Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 19/08/2019 - 23/08/2019

Medical Practitioner’s name: Dr Vasudevan RAJU

GMC reference number: 6083909

Primary medical qualification: MB BS 2001 Tamil Nadu Dr MGR Med University

Type of case: New - Misconduct

Outcome on impairment: Not Impaired

Summary of outcome
No action (warning not considered)

Tribunal:

<table>
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<tr>
<th>Legally Qualified Chair</th>
<th>Miss Sally Cowen</th>
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<tbody>
<tr>
<td>Lay Tribunal Member:</td>
<td>Ms Wanda Rossiter</td>
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<tr>
<td>Medical Tribunal Member:</td>
<td>Dr Meera Ladwa</td>
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</table>

Tribunal Clerk: Mr David Salad
Ms Jeanette Close (19 August 2019 only)

Attendance and Representation:

<table>
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<th>Medical Practitioner:</th>
<th>Present and represented</th>
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<tr>
<td>Medical Practitioner’s Representative:</td>
<td>Mr David Morris, Counsel, instructed by BTO Solicitors LLP</td>
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<tr>
<td>GMC Representative:</td>
<td>Ms Rebecca Vanstone, Counsel</td>
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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 partly in public and partly in private.
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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 - 23/08/2019

Background

1. Dr Raju qualified from the Tamil Nadu Dr MGR Med University in India in 2001. He began working in the UK in 2004, and prior to the events which are the subject of the hearing, worked in a number of training roles in Paediatrics at various sites in the UK. At the time of the alleged events in 2017 Dr Raju was practising initially as a Specialty Registrar in Medical Paediatrics at the Royal Aberdeen Children’s Hospital (‘RACH’). From February 2017 to August 2017 Dr Raju practised as a senior middle grade trainee in paediatrics at Wishaw General Hospital (‘WGH’) as part of an out of programme review of his clinical practice.

2. Having been involved in an Adverse Incident at RACH (‘the Adverse Incident’) in December 2016 and interviewed as part of a Significant Events Analysis (‘SEA’) Level 1 investigation concerning the Adverse Incident, Dr Raju has accepted that he failed to notify one or more of his Educational Supervisors of this between February and April 2017. His Educational Supervisor, Dr B, learned of Dr Raju’s involvement in the Adverse Incident whilst Dr Raju was working at WGH.

3. It is alleged that Dr Raju, acting dishonestly, did not declare the details of the Adverse Incident or the subsequent investigation on a Scottish Online Appraisal Resource (‘SOAR’) Declaration on 31 March 2017, as part of his Annual Review of Competency Progression (‘ARCP’). It is further alleged that Dr Raju dishonestly gave false information to Dr A, his clinical supervisor based at RACH, about standard practice at WGH.

4. The initial concerns were raised with the GMC in November 2017 further to a local investigation following the Adverse Incident and due to Dr Raju’s alleged comments to Dr A. The GMC’s subsequent investigation has led to this Medical Practitioners Tribunal.

The Outcome of Applications Made during the Facts Stage

5. The Tribunal granted the GMC’s application, made pursuant to Rule 34(13) and (14) of the General Medical Council (Fitness to Practise Rules) 2004 as amended
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("the Rules"), for Dr C, Dr D and Dr B to give evidence via Telephone Link. The Tribunal’s full decision on the application is included at Annex A.

6. The Tribunal granted the application made by Mr Morris on Dr Raju’s behalf, pursuant to Rule 17(2)(g) of the Rules, that there was no case to answer in respect of sub paragraph 2b and paragraph 4 of the Allegation. 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 Raju is as follows:

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

1. Between February and April 2017, you failed to notify one or more of your Educational Supervisor(s) that you:

   a. were involved in an adverse incident at the Royal Aberdeen Children’s Hospital ("the Adverse Incident");

   Admitted and Found Proved

   b. had been interviewed as part of the level 1 investigation of the Adverse Incident.

   Admitted and Found Proved

2. On 31 March 2017, you completed a Scottish Online Appraisal Resource Declaration in which you were asked ‘Since your last appraisal, have you been the subject of a formal complaint or critical incident report?’ and you:

   a. answered ‘No’;

   Admitted and Found Proved

   b. failed to declare the details as set out at paragraphs 1a and 1b.

   To be Determined

3. You knew at the time of completing the declaration as referred to at paragraph 2 that you were / had been involved in the Adverse Incident.

Admitted and Found Proved
4. Your conduct as set out at paragraph 2 was dishonest by reason of paragraph 3.

To be Determined

5. On 26 September 2017, you indicated to Dr A that the standard practice at Wishaw General Hospital was that:

a. all patients with right iliac fossa pain would be referred for surgical opinion to exclude appendicitis;

Admitted and Found Proved

b. children with recurrent wheeze would:

i. not be assessed for preventative inhaled steroids during admission;

To be Determined

ii. be assessed for preventative inhaled steroids in a follow-up clinic.

To be Determined

6. You knew that the indications made at paragraph 5 above were false.

To be Determined

7. Your conduct as set out at paragraph 5 was dishonest by reason of paragraph 6.

To be Determined

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

To be Determined

The Admitted Facts

8. At the outset of these proceedings, through his counsel, Mr Morris, Dr Raju made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC)
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(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.

