Record of Determinations – Medical Practitioners Tribunal

PUBLIC RECORD

Medical Practitioner’s name: Dr Pandeshwar GURURAJ
GMC reference number: 4684583
Primary medical qualification: MB BS 1986 Mangalore University
Type of case: New - Misconduct
Outcome on impairment: Impaired

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

Tribunal:
Legally Qualified Chair | Mrs Nessa Sharkett
Lay Tribunal Member: | Mr Colin Sturgeon
Medical Tribunal Member: | Dr Ann Smalldridge

Tribunal Clerk: | Ms Angela Carney

Attendance and Representation:
Medical Practitioner: | Present and represented
Medical Practitioner’s Representative: | Mr Alan Jenkins, Counsel, instructed by BTO Solicitors
GMC Representative: | Ms Sarah Barlow, Counsel

Attendance of Press / Public
In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held in public.

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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 and Impairment - 24/09/2019

Background

1. Dr Gururaj qualified as a doctor in 1986 in India. Dr Gururaj first started working in the United Kingdom in January 1998. From 2005 to date Dr Gururaj has been employed as a Consultant Anaesthetist at Grampian NHS, where he continues to work. As well as working for Grampian NHS Dr Gururaj commenced private practice at the Albyn Hospital, part of the BMI Healthcare Group (the Hospital) in 2006.

2. The allegation that has led to Dr Gururaj’s hearing can be summarised as, between 21 November 2015 and 15 February 2018, on approximately 23 occasions, Dr Gururaj added his name as the named anaesthetist on operation theatre charge sheets at BMI Healthcare Albyn Hospital. It is alleged that Dr Gururaj knew that in adding his name to the theatre charge sheets he would receive financial remuneration to which he was not entitled. It is alleged that his actions were dishonest.

3. The initial concerns were raised by Ms A, Senior Theatre Practitioner, at the Hospital. Ms A noticed Dr Gururaj writing on charge sheets in theatre three. Ms A stated that she knew that Dr Gururaj had been working in another theatre that day and had no reason to be in theatre three. She also stated that she knew there were no cases in theatre three that day that required an anaesthetist. She approached Dr Gururaj to ask him what he was doing, he replied that ‘he was sending the charge sheets to recovery’. Ms A was aware that it was the nurse’s job to attend to this paperwork and that under normal circumstances an anaesthetist would have no need to write on them. Ms A did not pursue the matter further with Dr Gururaj at the time but a little while later went to recovery to look at the charge sheets. It was at this time that she noted Dr Gururaj’s name written on the charge sheet at the top of the pile. She was aware that an anaesthetist had not been required for that procedure and she reported the matter to the Lead Practitioner. As a result a meeting was held on 16 February 2018, where following some admission on the part of Dr Gururaj, his practising privileges were suspended. A BMI Healthcare group audit team was commissioned to carry out an independent investigation of charge sheets on which Dr Gururaj’s name appeared covering the period between 2015 and 2018. Following the audit team report in April 2018 a meeting was held on 18 May 2018 and Dr Gururaj was referred to the GMC.

The Outcome of Applications Made during the Facts Stage

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4. On Friday 20 September 2019 further disclosure and a written witness statement was received from Dr Gururaj. This led to an application by the GMC, made pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended (‘the Rules’), to amend the Allegation. This application was not opposed by Mr Jenkins. The Tribunal determined that it was in the interests of justice and fairness to amend the Allegation and reduce the number of occasions Dr Gururaj was alleged to have added his name, as the named anaesthetist on operation theatre charge sheets, from 54 to 23.

