Date: 16 September 2019

Medical Practitioner’s name: Dr Ganeshmoorthi ARUNACHALAM

GMC reference number: 5182537

Primary medical qualification: MB BS 1993 Tamil Nadu Dr MGR Med University

Type of case Outcome on impairment
Misconduct Not impaired

Summary of outcome
Order revoked

Tribunal/Legally Qualified Chair:

| Legally Qualified Chair: | Mr Stephen Killen |

Review on the Papers
This case was reviewed on the papers, with the agreement of both parties, by a Legally Qualified Chair.

Determination

Background and history
1. I have noted the background to this case, which was first considered by a Medical Practitioners Tribunal in May 2017 (‘the 2017 Tribunal’). Dr Arunachalam was both present and represented throughout the course of that hearing.
2. I do not intend to rehearse the full history of the matter, which has been outlined in detail by the 2017 Tribunal in its determination, by the High Court in its judgment in Arunachalam v General Medical Council [2018] EWHC 758 and by the Tribunal which reviewed the case in January 2019 ('the January 2019 Tribunal'). I adopt the background as outlined by the January 2019 Tribunal, as follows:

"Background"

1. Dr Arunachalam worked as a Trust Grade doctor in General Medicine at Guy’s and St Thomas’ NHS Foundation Trust (‘the Trust’) until September 2014; from September 2014 onwards he worked as a Locum Registrar at the Queen Elizabeth Hospital in Woolwich (‘QEH’), part of the Lewisham and Greenwich NHS Foundation Trust.

2. Dr Arunachalam was referred to the GMC following allegations of sexually inappropriate behaviour made against him by two junior female colleagues, Dr A and Dr B. At the time of the events in question, Dr A was a CT1 grade doctor undertaking a six month rotational placement in acute medicine at the Trust, and Dr B was a CT1 grade doctor undertaking a six month rotational placement at QEH.

3. Dr Arunachalam’s case was first heard by a Medical Practitioners Tribunal in May 2017 (‘the 2017 Tribunal’); at that hearing Dr Arunachalam admitted certain paragraphs and sub-paragraphs of the Allegation, but denied some of the Allegation made by Dr B, and denied that any of his conduct towards either Dr A or Dr B was sexually motivated.
4. In respect of Dr A, the 2017 Tribunal found that Dr Arunachalam displayed ‘harassing’ behaviour, in that he was persistent in sending her ‘unwelcome, unnecessary, personal and intimate messages’ via text message and WhatsApp to her personal mobile phone, and via email to her personal email address. It accepted that Dr Arunachalam’s attention was both unwelcome and intrusive, and it found that his actions towards Dr A were sexually motivated.

5. In respect of Dr B, the 2017 Tribunal found that – on the first and only occasion they worked together – Dr Arunachalam embarked on a course of ‘uninvited physical contact’ by repeatedly touching and tickling Dr B, pulling her towards him, kissing her on the head, and hugging her. It further found that, following this work shift, Dr Arunachalam contacted Dr B on her personal mobile telephone attempting to find out her address, and inviting her out for coffee or dinner. The 2017 Tribunal accepted that Dr Arunachalam’s attention was unwelcome and intrusive, and it found that his actions towards Dr B were also sexually motivated.

6. The 2017 Tribunal noted that Dr Arunachalam was an experienced Registrar at the time of the events in question, and that both Dr A and Dr B were junior trainees. The 2017 Tribunal was of the view that Dr Arunachalam had taken advantage of this power balance; it found that, as well as being an abuse of his position, his behaviour towards Dr A and Dr B created a hostile working environment which could have negatively impacted on patient care. Further, the 2017 Tribunal was concerned that, when confronted with the allegations made by Dr A and Dr B, Dr Arunachalam responded by making unfounded detrimental allegations regarding their clinical performance and behaviour.
7. The 2017 Tribunal was of the view that Dr Arunachalam had very limited insight into his behaviour. At his initial hearing Dr Arunachalam failed to accept that his behaviour was sexually motivated, and instead attempted to deflect blame onto Dr A and Dr B themselves; he accused Dr A of being ‘flirtatious’ and ‘infatuated’ with him, and accused Dr B of making up the Allegation entirely. Given this lack of insight, combined with the seriousness of his behaviour, and the lack of evidence regarding remediation, the 2017 Tribunal could not be satisfied that Dr Arunachalam would not repeat his behaviour in future. In reaching this conclusion, it bore in mind that Dr Arunachalam’s behaviour towards Dr B occurred whilst he was already under investigation for his behaviour towards Dr A.