The Facts to be Determined

9. In light of Dr Raju’s response to the Allegation made against him, the Tribunal was required to determine whether Dr Raju failed to declare details of the adverse incident on his SOAR Declaration of 31 March 2017, and whether his alleged actions in doing so were dishonest. In addition, the Tribunal was required to determine whether Dr Raju falsely indicated, in explaining standard practice at WGH to Dr A, that children with recurrent wheeze would not be assessed for preventative inhaled steroids during admission, but would be assessed in a follow up clinic. It was also required to determine whether Dr Raju acted dishonestly in indicating this to Dr A.

Factual Witness Evidence

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

- Dr A, Consultant paediatrician at RACH, in person;
- Dr C, Consultant in emergency medicine at Aberdeen Royal infirmary and the RACH, by telephone link;
- Dr E, Associate Postgraduate Dean at NHS Education for Scotland (at the time of the Allegation – now retired), in person;
- Dr D, Consultant paediatrician at WGH, by telephone link;
- Dr B, Consultant paediatrician at RACH and Dr Raju’s Educational Supervisor at the time of the Allegation, by telephone link.

11. Dr Raju provided his own witness statement dated 15 August 2019 and also gave oral evidence at the hearing.

Documentary Evidence

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

- Dr B’s initial witness statement for NHS Grampian dated 13 December 2017;
- Scottish Online Appraisal Resource forms dated 14 April 2017 and 1 December 2017;
- Email from Dr D to Dr A dated 27 September 2017;
- Meeting minutes ARCP Panel Face to Face meeting dated 11 August 2017;
- Scottish Online Appraisal Resource declarations dated 31 March 2017 and 1 December 2017;
- transcript of interview with Dr C dated 29 November 2017;
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- email from Dr A to Dr F dated 27 September 2017;
- Supervision Meeting report dated 10 April 2017;
- email exchange between Dr Raju and the Trust – various dates in February 2017;
- example night shift feedback form (undated);
- Curriculum Vitae of Dr Raju (undated);
- Terms of Reference for Significant Event Review of the Adverse Incident dated 31 January 2017;
- Terms of Reference for Preliminary Enquiry of Dr Raju’s involvement in the Adverse Incident (undated).

Application under Rule 17(2)(g)

13. At the end of the GMC case, Mr Morris, on Dr Raju’s behalf, made an application under Rule 17(2)(g) of the Rules, that there was no case to answer in respect of sub paragraph 2b, and paragraph 4 of the Allegation. The Tribunal determined that there was no case to answer in those respects. As part of its consideration of the application, the Tribunal determined that sub paragraphs 2a and 2b were closely related and must stand together. It was of the view that, given its reasoning and its upholding of Mr Morris’s submissions with regard to sub paragraph 2b and in particular paragraph 4, the Tribunal considered paragraph 2 in its entirety could not be a culpable act. The Tribunal’s full decision is included at Annex B.

14. Following the application under Rule 17(2)(g), the Allegation was as follows:

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

1. Between February and April 2017, you failed to notify one or more of your Educational Supervisor(s) that you:

   a. were involved in an adverse incident at the Royal Aberdeen Children’s Hospital (‘the Adverse Incident’);

      Admitted and Found Proved

   b. had been interviewed as part of the level 1 investigation of the Adverse Incident.

      Admitted and Found Proved

2. On 31 March 2017, you completed a Scottish Online Appraisal Resource Declaration in which you were asked ‘Since your last appraisal, have
you been the subject of a formal complaint or critical incident report?’ and you:

a. answered ‘No’;

   **Admitted and Found Proved**

b. _______failed to declare the details as set out at paragraphs 1a and 1b.

   **Deleted Following Successful Application Under Rule 17 (2)(g)**

3. You knew at the time of completing the declaration as referred to at paragraph 2 that you were / had been involved in the Adverse Incident.

   **Admitted and Found Proved**

4. Your conduct as set out at paragraph 2 was dishonest by reason of paragraph 3.

   **Deleted Following Successful Application Under Rule 17 (2)(g)**

5. On 26 September 2017, you indicated to Dr A that the standard practice at Wishaw General Hospital was that:

a. all patients with right iliac fossa pain would be referred for surgical opinion to exclude appendicitis;

   **Admitted and Found Proved**

b. children with recurrent wheeze would:

   i. not be assessed for preventative inhaled steroids during admission;

      **To be Determined**

   ii. be assessed for preventative inhaled steroids in a follow-up clinic.

      **To be Determined**

6. You knew that the indications made at paragraph 5 above were false.
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To be Determined

7. Your conduct as set out at paragraph 5 was dishonest by reason of paragraph 6.

To be Determined

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

To be Determined

Facts

15. The Tribunal went on to determine whether Dr Raju falsely indicated, in explaining standard practice at WGH to Dr A, that children with recurrent wheeze would not be assessed for preventative inhaled steroids during admission, but would be assessed in a follow up clinic. It was also required to determine whether Dr Raju acted dishonestly in indicating this to Dr A.

The Tribunal’s Approach

16. 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 Raju 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.