The Admitted Facts

1. Between 2 April 2015 21 November 2015 and 15 February 2018 on approximately 54 23 occasions you added your name or caused your name to be added, as the named anaesthetist on operation theatre charge sheets, as set out in Schedule 1.
Admitted and Found Proved

2. You knew:
   a. your actions at paragraph 1 were untrue as you did not provide the anaesthetic services to the operations; Admitted and Found Proved
   b. that in adding your name to the theatre charge sheet/s you would receive financial remuneration for which you were not entitled. Admitted and Found Proved

3. Your actions as set out in paragraph 1 were dishonest by reason of paragraph 2. Admitted and Found Proved

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

Factual Witness Evidence

6. The Tribunal received evidence on behalf of the GMC from the following witnesses:

   • Mr B, Executive Director, Albyn Hospital, in person
The Tribunal also received evidence on behalf of the GMC in the form of witness statements from the following witnesses who were not called to give oral evidence:

- Ms C, Lead Theatre Practitioner, Albyn Hospital
- Ms D, Clinical Services Manager for Theatre, BMI Healthcare
- Ms E, Head of Group Audit, BMI Healthcare
- Ms A, Senior Theatre Practitioner, Albyn Hospital
- Mr F, Group Internal Auditor, BMI Healthcare

Dr Gururaj provided his own witness statement dated 20 September 2019 but did not give oral evidence at this stage of the hearing.

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

- Email from Dr Gururaj to GMC dated 14 June 2018
- BMI Healthcare File note dated 16 February 2018 timed 09:45
- BMI Healthcare File note dated 16 February 2018 timed 14:45
- BMI Healthcare File note dated 18 May 2018 timed 13:45
- Letter from BMI Healthcare to Dr Gururaj regarding Suspension of Practising Privileges dated 16 February 2018
- BMI Healthcare Internal Audit report dated April 2018
- Theatre Charge Sheets
- Table of findings by Mr F
- Dr Gururaj’s Curriculum Vitae
- Bupa Schedule of Procedures 1999 -2012
- Email dated 1 October 2018 from Dr Gururaj and BMI Healthcare regarding repayment to Albyn Hospital

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 Gururaj’s fitness to practise is impaired by reason of misconduct.

On behalf of the GMC, Ms Barlow, referred the Tribunal to the over-arching objective.
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‘(a) to protect, promote and maintain the health, safety and well-being of the public,

(b) to promote and maintain public confidence in the medical profession, and

(c) to promote and maintain proper professional standards and conduct for members of that profession.’

She submitted that limbs two and three are engaged in this case.

12. She reminded the Tribunal that Dr Gururaj committed multiple incidences of dishonesty over a two-year period, in charging for work that he had not done. Ms Barlow referred the Tribunal to paragraphs 65 and 71 of Good Medical Practice (2013), which states:

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

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.’

13. Ms Barlow submitted that this was conduct which was sufficiently serious to amount to misconduct and which calls Dr Gururaj’s fitness to practice into question. She stated that it was protracted dishonesty which continued until he was ‘caught out’. Ms Barlow submitted that a finding of misconduct is necessary to promote and maintain public confidence in the medical profession and to promote and maintain proper standards and conduct for those within the profession.

14. In relation to remediation Ms Barlow acknowledged that Dr Gururaj offered to repay the monies and noted the courses Dr Gururaj has attended. However, she stated that Dr Gururaj has given no real reason for the dishonesty, has little insight and has not remediated his misconduct. She submitted that, given the serious nature of the misconduct, a finding of impairment is necessary to protect the public, to maintain appropriate standards of behaviour and to maintain public confidence in the profession.

Mr Jenkins’ Submission

15. On behalf of Dr Gururaj, Mr Jenkins told the Tribunal that Dr Gururaj conceded misconduct and impairment, but accepted that these are matters for the Tribunal’s judgement. Mr Jenkins stated that late payment from insurance companies was not justification for Dr Gururaj making false claims. He reminded the Tribunal that
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Dr Gururaj has apologised for his dishonest conduct and offered to repay the monies but he accepted that in doing so this did not amount to remediation. He further stated that the courses Dr Gururaj has undertaken do not amount to remediation at this time. Mr Jenkins referred the Tribunal to CHRE v NMC & Paula Grant [2011] EWHC 927 (Admin) and Dame Janet Smith’s fifth Shipman Report, which states:

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

a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or

b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or

c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

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

16. Mr Jenkins referred the Tribunal to the over-arching objectives and submitted that no patients were put at risk but accepted that limbs two and three were engaged.

The Relevant Legal Principles

17. 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.

