelyn Kramer

Attendance and Representation:

<table>
<thead>
<tr>
<th>Medical Practitioner:</th>
<th>Not present and not represented</th>
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<tbody>
<tr>
<td>Medical Practitioner’s Representative:</td>
<td>N/A</td>
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<tr>
<td>GMC Representative:</td>
<td>Ms Laura Barbour, Counsel</td>
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MPT: Dr RENGARAJAN
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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 - 26/11/2019

Background

1. Dr Rengarajan qualified in 1990 from Mangalore University. Dr Rengarajan has been living and working in Canada since 2013. At the time of the events Dr Rengarajan was working at Humboldt Medical Centre in the province of Saskatchewan, Canada as a General Practitioner (‘GP’).

2. The allegation that has led to Dr Rengarajan’s hearing relates to the two charges brought against him by the College of Physicians and Surgeons of Saskatchewan (‘CPSS’). The first charge related to Dr Rengarajan’s treatment of ‘Patient Number 1’ (as referred to by the CPSS) whose medical records he had allegedly amended and falsified, it was also alleged that such changes were not noted appropriately in the medical records and did not accurately reflect the treatment ‘Patient Number 1’ received. The CPSS alleged a second charge that Dr Rengarajan failed to maintain appropriate professional boundaries with another patient referred to as ‘Patient Number 1’.

3. The matters to be considered by this Tribunal are as follows: it is alleged that on 30 March 2019, the CPSS found Dr Rengarajan guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to The Medical Profession Act 1981, CPSS bylaws, and the code of ethics. It is further alleged that the CPSS determined to reprimand Dr Rengarajan, required him to complete a number of courses within six months, and ordered him to pay costs of $32,901.71.

4. The charges brought against Dr Rengarajan by the CPSS were first raised with the GMC by NHS England on 15 December 2017. The CPSS itself notified the GMC of the CPSS’s Council decision regarding its charges against Dr Rengarajan on 8 April 2019.
The Outcome of Applications Made during the Facts Stage

5. The Tribunal refused Dr Rengarajan’s application, made pursuant to Rule 29(2) of the General Medical Council (Fitness to Practise Rules) 2004 as amended (‘the Rules’), to adjourn these proceedings. The Tribunal’s full decision on the application is included at Annex A.

6. The Tribunal granted the GMC’s application, made pursuant to Rule 31 of the General Medical Council (Fitness to Practise Rules) 2004 as amended (‘the Rules’), for the Tribunal to proceed to consider Dr Rengarajan’s case in his absence. The Tribunal’s full decision on the application is included at Annex B.

The Allegation and the Doctor’s Response

7. The Allegation made against Dr Rengarajan is as follows:

1. On 30 March 2019, the College of Physicians and Surgeons of Saskatchewan (‘CPSS’) found you guilty of:

   a. unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of section 46(o) and/or section 46(p) of The Medical Profession Act, 1981 s.s. 1980-81 c. M-10.1, and/or bylaw 8.1(b)(vi) and/or bylaw 8.1(b)(ix) of the bylaws of CPSS; To be determined

   b. unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of section 46(o) and/or section 46(p) of The Medical Profession Act, 1981 s.s. 1980-81 c. M-10.1, and/or bylaw 7.1 and paragraph 13 of the Code of Ethics. To be determined

2. The CPSS determined to:

   a. reprimand you; To be determined

   b. require you to successfully complete and provide proof of completion, within six months, of the following courses approved by the Registrar:

      i. ethics; To be determined

      ii. boundaries; To be determined

      iii. medical record-keeping; To be determined
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iv. the Saegis program Effective Team Interactions;
   To be determined

c. pay the costs of, and incidental to, the investigation and hearing in the sum of $32,901.71.
   To be determined

And that by reason of the matters set out above your fitness to practise is impaired because of the determination by an overseas body that your fitness is impaired.
To be determined

Documentary Evidence

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

   • Letter to GMC from NHS England, dated 15 December 2017;
   • CPSS Physician Profile, dated 12 December 2017;
   • Work Details Form dated, 11 June 2018;
   • CPSS Council Charges, dated 25 March 2017;
   • Email from CPSS to GMC, dated 08 April 2019;
   • CPSS Amended Council decision, dated 30 March 2019;
   • CPSS Reprimand, undated;
   • Correspondence between Dr Rengarajan, the GMC and the MPTS Case Management Team, various dates between 19 and 22 November 2019;
   • A reflection on the CPSS’s decision provided by Dr Rengarajan on 19 November 2019;
   • Letters from various Canadian legal professionals regarding Dr Rengarajan’s CPSS case and these proceedings, various dates.

The Tribunal’s Approach

9. 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 Rengarajan 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.

The Tribunal’s Analysis of the Evidence and Findings

10. 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.
11. The Tribunal had regard to all of the evidence presented in this case by the GMC and the written responses of Dr Rengarajan as well as the supporting documentation he provided.

12. The Tribunal was mindful of paragraph 115 of Sanctions Guidance (November 2019 edition) ('the SG') which states:

115 If the tribunal receives a signed certificate of a conviction or determination, unless it also receives evidence to the effect that the doctor is not the person referred to in the conviction or determination, then it must accept the certificate as conclusive evidence that the offence was committed, or that the facts are as found by the determination. A tribunal can make an exception to this if it receives evidence to the effect that the doctor is not the person referred to in the conviction or determination. In accepting a caution, the doctor will have admitted committing the offence.

Paragraph 1 of the Allegation

13. In considering paragraph 1 of the Allegation, the Tribunal had regard to the two charges the CPSS laid against Dr Rengarajan on the 25 March 2017, the outcome regarding the CPSS Council’s decision on 30 March 2019 and confirmation from the CPSS by email on 8 April 2019 that Dr Rengarajan has admitted both charges. The CPSS charges were as follows (CPSS emphasis):

1) You Dr. Arvind Rengarajan are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of section 46(o) and/or section 46(p) of The Medical Profession Act, 1981 s.s. 1980 81 c. M-10.1, and/or bylaw 8.1(b)(vi) and/or bylaw 8.1(b)(ix) of the bylaws of the College of Physicians and Surgeons

The evidence that will be led in support of this particular will include some or all of the following:

(a) A person hereinafter referred to in this charge as “Patient Number 1” was your patient;

(b) On or about August 24, 2015 you saw patient number 1 in relation to the patient’s health concerns;

(c) You prepared one or more entries in Patient Number 1’s chart which did not accurately reflect the care you provided to Patient Number 1;

(d) You falsified the record for Patient Number 1 in respect of your examination or treatment of the patient;
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(e) After you made your entry related to August 24, 2015 you altered the record by adding the notation “ESM- Aortic area”;

(f) After you made your entry related to August 24, 2015 you altered the record by changing the words “arranged for labs/Echo” to “arranged for Urgent labs/Echo”

(g) After you made your entry related to August 24, 2015 you altered the record by adding the word “dismissive about Cardiac cause .. not keen on ECG. Advised to follow through with labs to start.”

(h) The changes to the patient record were made without noting that the changes were made at a later time than the original patient records was created.

2) You Dr. Arvind Rengarajan are guilty of unbecoming, improper, unprofessional, or discredititable conduct contrary to the provisions of section 46(o) and/or section 46(p) of The Medical Profession Act, 1981 s.s. 1980-81 c. M-10.1, and/or bylaw 7.1 and paragraph 13 of the Code of Ethics.