17. The Tribunal bore in mind the relevant legal principles where dishonesty is alleged and the test laid down by the Supreme Court in Ivey v Genting Casinos (UK) Ltd 2017 UKSC 67 (Ivey), namely that the Tribunal should first ascertain subjectively the actual state of Dr Raju’s knowledge or belief as to the facts, before then determining whether his conduct was dishonest applying the objective standards of ordinary decent people.

18. The Tribunal noted the agreed position of the parties that no previous findings of impairment have been made against Dr Raju. It was therefore appropriate for it to consider that he is of previous good character. The Tribunal bore this in mind as a factor in Dr Raju’s favour when assessing the credibility of his account and the likelihood of his behaving in the manner alleged.

The Tribunal’s Analysis of the Evidence and Findings

19. 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.
20. The Tribunal noted that sub paragraph 5b (i) and (ii) required it to determine whether Dr Raju indicated, in explaining standard practice at WGH to Dr A, that children with recurrent wheeze would not be assessed for preventative inhaled steroids during admission, but would be assessed in a follow up clinic.

21. The Tribunal was satisfied, from the evidence it received from Dr A and Dr Raju, that they had a conversation in Dr A’s office on 26 September 2017 about practice at WGH. They were the only people present at the meeting to give accounts of the conversation. It considered that Dr A’s email of 27 September 2017 to Dr F, Clinical Director, was contemporaneous evidence and that he was concerned enough about the contents of the conversation to document and act upon it. In his oral evidence, Dr A told the Tribunal that he was ‘shocked’ by the conversation, leading him to take further action.

22. The Tribunal noted that there were some inconsistencies between Dr A’s email to Dr F of 27 September 2017 and his later GMC witness statement (dated 19 June 2019) and his oral evidence. For instance – the email refers to ‘...children with a recurrent wheeze...’ whilst Dr A’s GMC statement mentions ‘...children presenting with acute wheeze...’. The same email also refers to ‘children not being assessed for preventative inhaled steroids during admission’ while Dr A’s GMC statement states ‘not to initiate prophylactic treatment on discharge.’ [Tribunal’s highlighting]. However, in the light of the contemporaneous email to Dr F, sent only a day after the conversation took place, the Tribunal determined that any discrepancies were the result of the uncertainty of memory over the period of approximately eighteen months between the conversation, the completion of the witness statement, and the dates of this hearing. It was satisfied that these discrepancies did not undermine Dr A’s evidence to a significant extent and accepted it with regard to what was said at the meeting.

23. Dr Raju set out his evidence on the matter in his witness statement as follows:

_I cannot fully recall the conversation with [Dr A] regarding presentation of wheeze [sic]. If[Dr A]’s statement is accurate then I accept I made a mistake. The practice I observed was that these patients would be assessed during admission and either started on steroids or, because of adverse factors followed-up in clinic. [Dr A] and I also discussed the treatment of first time wheeze patients. The practice I observed was for them to be booked for assessment for inhaled steroids at a follow up clinic. I probably got confused between these two sets of patients. It was the end of a long shift and I was tired. I was not intending to mislead [Dr A]. He told me that he was going to check what I had said with [WGH]._
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24. In his oral evidence, Dr Raju maintained that he could not remember what was said in the conversation. The Tribunal accepted that this was plausible, taking into account the lapse of time between the conversation and this hearing and the fact that it would not have appeared to him to have been a significant conversation at the time, and one which he ought to have recorded by a contemporaneous note.

25. In circumstances in which Dr Raju had no specific memory of the contents of the conversation, the Tribunal was satisfied that Dr A’s evidence about what was discussed was sufficient for it to find, on the balance of probabilities, that Dr Raju had indicated to him that standard practice at WGH was that children with recurrent wheeze would not be assessed for preventative inhaled steroids during admission or in a follow up clinic. It therefore found sub paragraph 5b (i) and (ii) proved.

Paragraph 6

26. The Tribunal noted that Paragraph 6 alleges that Dr Raju knew that his indications to Dr A regarding standard practice at WGH involving patients with right iliac fossa pain and children with recurrent wheeze (as set out in Sub Paragraphs 5a and b) were false.

27. The basis of this paragraph was the evidence of Dr A, who stated that at their meeting of 26 September 2017 Dr Raju had maintained his views on standard practice at WGH despite Dr A expressing his surprise and telling him he would check with staff at WGH. Dr A made enquiries the following day by email to Dr D, Clinical Director for Paediatrics and Consultant Paediatrician, who worked directly with Dr Raju in his period at WGH.

28. The Tribunal found the evidence of Dr D to be particularly relevant in its consideration of this matter. The tribunal found her evidence to be consistent and clear throughout. Dr D confirmed in her evidence that Dr Raju may have observed a range of practices from colleagues at WGH and that there was no standard local practice in place with regard to referral of patients with right iliac fossa pain for surgical opinion or with regard to assessment of children with recurrent wheeze.

29. In relation to patients with right iliac fossa pain, Dr D stated that she was aware that at WGH ‘...some colleagues may have a lower threshold to refer for a surgical opinion if they are less confident in their assessment, for example trainees. There is always some variation in practice amongst colleagues based on their previous experience and their own area of expertise.’