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

19. The Tribunal must determine whether Dr Gururaj’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.

The Tribunal’s Determination on Impairment

Misconduct
20. The Tribunal found that Dr Gururaj, on 23 occasions, over a period of in excess of two years, added his name as the anaesthetist to theatre charge sheets when he knew he had not been present and in doing so received financial remuneration that he knew he was not entitled to. The Tribunal considered Dr Gururaj’s conduct was dishonest and amounted to theft in the course of his professional duties.

21. The Tribunal heard that on two occasions the theatre charge sheets related to patients who were paying for their own treatment as opposed to being funded by insurers. The Tribunal found that Dr Gururaj was indiscriminate about who might suffer loss as a result of the money he falsely claimed. In submissions Mr Jenkins accepted that whilst the charge sheets may not make clear whether a particular procedure is being carried out on either an insured or privately paying patient the actions of Dr Gururaj, by their very nature, exposed him to the risk that his actions had a direct financial impact on individual patients. The Tribunal considered that, had Dr Gururaj not been caught, he may have continued to act as he did, especially as the frequency at which he made false claims had increased significantly in the twelve months before his actions were discovered.

22. The Tribunal was satisfied that Dr Gururaj breached the principles in paragraphs 65 and 71 of Good Medical Practice (2013).

23. The Tribunal noted that whilst patient safety had not been directly compromised, patients, the public and fellow professionals would find Dr Gururaj’s dishonest conduct deplorable. There could be no doubt that both the public and the profession would have an expectation of honesty from a doctor. The Tribunal concluded that Dr Gururaj’s conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct.

Impairment

24. The Tribunal having found that the facts found proved amounted to misconduct, went on to consider whether, as a result of that misconduct, Dr Gururaj’s fitness to practise is currently impaired.

25. The Tribunal carefully considered the case of Grant. The Tribunal was satisfied that Dr Gururaj’s past misconduct brought the medical profession into disrepute. By failing to be honest and trustworthy Dr Gururaj has breached a fundamental tenet of the medical profession. Accordingly, the Tribunal was satisfied that limbs (b), (c) and (d) of Paragraph 76 in Grant are engaged in this case.

26. The Tribunal has borne in mind the public interest in this case and that the public expects doctors to be honest. The Tribunal has also borne in mind its statutory overarching objective.
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27. The Tribunal noted that the issues raised by this case focus on the public interest and public confidence in the medical profession, including the need to uphold and re-affirm clear standards of professional conduct so as to maintain public confidence in the practitioner and the profession.

28. The Tribunal considered how Dr Gururaj had initially responded to the allegations against him and whether there had been any change in his acceptance since that time.

29. The Tribunal noted at a meeting with BMI Healthcare on 16 February 2018, Dr Gururaj stated that 'he was sorry that this had happened and he would not do it again. He explained that Dr G asked him to put his name down even though no sedation was given, just to show he was in theatre’. He also said ‘it’s a slip up... it had only been the last few months.’

30. The Tribunal noted that at a later meeting with BMI Healthcare on 18 May 2018, Dr Gururaj ‘apologised and said it was an error of judgement on his part’.

31. By 14 June 2018, in an email to the GMC, Dr Gururaj stated ‘Yes the allegation is true. Yes, I am seriously ashamed and disappointed, I feel at no point anybody should be dishonest especially a medical professional. I have apologised and offered to pay back the sum owed to Albyn Hospital’.

32. In his witness statement dated 20 September 2019 Dr Gururaj stated ‘I fully admit that over a period of time I acted badly and made serious errors of judgement in acting dishonestly’.

33. The Tribunal has taken account of Dr Gururaj’s apology, offer and attempt to repay the monies and the courses he has attended. It noted that there is no documentary evidence in relation to these courses, whether there was any assessment of his learning from these courses and how he may have applied his learning.

34. The Tribunal noted that whilst Dr Gururaj has taken steps to remediate he has not yet developed full insight into his dishonest conduct. The Tribunal cannot be satisfied that there is not a significant risk of repetition should he be placed in the same or similar circumstances again.

35. In addition for the need for further insight and remediation the Tribunal also considered that were it not to make a finding of impairment in the particular circumstances of this case, the need to uphold proper professional standards and public confidence in the medical profession and its regulator would be undermined.