8. The 2017 Tribunal found that Dr Arunachalam’s actions towards both Dr A and Dr B breached principles set out in Good Medical Practice (GMP) and amounted – both individually and cumulatively - to serious misconduct. The 2017 Tribunal determined that a finding of impaired fitness to practise was necessary in order to uphold proper professional standards and in order to maintain public confidence in the medical profession, and it therefore found Dr Arunachalam’s fitness to practise to be impaired by reason of his misconduct.

9. The 2017 Tribunal determined to erase Dr Arunachalam’s name from the Medical Register; both the GMC and Dr Arunachalam’s representatives had submitted that an order of suspension would be the appropriate and proportionate response. Dr Arunachalam subsequently appealed this decision and – on 8 February 2018 – the High Court quashed the sanction of erasure and substituted a sanction of suspension for 12 months with no review.
10. At the appeal hearing, Mr Justice Kerr found that the 2017 Tribunal did not properly evaluate the factors ‘weighing in the balance in favour of suspension and against erasure’. These mitigating factors (as identified by the 2017 Tribunal), were as follows:

- Aside from his actions towards Dr A and Dr B, Dr Arunachalam was otherwise a person of previous good character;
- In the two and a half years that had elapsed since the events in question there had been no further complaints made against Dr Arunachalam;
- There were no concerns about his clinical competencies;
- He had provided the 2017 Tribunal with a selection of testimonial references which both pre- and post-dated the events in question, and which commented on his character and clinical abilities.

11. Revisiting the sanction of erasure, Mr Justice Kerr stated:

'In our system of justice, the law jealously guards the rights of women workers to protection against predatory, ignorant men who feel entitled to prey on female colleagues in the way that this doctor did; but our system is not so inflexible that every transgression of this kind must be met with erasure. This appellant's conduct was not at the very bottom of the scale; it was very serious, but it was not anywhere near the top of that scale. The mitigation, for what it was worth, was there. No patient's safety was endangered. The appellant was of previous good character. He had some insight into his offending behaviour, although it was given slight weight and came late. He had a long record of unblemished service, which included about two and a half years after the second incident without any further offending. In the circumstances, I am clear that the decision was flawed and
cannot stand. I have the power to remit the matter to the same or a differently constituted tribunal or to substitute a different sanction. In the unusual circumstances of this case, I am persuaded after reflection to substitute the sanction of suspension which both parties plainly considered appropriate when the case was argued before the [2017] Tribunal.’

12. Dr Arunachalam was therefore suspended for a period of 12 months, effective as of 8 February 2018. A review hearing was subsequently requested by a GMC Assistant Registrar.”

3. Dr Arunachalam was present and represented during the review hearing before the January 2019 Tribunal. He gave oral evidence and produced a log of continuing professional development (‘CPD’) courses and conferences attended during 2018; a reflective summary focusing on that CPD and those conferences; and an updated reflective statement.

4. In reaching its decision on impairment, the January 2019 Tribunal found Dr Arunachalam to be credible in his evidence and it considered that he gave thoughtful and authentic answers which demonstrated insight which was both genuine and sincere. The January 2019 Tribunal noted that Dr Arunachalam had taken steps to remediate which went beyond simply attending courses. It considered that Dr Arunachalam fully understood the impact of his actions and it noted his apologies to Dr A and Dr B for his conduct. The January 2019 Tribunal noted that Dr Arunachalam gave evidence of difficulties in his personal life at the time of the events in question and the coping strategies he intended to use going forward. The January 2019 Tribunal considered that these coping strategies were positive but that greater development and testing was needed to ensure confidence that there would not be repetition of Dr Arunachalam’s previous misconduct. It noted that he had, at that time, been out of medical
practise for a period of 20 months and that Dr Arunachalam’s ability to deal with any stress arising from resumption of practise had not been tested. The January 2019 Tribunal determined that Dr Arunachalam’s fitness to practise remained impaired by reason of misconduct and imposed an order of conditions for a period of 9 months. It was satisfied that this period of conditional registration would allow Dr Arunachalam to return to clinical practice and to further develop his insight while keeping his skills and knowledge up-to-date.

5. The January 2019 Tribunal did not direct a review hearing, however an Assistant Registrar within the General Medical Council (‘the GMC’) subsequently directed that such a hearing would take place.

This Review

6. Dr Arunachalam and the GMC have agreed that this review should be considered on the papers in accordance with Rule 21B of the General Medical Council (Fitness to Practise) Rules 2004.