The evidence that will be led in support of this particular will include some or all of the following:

(a) A person hereinafter referred to in this charge as “Patient Number 1” was or had been your patient;

(b) Patient Number 1 had consulted you in relation to concerns related to her marital breakup;

(c) You failed to maintain appropriate professional boundaries in relation to Patient Number 1;

(d) On or about the 31st of July, 2015 you sent a text message to Patient Number 1;

(e) Patient Number 1 provided her contact information in relation to medical care you provided for her;

(f) You did not have Patient Number 1’s consent to use her contact number for purposes unrelated to her medical care;

(g) The text message was unrelated to medical care for Patient number 1;

(h) The text message sent to Patient Number 1 stated the following "It Is Dr R .... sorry to text you. I want some advice regarding Nurses.staff
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affairs etc. could you help? I want this to be confidential. Thank you” or used words to similar effect;

(i) On or about July 31, 2015 you telephoned Patient Number 1 and engaged in a discussion relating to your concerns about certain individuals associated with the hospital in Humboldt;

(j) During the telephone conversation that occurred on or about July 31, 2015 you asked Patient Number 1 if she wanted to come to your home for a glass of wine;

(k) At the time that you invited Patient Number 1 to come to your home for a glass of wine you were aware of her medical history, including the fact that she was separated from her husband.

14. It also had regard to the email sent from the CPSS to the GMC on 8 April 2019 which confirmed that:

I am writing to confirm that Dr. Rengarajan attended before the CPSS Council on March 30, 2019 for a penalty hearing. Penalties were imposed in relation to the two charges that had been admitted. Both penalties included a reprimand (to be adopted by the Council at its June meeting), the requirement to attend remedial/educational courses, and the requirement to pay the costs of the College proceedings.

15. The Tribunal noted the reflections Dr Rengarajan provided regarding the CPSS proceedings. However, as Dr Rengarajan admitted the charges to the CPSS and had at no stage provided evidence that the CPSS Council’s decision referred to a person other than himself, the material provided had little bearing on the Tribunal’s decision regarding paragraph 1 of the Allegation.

16. Having had regard to the charges provided by the CPSS to the GMC, the Tribunal was satisfied that on 30 March 2019, Dr Rengarajan was found guilty of two charges by the CPSS. Accordingly, the Tribunal found paragraph 1 of the Allegation proved in its entirety.

Paragraph 2 of the Allegation

17. In considering this paragraph of the Allegation, the Tribunal had regard to all the documentary evidence provided. It had particular regard to the CPSS ‘Council Decision’ document, dated 30 March 2019 and the ‘Amended Council Decision’, dated 14 September 2019 provided by the GMC. These documents outlined the CPSS Council’s response to the admitted charges brought against Dr Rengarajan. Considering this documentation, the Tribunal accepted that on 30 March 2019, the CPSS Council imposed penalties on Dr Rengarajan for his actions as set out in the charges referenced above. Those penalties included:
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- A CPSS Reprimand;
- A requirement for Dr Rengarajan to complete and provide evidence of completion for four courses on Medical Ethics, Boundaries and Professionalism, Medical Ethics and Professionalism, the Saegis program Effective Team Interactions, and a medical record-keeping course, which was required to be acceptable to the Registrar, to be completed in six months;
- Costs of, and incidental to the investigation and hearing of $15,573.36 and $17,328.35 respectively for each charge, totalling $332,901.71, repayment was expected in full by 30 September 2019;

Following the ‘Amended Council Decision’ dated 14 September 2019, Dr Rengarajan was given additional time to complete the required courses set by the CPSS, currently he has until the 31 December 2019 for course completion. He was also given a repayment extension which gave additional time and requires him to have paid the CPSS back in full by 31 March 2020.

18. The Tribunal noted that in his email renewing his application to postpone this hearing, Dr Rengarajan referenced his compliance with the requirements of the CPSS decision, as follows:

...I am currently paying the $35,000 costs from the College of Physicians and Surgeons of Saskatchewan (CPSS) as well as paying for and taking time off to complete the courses mandated in the CPSS disciplinary requirement.

19. Having taken all of the evidence into account, the Tribunal was satisfied that on 30 March 2019, the CPSS determined to reprimand Dr Rengarajan, required him to complete and provide proof of completion for four courses within six months and required him to pay a total of $32,901.71 towards the costs of the investigation and hearing undertaken. The Tribunal noted that the ‘Amended Council Decision’ extended the time limits for both Dr Rengarajan’s course completion and repayment schedule, but was satisfied that this did not materially affect its findings on this paragraph of the Allegation. Accordingly, the Tribunal found paragraph 2 of the Allegation proved in its entirety.

The Tribunal’s Overall Determination on the Facts

20. The Tribunal has determined the facts as follows:

1. On 30 March 2019, the College of Physicians and Surgeons of Saskatchewan (‘CPSS’) found you guilty of:

   a. unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of section 46(o) and/or section 46(p) of The Medical Profession Act, 1981 s.s. 1980-81 c. M-10.1, and/or bylaw
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8.1(b)(vi) and/or bylaw 8.1(b)(ix) of the bylaws of CPSS;
Determined and found proved

b. unbecoming, improper, unprofessional, or discreditable conduct
contrary to the provisions of section 46(o) and/or section 46(p) of The
Medical Profession Act, 1981 s.s. 1980-81 c. M-10.1, and/or bylaw 7.1
and paragraph 13 of the Code of Ethics.
Determined and found proved

2. The CPSS determined to:

a. reprimand you;
   Determined and found proved

b. require you to successfully complete and provide proof of completion,
   within six months, of the following courses approved by the Registrar:
   i. ethics;
      Determined and found proved
   ii. boundaries;
      Determined and found proved
   iii. medical record-keeping;
      Determined and found proved
   iv. the Saegis program Effective Team Interactions;
      Determined and found proved

c. pay the costs of, and incidental to, the investigation and hearing in the
   sum of $32,901.71.
   Determined and found proved

And that by reason of the matters set out above your fitness to practise is
impaired because of the determination by an overseas body that your fitness
is impaired.
To be determined

Determination on Impairment - 27/11/2019

1. 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
   Rengarajan’s fitness to practise is impaired by reason of a determination by another
   regulator.
The Evidence

2. The Tribunal has taken into account all the documentary evidence received during the facts stage of the hearing.

Submissions

3. On behalf of the GMC, Ms Barbour, Counsel, reminded the Tribunal that the issue of impairment is one for the Tribunal alone, exercising its independent judgement. She submitted that Dr Rengarajan’s fitness to practise is currently impaired. Ms Barbour submitted that while impairment is not defined in the Medical Act 1983 (as amended), the Tribunal may be assisted by the guidance set out by Dame Janet Smith in the Fifth Report to the Shipman Inquiry relating to findings of impairment, as follows:

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

d. has in the past acted dishonestly and/or is liable to act dishonestly in the future.

Ms Barbour submitted that all four limbs of this test were engaged in this case.

4. Ms Barbour submitted that the fundamental tenets as referenced by Dame Janet Smith are set out in Good Medical Practice (2013 edition) (‘GMP’). Ms Barbour submitted that the following paragraphs were particularly relevant in this case:

1 Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law.

2 Good doctors work in partnership with patients and respect their rights to privacy and dignity. They treat each patient as an individual. They do their best to make sure all patients receive good care and treatment that will support them to live as well as possible, whatever their illness or disability.
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65 You must make sure that your conduct justifies your patients’ trust in you and the public’s trust in the profession.

68 You must be honest and trustworthy in all your communication with patients and colleagues. This means you must make clear the limits of your knowledge and make reasonable checks to make sure any information you give is accurate.

71 You must be honest and trustworthy when writing reports, and when completing or signing forms, reports and other documents. You must make sure that any documents you write or sign are not false or misleading.

a You must take reasonable steps to check the information is correct.

b You must not deliberately leave out relevant information.

