Date: 29/07/2019
Medical Practitioner’s name: Dr Sivaguru Salakianathan

GMC reference number: 4338332
Primary medical qualification: MB BS 1975 University of Colombo

Type of case: Outcome on impairment
Review - Misconduct
Not Impaired

Summary of outcome
Suspension revoked

Tribunal:
Legally Qualified Chair
Mrs Fiona Barnett
Lay Tribunal Member:
Mr Mick Turner
Medical Tribunal Member:
Dr Maria Broughton

Tribunal Clerk:
Ms Lorraine Curry

Attendance and Representation:
Medical Practitioner:
Present and represented
Medical Practitioner’s Representative:
Mr James Buchanan, Counsel, instructed by RadcliffesLeBrasseur.
GMC Representative:
Mr Paul Wakerley, Counsel, instructed by GMC legal.

Attendance of Press / Public
In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held in public.
Determination on Impairment - 29/07/2019

1. This Tribunal does not intend to rehearse the full factual background to Dr Salakianathan’s case, as this is set out in previous determinations, which are a matter of record. At an MPT hearing in March 2019 (March Tribunal) the Tribunal heard that at the time of the incidents Dr Salakianathan was working as a Locum Consultant General Surgeon at West Middlesex University Hospital ('the Hospital') part of the Chelsea and Westminster Hospital NHS Foundation Trust ('the Trust').

2. On the morning of 12 December 2017, Miss A’s line manager asked her to go and work with Dr Salakianathan on a task related to the doctors’ rota. Miss A and Dr Salakianathan were alone in Dr Salakianathan’s office, sitting together at his desk, jointly working with spreadsheets on his computer. Miss A alleged that, whilst they were working, Dr Salakianathan made a number of comments to her about how soft her skin was, and her perfume whilst touching her hands, and subsequently touched her ear and lips, kissed her hands and neck, and tried to kiss her mouth.

3. Immediately after leaving Dr Salakianathan’s office, Miss A reported her concerns to her line manager and the allegations were then escalated to senior staff the same day. Following discussions with senior Trust staff members, and an admission that he had told Miss A her hands were beautiful and kissed her hands and neck in what he described as ‘a moment of madness’ on his part, Dr Salakianathan was excluded from the Trust on 13 December 2017 pending an investigation. The Trust’s Associate Medical Director informed the GMC of the concerns on 18 December 2017.

4. Miss A was interviewed by a Case Investigator on 22 January 2018 as part of the Trust’s investigation. During the interview, Miss A raised a further allegation that in or around July 2017 Dr Salakianathan had examined her after she had told him that she was unwell. She stated that during the examination, Dr Salakianathan had inappropriately lifted her leggings and knickers and looked at her pubic area, (although the March Tribunal found that his conduct in this respect was not inappropriate). This allegation was later included in the terms of the Trust’s investigation. Further, Miss A alleged that there had also been an instance (later alleged to have taken place in or around November 2017) during which she had passed Dr Salakianathan in a corridor and he had stopped to tell her that she looked beautiful.

5. The March Tribunal determined that:
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"inappropriate comments and non-consensual touching of colleagues with a sexual motivation are unacceptable in the workplace, particularly when an imbalance of power is present as in this case. Given this, the Tribunal was satisfied that, due to the seriousness of such actions and their impact on public confidence in the profession and the standards and conduct required of members the profession, a finding of impaired fitness to practise would be required even had Dr Salakianathan shown full insight into his actions. Such a finding is only confirmed by the fact that he has not.”

6. The March Tribunal accepted that Dr Salakianathan had demonstrated remorse and accepted that his actions were unacceptable. However the March Tribunal found that his actions did not relate to an isolated incident and his conduct was not simply an isolated ‘moment of madness.’

7. The March Tribunal noted that Dr Salakianathan had taken significant steps in order to reflect upon and remediate his actions, including attendance on relevant courses. It further found that he demonstrated genuine remorse and sought to apologise to Miss A. The March Tribunal determined that Dr Salakianathan had some insight into his misconduct, but that his insight was limited and found that his fitness to practise was impaired by reason of his misconduct.