30. Dr Raju accepted that he had told Dr A that all patients with right iliac fossa pain would be referred for surgical opinion to exclude appendicitis because his experience at WGH had been that ‘a number of colleagues’ including other trainees at his level and more junior would routinely act in this way with the rationale that appendicitis was a surgical diagnosis. He also told the Tribunal that at the time
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patients were seen by senior consultants such referral would already have taken place and therefore their practise was not part of his perspective of standard practice at WGH. He stated that he had no intention of misleading Dr A. The Tribunal accepted this explanation as Dr Raju’s own experience at WGH, which it found to be plausible and supported by the evidence of Dr D.

31. Similarly, the Tribunal noted Dr D’s evidence on the matter of assessment of children with a recurrent wheeze. She stated that she thought Dr Raju would have observed a range of practices on this matter at WGH, and that although she would not wait till a child with a recurrent wheeze came back to a follow up appointment to consider treatment, she was aware that some of her colleagues would.

32. Taking into account the range of practices apparent at WGH as set out by Dr D, the Tribunal found Dr Raju’s explanation that he may have become confused about different sets of patients (as quoted above) to be plausible. In his oral evidence the Tribunal noted that Dr Raju was prepared to concede that he had made mistakes and, although he appeared to be nervous, which is understandable given he was appearing at this hearing, it considered that he was a credible witness. It also took account that he is of previous good character and that he had been provided testimonials by professional colleagues, including from Dr D, extracts from which were read into the record by Mr Morris. These extracts attested to a lack of concerns about Dr Raju’s probity in his current and previous posts.

33. In these circumstances the Tribunal determined, on the balance of probabilities, that Dr Raju did not know that the indications made in paragraph 5 were false. Having heard oral evidence from both Dr A and Dr Raju, the Tribunal considered that it was possible there had been some confusion in the conversation between Dr A and Dr Raju leading to them talking at cross purposes. Dr A believed the conversation to be of a wider nature, relating to standard practice (which he assumed was consistent) at WGH. Dr Raju however was confused as the conversation was initially about patients seen at RACH the previous day, but became one about his experience of WGH which he assumed was standard practice. The Tribunal therefore determined that paragraph 6 was not proved in relation to paragraph 5.

Paragraph 7

34. The Tribunal applied the test set out in Ivey. It has already determined, as set out above, the actual state of Dr Raju’s knowledge or belief as to the facts; he did not know at the time that the indications he made to Dr A on 26 September 2017 were false. Given this, it considered that his actions would not be considered dishonest by the objective standards of ordinary decent people.

35. The Tribunal therefore found Paragraph 7 not proved.
The Tribunal’s Overall Determination on the Facts

36. The Tribunal has determined the facts as follows:

The Allegation made against Dr Raju is as follows:

1. Between February and April 2017, you failed to notify one or more of your Educational Supervisor(s) that you:

   a. were involved in an adverse incident at the Royal Aberdeen Children’s Hospital (‘the Adverse Incident’);

      **Admitted and Found Proved**

   b. had been interviewed as part of the level 1 investigation of the Adverse Incident.

      **Admitted and Found Proved**

2. On 31 March 2017, you completed a Scottish Online Appraisal Resource Declaration in which you were asked ‘Since your last appraisal, have you been the subject of a formal complaint or critical incident report?’ and you:

   a. answered ‘No’;

      **Admitted and Found Proved**

   b. failed to declare the details as set out at paragraphs 1a and 1b.

      **Deleted Following Successful Application Under Rule 17 (2)(g)**

3. You knew at the time of completing the declaration as referred to at paragraph 2 that you were / had been involved in the Adverse Incident.

   **Admitted and Found Proved**

4. Your conduct as set out at paragraph 2 was dishonest by reason of paragraph 3.

   **Deleted Following Successful Application Under Rule 17 (2)(g)**
5. On 26 September 2017, you indicated to Dr A that the standard practice at Wishaw General Hospital was that:
   
a. all patients with right iliac fossa pain would be referred for surgical opinion to exclude appendicitis;  
   
   Admitted and Found Proved
   
b. children with recurrent wheeze would:
   
i. not be assessed for preventative inhaled steroids during admission; Determined and found proved
   
ii. be assessed for preventative inhaled steroids in a follow-up clinic. Determined and found proved
   
6. You knew that the indications made at paragraph 5 above were false.
   
   Determined and found not proved
   
7. Your conduct as set out at paragraph 5 was dishonest by reason of paragraph 6.
   
   Determined and Found not proved
   
   And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct.
   
   To be Determined

Determination on Impairment - 23/08/2019

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

The Evidence

2. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary. In addition, the Tribunal received
three testimonials provided on his behalf written by colleagues at his current and previous employers.

**Submissions**

3. On behalf of the GMC, Ms Vanstone submitted that the GMC wished to make no positive submissions at this stage and was neutral on the matter of impairment.

4. On behalf of Dr Raju, Mr Morris stated that the only culpable facts found proved were those at paragraph 1, namely: Dr Raju’s failure to disclose information to his educational supervisor(s) about the Adverse Incident. He submitted that this failure does not amount to misconduct. He stated that the failing did not give rise to any risk to patient safety, which is one of the core concerns regarding failings by doctors. He told the Tribunal that this was a failure to disclose which stemmed from one clinical incident, and that Dr Raju has no history or pattern of non-disclosure to aggravate the seriousness of this particular failing. He told the Tribunal that it was difficult to identify any paragraphs of GMP from which Dr Raju had departed by virtue of his failure to disclose.