Ms Barbour submitted that the Tribunal may also identify further paragraphs of GMP which it considers relevant in its deliberations.

5. Ms Barbour submitted that case law invites the Tribunal to consider the context of Dr Rengarajan’s failings. She submitted that there was relatively limited information in this case but invited that Tribunal to consider the material provided by Dr Rengarajan regarding his reflections on the CPSS Council decision and the letters he has provided from several Canadian lawyers. Ms Barbour submitted that it would be appropriate for the Tribunal to consider this case in the round and have regard to the over-arching objective throughout.

6. Ms Barbour submitted that the CPSS Council’s decision was imposed in March and that the reprimand adopted by the CPSS Council assists with the seriousness of Dr Rengarajan’s actions. It states that Dr Rengarajan’s actions amounted to a ‘shameful deviation’ and makes reference to Dr Rengarajan’s poor judgement, lack of truth-telling in falsifying documents and disappointment that such behaviour would come from a ‘well learned and experienced physician’.

7. Ms Barbour reminded the Tribunal that Dr Rengarajan had not engaged with these proceedings between June 2019 when the Rule 7 letter from the GMC was issued to him until the 19 November 2019. Ms Barbour submitted that there is little information regarding the steps Dr Rengarajan has taken since the CPSS Council’s decision on 30 March 2019 and limited information about any remediation. She submitted that it appears that Dr Rengarajan had not completed all of the requirements set out by the CPSS within the six month period initially decided. She submitted that it was relevant that Dr Rengarajan required an extension in order to complete two of the four courses assigned by the CPSS and to pay back the sum of costs.
8. Ms Barbour submitted that the circumstances of this case relate to section 35(C)(e) of the Medical Act regarding a determination by a regulatory body abroad. Ms Barbour took the Tribunal through the chronology of the case, noting that Dr Rengarajan has not practised in the UK since 2013. She submitted that the events which were the subject of the CPSS charges and decision occurred in 2015. She submitted that there is no evidence before the Tribunal of a repetition of this behaviour. Further, Ms Barbour conceded that the sanction imposed on Dr Rengarajan was not the most severe available, she submitted that the CPSS has the following options available to it: erasure, suspension, restricted practice and supervision.

9. In Dr Rengarajan’s absence, Ms Barbour also submitted that the Tribunal should have regard to the evidence presented by Dr Rengarajan regarding the circumstances of the events in 2015. Including his reflections on acting as a ‘whistle-blower’, the ‘professional joisting’ and his reflection that he was ‘bullied’ into accepting the CPSS reprimand.

10. Ms Barbour submitted that the nature of Dr Rengarajan’s failings as set out by the Canadian regulator, the CPSS relate to dishonesty and an improper interaction with a patient. She submitted that allegations of those types carry a presumption of impairment. Further, she submitted that a finding of impairment was required even if there is some remediation or a low risk of repetition. She concluded by submitting that Dr Rengarajan fitness to practise is impaired and that a finding of impairment in this case was required to maintain public confidence and uphold and maintain proper professional standards.

The Relevant Legal Principles

11. 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. It had regard to all of the evidence provided during facts stages and the submissions it had heard from the GMC.

12. The Tribunal accepted the legal advice of the LQC and approached its decision regarding whether Dr Rengarajan’s fitness to practise is impaired in two stages. First, it must determine whether there has been a determination by a regulatory body. Then, it must determine whether Dr Rengarajan’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.

13. Throughout its deliberations, the Tribunal was mindful of its responsibility to uphold the over-arching objective as set out in the Medical Act 1983 (as amended):

   a. to protect, promote and maintain the health, safety and wellbeing of the public;
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-b. to maintain public confidence in the profession;

c. to promote and maintain proper professional standards and conduct for members of the profession.’

14. The Tribunal was also mindful of the guidance referred to by Ms Barbour of
Dame Janet Smith in the Fifth Report to the Shipman adopted by the High Court in
the case of CHRE v NMC & Paula Grant [2011] EWHC 927 [Admin]. The case law
requires that as part of the process of determining whether a doctor is fit to practise
today, a Tribunal must take account of past actions or failures to act.

15. The Tribunal took account of each of these elements when determining
whether Dr Rengarajan’s fitness to practise was currently impaired.

The Tribunal’s Determination on Impairment

Determination by a Regulatory Body

16. In considering whether there is a determination by another regulatory body in
this case, the Tribunal has regard to section 35C(2) of the Medical Act which states:

A person’s fitness to practise shall be regarded as “impaired” for the purposes
of this Act by reason only of –

…

(e) a determination by a body in the United Kingdom responsible under any
enactment for the regulation of a health or social care profession to the effect
that his fitness to practise as a member of that profession is impaired, or a
determination by a regulatory body elsewhere to the same effect.

17. Section 35C(3) provides that an allegation may be based on a matter that is
alleged to have occurred outside the United Kingdom.

18. Section 35(C)(9) provides:

…“regulatory body” means a regulatory body which has the function of
authorising persons to practise as a member of health or social care
profession…

19. The Tribunal noted the submissions of Ms Barbour who explained the options
of sanction available to the CPSS in Dr Rengarajan’s case which included the
equivalent of erasure, suspension and conditions in this jurisdiction. It also had
regard to the CPSS Council’s decision following the charges that were brought
against Dr Rengarajan.
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20. The Tribunal was satisfied that in directing Dr Rengarajan to complete four courses, pay costs and accept a reprimand, the CPSS had the powers of a regulatory body. Therefore, the Tribunal determined that there is a determination of an overseas body in this case and that the CPSS is responsible for the regulation of a health or social care profession in Saskatchewan, Canada in accordance with the Medical Act.

Impairment

21. In reaching a determination as to whether the decision of the CPSS was sufficient to find Dr Rengarajan’s fitness to practise impaired, the Tribunal accepted the relevance of the paragraphs of GMP set out by Ms Barbour. It further noted that the following paragraphs were also relevant to its consideration of impairment in this case:

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.

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.

47 You must treat patients as individuals and respect their dignity and privacy.

22. The Tribunal also had regard to guidance of Dame Janet Smith (set out in full above):

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
d. has in the past acted dishonestly and/or is liable to act dishonestly in the future.

The Tribunal considered the relevance of each of these questions in turn. As the CPSS brought no charges in relation to the actual or potential harm to either patient, the Tribunal determined that in relation to the first question (a.) it did not appear that Dr Rengarajan’s had put either patient at unwarranted risk of harm. It therefore rejected the submission of Ms Barbour that all limbs of this test were engaged.

23. The Tribunal did however accept that Dr Rengarajan’s clinical failings in amending and falsifying the records of one patient and engaging in inappropriate contact with another patient did mean the other three questions were relevant to its deliberations.

24. The Tribunal had regard to the chronology of events in this case and considered the documentary evidence provided by Dr Rengarajan. The Tribunal noted that the letter written by Dr Rengarajan to the Associate Registrar and Legal Counsel of the CPSS on 21 August 2015 stated:

   I am terribly sorry [Patient Number 1] interpreted the conversation as she has and is feeling the way she is. It was a clear misunderstanding from my part thinking that she was helping me all along.

In an undated but seemingly similar letter regarding the other patient identified as ‘Patient Number 1’, Dr Rengarajan wrote:

   I can only apologise for the misunderstanding about the care plan for [Patient Number 1].

   ...

   I would have been happy to meet and explain my course of action and address any of [Patient Number 1]’s concerns.