36. The Tribunal has therefore determined that Dr Gururaj’s fitness to practice is impaired by reason of misconduct.
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Determination on Sanction - 26/09/2019

1. At the impairment stage the Tribunal did not have the benefit of the further documentary and oral evidence received at this stage. Having now had the benefit of this documentary evidence and hearing from Dr Gururaj the Tribunal is of the view that Dr Gururaj’s insight into his misconduct is more established than it found at the impairment stage. However, the further information received does not affect the Tribunal’s determination that Dr Gururaj’s fitness to practise is impaired.

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

3. The Tribunal has already given a detailed determination on impairment and it has taken those matters into account during its deliberations on sanction.

The Evidence

4. The Tribunal received further evidence on behalf of the GMC including:

   - A statement from Dr Gururaj’s Responsible Office Professor H, dated 8 August 2019

5. The Tribunal received further documentary evidence on behalf of Dr Gururaj including:

   - Testimonial dated 17 September 2019 from Dr I, Consultant Anaesthetist & Unit Clinical Supervisor, NHS Grampian
   - Testimonial dated 13 September 2019 from Dr J, Consultant Anaesthetist, Aberdeen Royal Infirmary
   - Testimonial dated 16 September 2019 from Mr K, ENT Consultant, Aberdeen Royal Infirmary
   - Testimonial dated 10 September 2019 from Mr L, Consultant Plastic Surgeon
   - Testimonial dated 13 September 2019 from Mr M, Consultant Orthopaedic Surgeon, Aberdeen Royal Infirmary
   - Testimonial dated 14 September 2019 from Mr N, Consultant Urological Surgeon, Aberdeen Royal Infirmary
   - Testimonial dated 10 September 2019 from Dr O, Consultant Gastroenterologist & Heptologist, Aberdeen Royal Infirmary
   - Testimonial dated 11 September 2019 from Dr P, Consultant Gastroenterologist, Aberdeen Royal Infirmary
   - Testimonial dated 17 September 2019 from Dr Q, Consultant Gastroenterologist, Aberdeen Royal Infirmary
   - Testimonial dated 12 September 2019 from Dr R, Consultant Physician & Gastroenterologist, Aberdeen Royal Infirmary
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- Testimonial dated 13 September 2019 from Ms S, Senior Charge Nurse, Aberdeen Royal Infirmary
- Testimonial dated 17 September 2019 from Professor T, Orthopaedic Trauma Unit, Aberdeen Royal Infirmary
- Testimonial dated 19 September 2019 from Mr U, Consultant Orthopaedic Surgeon, Aberdeen Royal Infirmary
- Testimonial dated 18 September 2019 from Mr V, Consultant Anaesthetist, Perth Royal Infirmary
- Testimonial dated 18 September 2019 from Professor W, Professor of Urological Surgery, University of Aberdeen
- Testimonial dated 20 September 2019 from Mr X, Consultant Anaesthetist, Aberdeen Royal Infirmary
- Testimonial dated 17 September 2019 from Dr Y, General Practitioner
- Testimonial dated 20 September 2019 from Miss Z, Consultant Oral & Maxillofacial Surgeon, Aberdeen Royal Infirmary
- Testimonial dated 14 September 2019 from Dr AA, Consultant Gastroenterologist, Aberdeen Royal Infirmary
- Testimonial dated 17 September 2019 from Mr BB, Consultant Oral & Maxillofacial Surgeon, Aberdeen Royal Infirmary
- Testimonial dated 20 September 2019 from Mr CC, Gastrointestinal Surgeon, Aberdeen Royal Infirmary
- Testimonial dated 20 September 2019 from Mr DD, Consultant General & Laparoscopic Colorectal Surgeon, Aberdeen Royal Infirmary
- Certificate of Educational Activity dated 16 May 2018
- Certificate Maintaining Professionalism dated 27 June 2019
- Certificate Open Disclosure and Duty of Candour Course dated 22 March 2018
- Certificate Maintaining Professional Ethics dated 30 July to 1 August 2018
- Multi Source Feedback Report dated 29 March 2019