7. Accordingly, I have considered all of the evidence presented to me and the agreed submissions made on behalf of Dr Arunachalam and the GMC. In those submissions, the parties have agreed that Dr Arunachalam’s fitness to practise is no longer impaired by reason of his misconduct and that the current order of conditions which is imposed upon Dr Arunachalam’s registration should be revoked with immediate effect.

8. In coming to my decision, I have taken into account that, since the hearing before the January 2019 Tribunal, Dr Arunachalam commenced work in March 2019 at the Princess Alexandra Hospital NHS Trust as a locum, initially for a period of eight weeks but this has been extended until December 2019. I have noted the contents of an email from Dr A – Dr Arunachalam’s Clinical Supervisor – in which the following comment and feedback is given:
“...Dr Arunachalam has been working with me on Lister ward since the 11th March 2019. The patients on the ward are predominantly care of the elderly with multiple comorbidities and complexity. Despite previously training in acute medicine and clinical pharmacology Dr Arunachalam has settled down very well in his new environment. He is knowledgeable and able to safely carry ward rounds with minimal supervision. He is also very keen to update himself on unfamiliar topics such as delirium. His acute medical knowledge is excellent and he can safely and efficiently manage a ward consisting of 28 patients without any difficulty. He is punctual, proactive, has excellent leadership skills. His organisation skills are exceptional and he can get the best out of a multidisciplinary team. This was surprising given the lack of training in Care of the Elderly and time spent away from medicine. He has always sought supervision when carrying out practical procedures such as Lumbar punctures.

One of Dr Arunachalam’s best attributes is his level of enthusiasm. He shows plenty of initiative and readily engages with patients and their relatives. In fact he was instrumental in successfully discharging a lady who had spent over 70 days in hospital. He is also very good at supervising junior doctors who have given the feedback enclosed in the above MSF. The nurses and all other members of the multidisciplinary team value his presence and hard work.

It is still early days but I have no concerns regarding the above doctor’s performance and work ethic...”

9. I have noted the contents of the following:
   - 11 multisource feedback forms from colleagues in which consistently positive responses were given;
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- 5 Direct Observation of Procedural Skills reports in which consistently positive results were obtained;
- A workplace report dated 4 June 2019 which was very complimentary and which contained no issues of concern;
- 12 patient feedback forms in which consistently positive responses were given; and
- 5 CPD certificates for relevant courses during 2019.

10. In addition, I have noted the contents of Dr Arunachalam’s reflective statement dated 16 July 2019, in which he comments on his return to practise and the differences in his approach to patients and colleagues as a result of the lessons ‘I learnt the hard way and my sincere reflections in solitude over the period off work in the last couple of years’. In that statement, Dr Arunachalam concludes his comments by stating that:

“I feel I am incredibly lucky to have been given a second chance to prove that I am not the person who had committed serious blunders in my life earlier. I am grateful for this opportunity to practice medicine once again. This is not because of the fact I was trained to be a doctor but there is absolutely nothing else in my life which will give me the happiness I experience helping others and making a difference to their lives. I could assure that mistakes will never be repeated again. My take on life and approach to people I meet has changed for good. I have this once in a lifetime opportunity to leave a lasting impression in medicine and carve out a legacy for myself and my family.

Finally, there is one thing that is certain: I have learnt life changing lessons from my mistakes in past and the best is yet to come in the future.”
11. I have noted that, in the agreed submission, the GMC has confirmed that it is satisfied that the documentation provided by Dr Arunachalam evidences that he has remediated his misconduct, that he is working in clinical practice successfully without further concerns and that his fitness to practise is no longer considered impaired. As such, the GMC is content that the current order of conditional registration upon Dr Arunachalam’s registration is revoked.

12. Taking the available evidence (as briefly outlined in this determination), together with the agreed submissions, into account, I agree that Dr Arunachalam’s fitness to practise is no longer impaired by reason of his misconduct. I am satisfied that Dr Arunachalam has demonstrated full insight into his misconduct and the seriousness of his actions; that he has not repeated that previous misconduct prior to or since his resumption of clinical practice; that he has maintained his skills and knowledge through relevant CPD; and that patients will not be placed at risk by the resumption of unconditional registration. There is no evidence in the papers which suggests otherwise.

13. I have borne in mind the statutory overarching objective which is 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 the medical profession.

14. In light of this decision, I direct that Dr Arunachalam’s current period of conditional registration be revoked with immediate effect.

15. Notification of this decision will be served on Dr Arunachalam in accordance with the Medical Act 1983, as amended.
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**Confirmed**
**Date** 16 September 2019

Mr Stephen Killen, Chair