5. He told the Tribunal that, if it did not accept his primary submission and determined that Dr Raju’s failure to disclose information to his educational supervisors constituted misconduct, then his secondary submission was that Dr Raju’s fitness to practise was not currently impaired by reasons of that misconduct. He submitted that the conduct was remediable, that Dr Raju had acknowledged his failing as demonstrated by his admission to paragraph 1 of the Allegation at the outset of this hearing. He said that Dr Raju had demonstrated full insight into his failure and had remediated it. He drew the Tribunal’s attention to testimonials from Dr Raju’s colleagues in his current and recent posts, submitting that they demonstrated that there was no suggestion that there had been any further issues with disclosing issues to his supervisors. He submitted that it was highly unlikely Dr Raju would repeat such behaviour, and this was not a case in which, despite his remediation, the Tribunal was required to impose a sanction in the public interest.

6. In response to Mr Morris’s submission regarding GMP, Ms Vanstone stated that the Tribunal should look at the circumstances of the case as a whole when considering its determination, and not only potential departures from GMP.

**The Relevant Legal Principles**

7. 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.

8. 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
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whether the finding of that misconduct was serious and then whether the finding of that misconduct which was serious could lead to a finding of impairment.

9. The Tribunal must determine whether Dr Raju’s fitness to practise is impaired today, taking into account Dr Raju’s conduct at the time of the events and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.

The Tribunal’s Determination on Impairment

Misconduct

10. The Tribunal noted that, following its findings on facts, the only culpable facts found proved were at paragraph 1: between February and April 2017, Dr Raju failed to notify one or more of his Educational Supervisor(s) that he was involved in the Adverse Incident and that he had been interviewed as part of the SEA Level 1 investigation of the Adverse Incident.

11. The Tribunal was satisfied that Dr Raju should have directly updated his Educational Supervisors at RACH and WGH about his involvement in the Adverse Incident, and it is clear from his admissions and evidence that he has accepted that it was a failure on his part that he did not. Disclosing his involvement in a timely manner would have ensured that he was able, at an earlier stage, to begin to take any learning from the incident and apply it to the development of his practice - an important matter for any doctor. However, the Tribunal found that the context of the situation was central to its consideration of the seriousness of Dr Raju’s failure to disclose.

12. The Tribunal noted that there was no evidence that Dr Raju had made a deliberate attempt to conceal his involvement in the Adverse Incident. The evidence showed that he had discussed the matter with Dr A, his clinical supervisor on 24 January 2017. The notes of this clinical supervision meeting should have been uploaded to Dr Raju’s e-portfolio where they would have been available to view by Dr B. Unknown to Dr Raju this was delayed until 10 April 2017. Dr Raju also spoke to Dr G, the Consultant who was on call with him at the time of the incident. Further he cooperated with the SEA level 1 investigation and he was aware that this investigation was ongoing in the period of February – April 2017, and the report was not available before the end of April. Even if this report had been available earlier, this investigation was not focussed on addressing potential failures by individuals, and therefore it was not until later in 2017 that the Preliminary Enquiry into Dr Raju’s own actions took place.

13. The Tribunal noted that witnesses in this case acknowledged that communication pathways amongst senior colleagues could have been improved. It was of the view that it was plausible for Dr Raju to assume that senior staff had discussed the matter between themselves. Although this did not exempt Dr Raju from the requirement to inform his Educational supervisors of his involvement in the Adverse Incident, it was
satisfied that this fact constitutes a mitigating element. In addition, Dr B was on annual leave at the time of the Adverse Incident and did not return to work at RACH till mid-January 2017. Dr Raju moved to work at WGH from 1 February 2017. Again, although this was not an excuse for Dr Raju not speaking directly to Dr B about the Adverse Incident, the Tribunal accepted that this narrow window of time when both of them were present in the same workplace was a further mitigating factor for the lack of direct communication.

14. Having taken into the account the full context of the case, the Tribunal determined that this was a single omission on Dr Raju’s part which did not constitute a significant departure from the principles of GMP. It was satisfied that, knowing the full circumstances of the situation, fellow practitioners would not consider Dr Raju’s actions to be deplorable.

15. In conclusion, the Tribunal determined that Dr Raju’s conduct did not fall so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct. It follows therefore that his fitness to practise is not impaired.

No submissions on a Warning

16. The Tribunal carefully considered whether the factors that indicate a warning as set out in paragraphs 14 and 16 of the Guidance on Warnings [February 2018] are present.

14 Warnings should be viewed as a deterrent. They are intended to remind the doctor that their conduct or behaviour fell significantly below the standard expected and that a repetition is likely to result in a finding of impaired fitness to practise. Warnings may also have the effect of highlighting to the wider profession that certain conduct or behaviour is unacceptable.

15 ...

The test for issuing a warning

16 A warning will be appropriate if there is evidence to suggest that the practitioner’s behaviour or performance has fallen below the standard expected to a degree warranting a formal response by the GMC or by a MPTS tribunal. A warning will therefore be appropriate in the following circumstances:

- there had been a significant departure from Good Medical Practice
- there is a significant cause for concern following an assessment of the doctor’s performance.
17. It has already determined that Dr Raju’s failure in not disclosing information about the Adverse Incident was not of the seriousness required to constitute misconduct. Further, it has not identified any significant departures from GMP. In these circumstances, the Tribunal was satisfied that it was not appropriate and did not need to go on and invite submissions from parties on a Warning.