6. Dr Gururaj gave oral evidence to the Tribunal which is a matter of record. It can be summarised as follows:

7. Dr Gururaj could not explain why he acted dishonestly. He said that he had been experiencing professional and personal pressures at the time. He also stated that he had felt disrespected and undervalued. He described how he had not been paid by BMI Healthcare and/or the health insurance companies for some of the anaesthetic procedures he had provided and that he had chased payment on a number of occasions without success. He told the Tribunal that when he was first confronted with his dishonesty he was horrified, anxious and scared and did not know what to say. Instead of admitting his actions straight away, he said it was a mistake. At subsequent meetings with BMI Healthcare he had apologised and offered to repay the money. He explained it was a shock for him to understand what he had done as it was not who he was.
8. He said that at the time he did not feel that adding his name to the theatre charge sheets was dishonest but now that he has reflected he knows it was totally dishonest. He said that he was not thinking straight and his mind was clouded because of the stress he was going through. In response to questions about how he thought stress might have influenced his actions, he was unable to provide an explanation. He accepts that his actions were stealing but that whatever he was going through, his mind decided that it was ok. He explained that at that point in time he did not question whether what he was doing was right or wrong. He said that now he fully accepts that he had acted deliberately and dishonestly.

9. He repeated, on a number of occasions, that what he did was dishonest and unacceptable. He said that he was very sorry for what he had done and was ashamed. He said that he has reflected on his misconduct and that he didn’t realise at the time that he was not coping well with what was going on. In July 2018 he attended a three-day professional boundaries course where he discussed his dishonesty with a psychologist. He identified his core values as honesty and transparency and acknowledged that he had not kept to his core values in carrying out his dishonesty.

10. He said that a year later he attended a one-day refresher course and described aspects of the course which covered, motivation, honesty, guilt, self-deception. He said that prior to attending the refresher course he had studied and gained a lot of knowledge about cognitive distortion and stress. He stated that he was still learning. When asked how he would avoid being under stress and placing himself in a similar situation in the future, he said that he has undertaken extensive reading on psychology and practises meditation related to mindfulness. He said that he now thinks about how he can resolve issues and that this experience had enlightened him and will be there for the rest of his life.

Submissions

11. On behalf of the GMC, Ms Barlow submitted that Dr Gururaj has committed a serious and persistent breach of the principles in Good Medical Practice. She stated that although the total value of monies taken was low, the GMC submit that this is of no relevance as the principles of GMP do not exclude low value. She submitted that whilst all testimonials speak to Dr Gururaj’s undoubted clinical skill, that is not relevant in this case. None of the testimonials speak to the underlying reasons of Dr Gururaj’s dishonesty and are therefore of limited value. In this case Dr Gururaj’s insight is limited. He has provided no real reason for his actions although he accepts that his dishonesty was deliberate and considered. She reminded the Tribunal of Dr Gururaj’s early offer to repay which should be balanced against him being ‘caught in the act’. She submitted that Dr Gururaj has been unclear as to how the stress he stated he was under at the time led to his dishonest behaviour. She submitted that it should not require a course to identify that stealing is wrong.
Ms Barlow reminded the Tribunal of paragraph 65 in the GMP which states:

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

Ms Barlow submitted that the only appropriate sanction in this case is one of erasure. She referred the Tribunal to the Sanctions Guidance (February 2018) (the SG), in particular paragraph 109, which states:

‘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.

c...

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’).

e...

f...

Ms Barlow reminded the Tribunal that there were 23 instances of dishonesty which took place over a significant period of time and that the dishonesty was persistent and escalating. Ms Barlow referred the Tribunal to paragraphs 120 to 128 in the SG and in particular, paragraphs 124 and 128, which state:

‘124. Although it may not result in direct harm to patients, dishonesty related to matters outside the doctor’s clinical responsibility (eg providing false statements or fraudulent claims for monies) is particularly serious. This is because it can undermine the trust the public place in the medical profession. Health authorities should be able to trust the integrity of doctors, and where a doctor undermines that trust there is a risk to public confidence in the profession. Evidence of clinical competence cannot mitigate serious and/or persistent dishonesty.