25. The Tribunal also had regard to the letters written by two Canadian representatives familiar with Dr Rengarajan’s case. The first, dated 12 March 2017, in reference to the patient with whom he exchanged text messages, states:

   Dr. Rengarajan would also be prepared to write a letter of apology to [Patient Number 1] to explain his actions, his approach, and his insight. He has learned a better appreciation of the boundaries of the physician-patient relationship but recognizes he has more to learn to reach a fuller understanding.

The same letter, referencing the other patient (also identified as ‘Patient Number 1’ whose medical records Dr Rengarajan admitted to amending, also states:
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On reflection of this matter, Dr. Rengarajan recognizes he could have done things differently with [Patient Number 1], not only in terms of making changes to his notes regarding a visit, but, perhaps more importantly, in terms of communicating more clearly with patients and staff and making sure they understand his advice.

26. The Tribunal also had regard to a much more recent letter issued by a different law firm familiar with Dr Rengarajan’s case dated 15 November 2019, particularly regarding the CPSS reprimand states:

...[Dr Rengarajan] admitted guilt, his contrition and willingness to accept responsibility and the other portions of the penalty imposed.

27. The Tribunal were of the view that these letters, both written by Dr Rengarajan himself and by Canadian legal representatives on his behalf did show that previously he was developing insight into his actions and that he had reflected on the impact of his actions on both patients involved in the charges which he was found guilty of by the CPSS.

28. However, the Tribunal had concerns about the most recent letter written by Dr Rengarajan which was for the attention of the MPTS Case Manager sent by email, dated 19 November 2019, in which he writes:

I did not accept that I was guilty of the charges and I wanted to go forward to a hearing. I was very disappointed that the [Canadian Medical Protective Association] refused to support me to attend the hearing.

I was basically bullied into accepting a guilty plea and the reprimand.

I reluctantly agreed to accept the reprimand offered by the CPSS and, at great personal difficulty pay the extensive costs charged by the CPSS.

However I was shocked and distressed when, several months later I was provided with a copy of the reprimand. The sheer vitriol of the wording of the reprimand was totally unexpected and very offensive.

The Tribunal was concerned that Dr Rengarajan most recent letter appeared to be at odds with his previous reflections and remorse and did not demonstrate the same level of insight as the other documents before the Tribunal.

29. In considering repetition, the Tribunal noted that it had received no evidence to suggest that Dr Rengarajan had repeated his actions in either altering a patient’s medical records or inappropriately contacting a patient before or since these events.
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It accepted that Dr Rengarajan’s actions appeared to relate to two separate but isolated incidents which did not overlap when considering the parts of GMP he had departed from. It noted that Dr Rengarajan appeared to have an unblemished record with the GMC before he moved to Canada in 2013.

30. The Tribunal noted that the departures from the standards of the CPSS identified in its decision of 30 March 2019 regard record-keeping and maintaining professional boundaries with patients were entirely comparable to the standards that would be expected of Dr Rengarajan had he performed the same actions in the UK. The Tribunal also noted that while Dr Rengarajan appears to be complying with the penalties imposed by the CPSS, he has not yet completed the courses and full repayment required.

31. The Tribunal had regard to the date of the CPSS Council’s decision regarding the charges brought against Dr Rengarajan. It was of the view that it was relevant that the CPSS currently views Dr Rengarajan’s fitness to practise as being impaired. The Tribunal also noted that as Dr Rengarajan’s engagement with these proceedings has been limited, he has provided no evidence of his remediation or any reflections or learnings on the required courses he has completed so far as part of the CPSS penalties.

32. The Tribunal concluded that it had evidence of only limited insight from Dr Rengarajan, no evidence of remediation and therefore determined that the risk of repetition of such behaviour does remain.

33. The Tribunal was mindful of the overarching statutory objective of the GMC, of the need to uphold proper professional standards and maintain public confidence in the medical profession. The Tribunal considered that public confidence in the profession would be undermined if a finding of impairment were not made in this case given the significant number of departures from GMP.

34. The Tribunal has therefore determined that Dr Rengarajan’s fitness to practise is impaired by reason of a determination by an overseas regulator.

Determination on Sanction - 17/12/2019

1. Having determined that Dr Rengarajan’s fitness to practise is impaired by reason of a determination by an overseas regulator, 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

2. The Tribunal has taken into account evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction.
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3. The Tribunal received further documentary evidence on behalf of the GMC, as follows:

- Confirmation that a separate charge was laid against Dr Rengarajan by the CPSS for unprofessional conduct, dated 15 September 2018;
- A screenshot of Dr Rengarajan’s record with the CPSS confirming he accepted an undertaking for the additional charge of unprofessional conduct on 21 December 2018.

Submissions

4. On behalf of the GMC, Ms Barbour, Counsel, submitted that the only appropriate sanction in this case was one of erasure. In its consideration of dishonesty, Ms Barbour referred the Tribunal specifically to Charge 1d brought against Dr Rengarajan by the CPSS:

1)...

(d) You falsified the record for Patient Number 1 in respect of your examination or treatment of the patient

Ms Barbour submitted that the retrospective amendment of patient records is a serious matter.

5. Ms Barbour submitted that in line with Patel v GMC [2003] WL 933280 (‘Patel’), dishonesty lies at the upper end of the scale when considering misconduct, and while Patel confirms that doctors that have been found to have acted dishonestly may be able to reply on previous good character, Ms Barbour submitted that there is little evidence of such good character in this case. She further submitted that there is additional evidence to be adduced at this stage to indicate the opposite. Ms Barbour also cited the case of Khan v GMC [2015] EWHC 301 (Admin) which held that a strict line in relation to findings of dishonesty is often taken given the gravity of such behaviour, further Ms Barbour quoted:

7. Dishonesty will be particularly serious where it occurs in the performance by a doctor of his or her duties and/or involves a breach of trust placed in the doctor by the community.

6. Ms Barbour submitted that the Tribunal has received no evidence of Dr Rengarajan’s proper reflections on his actions, nor has it been provided with any evidence of the steps he has taken to ensure he does not repeat his behaviour. Ms Barbour further submitted that the Tribunal has received nothing to indicate, and it has actually received evidence to the contrary, that Dr Rengarajan appreciates the impact of his actions on his patients and the impact on the wider pubic. Ms Barbour reminded the Tribunal of its own determination on impairment and stated that while his previous partial apologies may constitute a mitigating factor in this case, having apparently now drawn back from such apologies and adopted a stance of denial, Dr Rengarajan’s
actions may now cast doubt on the genuineness of his previous remorse. Regarding mitigation, Ms Barbour submitted that in his correspondence, Dr Rengarajan had provided evidence of good practice in expressing concerns about letting patients down should he have to close his medical practice.

7. In considering the aggravating factors in this case, Ms Barbour referred the Tribunal to relevant paragraphs of the Sanctions Guidance (November 2019 edition) (‘the SG’). She submitted that paragraph 52b and c were particularly relevant:

   **52 A doctor is likely to lack insight if they:**
   ...
   **b promise to remediate, but fail to take appropriate steps, or only do so when prompted immediately before or during the hearing**
   **c do not demonstrate the timely development of insight**

Ms Barbour submitted that Dr Rengarajan has promised to remediate by taking the courses directed by the CPSS, but there is no evidence that such courses are complete. Ms Barbour further submitted that, in contrast to the Tribunal’s view that Dr Rengarajan is complying with the CPSS penalties, at its highest, it can only be concluded that Dr Rengarajan is not in breach of his CPSS requirements. She also submitted that the Tribunal has precious little evidence of any remediation in this case. Regarding insight, Ms Barbour submitted that Dr Rengarajan has had ample time to reflect on his actions since 2015, she questioned whether given the time elapsed, the Tribunal would expect Dr Rengarajan to have very well-developed, if not complete insight at this stage.