18. That concludes this case.

Confirmed
Date 23 August 2019  Miss Sally Cowen, Chair
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ANNEX A – 19/08/2019

Application to hear witness evidence by telephone link

1. On day 1 of the hearing Ms Vanstone, Counsel on behalf of the GMC, made applications for the witness evidence of Dr C, Dr D and Dr B to be heard via telephone under Rule 34(13) of the General Medical Council (‘GMC’) (Fitness to Practise) Rules 2004, as amended (the Rules).

2. In support of her application, Ms Vanstone explained that all three doctors were professionals with commitments that made it difficult for them to arrange their affairs to attend these proceedings in person.

3. Mr Morris, Counsel, on behalf of Dr Raju did not oppose Ms Vanstone’s application.

Tribunal Decision

4. The Tribunal considered Rule 34(13) and (14) of the Rules which states:

“(13) A party may, at any time during a hearing, make an application to the Committee or Tribunal for the oral evidence of a witness to be given by means of a video link or a telephone link.

(14) When considering whether to grant an application by a party under paragraph (13), the Committee or Tribunal must-

(a) give the other party an opportunity to make representations;
(b) have regard to-
   (i) any agreement between the parties, or
   (ii) in the case of a Tribunal hearing, any relevant direction given by a Case Manager; and
(c) only grant the application if the Committee or Tribunal consider that it is in the interests of justice to do so.”

5. In reaching its decision, the Tribunal took into account that whilst it is preferable to hear evidence from witnesses in person, it determined that it was in the interests of justice to allow Dr C, Dr D and Dr B’s evidence to be admitted by telephone. The Tribunal also determined that there was no injustice to Dr Raju in granting the application.

6. The Tribunal therefore granted Ms Vanstone’s application.
Application under Rule 17(2)(g)

1. At the end of the GMC case, Mr Morris, Counsel, on Dr Raju’s behalf, made an application under Rule 17(2)(g) of the General Medical Council (Fitness to Practise) Rules Order of Council 2004 (“The Rules”), which states:

“the practitioner may make submissions as to whether sufficient evidence has been adduced to find some or all of the facts proved and whether the hearing should proceed no further as a result, and the Medical Practitioners Tribunal shall consider any such submissions and announce its decision as to whether they should be upheld”.

2. This application related to sub paragraph 2b and paragraph 4 of the Allegation only.

The Relevant Legal Principles

3. In relation to this application, both parties and the Legally Qualified Chair referred to the case of *R v Galbraith* [1981] 73 Cr App R 124. The Court of Appeal said (adapted wording for the benefit of the Tribunal):

"How then should the Tribunal approach a submission on ‘no case’?

(1) If there is no evidence that the fact alleged has been committed by the medical practitioner, there is no difficulty. The Tribunal will of course stop the case.

(2) The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence.

(a) Where the Tribunal comes to the conclusion that the GMC evidence, taken at its highest, is such that a properly directed Tribunal could not properly find the fact proved upon that evidence, it is the Tribunal’s duty, upon a submission being made, to stop the case in relation to that alleged fact.

(b) Where however the GMC evidence is such that its strength or weakness depends on the view to be taken of a witness’ reliability, or other matters which are generally speaking within the province of the Tribunal, and where on one possible view of the facts there is evidence upon which a Tribunal could properly find the fact proved, then the Tribunal should not make a direction of no case to answer.”
Submissions on Dr Raju’s behalf

4. Mr Morris first referred the Tribunal to sub paragraph 2b. It is useful to provide the text of paragraphs 1 and 2 at this point:

1. Between February and April 2017, you failed to notify one or more of your Educational Supervisor(s) that you:

   a. were involved in an adverse incident at the Royal Aberdeen Children’s Hospital (‘the Adverse Incident’);
      Admitted and Found Proved

   b. had been interviewed as part of the level 1 investigation of the Adverse Incident.
      Admitted and Found Proved

2. On 31 March 2017, you completed a Scottish Online Appraisal Resource Declaration in which you were asked ‘Since your last appraisal, have you been the subject of a formal complaint or critical incident report?’ and you:

   a. answered ‘No’;
      Admitted and Found Proved

   b. failed to declare the details as set out at paragraphs 1a and 1b.
      To be Determined

5. Mr Morris reminded the Tribunal that Dr Raju had admitted that he had been involved in an adverse incident (‘the Adverse Incident’) at the Royal Aberdeen Children’s Hospital (‘RACH’) and that he had been interviewed as part of a Significant Event Analysis (‘SEA’) level 1 investigation of the Adverse Incident. He submitted that it could not be established from these admissions that Dr Raju had been made the subject of a formal complaint or that he was the subject of a critical incident report at the time that he completed the Scottish Online Appraisal Resource (‘SOAR’) Declaration on 31 March 2017 as part of his Annual Review of Competency Progression (‘ARCP’).
6. He told the Tribunal that there was no evidence that the question asked on the ‘SOAR’ Declaration (quoted above) gave rise to an obligation on Dr Raju’s part to declare his involvement in the Adverse Incident or that he had been interviewed as part of a SEA level 1 investigation of the Adverse Incident on the form. He stated that, if the Tribunal was of the view that there was some evidence, then he asked it to find that any evidence to support sub paragraph 2b was tenuous and, taken at its highest, could not properly allow the Tribunal to find the sub paragraph proved on the balance of probabilities.