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

Mr Jenkins’ submissions
15. On behalf of Dr Gururaj, Mr Jenkins reminded the Tribunal that sanctions are not meant to punish doctors, but they may have a punitive effect. He stated that the Tribunal may consider Dr Gururaj has already been punished by the financial effect of having his private practice privileges removed.

16. Mr Jenkins submitted that the Tribunal’s decision is between suspension or erasure. He stated that it would not be appropriate to consider no action or conditions in this case.

17. Mr Jenkins submitted that Dr Gururaj has insight and has attempted to address and remediate his misconduct. Mr Jenkins submitted that that there must be an explanation for Dr Gururaj’s actions and given his income this cannot be greed. Mr Jenkins submitted that there must have been personal and professional factors which troubled him at the time and referred the Tribunal to the positive testimonials. He stated that being paid late or not being paid could never amount to justification of Dr Gururaj’s dishonesty but may go some way to explaining his actions. He also stated that Dr Gururaj’s feelings of being undervalued may also go some way to explain his actions.

18. Mr Jenkins submitted that whilst Dr Gururaj had said that his misconduct had only been happening for a few months when in fact it had gone on for much longer, he asked the Tribunal to consider that it is a reasonably common experience to misremember times and dates.

19. Mr Jenkins reminded the Tribunal that Dr Gururaj has made full admissions and attended courses to address his behaviour. He has also reflected on his actions and taken on board the discussion he had with a psychologist. He further reminded the Tribunal that Dr Gururaj offered to repay the monies at an early stage.

20. Mr Jenkins stated that Dr Gururaj has provided a high level of care for patients over many years and has provided teaching and mentoring to junior colleagues. He stated that no patients have been put at risk but that many patients have derived a great benefit over the years as a result of Dr Gururaj’s expertise as an anaesthetist. He reminded the Tribunal that there is a shortage of doctors and it should bear in mind the consequences for the local community and it may be patients and colleagues that suffer over a period of time.

21. Mr Jenkins acknowledged that proper standards and public confidence should be maintained but this should be balanced against the quality of Dr Gururaj’s clinical work. He submitted that the balance lies in allowing Dr Gururaj to continue in practice after a period of suspension.

**The Tribunal’s Approach**
22. The decision as to the appropriate sanction to impose, if any, 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. It has borne in mind that the purpose of sanctions is not to be punitive, but to protect patients and the wider public interest, although they may have a punitive effect.

23. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Gururaj’s interests with the public interest. The public interest includes, amongst other things, the protection of patients, the maintenance of public confidence in the profession, and the declaring and upholding of proper standards of conduct and behaviour.

**Aggravating and Mitigating circumstances**

24. The Tribunal bore in mind paragraph 24 of the SG when considering aggravating and mitigating factors, which states:

> '24. The tribunal needs to consider and balance any mitigating factors presented by the doctor against the central aim of sanctions (see paragraphs 14–16). The tribunal is less able to take mitigating factors into account when the concern is about patient safety, or is of a more serious nature, than if the concern is about public confidence in the profession.'

25. The Tribunal considered the following to be aggravating circumstances in this case:

- Failed to admit his dishonesty at the earliest opportunities and attempted to dismiss the same as ‘errors of judgements and silly mistakes’
- The protracted period over which the dishonest conduct took place
- 23 instances of dishonesty over a two-year period, 20 of which occurred in the twelve months before being discovered in February 2018
- The breach of trust of his employer and colleagues by the deliberate manner in which he carried out the misconduct

26. The Tribunal considered the following to be mitigating circumstances in this case:

- Dr Gururaj has made full admissions at the outset of this hearing and made his professional colleagues aware of his dishonest actions
- Dr Gururaj made a full apology and expressed shame and remorse
- Dr Gururaj made a timely offer to repay the monies
- Personal and professional pressure
- Dr Gururaj is highly regarded by his clinical colleagues for his clinical competence
- Dr Gururaj has developed further insight
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- Dr Gururaj has made efforts to prevent behaviour recurring
- Dr Gururaj is of previous good character

The Tribunal’s Determination on Sanction

No Action

27. In coming to its decision as to the appropriate sanction, if any, to impose in Dr Gururaj’s case, the Tribunal first considered whether to conclude the case by taking no action.