8. Ms Barbour then took the Tribunal through the options available to it regarding sanction, beginning with the least restrictive. Ms Barbour submitted that given the circumstances of this case, it would be entirely inappropriate for the Tribunal to take no action. Ms Barbour submitted that without an agreement of undertakings, such an option was not available to consider. Ms Barbour further submitted that this case was far too serious to be dealt with in that way. Turning to conditions, Ms Barbour submitted that the guidance is clear on when conditions are appropriate and workable. She submitted that in this case, the risk posed by Dr Rengarajan is too serious to be dealt with by imposing conditions. Further, she submitted that an order of conditions would not uphold the over-arching objective in this case, nor would there be suitable conditions given the dishonesty identified.

9. Ms Barbour submitted that in considering suspension, certain sub-sections of paragraph 97 of the SG were relevant:

   **97 Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.**

   **a A serious breach of Good medical practice, but where the doctor’s misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest.**
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However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.

... 

e No evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor’s unwillingness to engage.

... 

g The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.

Ms Barbour submitted that there is an undertone of dishonesty to the allegations which amounts to a serious breach of GMP. She further submitted that Dr Rengarajan has shown a total disregard for his UK regulator in failing to inform the GMC of the Canadian proceedings against him, in not complying with his obligation under the Medical Act to keep his address up to date, in his failure to reply to the GMC notifications regarding Rule 7, Rule 8 and his decision to ignore requests from the GMC to even confirm documents had been received.

10. Ms Barbour submitted that the weight of the guidance points towards erasure. She submitted that the Tribunal, having found the Dr Rengarajan only has limited insight in to his behaviour, paragraphs 107 and 109 of the SG are relevant:

107 The tribunal may erase a doctor from the medical register in any case – except one that relates solely to the doctor’s health and/or knowledge of English – where this is the only means of protecting the public.

109 Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).

a A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor.

b A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety.

... 

d Abuse of position/trust (see Good medical practice, paragraph 65: ‘You must make sure that your conduct justifies your patients’ trust in you and the public’s trust in the profession’).

...
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h Dishonesty, especially where persistent and/or covered up (see guidance below at paragraphs 120–128).

i Putting their own interests before those of their patients (see Good medical practice paragraph 1: – ‘Make the care of [your] patients [your] first concern’ and paragraphs 77–80 regarding conflicts of interest).

j Persistent lack of insight into the seriousness of their actions or the consequences.

Ms Barbour submitted that erasure is an appropriate sanction when a doctor's actions are fundamentally incompatible with continued registration, she stated that this is such a case. She submitted that there had been a particularly serious departure from GMP given Dr Rengarajan’s dishonesty. She further submitted that the Tribunal’s determination on impairment set out a raft of wide-ranging failings in respect of GMP so sub-section 109b was well met. Ms Barbour submitted that Dr Rengarajan had failed to respect the privacy and dignity of his patient when he took and used their phone number in the way that he did, particularly in sharing his concerns about other medical professionals. Ms Barbour reiterated that there is dishonesty in this case and submitted in regard to 109i, Dr Rengarajan had put his interests above his patient’s when he burdened her with his own political workplace issues. In regard to 109j, Ms Barbour submitted that Dr Rengarajan continues to minimise and deny behaviour that he has previously admitted and accepted before a regulatory body. She submitted that his previous admissions may have amounted to a ‘false dawn’, and further submitted that his actions in previously making admissions may have been strategic.

11. Ms Barbour reminded the Tribunal that it had received no references or testimonials regarding Dr Rengarajan’s abilities as a GP. She submitted that the Tribunal may wish to bear in mind the nature of the sanction imposed by the Canadian regulator in this case. She submitted that the range of sanctions can be applied very differently in other jurisdictions. Ms Barbour submitted that in the UK, the type of behaviour displayed by Dr Rengarajan would be amongst the most serious to appear before the regulator. Ms Barbour concluded by submitting that given the extent of his departures and considering the case law, the only sanction capable of meeting the over-arching objective in this case was one of erasure.

The Tribunal’s Determination on Sanction

12. The decision as to the appropriate sanction, if any, to impose in this case is a matter for the Tribunal exercising its own judgement. In reaching its decision, the Tribunal has taken account of the SG, together with the over-arching objective.

13. The Tribunal reminded itself that the main reason for imposing any sanction is to protect the public and that sanctions are not imposed to punish or discipline doctors, even though they may have a punitive effect. Throughout its deliberations,
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the Tribunal has applied the principle of proportionality, balancing Dr Rengarajan’s interests with the public interest.

Mitigating and Aggravating Factors

14. The Tribunal has already set out its decision on the facts and impairment which it took into account during its deliberations on sanction. Before considering what action, if any, to take in respect of Dr Rengarajan’s registration, the Tribunal considered and balanced the mitigating and aggravating factors in this case.

15. The Tribunal noted the submissions of the GMC regarding the lack of mitigation in this case but was of the view that given the evidence submitted by Dr Rengarajan, there were the following factors it considered to be mitigating:

- Dr Rengarajan’s admissions to the CPSS;
- Dr Rengarajan’s expressions of remorse in his letters to the CPSS regarding both patients and a willingness to communicate with both patients to apologise;
- Dr Rengarajan appeared to be developing insight prior to his communications with the MPTS on 19 November 2019, considering his own reflections letters and those from his legal representatives;
- Dr Rengarajan appears to have made progress in completing the courses directed by the CPSS: Medical Ethics, Boundaries and Professionalism, Medical Ethics and Professionalism, the Saegis program Effective Team Interactions, and a medical record-keeping course, having asked for an extension for only two of the four courses;
- Events occurred over four years ago with no evidence of repetition relating to the failings identified in the CPSS charges which are the subject of this hearing and Dr Rengarajan has continued to practise medicine since such events;

16. In considering the aggravating factors in this case, the Tribunal noted that the patient with whom Dr Rengarajan admitted to having improper interactions, having taken their phone number from their records, was not only a patient but a former professional colleague with whom professional disputes had been discussed. The Tribunal was of the view that this relationship could be viewed as separate from the doctor-patient relationship, which did somewhat temper its view of Dr Rengarajan’s contact with this ‘Patient Number 1’.

17. The Tribunal considered the aggravating factors in this case to be:

- Dr Rengarajan’s decision to obtain a patient’s contact details from their medical records;
- Dr Rengarajan’s dishonest behaviour in falsifying a patient’s record;
- Dr Rengarajan’s failure to notify either NHS England or the GMC about proceedings in Canada;
- Dr Rengarajan’s failure to keep his address and contact details up to date with the GMC;
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- Dr Rengarajan’s lack of engagement with the GMC from June 2019 until 19 November 2019.

18. Having considered and balanced the aggravating and mitigating factors in this case, the Tribunal concluded that the mitigation identified in this case must be borne in mind when considering the appropriate and proportionate sanction. The Tribunal considered each sanction in ascending order of severity, starting with the least restrictive.

19. The Tribunal had regard to the additional charge laid by the CPSS, dated 15 September 2018, provided by the GMC at this stage of proceedings. It noted that this charge related to a different time period and that the CPSS charge was not directly related to the misconduct the Tribunal had identified in this case. Taking this into consideration, the Tribunal placed little weight on this additional charge in its deliberations.

No action

20. The Tribunal first considered whether to conclude the case by taking no action. Taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances. The Tribunal determined that there are no exceptional circumstances in this case and that, given the seriousness of its findings, it would not be sufficient, proportionate, or in the public interest to conclude this case by taking no action.