7. Mr Morris drew the Tribunal’s attention to the evidence of Dr C, Clinical lead for the Paediatric Emergency Department at RACH; Dr B, Consultant Paediatrician at RACH; Dr E, Associate Postgraduate Dean at NHS Education for Scotland, at the time of the events leading to the Allegation, all of whom provided oral evidence at the hearing as witnesses for the GMC. He submitted that their evidence made it clear that the SEA Level 1 investigation of the Adverse Incident was, rather than being a complaint or a critical incident report, actually an analysis of the issues which led to the Adverse Incident and the systems involved, rather than something which included ‘finger pointing at individuals.’

8. Mr Morris referred the Tribunal to the notes of Dr Raju’s interview with Dr E and Dr H, part of an ARCP Panel face to face meeting on 11 August 2017 (‘the August Meeting’). He submitted that these notes included text which demonstrated that Dr E and Dr H had told Dr Raju ‘in no uncertain terms’ that he had effectively made a mistake and should have ticked the ‘Yes’ box on the SOAR Declaration. He told the Tribunal that that it was not therefore surprising that, taking into account the circumstances of him being criticised by senior doctors who were ‘sitting in judgment on him’, that Dr Raju had said at the meeting that he had made a mistake.

9. In addition, Mr Morris drew the Tribunal’s attention to a later SOAR Declaration of 31 December 2017 on which Dr Raju had answered ‘Yes’ to the question ‘Since your last appraisal, have you been the subject of a formal complaint or critical incident report?’ He stated that, by December 2017, circumstances had changed in a number of ways which would have compelled Dr Raju to select the ‘Yes’ box on this occasion, and that his answering of the question in the affirmative on this later date was therefore not evidence of a culpable failure to declare the matters set out at paragraph 1 on the SOAR Declaration of 31 March 2017.

10. Mr Morris referred the Tribunal to Paragraph 4 of the Allegation which alleges dishonesty. It is useful to provide the text of paragraphs 3 and 4 at this point as follows:

3. You knew at the time of completing the declaration as referred to at paragraph 2 that you were / had been involved in the Adverse Incident.

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4. Your conduct as set out at paragraph 2 was dishonest by reason of paragraph 3.

To be Determined

11. Mr Morris reminded the Tribunal of Dr Raju’s admissions that he had answered ‘no’ to the question: ‘Since your last appraisal, have you been the subject of a formal complaint or critical incident report?’ and that he knew that he had been involved in the Adverse incident when completing the Declaration. He submitted that, in light of the evidence before the Tribunal, these admissions could not begin to establish that Dr Raju knew that he should answer the question ‘yes’ or that he knew that he should declare the detail as set out in paragraph 1 of the Allegation. He submitted that there was therefore no evidence that Dr Raju’s conduct in this regard was dishonest.

GMC Submissions

12. Ms Vanstone submitted that the GMC opposed the application. She referred the Tribunal to the evidence of Dr E who she submitted had given the view that there was a clear duty on Dr Raju to disclose his involvement in the Adverse Incident as he had been interviewed as part of a SEA level 1 investigation of the Adverse Incident. She reminded the Tribunal that when Dr E had been questioned on this view he had responded that he held this view because the Adverse Incident was a very significant event and that he expected trainees to realise that a major incident had occurred and to therefore tick the ‘Yes’ box and include details on the SOAR Declaration.

13. Ms Vanstone contended that Dr E was the key witness in this part of the case as he had been employed as a Post Graduate Dean for eight and a half years and was Chair of the ARCP Panel. She stated that his role was to take an overview of the progress of trainees, scrutinise their portfolios and their SOAR declarations. She submitted that the Tribunal may feel that his view on Dr Raju’s duty to disclose the matters set out at paragraph 1 of the Allegation carried more weight than that of any of the other witnesses.

14. Ms Vanstone stated that Mr Morris’s contention was misconceived with regards to the August Meeting. She submitted that the Tribunal could rely on this meeting when assessing whether Dr Raju was culpable, as he had been told ‘in no uncertain terms’ that he had made a mistake by Dr E and Dr H. She asked the Tribunal to revisit the meeting minutes, as it may not be as clear cut as Dr Raju having made a mistake.

15. Ms Vanstone referred the Tribunal to 1 (b) of Galbraith as set out above, submitting that the evidence before the Tribunal was such that on one view of the
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facts the Tribunal could find the Allegation proved and so the matter should be left
for the Tribunal to determine at the conclusion of stage 1.

16. With regard to paragraph 4 of the Allegation, Ms Vanstone submitted that, if
the Tribunal upheld Mr Morris’s submissions with regard to there being no evidence
of dishonesty in relation to his alleged failure at sub paragraph 2b, it still remained
possible for the Tribunal to allow the allegation of dishonesty with regard to Dr Raju
answering ‘No’ on the SOAR Declaration, to proceed.