28. The Tribunal considered that there are no exceptional circumstances in which it might be justified in taking no action against Dr Gururaj’s registration. The Tribunal determined that in view of the serious nature of the Tribunal’s findings on impairment, it would be neither sufficient, proportionate nor in the public interest, to conclude this case by taking no action.

Conditions

29. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Gururaj’s registration. It has borne in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable.

30. The Tribunal is of the opinion that a period of conditional registration would not adequately reflect the serious nature of Dr Gururaj’s misconduct, nor could conditions be devised that would protect the public interest and maintain public confidence in the medical profession. The Tribunal has, therefore, determined that it would not be sufficient to direct the imposition of conditions on Dr Gururaj’s registration.

Suspension

31. The Tribunal took account of Paragraphs 92 and 97 of the SG, which state:

'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 (ie 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).

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

b...

c...

d.

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

f. No evidence of repetition of similar behaviour since incident.

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

32. The Tribunal noted that Dr Gururaj failed to admit his dishonest conduct at the earliest opportunity and may have continued this dishonesty had he not been caught. It noted that he attempted to minimise his dishonest behaviour as an ‘error in judgement and a silly mistake’. It also borne in mind that there were 23 deliberate acts of dishonesty in a period of just over two-years, 20 of which occurred in the twelve months before being discovered in February 2018.

33. The Tribunal took account of the manner in which Dr Gururaj carried out his misconduct whilst maintaining his professional practice. He went into theatre and deliberately added his name to the theatre charge sheets, knowing that he would receive payment to which he knew he was not entitled. The Tribunal was in no doubt that Dr Gururaj’s misconduct was a serious breach of Good Medical Practice.

34. The Tribunal considered the testimonial evidence which it noted had been provided by current colleagues and those who had known him for a considerable length of time. It was clear from these testimonials that Dr Gururaj has been open with colleagues about the nature of his misconduct. It noted that most colleagues were shocked when they were made aware of Dr Gururaj’s dishonest behaviour and considered it was ‘out of character’. Several testimonials stated that Dr Gururaj expressed remorse and that he felt that he had let his family, colleagues and the wider profession down. The Tribunal noted that all of the testimonials speak of his clinical competence and his team working.
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35. The Tribunal noted that none of the testimonials spoke of an explanation from Dr Gururaj about his dishonesty, save for Mr EE, who stated ‘Having spoken to Dr Gururaj, it would seem that there were numerous pressures at the time that meant he became overly focussed on his work and money’.

36. The Tribunal considered that the testimonials provided it with a wider picture of how Dr Gururaj accepted and acknowledged his dishonesty.

37. The Tribunal noted that Dr Gururaj has engaged in remediation courses and attended a refresher course, which resulted in a Personal Development Plan. Dr Gururaj told the Tribunal that he meditates every day and continues to reflect on his misconduct and how it may have occurred.

38. The Tribunal, having looked at the additional evidence provided at this stage, accepted that it demonstrated that Dr Gururaj now has a better basis to understand his misconduct. Dr Gururaj has apologised for his misconduct, made full admissions at the outset of the hearing and made a timely offer to repay the monies.

39. Whilst the Tribunal noted that Dr Gururaj offered professional and personal pressures as a mitigating factor, it reminded itself that it is less able to take mitigating factors into account when the concern is of a more serious nature.

40. It was obvious to the Tribunal from Dr Gururaj’s oral evidence that he has engaged in self-reflection and appears to be committed to continuing his learning and remediation. Dr Gururaj acknowledged and accepted that he remains on the journey of insight into his misconduct and has taken steps to prevent the behaviour recurring. The Tribunal considers that Dr Gururaj has developed a better understanding and gained insight into the fact that he must take personal responsibility for his own behaviour.

41. The Tribunal noted that there are no patient safety issues in this case and that Dr Gururaj is highly regarded by his clinical colleagues for his clinical competence. It noted that Dr Gururaj continues to work for NHS Grampian despite his disclosure of his dishonest conduct. The Tribunal found no evidence of repetition of similar behaviour since the misconduct and given Dr Gururaj has now demonstrated that he has developing insight and has taken some steps to remediate his misconduct. The Tribunal determined that there is not a significant risk of repetition.

