

## **Meeting of the s40A Panel to consider the case of Hetti Achchillage Nalin Senadheera Hettiarachchi**

Held on 11 June 2019.

### **Panel members present**

Charlie Massey, Chief Executive (in the Chair)  
Sue Carr, Deputy Medical Director (deputising for Colin Melville)  
Anthony Omo, General Counsel and Director of Fitness to Practise

### **In attendance**

Jim Percival, Principal Legal Adviser and Deputy General Counsel  
Jacqui Eden, Senior Legal Adviser  
Tim Swain, Head of Office, Corporate Directorate (Panel Secretary)

### **Purpose of this note**

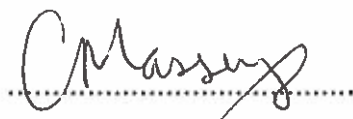
- 1** This meeting note records a summary of the Members' consideration of the relevant decision of the Medical Practitioners Tribunal ('MPT') which considered the Doctor's case ("the decision"), and the Panel's decision on behalf of the General Medical Council as to whether or not to exercise the power to appeal the decision pursuant to section 40A Medical Act 1983.

### **The relevant decision**

- 2** The Principal Legal Adviser confirmed that the decision was a relevant decision for the purposes of s.40A.

## Consideration

- 3 The Panel considered the record of the MPT's determination and the legal advice in detail.
- 4 The Panel noted that the GMC's submission was for a sanction of suspension and that had been the sanction imposed by the MPT. The question for the Panel was therefore whether the length of the suspension was sufficient to protect the public and maintain public confidence in the profession.
- 5 The Panel did note that the doctor had demonstrated poor judgement and had made two patients very uncomfortable. More seriously still, the doctor had also contacted one of these patients asking them to withdraw their complaint to the GMC.
- 6 These were serious failings and the Panel noted that the finding of impairment and the imposition of a sanction did reflect the severity of these failings. It further noted that the sanction will remain on the doctor's public record, and that the doctor had previously been suspended for a period of ten months by their employer which had an impact on his GP training. The Panel noted that the doctor's employers were aware of the matter and that he would continue to be guided by his trainers as part of his GP training.
- 7 When considering whether a lengthier suspension from the Register was required, the Panel reflected that the actions of the doctor appeared to be misguided rather than malicious, that there were mitigating circumstances, and there was also evidence of insight and remediation on the part of the doctor which meant the risk of repetition was low.
- 8 The Panel did express some concern about the adequacy of the reasoning provided by the MPT in reaching its decision on the length of the sanction but ultimately concluded that it was not insufficient to protect the public and therefore agreed not to appeal the MPT's decision.



**Charlie Massey (Chair)**



**Dated**

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## Background

- 9** This case concerns the determination of an MPT, which concluded on Friday 17 May 2019, considering the matter under Part 4 of the General Medical Council (Fitness to Practise) Rules 2004 ('the Rules').
- 10** The allegation considered by the MPT was one of misconduct the circumstances of which were as follows:
- 10.1** At the time of the allegations Dr H was practising as a consultant in sexual health at Buryfields Central North West London NHS Foundation Trust Sexual Health Clinic ('the Clinic') where he consulted with two patients 'Patient A' and 'Patient B'. In addition, in his own time Dr H was developing a website containing information about sexually transmitted diseases to assist the recognition of symptoms and to advise on appropriate treatments. Following his suspension from the Clinic, Dr H began training to become a GP and at the time of the MPT hearing was undertaking an adult psychiatry rotation.
- 10.2** Patient A attended the Clinic twice in August 2017 and following one of her consultations, Dr H met Patient A at a shopping centre to provide her with medication. Dr H subsequently also contacted her by text message and email to seek her assistance in the translation of an information leaflet in respect of his website into Russian. Patient A complained directly to the GMC that Dr H had retained and used her confidential contact details from her medical records.
- 10.3** Following Patient A's complaint to the GMC, Dr H sent an email to Patient A asking her to consider withdrawing her complaint to the GMC and encouraging her not to disclose that email to the GMC.
- 10.4** Patient B attended the Clinic twice in September 2017, following which Dr H contacted Patient B by text and WhatsApp messenger for the purposes of seeking her assistance with translating information for his website into a language spoken in China.
- 10.5** After attending the Clinic, Patient B attended a different sexual health clinic in London and informed the treating consultant at that clinic that the reason she had attended an alternative clinic was because of the text message contact she had received from Dr H. The consultant then made a complaint to the GMC as whilst the text messages referred to test results the last text stated "*I would like to have a small chat with you over a coffee or a meal. Would it be okay with you.*" Patient B confirmed that during her consultation with Dr H he had discussed her helping with translation for his website.