Tribunal’s Decision

17. The Tribunal had regard to the relevant legal principles as set out in Rule
17(2)(g) and Galbraith in its deliberations.

Sub paragraph 2b

18. The Tribunal noted that Sub paragraph 2b, quoted in full above, alleges a
failure on Dr Raju’s part to declare that he had been involved in the Adverse
Incident and that he had been interviewed as part of a SEA level 1 investigation of
the Adverse Incident. The Tribunal noted the use of the word ‘failed’ in the sub
paragraph, accepting this meant that, in order for the sub paragraph to be found
proved, it would need to be proved that Dr Raju not only had not declared the
details as set out at paragraph 1 of the Allegation on the SOAR Declaration, but also
that he had a duty to declare these details.

19. The Tribunal’s starting point in the matter was the wording of the relevant
question on the SOAR Declaration: ‘Since your last appraisal, have you been the
subject of a formal complaint or critical incident report?’ The Tribunal noted that it
has heard evidence concerning this question and the response expected from Dr
Raju from three GMC witnesses: Dr C, Dr E, and Dr B.

20. Having heard Dr C’s evidence and taking into account the Significant Event
Review Terms of Reference dated 31 January 2017, the Tribunal was satisfied that,
by the time he filled in the SOAR Declaration, it had been made clear to Dr Raju that
the SEA Level 1 investigation of the Adverse Incident was not an investigation into
his (Dr Raju’s) personal culpability in the matter. Rather, the focus of the SEA Level
1 investigation was on an analysis of the circumstances, including system processes
and procedures, which led to the Adverse Incident, with an emphasis on learning
lessons for the future.

21. The Tribunal noted that, in his evidence, Dr B had stated that in his view Dr
Raju ticking ‘No’ to the question was ‘...probably correct as the enquiry into the
incident had not started by this point.’
22. Dr E’s evidence was that Dr Raju had a duty to disclose his involvement in the Adverse Incident as it had been a very significant event and that he expected trainees to realise that a major incident had occurred and declare it. Referring to Galbraith, the Tribunal accepted that this provided some evidence ‘that the fact alleged has been committed by the medical practitioner.’ However, the strength of Dr E’s evidence was challenged both in cross examination and via questions from the Tribunal. Dr E acknowledged that, at the time Dr Raju completed the Declaration, there had been no ‘...finger pointing at individuals...’. In addition, he confirmed Dr C’s interpretation of the SEA Level 1 investigation as a review of the circumstances leading to the Adverse Incident.

23. Although Dr E maintained his view that Dr Raju, as with any specialty trainee, had a duty to disclose the Adverse Incident on the SOAR form in March 2017, this appeared to be an expectation on his part that any trainee would understand that this question was referring to involvement in any Adverse Incidents. Dr E said that he had spoken to trainees previously to encourage them to declare adverse incidents at this part of the form. However, he acknowledged that he had never spoken to Dr Raju about this. He accepted that Dr Raju was not subject to a formal complaint and that the question gave rise to ambiguity. Further, when asked by the Tribunal as to whether a critical incident report was the same thing as SEA Level 1 Investigation of an Adverse Incident, Dr E confirmed that it was not and that the form should be re-worded. The Tribunal considered that this had a significant impact on any weight it could place on the GMC’s evidence on this sub paragraph.

24. The Tribunal accepted Mr Morris’s submission with regard to the August Meeting. It was satisfied that with senior doctors telling Dr Raju that he had made a mistake in not declaring the Adverse Incident on the SOAR Declaration, it was a natural response for him to acknowledge that he had done so. It considered that this was of no significance in assessing Dr Raju’s actions in completing the Declaration.

25. In addition, the Tribunal accepted Mr Morris’s submission with regard to the later SOAR Declaration of 31 December 2017. It considered that the circumstances had changed significantly by this time such that Dr Raju would have been aware, after the August Meeting, that senior doctors expected him to declare the Adverse Incident, regardless of the wording of the question on the Declaration form. In addition, he would have been aware of a Preliminary Enquiry into his actions personally which would oblige him to select ‘Yes’ and declare relevant details, which he did.

26. In all the circumstances, the Tribunal considered that the GMC’s evidence, taken at its highest, was such that a properly directed Tribunal could not find the facts proved on this sub paragraph. The Tribunal accordingly determined that there was no case to answer in respect of sub paragraph 2b of the Allegation.
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Paragraph 4

27. The Tribunal noted that, at sub paragraph 2a, Dr Raju has admitted that he had answered ‘No’ on the relevant question on the SOAR Declaration. Ms Vanstone submitted that this part of the Allegation could proceed in relation to it being dishonest. However, the Tribunal considered that sub paragraphs 2a and 2b are closely related and therefore must logically stand together. Having found that Dr Raju had no case to answer with regard to a failure to declare the details set out at paragraphs 1a and 1b, the Tribunal considered that there was therefore no evidential basis that Dr Raju had acted dishonestly in not doing so.

28. In the light of its reasoning above in relation to sub paragraph 2b, the Tribunal considered that the GMC has produced no evidence that Dr Raju acted dishonestly in either selecting the ‘No’ box or failing to declare his involvement in the Adverse Incident. The Tribunal accordingly determined that there is no case to answer in respect of paragraph 4 of the Allegation as it relates to both 2a and 2b.