42. The Tribunal considered that Dr Gururaj’s misconduct, could be considered fundamentally incompatible with continued registration. However, the Tribunal reminded itself that although matters of dishonesty were difficult to remediate it had accepted at the impairment stage that in these circumstance that this was possible. The Tribunal determined that Dr Gururaj has demonstrated a significant although not complete level of insight and is satisfied of his commitment to remediating his actions. In addition to this the Tribunal accepted that Dr Gururaj is a clinically competent doctor and complete removal from the medical register would not be in
Record of Determinations –
Medical Practitioners Tribunal

the public interest. Therefore, it determined that erasure was not appropriate or proportionate in this case.

43. Having determined to impose a sanction of suspension the Tribunal next considered an appropriate period of suspension. In the circumstances having had regard to the seriousness of the misconduct and all other relevant factors the Tribunal determined to suspend Dr Gururaj’s registration for a period of 12 months. The Tribunal considered that the maximum period of suspension would send a clear signal to Dr Gururaj, the profession and public about what is regarded as behaviour unbefitting a registered doctor, and would serve to promote and maintain public confidence in the medical profession and promote and maintain proper professional standards and conduct for the members of the profession.

Review

44. The Tribunal determined to direct a review of Dr Gururaj’s case. A review hearing will convene shortly before the end of the period of suspension, unless an early review is sought. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Gururaj to demonstrate how he has remediared his misconduct, it therefore may assist the reviewing Tribunal if Dr Gururaj provided:

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

45. Dr Gururaj will also be able to provide any other information that he considers will assist.

Determination on Immediate Order - 26/09/2019

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

Submissions
2. On behalf of the GMC, Ms Barlow submitted that an immediate order is necessary in the public interest and in light of the findings the Tribunal made at the impairment stage. Ms Barlow submitted that the interim order should be revoked.

3. On behalf of Dr Gururaj, Mr Jenkins submitted that an immediate order is not necessary. He stated that if an immediate order was imposed then Dr Gururaj would technically be suspended for a period of 13 months. He stated that Dr Gururaj is a good doctor and it would be the public and his colleagues that would suffer and there is a risk that he would become deskilled further.

The Tribunal’s Determination

4. The Tribunal considered Dr Gururaj’s misconduct to be at the high end of seriousness. The main purpose of the substantive order of suspension is not only to enable Dr Gururaj to gain insight and to remediate his misconduct, but to send a clear signal to Dr Gururaj, the profession and public about what is regarded as behaviour unbefitting of a registered doctor. This will serve to promote and maintain public confidence in the medical profession and promote and maintain proper professional standards and conduct for the members of the profession. In the Tribunal’s view to allow Dr Gururaj to return to unrestricted practice at this time would not uphold the over-arching objective.

5. This means that Dr Gururaj’s registration will be suspended from today. The substantive direction, as already announced, will take effect 28 days from today, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.

6. The interim order currently imposed on Dr Gururaj’s registration will be revoked when the immediate order takes effect.

Confirmed
Date 26 September 2019

Mrs Nessa Sharkett, Chair
### SCHEDULE 1- Date of charge sheet

1. 21 November 2015
2. 15 August 2016
3. 04 January 2017
4. 04 March 2017
5. 24 April 2017
6. 11 May 2017
7. 27 May 2017
8. 27 May 2017
9. 21 June 2017
10. 12 August 2017
11. 31 August 2017
12. 09 September 2017
13. 04 October 2017
14. 05 October 2017
15. 13 October 2017
16. 26 October 2017
17. 30 October 2017
18. 09 December 2017
19. 21 December 2017
20. 27 December 2017
21. 18 January 2018
22. 24 January 2018
23. 15 February 2018

1. 02 April 2015
2. 30 April 2015
3. 13 June 2015
4. 13 August 2015
5. 20 August 2015
6. 05 September 2015
7. 08 October 2015
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10. 02 March 2016
11. 28 April 2016
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