8. The March Tribunal determined to suspend Dr Salakianathan’s registration for a period of four months. It determined that this would send a message to him and the medical profession that such behaviour towards a colleague is not acceptable.

9. The March Tribunal determined that there should be a review of his case and that a future Tribunal reviewing his case may be assisted by the following:

- a reflective statement demonstrating how he has developed further insight following the findings made at this hearing and recording any steps he has taken in order to reflect on them;
- evidence that he has kept his medical knowledge and skills up to date;
- any other information that Dr Salakianathan considers will assist.

Today’s review

10. This Tribunal has met to review Dr Salakianathan’s case. It has considered, under Rule 22(1)(f) of the Rules, whether his fitness to practise is currently impaired by reason of his misconduct. In so doing, it has taken into account all of the
evidence before it and the submissions made by Mr Wakerley, Counsel, on behalf of the GMC and submissions from Mr Buchanan, on behalf of Dr Salakianathan.

Written evidence

11. The Tribunal has received the following documents from Dr Salakianathan:

- A reflection statement from Dr Salakianathan dated 18 July 2019;
- Maintaining Professional Boundaries course certificate dated 21 – 23 May 2018;
- Reflection notes on Maintaining Professional Boundaries course;
- Mastering Adverse Outcomes workshop course certificate dated 22 October 2018;
- Reflection notes on Mastering Adverse Outcomes workshop;
- Mastering Difficult Interactions with Patients workshop dated 23 October 2018;
- Reflection notes on Mastering Difficult Interactions with Patients workshop;
- Mastering Professional Interactions workshop dated 23 October 2018;
- Reflection notes on Mastering Professional Interactions;
- Osteoporosis and Cardiology Study Morning certificate dated 24 November 2018;
- Reflection notes from the Osteoporosis and Cardiology Study Morning;
- The Clinic for Boundaries Studies certificate dated 14 March 2019;
- Reflection notes on The Clinic for Boundaries Studies;
- Certificate from IndoUK Breast Forum Annual Scientific meeting dated 24 March 2019;
- Interactive Emergency Imaging Course certificate dated 22–23 May 2019;
- Reflective notes of the Interactive Emergency Imaging Course;
- Risk Management Masterclass for General Surgeons certificate dated 5 June 2019;
- Reflection notes from Risk Management Masterclass for General Surgeons;
- Certificate from UHNM Keele Breast Reconstruction Course dated 24 June 2019;
- Reflection notes from UHNM Keele Breast Reconstruction Course;
- British Association of Day Surgery Annual conference dated 27 – 28 June 2019;
- Antithrombotic Therapy in Abdominal Aortic Aneurysm Beneficial or Detrimental? Dated 6 July 2019;
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- Debates, Dilemmas, and Consensus: Evolving Standards of Care in HER2-Positive Breast Cancer course certificate dated 7 July 2019;
- Diagnostic Evaluation of Lung Nodules course certificate dated 8 July 2019;
- Application of Biologics in IBD: Getting It Right course certificate dated 11 July 2019;
- Sleep Apnea and Postsurgical Cardiovascular Complications course certificate dated 11 July 2019;
- New Horizons in the Management of Skin and Soft Tissue Infections course certificate dated 13 July 2019;
- Surgical Fire Prevention: New FDA Guidance course certificate dated 13 July 2019;
- Does Hypoglycemia Cause Greater Risk of Dying Post-discharge course certificate dated 13 July 2019;

12. In his reflective statement Dr Salakianathan explained that he regrets his previous conduct, acknowledged that he is to blame for his conduct and explained that he has undertaken a three day ‘Maintaining Professional Boundaries’ course. He stated that:

"The course has taught me that non clinical touching is not acceptable in any form. The cognitive distortions I had, made me assume the intention and thoughts of [Miss A] as favourable to me – which was totally incorrect. I realise that her silence was not indicative of consent."

13. Dr Salakianathan further stated:

"I am sorry that I was blinded by affection of a kind that was unbecoming of a responsible senior surgeon of standing. I foolishly caused pain of mind to the victim, brought shame on the profession and caused intense pain to my wife & children. I have accepted the verdict of the GMC panel and understand the reasons for their recommendations when the sanctions were imposed on me. I am also thankful to them for not erasing me or imposing longer suspension."
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14. Dr Salakianathan outlined the various workshops he has undertaken and said he now has a better understanding of communication, building relationships and the importance of appropriate inter professional relationships which can impact on patient care.

