

Meeting of the s40A Panel to consider the case of Mr Sadagopan VARADARAJAN (3376629)

Held on 16 August 2019.

Panel members present

Paul Reynolds, Director of Strategic Communications and Engagement (deputising for Charlie Massey) (in the Chair)

Sue Carr, Deputy Medical Director (deputising for Colin Melville)

Anthony Omo, General Counsel and Director of Fitness to Practise

In attendance

Kate Takes, Senior Legal Adviser

Tim Swain, 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.

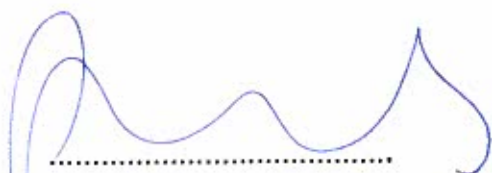
The relevant decision

- 2 The Senior 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 this was a dishonesty case and as such the question before it was one of maintaining professional standards and public confidence in the profession, rather than whether the doctor continuing to practise was a risk to patient safety. As such, the Panel considered whether erasure was the only appropriate outcome in this case, or whether an eight-month suspension with a review hearing, as determined by the Tribunal, was sufficient.
- 5 The Panel agreed on the seriousness of the doctor's dishonest conduct, particularly the fact that this continued to be in evidence before the Tribunal which found Mr V to be an evasive witness who showed a lack of candour. The Panel considered that this demonstrated a clear lack of insight into the dishonesty elements of the allegations found proven.
- 6 The Panel considered the decision about whether or not to appeal was finely balanced but was of the view that eight months out of professional practice was a serious sanction and was reassured that the review hearing would provide an important mechanism to test whether the doctor had developed greater insight into their dishonest behaviour, to enable them to fully remediate.
- 7 In the circumstances of this case, the Panel concluded that a substantial period of suspension followed by a review hearing, was not insufficient to maintain public confidence in the profession.
- 8 The Panel therefore decided to not appeal the MPT's decision pursuant to section 40A Medical Act 1983.



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Paul Reynolds (Chair)

21/8/19

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Dated

Background

- 9 This case concerns the determination of an MPT, which concluded on 23 July 2019, considering the matter under Part 4 of the General Medical Council (Fitness to Practise) Rules 2004 ('the Rules').
- 10 Mr V, a Breast and Endocrine Consultant Surgeon, was involved in the treatment of Patient A's breast cancer in 2014. Following an initial examination and biopsy, Patient A's case was initially discussed in the Multidisciplinary Team ('MDT') meeting on 10

October 2014. The care plan for treatment was recorded as being dependent on the pathology of the breast cancer.

- 11** As the pathology was unclear, Patient A was sent for a MRI which she underwent on 15 October 2014. It was hospital practice that an MRI for breast cancer would be formally reported upon by two radiologists, often on different dates. The MRI was first reported on 20 October 2014.
- 12** On 22 October 2014 Mr V performed a wide local excision tumour right breast and sentinel lymph node biopsy ('the Procedure') on Patient A. At this time, the second MRI reporting was not available; the MRI report was issued on 29 October 2014. In addition, Patient A's case was not discussed again at the MDT before the Procedure (the scheduled meeting had been 17 October 2014).

MPT hearing

- 13** The MPT hearing commenced on 8 July 2019.

Facts

- 14** The allegations related to Mr V performing the Procedure when MRI results were not formally known and the treatment plan had not been fully agreed by the MDT prior to surgery. The allegations also related to Mr V's communication with the patient including explaining the risk and benefits of the procedure over comparable surgery and obtaining informed consent, his communication with colleagues, his record keeping and also that he had failed to report the Procedure as an untoward incident in accordance with trust Policy.
- 15** There were also two allegations of dishonesty:
 - 15.1** that Mr V had suggested to Dr B, a Consultant Radiologist (who provided the second reporting), that they had provided him with a verbal report of the MRI scan prior to the Procedure and told him that they could proceed with it; it was alleged that Dr B had not told Mr V these matters.
 - 15.2** during a disciplinary hearing in 2015, Mr V stated that he had never previously been before a disciplinary hearing; he had in 2013.
- 16** Mr V admitted a number of allegations (not those of dishonesty) and the majority of the other allegations, including those of dishonesty, were found proved.
- 17** Mr V gave evidence during the facts stage of the proceedings and the facts determination noted that the MPT had *'found Mr [V] to be evasive when giving oral evidence particularly during cross-examination ... further, there were areas of his evidence in which the Tribunal is satisfied to a high standard that he sought to mislead ...'* In addition, when discussing their findings with regard to one of the

allegations and that they preferred the evidence of another witness, the MPT noted they did *'not consider Mr [V] to be a truthful witness.'*