Conditions

21. The Tribunal next considered whether to impose conditions on Dr Rengarajan’s registration. The Tribunal noted that in cases of dishonesty, it will be difficult to identify any conditions that could be appropriate, proportionate, workable, and measurable. It further considered that imposing conditions requires co-operation and that by absenting himself from these proceedings, the Tribunal could not be assured that Dr Rengarajan would co-operate with any conditions it might impose.

22. In any event, the Tribunal was of the view that imposing conditions on Dr Rengarajan’s registration would not sufficiently mark the seriousness of his misconduct.

Suspension

23. The Tribunal went on to consider whether it would be appropriate and proportionate to suspend Dr Rengarajan’s registration. The Tribunal acknowledged that a sanction of suspension does have a deterrent effect and can be used to send a signal to Dr Rengarajan, the profession, and the public about what is regarded as behaviour unbefitting a registered medical practitioner.
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24. In its specific consideration of dishonesty, the Tribunal had regard to paragraph 128 of the SG:

128 Dishonesty, if persistent and/or covered up, is likely to result in erasure

The Tribunal noted that its consideration of dishonesty related to only one patient. It further noted that neither the CPSS nor the GMC had alleged that any harm had been caused to the patient whose records Dr Rengarajan amended. The Tribunal concluded that Dr Rengarajan’s actions amounted to a single isolated incident of dishonesty. The Tribunal also noted that it had received no evidence to suggest that Dr Rengarajan had sought to cover-up his dishonest actions regarding the falsification of a patient’s records.

25. The Tribunal had regard to the submissions of the GMC regarding erasure being the appropriate sanction in this case. However, while the Tribunal acknowledged that there had been a number of departures from GMP, it had not concluded that any of those individual breaches was particularly serious. The Tribunal did not accept the submission that Dr Rengarajan had shown a ‘reckless disregard’ for the principles of GMP. It noted Dr Rengarajan’s own account, particularly regarding the patient with whom he had improper contact, that he did not understand the boundaries he had breached and accepted his account that it was a genuine misunderstanding of his relationship with the patient, who the Tribunal noted was also a former colleague.

26. The Tribunal considered paragraph 109 of the SG, particularly reflecting on the sub-section on insight that Ms Barbour referred to:

109 Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).

j Persistent lack of insight into the seriousness of their actions or the consequences.

The Tribunal rejected the submission that Dr Rengarajan’s actions in withdrawing his previous admissions in his letter of 19 November 2019 amounted to a persistent lack of insight. The Tribunal was of the view that while his most recent correspondence was unhelpful to his case, Dr Rengarajan’s previous correspondence to the CPSS, which demonstrated developing insight, should not be discounted. The Tribunal accepted that Dr Rengarajan did appear to currently only have limited insight but the Tribunal was also of the view that whilst dishonesty can be difficult to remediate, it is not impossible to do so. The Tribunal also noted that there was no evidence before it to suggest that Dr Rengarajan had repeated any similar misconduct, including any dishonest misconduct since these events in 2015.
27. The Tribunal considered paragraph 92 of the SG to be particularly relevant to its consideration of suspension:

92 Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (i.e. for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession).

The Tribunal was of the view that while it had found that Dr Rengarajan’s actions did amount to a number of breaches of GMP, these individual breaches were not sufficiently serious as to constitute any fundamental incompatibilities with continued registration. The Tribunal concluded, considering the facts and context of the case, that Dr Rengarajan’s actions in both contacting a patient without their permission and amending another patient’s medical records were not fundamentally incompatible with continued registration.

28. Taking all of the evidence, submissions and its own deliberations into account, the Tribunal was satisfied that a period of suspension would mark the seriousness of Dr Rengarajan’s misconduct. The Tribunal was of the view that during a period of suspension, Dr Rengarajan would have the time and opportunity to develop his insight and remediate his misconduct. The Tribunal considered the mitigation in this case, alongside the guidance and concluded that imposing a sanction of erasure would be disproportionate given the facts of this case.

29. Having considered the sanctions in ascending order of restrictiveness and having determined to suspend Dr Rengarajan’s registration, the Tribunal went on to consider the length of the period of suspension for Dr Rengarajan. The Tribunal determined to suspend Dr Rengarajan’s registration from the medical register for a period of twelve months. It was satisfied that such a period marked the seriousness of Dr Rengarajan’s dishonesty as well as his other significant departures from GMP and upheld the overarching objective to maintain public confidence in the profession and uphold proper professional standards. The Tribunal concluded that a suspension of this length would provide Dr Rengarajan with an opportunity to develop insight into his dishonesty and remediate appropriately.

30. The Tribunal determined to direct a review of Dr Rengarajan’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, it will be Dr Rengarajan’s responsibility to demonstrate how he has addressed this Tribunal’s concerns. It therefore may assist the reviewing Tribunal if Dr Rengarajan provides:
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- A written reflective statement on his dishonesty and the other misconduct identified;
- Evidence that all courses directed by the CPSS have been completed;
- Reflections on all the courses Dr Rengarajan has completed and a statement on how those learnings have impacted on his present medical practice;
- Evidence that all scheduled payments to the CPSS have been made and completed;
- Evidence that Dr Rengarajan has maintained his clinical skills and that his CPD is up to date;
- Any further evidence which may assist the Tribunal.

Determination on Immediate Order - 17/12/2019

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

2. The Tribunal has borne in mind the test to be applied with regard to imposing an immediate order; it 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.

Submissions

3. On behalf of the GMC, Ms Barbour submitted that an immediate order would be appropriate in this case given the seriousness of Dr Rengarajan’s misconduct.

The Tribunal’s Determination

4. The Tribunal has taken account of the relevant paragraphs of the SG, in particular paragraph 172 which states:

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...

5. The Tribunal noted that as Dr Rengarajan does not currently hold a licence to practise medicine with the GMC, he poses no risk to patient safety. However, the Tribunal determined that, given the seriousness with which it viewed Dr Rengarajan’s misconduct, its findings on impairment and the sanction it has imposed, it is in the public interest to suspend his registration with immediate effect.

6. The substantive period of suspension to be imposed on Dr Rengarajan’s registration will take effect 28 days from when notice is deemed to have been served upon Dr Rengarajan, unless he lodges an appeal in the interim. If Dr
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Rengarajan lodges an appeal, the immediate order for suspension will remain in
place until such time as the outcome of any appeal is determined.

7. There is no interim order to revoke.

8. That concludes the case.

Confirmed
Date 17 December 2019

Mrs Aaminah Khan, Chair
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ANNEX A – 25/11/2019

Application to adjourn proceedings under Rule 29(2)

1. On 19 November 2019, before this hearing commenced, Dr Rengarajan made an application to the MPTS Case Manager to postpone this hearing. On 22 November 2019, Dr Rengarajan’s application was refused. Following this refusal, the Case Manager did remind Dr Rengarajan that it was open to him to submit an application for an adjournment of the Tribunal at the outset of the hearing.

2. On day one of this hearing, Dr Rengarajan renewed his application to postpone the hearing by email, received on 25 November 2019 at 06:46am GMT. As the hearing had commenced, under Rule 29(2) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended (’the Rules’), the Tribunal considered Dr Rengarajan’s application to be an adjournment request.

Written submissions on behalf of Dr Rengarajan

3. Dr Rengarajan submitted that he is unable to attend this hearing as he was ‘unable to obtain cover to keep my single handed practice open.’ He submitted that in order to attend this hearing he would have to close his practice. Further, he submitted that there are no locum agencies in Saskatchewan, Canada where he lives and while he has asked his contacts, no one has been able to assist him regarding providing cover for his practice.