GMC submissions

15. Mr Wakerley stated that the GMC are “neutral” on the issue of impairment. He drew the Tribunal’s attention to the comments made in the March Tribunal’s determinations regarding the likelihood of repetition which it found to be “negligible”.

Submissions on behalf of Dr Salakianathan

16. Mr Buchanan drew the Tribunal’s attention to Dr Salakianathan’s reflective statement. He stated that Dr Salakianathan has sought to address the principal concerns of the March Tribunal. Mr Buchanan told the Tribunal that Dr Salakianathan has identified his own failings and has not just “gone through the motions” but has demonstrated significant reflection of his conduct and the impact which it had on Miss A, and the profession.

17. Mr Buchanan submitted that taking into account the reflection undertaken by Dr Salakianathan along with his previous good character and the comments made by the March Tribunal that he is “highly regarded by colleagues in terms of both character and clinical skills”, the Tribunal should find Dr Salakianathan no longer impaired.

Tribunal decision

18. The Tribunal is aware of its statutory over-arching objective which is to protect the public. This includes protecting and promoting the health safety and well-being of the public, promoting and maintaining public confidence in the medical profession, and promoting and maintaining proper professional standards and conduct for the medical profession.

19. In a review case there is a persuasive burden upon the doctor to demonstrate that all the concerns which have been identified have now been adequately
addressed, and that full remediation has taken place. If so, a Tribunal might then conclude that the doctor’s fitness to practise is no longer impaired.

20. The Tribunal found Dr Salakianathan’s reflective statement to be comprehensive and compelling. It was a detailed reflection with a strong focus on his understanding of the impact of his misconduct on others, including Miss A, his family, colleagues and the profession as a whole. Dr Salakianathan demonstrated in his reflection that he now understands Miss A had not consented to his actions and that there was a power differential between them. For example in his reflective statement he states that “I have since realised how stupid and unprofessional for a man of trusted position to have behaved in such a manner... My colleagues have helped me to understand how power and position sometimes blind those in authority, the restraint that needs to be exercised when overwhelmed by deluded thinking.”

21. The Tribunal decided, from the evidence before it, that Dr Salakianathan’s insight has clearly developed since the hearing in March. His reflective statement demonstrates detailed and compelling insight into his past behaviour and the previous concerns about his insight are now no longer concerns for the Tribunal. Dr Salakianathan understands the seriousness of misconduct and now realises how wrong he was “in trying to fool myself in believing that I had the consent of [Miss A] to do what I did. Considering my higher level of authority, she couldn’t say anything at the time”.

22. Dr Salakianathan has apologised unreservedly for his actions and has addressed the areas of concern identified by the March Tribunal.

23. The Tribunal is satisfied, having considered the CPD certificates that Dr Salakianathan has maintained his knowledge and skills. He has undertaken a wealth of CPD activities, which are relevant to his role as a General Surgeon, and up to date. This includes attendance at various courses and conferences and his reflections upon the courses he has attended.

24. The Tribunal concluded that a reasonable and well-informed member of the public would now be satisfied with the steps Dr Salakianathan has taken to reflect upon and remediate his misconduct, and maintain his clinical knowledge during his period of suspension. It therefore determined that public confidence in the medical profession and the need to uphold proper standards would not be undermined if a finding of impairment was not made.
25. Taking all of the above into account, the Tribunal is satisfied that Dr Salakianathan is now fit to return to unrestricted practice.

26. The Tribunal therefore determined that Dr Salakianathan’s fitness to practise is no longer impaired by reason of his misconduct.

27. In circumstances where there are approximately 3 weeks remaining of the 4 months’ suspension order, and where there is a clear public interest in a competent doctor returning to unrestricted clinical practice, the Tribunal determined that the current order of suspension on Dr Salakianathan’s registration is revoked with immediate effect.

28. That concludes this hearing.

Confirmed
Date 29 July 2019 Mrs Fiona Barnett, Chair