Impairment

- 18** Mr V gave further evidence at the second stage of the hearing. During this evidence, Mr V was asked a question by his representative about honesty and the impact of patients, colleagues and the reputation of the profession. In response he stated that he considered honesty to be *'a basic human value; honesty and integrity every human being should have, much more the medical profession and it gives trust for the patients in the doctor and trust for the public in the profession. I know the tribunals have come to a conclusion about my integrity and honesty which I will never ever accept because I know who I am and I always live my life with integrity and honesty ...'*
- 19** The MPT found that Mr V had demonstrated insight, had attempted to remediate his practice deficiencies and that it was satisfied that Mr V was unlikely to repeat his misconduct *'in relation to his clinical care, communication and record keeping.'*
- 20** However, the MPT noted their concern about the dishonesty in the case and highlighted Mr V had *'demonstrated a lack of candour within his evidence during the facts stage of these proceedings'*. Therefore, the MPT *'found that Mr [V]'s fitness to practise is currently impaired by reason of misconduct on public interest grounds.'*

Sanction

- 21** The GMC's submission was for a sanction of erasure.
- 22** With regard to sanction, the MPT noted the aggravating features to be:
 - 22.1** the two episodes of dishonesty, one arising out of motivation to cover up a clinical error;
 - 22.2** Mr V maintaining the dishonesty throughout the MPT proceedings; and
 - 22.3** insufficient evidence of insight or remediation into the dishonesty element of the case.
- 23** The mitigation considered by the MPT included:
 - 23.1** no evidence of dishonesty prior to the allegation;
 - 23.2** the lack of repetition since the incident (in 2014-2015);
 - 23.3** the partial admissions made by the doctor;

23.4 testimonials attesting to the doctor's good character (although it was noted *'that the evidence is undermined by the Tribunal's findings of dishonesty'*);

23.5 a 'successful recent appraisal with significant patient input.'

24 The MPT determined an eight month period of suspension was required to mark the gravity of Mr V's misconduct. In imposing this sanction, the MPT noted it considered the doctor's dishonesty to be serious and that Mr V *'demonstrated that he has the capacity to be dishonest over a significant period of time for his own benefit, including during these proceedings.'* However, this was balanced against the time since the incident and the doctor's lengthy (approximately 40 year) unblemished career. The MPT also noted that Mr V *'has also expressed an appreciation of the importance of doctors being honest.'*

25 The MPT noted that with regard to erasure, whilst considered, *'the Tribunal stood back and considered all of the aggravating and mitigating features in the round and determined that to erase Mr [V]'s name from the Medical Register would be disproportionate, given the circumstances of this case.'* The MPT noted that the doctor's unblemished career and Mr V's acknowledgment of the importance of probity was given substantial weight.

26 The MPT directed a review of Mr V's case.

27 The MPT did not direct an immediate order stating that this was not in the public interest.

The General Medical Council's power to appeal pursuant to s.40A

28 With effect from 31 December 2015, the General Medical Council acquired the power to appeal to the High Court (or equivalent courts in Scotland and Northern Ireland where relevant) against relevant decisions of a Medical Practitioners Tribunal ("MPT") if it considers that the decision is not sufficient (whether as to a finding or a penalty or both) for the protection of the public.

29 The basis upon which the GMC will consider whether or not to exercise this power to appeal is described in "Appeals by the GMC pursuant to s.40A of the Medical Act 1983 ("s.40A appeals") – Guidance for Decision-makers" ("the Guidance").

30 Decisions concerning the exercise of the s40A power to appeal were originally delegated by the Council to the Registrar. However, following recommendations from Sir Norman Williams' Review Council agreed that decision-making in prospective appeals involving decisions of Medical Practitioners Tribunals be delegated to a three person Executive Panel comprising: the Chief Executive and Registrar as Chair; the Medical Director and Director of Education and Standards; and the Director of Fitness to Practise (or their nominated Deputies if not available) ("the Panel").

31 As the Guidance makes clear, when considering whether to bring a s.40A appeal in a particular case, it will be necessary to consider the following questions:

31.1 Based on their assessment of all of the information held, and in the particular circumstances of the case, and having regard to the factors set out in the Guidance, does the Panel consider that the MPT's decision is not sufficient to protect the public?

31.2 If the Panel is of the view, on its assessment of all the information held, in the particular circumstances of the case, that there are grounds to consider that the MPT's decision is not sufficient, it will consider whether exercising the power of appeal would further, rather than undermine, the achievement of the over-arching objective.

31.3 If the answer is yes, then the GMC may exercise its power of appeal

31.4 In considering that question the Panel will be required to consider and weigh a number of competing factors (including its assessment of the prospects of success of the appeal, and the nature and importance of the issues which would be aired).