4. Dr Rengarajan submitted that XXX is currently seriously unwell in India and that because he cannot close his practice, he has not been able to visit them either.

5. Dr Rengarajan submitted that he requires legal representation for this hearing but has not been able to seek representation. He submitted that his Canadian legal representatives have not been able to assist with matters in this country. Dr Rengarajan submitted that he does not have sufficient funds or time to instruct a lawyer for these proceedings. Dr Rengarajan submitted that he feels it is essential to have legal representation but that he currently has other financial commitments as he is ‘currently paying the $35,000 costs from the College of Physicians and Surgeons of Saskatchewan (CPSS) as well as paying for the taking time off to complete the courses mandated in the CPSS disciplinary requirement.’ Dr Rengarajan submitted that he would not be comfortable attending the hearing even by video link without a representative.

Submissions on behalf of the GMC

6. On behalf of the GMC, Ms Barbour, Counsel, invited the Tribunal to refuse Dr Rengarajan’s application to adjourn these proceedings. Ms Barbour referred the Tribunal to guidance titled, ‘The postponement of an Interim Orders Tribunal or a Medical Practitioners Tribunal hearing under Rule 29’: She referred the Tribunal to paragraph 10 of this guidance, which states:
10. When considering the written submissions for the postponement of a hearing and any representations received from the other party, the factors taken into account may include the following, non-exhaustive, examples:

- whether a request based on the need to prepare or obtain evidence relevant to the allegation regarding the doctor’s fitness to practise is supported by sufficient reasoning, taking into account the length of time since the event(s) complained of

- whether the benefit of granting a postponement outweighs the resulting prolongation of uncertainty for the doctor regarding their fitness to practise. For example, the Case Manager will want to be satisfied that an application based on the party’s unavailability is of sufficiently greater importance than the case before the Tribunal.

- the availability of, and impact of a postponement on, witnesses (both lay and expert) who are required to attend to give oral evidence, which might impact on the efficiency of proceedings if rescheduled

- whether the doctor is subject to an interim order.

7. Ms Barbour made submissions on each sub-section of paragraph 10 in turn. In response to the first, she submitted that in these circumstances, delaying the opening of the Facts stage of this hearing would be an unnecessary delay considering paragraph 115 of Sanctions Guidance (November 2019 edition) ("the SG"), which states:

115 If the tribunal receives a signed certificate of a conviction or determination, unless it also receives evidence to the effect that the doctor is not the person referred to in the conviction or determination, then it must accept the certificate as conclusive evidence that the offence was committed, or that the facts are as found by the determination. A tribunal can make an exception to this if it receives evidence to the effect that the doctor is not the person referred to in the conviction or determination. In accepting a caution, the doctor will have admitted committing the offence.

Ms Barbour submitted that in Dr Rengarajan’s evidence which he first provided to the MPTS Case Manager, he appears to be seeking to go behind the CPSS’s determination. Ms Barbour submitted that this is not an option which is open to him in these proceedings.

8. Considering the second sub-section, Ms Barbour submitted that Dr Rengarajan’s application appears to be primarily concerned with his own attendance at these proceedings and wanting to have legal representation. Ms Barbour invited the Tribunal to remind itself of the overarching objective and consider the public interest in these matters. For the third sub-section, Ms Barbour submitted that she
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was bound to say that there are no live witnesses in this case and that the totality of the evidence then GMC intends to rely on has already been provided to the Tribunal. Considering the final sub-section of paragraph 10, Ms Barbour confirmed that Dr Rengarajan is not subject to an Interim Order, nor does he currently hold a licence to practise medicine with the GMC.

9. Ms Barbour proceeded to take the Tribunal through the chronology of events regarding Dr Rengarajan’s notification about these proceedings. She submitted that Dr Rengarajan had not engaged with the GMC about these proceedings since June 2019 until 19 November 2019 when he sent his email requesting a postponement. Ms Barbour referred to evidence of service provided by the GMC as well as Dr Rengarajan’s correspondence with the MPTS Case Manager and his subsequent email renewing his application. She submitted that Dr Rengarajan was first informed of the GMC Case Examiners’ decision as part of the Rule 8 notification letter to refer this case to a hearing on 28 August 2019. She further submitted that in the case of General Medical Council v Adeogba; General Medical Council v Visvardis [2016] EWCA Civ 162, it was established that it is the responsibility of a doctor to keep their correspondence details held by the GMC up to date. Ms Barbour submitted that in having left the UK in 2013 but not updating his registered address, Dr Rengarajan had not met his responsibility in this regard.

10. Ms Barbour confirmed that Dr Rengarajan was sent the GMC’s Notification of Allegation by email on 14 October 2019 and by post to his registered UK address on 14 November 2019. She further confirmed that on 24 October 2019, the MPTS sent Dr Rengarajan the Notice of Hearing by email and to his registered UK address. Both letters were delivered back to sender. Ms Barbour submitted that Dr Rengarajan has been given ample notice of these proceedings and that his late application to postpone on 19 November 2019 was the first indication from him that the hearing dates provided were not convenient for him. She further submitted that attendance by video link had been offered to Dr Rengarajan and he had declined to do this on the grounds that he requires legal representation.

11. Ms Barbour submitted that another basis for Dr Rengarajan’s postponement request is that the Canadian CPSS proceedings have not concluded as he is still completing the required courses and paying the fine imposed. Ms Barbour submitted that it is the GMC’s position that the Canadian proceedings have concluded subject to Dr Rengarajan’s compliance with directions made by the CPSS. Therefore, Ms Barbour submitted that these are not suitable grounds to adjourn this hearing. In closing, Ms Barbour submitted considering his lack of engagement with these proceedings until 19 November 2019, the Tribunal should refuse Dr Rengarajan’s application to adjourn these proceedings.

The Tribunal’s Decision
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12. The Tribunal accepted the legal advice of the Legally Qualified Chair (LQC) in these proceedings and bore in mind the case of Nabili v General Medical Council [2018] EWHC 3331 (Admin) (‘Nabili’) which confirmed that in considering whether to adjourn a case the interests of the doctor should be carefully balanced with the public interest in the fair, economical, expeditious and efficient disposal of such proceedings. The case of Nabili also stated that Tribunal’s are entitled to have regard to the whole history of proceedings in considering its deliberations on adjourning.

13. The Tribunal had regard to all of the evidence provided by the GMC and evidence submitted to the MPTS Case Manager on 19 November 2019 by Dr Rengarajan as well as his email renewing his application to postpone this hearing from 25 November 2019 addressed to the ‘hearing committee’. It also had regard to the oral submissions of the GMC.

14. The Tribunal considered the history of Dr Rengarajan’s engagement with the GMC in reaching its determination on whether to grant his application to adjourn these proceedings. The Tribunal had regard to the letter sent by NHS England to the GMC, dated 15 December 2017 which detailed Dr Rengarajan’s revalidation and appraisal history and his failure to engage with the process since 2015. Further, the letter sent by NHS England also documents their unsuccessful attempts to contact and engage with Dr Rengarajan through his Responsible Officer. The Tribunal concluded that Dr Rengarajan’s history of non-engagement with both NHS England and the GMC since June 2019 until the 19 November 2019 was relevant to its consideration of this application.

15. The Tribunal noted that Dr Rengarajan provided multiple reasons for his request to adjourn these proceedings, including: his wish to seek legal representation; his lack of financial means to instruct a lawyer or travel to the UK for this hearing; his inability to leave his family medicine practice in Saskatchewan because cover cannot be obtained and because he cannot afford to close his practice for the duration of this hearing; and his continuing compliance with the penalties imposed by the CPSS which include financial commitments. The Tribunal also noted that the option of attending this hearing by video link, which would minimise any travel costs, was declined by Dr Rengarajan who said he would not be comfortable to attend the hearing without representation.