## MPT hearing

- 11** The MPT hearing commenced on 8 May 2019 with Dr H admitting some of the allegations. Evidence was heard from witnesses in the case, following which successful applications were made by the GMC, pursuant to Rule 17(6) of the Rules and by Dr H, pursuant to Rule 17(2)(g) of the Rules; Dr H then admitted the remaining allegations.
- 12** In determining whether Dr H's actions amounted to misconduct and whether in turn his fitness to practise was impaired; the MPT found that his actions in meeting Patient A to provide medication and obtaining Patient A and B's telephone number from their records did not amount to misconduct; acknowledging the reason provided by Dr H for providing the medication which was described as '*ill-advised*' and that Patient A and Patient B had agreed to participate in the website project. However, the MPT found that his communications with both Patient A and B which were without clinical indication did constitute misconduct.
- 13** In respect of Patient A, the MPT found that his communications by text and email prior to the GMC complaint were '*inappropriate, intrusive and in breach of doctor patient confidentiality*'. In respect of the email sent to Patient A following her complaint to the GMC, the MPT described it as a '*serious lapse of judgement, amounting to interfering with a witness and seeking to obstruct the GMC complaints procedure*'. In respect of Patient B, the MPT noted that Dr H's conduct had ignored Patient B's sensitivity and caused her not to return to the Clinic.
- 14** Dr H's actions were found to have caused a breakdown in both patients confidence in the medical profession and in the MPT's opinion could have placed them both at risk if it deterred them from seeking medical help.
- 15** The MPT took the view that the conduct was remediable and had been remedied. In addition, they determined that Dr H had a good level of insight save for in respect of his conduct in sending and the content of the email to Patient A following her complaint to the GMC. The MPT found that his insight regarding sending the email was sufficient but that in asking that she did not show the email to the GMC; there was '*scope for improvement*'.
- 16** The MPT determined that the risk of repetition was low. However, the MPT determined that a finding of impairment was required in the public interest as it would be undermined if a finding was not made in the circumstances of this case.
- 17** The GMC's submission was for a sanction of suspension. It was submitted on behalf of Dr H that the finding of misconduct and impairment was in and of itself sufficient. It was submitted that a period of suspension would be disproportionate and would have a significant impact including '*the possible termination of his current training post*'.

- 18** The MPT determined that nothing less than a period of suspension was required to mark the gravity of Dr H having sent the email to Patient A following her complaint to the GMC, indicating that they would be *'inclined to impose a suspension for 6 months'*. However, the MPT then went on to impose a suspension of 14 days *'Having considered the unusual circumstances of this case'*. In doing so the MPT noted Dr H's:
- 18.1** engagement with the hearing process;
  - 18.2** honest account;
  - 18.3** commitment to the medical profession;
  - 18.4** excellent clinical skills;
  - 18.5** colleagues regard for him being a good clinician
  - 18.6** use of technical skills to devise improvements in whatever area of medicine he is working in;
  - 18.7** diligence, enthusiasm and usual good practice being of benefit to the public;
  - 18.8** lack of previous fitness to practise history;
- 19** The MPT also noted that they did not want to jeopardise Dr H's GP training having regard to paragraph 20 of the Sanction Guidance which addresses the proportionality of a sanction when considering the impact it may have for instance on a doctor's training.
- 20** The MPT did not direct a review of the suspension noting the imposition of the suspension was to mark the gravity of the misconduct alone. The MPT did not direct an immediate order noting it was not proportionate nor in the public interest.