16. The Tribunal was concerned that the issues Dr Rengarajan outlined about why he would be unable to attend this hearing commencing today did not appear to be easily remedied. Particularly, the Tribunal was concerned that Dr Rengarajan indicated that there is no provision where he lives for his medical practice to be covered while he is away from it and therefore, the Tribunal was unclear as to how this issue could be resolved should hearing be postponed to a future date. The Tribunal also noted that as Dr Rengarajan has until 31 March 2020 to finish repaying the $32,901.71 to the CPSS, Dr Rengarajan’s financial commitments are also unlikely to change in the foreseeable future, which he advised is preventing him seeking legal representation. The Tribunal had little confidence that any of the issues set out
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by Dr Rengarajan regarding his inability to participate in these proceedings would be resolved by a delay.

17. The Tribunal considered how long Dr Rengarajan had been aware of the investigation into his practice by the GMC and the notice he had been given regarding these proceedings. The Tribunal concluded that Dr Rengarajan has been given ample notice of these proceedings and has had sufficient time to prepare. The Tribunal had regard to Dr Rengarajan’s lack of engagement with these proceedings until 19 November 2019 as well as the lack of evidence provided to show his efforts in seeking legal representation and obtaining cover for his medical practice. The Tribunal also did not consider that it was relevant to the adjournment request that Dr Rengarajan had not yet completed the courses that he was directed to attend by the CPSS or had not yet paid in the full the costs of those proceedings, as it was not necessary for those matters to be completed prior to these present proceedings.

18. Taking all of its considerations into account, the Tribunal balanced the interests of Dr Rengarajan with the interests of the GMC and the public. It concluded that it was in the public interest for these matters to be dealt with expeditiously. Therefore, the Tribunal determined to refuse Dr Rengarajan’s application to adjourn this hearing.
Service and Application on Proceeding in Absence

Service of Notice of the Hearing

1. Dr Rengarajan is neither present nor represented at this hearing.

2. Ms Barbour, Counsel, on behalf of the GMC, provided the Tribunal with documents regarding service of these proceedings on Dr Rengarajan. This included a copy of the GMC Notice of Allegation (‘NoA’) letter dated 14 October 2019, sent to the email address Dr Rengarajan provided to the GMC on 11 June 2018. Ms Barbour drew the Tribunal’s attention to the service bundle provided by the GMC which showed that Dr Rengarajan was emailed the NoA on 14 October 2019. She commented that the NoA was only sent to Dr Rengarajan’s postal address on 14 November 2019 out of an abundance of caution despite the GMC already being aware that Dr Rengarajan had not kept his registered address with the GMC up to date. Royal Mail Track and Trace documentation confirmed that the NoA letter was refused and delivered back to sender on 20 November 2019.

3. Ms Barbour referred the Tribunal to Rule 15 of the Rules, which state that service is to be deemed effective when considering notifications sent by post only. Ms Barbour requested that the Tribunal consider the provision in Rule 15(2) of the Rules to permit the GMC to have given less than 28 days notice of the hearing to have been in the public interest. She submitted that the GMC had been pragmatic and practical in contacting Dr Rengarajan by email as this was the form of correspondence they believed would reach him.

4. The Tribunal was given a copy of the Medical Practitioners Tribunal Service (MPTS) Notice of Hearing letter (‘NoH’), dated 24 October 2019, which was sent by email and posted to Dr Rengarajan’s registered address in Leicester by Royal Mail Special Delivery on the same day. Royal Mail Track and Trace documentation confirmed that the Notice of Hearing letter was delivered back to sender on 28 October 2019.

5. The Tribunal was also provided with Dr Rengarajan’s email correspondence regarding these proceedings with both the MPTS Case Management Team and the GMC beginning on 19 November 2019. These emails included confirmation from Dr Rengarajan that he is unable to leave his medical practice in Canada to attend these proceedings.

6. The Tribunal had regard to the service bundle provided by the GMC, as well as Ms Barbour’s submissions. Having considered all of the evidence before it, particularly noting that Dr Rengarajan had used the email address registered with the GMC to which the NoA and NoH were sent to contact the MPTS Case Manager. It also noted that Dr Rengarajan had not kept his registered address and contact details up to date in accordance with Section 30(5) of the Medical Act 1983 (as
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amended) and that the GMC and MPTS can only serve notice on the basis of the information provided by Dr Rengarajan.

7. The Tribunal was satisfied that Dr Rengarajan had received notice of the Allegation and the Hearing by methods other than post in advance of the 28 day notice period. It accepted that under Rule 15(2) the NoA being sent by post within 11 days of this hearing commencing should be considered to have been in the public interest for the NoA to be served by post in a lesser notice period. It further noted that the NoH sent by MPTS was issued in advance of the 28 day notice period and that service had been effected in accordance with the Rules. The Tribunal was therefore satisfied that notice of the hearing had been served in accordance with Rules 15(2) and 40 of the General Medical Council (Fitness to Practise) Rules 2004 (as amended) (‘the Rules’) and paragraph 8 of Schedule 4 to the Medical Act 1983 (as amended).

Proceeding in Dr Rengarajan’s absence

8. The Tribunal went on to consider whether it would be appropriate to proceed with this hearing in Dr Rengarajan’s absence pursuant to Rule 31 of the Rules. The Tribunal was conscious that the discretion to proceed in the absence of a doctor should be exercised with appropriate care and caution, balancing the interests of the doctor with the wider public interest.

9. Ms Barbour invited the Tribunal to proceed in Dr Rengarajan’s absence. Ms Barbour submitted that Dr Rengarajan is aware of these proceedings. Ms Barbour invited the Tribunal to consider Dr Rengarajan’s application to adjourn in its deliberations on proceeding in Dr Rengarajan’s absence and adopted her previous submissions on service which were part of her submissions regarding GMC opposition to postponing the hearing. Ms Barbour submitted that considering the overarching objective, given the written documentation in this case, it would be in the public interest for the matter to be dealt with expeditiously and to proceed in Dr Rengarajan’s’ absence.

10. The Tribunal had regard to all of the evidence provided by both parties as well as their written and oral submissions. The Tribunal was mindful to consider the overall fairness of the proceedings in its deliberations.

11. The Tribunal had regard to its previous determination regarding Dr Rengarajan’s application to adjourn this hearing. This application was refused by the Tribunal considering Dr Rengarajan’s history of non-engagement and his late application to postpone the hearing which was received by the MPTS Case Manager on 19 November 2019. The Tribunal noted that Dr Rengarajan wrote that the hearing should be postponed due to his current lack of legal representation, his inability to acquire such representation because of his other financial commitments to the CPSS and because he is unable to close his medical practice to attend this hearing. The Tribunal concluded in its previous determination that the issues provided by Dr Rengarajan as grounds to delay this hearing did not appear to be
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easily remedied and it was not confident that a delay would allow such issues to be resolved.

12. The Tribunal was satisfied that Dr Rengarajan’s decision not to attend this hearing was voluntary, particularly considering his decision to decline the option of attending by video link. Considering the evidence before it alongside its previous determination to refuse Dr Rengarajan’s application to postpone this hearing and having deemed service to have been effected, the Tribunal concluded that it would not be in the public interest to delay these proceedings.

13. The Tribunal was satisfied to proceed with this hearing today and that all reasonable efforts had been made to serve Dr Rengarajan with notice of the hearing in accordance with Rule 31, therefore, the Tribunal determined to proceed in Dr Rengarajan’s absence.