Meeting of the s40A Panel to consider the case of Sri Hari Charan Thiguti (6094658)

Held on 17 December 2020.

Panel members present

Charlie Massey, Chief Executive (in the Chair)
Colin Melville, Medical Director, Education and Standards
Anthony Omo, General Counsel and Director of Fitness to Practise

In attendance

Dawn Crook, Senior Legal Adviser
Jim Percival, Principal Legal Adviser and Deputy General Counsel
Iona Tweddell, Office of the Chair and Chief Executive (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 (as amended) (‘the Act’).

The relevant decision

2. The Principal Legal Adviser confirmed that the decision was a relevant decision for the purposes of s.40A of the Act. The decision was a decision under s.35D giving a direction for suspension, within the meaning of s.40A(1)(a)(i).
Consideration

3 The Panel considered the record of the MPT’s determination and the legal advice in detail.

4 The Panel was concerned by the sexually motivated behaviour demonstrated by Dr Thiguti to a vulnerable patient. The Panel was also concerned by the credit that the MPT gave to Dr Thiguti’s developing insight at a late stage (at the hearing), when he had not made any admissions of sexually motivated behaviour previously. The Panel noted that Dr Thiguti’s personal circumstances were only raised at the hearing.

5 The Panel also had concerns about how the MPT had strictly interpreted the allegations and did not consider amending the allegations when they found the particular circumstances (i.e., the location of the inappropriate comments) not proven, therefore not inquiring about a wider patient safety risk.

6 However, the Panel felt that a 12-month suspension was not insignificant, this would remain on record, and Dr Thiguti would be less likely to be able to behave in a similar way in future. In addition, the review would offer the opportunity to confirm whether Dr Thiguti had demonstrated appropriate insight and remediation before he was able to practise again. Based on their assessment of all the relevant information, the Panel did not note any errors of fact or principle in the MPT’s decision which would give rise to grounds of appeal, such that they were satisfied that the outcome was sufficient to protect the public.

7 The Panel therefore decided not to appeal the MPT’s decision pursuant to section 40A of the Medical Act 1983.

13 January 2021

Charlie Massey (Chair) Dated

Background

8 This case concerns the determination of an MPT, which concluded on Tuesday 24 November 2020, considering the matter under Part 4 of the General Medical Council (Fitness to Practise) Rules 2004 (‘the Rules’). The outcome was that Dr Thiguti’s
fitness to practise was impaired and a sanction of 12 months’ suspension with a review was directed.

9 Dr Thiguti qualified as a doctor in India in 2004. Prior to the events which were the subject of the MPT hearing, he had joined the West Midlands General Psychiatry Higher Training Scheme, from February 2016 to February 2019. At the time of the events in question, Dr Thiguti was employed by North Staffordshire Combined Healthcare NHS Trust (‘the Trust’) as a Registrar in Psychiatry. As part of his role he was also employed by Sutherland Centre Community Mental Health team. From 3 February 2019 Dr Thiguti worked as a Consultant Psychiatrist at Harplands Hospital (‘the Hospital’). The circumstances of the allegations are as follows:

9.1 It was alleged that Dr Thiguti has engaged in sexually motivated behaviour towards Patient A, who was a vulnerable patient under his care for mental health treatment, between 28 August 2017 and 26 June 2018.

9.2 Dr Thiguti had approximately eight consultations with Patient A during the relevant period. It was alleged that Dr Thiguti made a number of inappropriate comments to Patient A including having told her that she was attractive and pretty. Further, Dr Thiguti was alleged to have asked Patient A to show him a tattoo on her breast and whether she thought about him when she masturbated.

9.3 On 26 June 2028 it was alleged that Dr Thiguti, during a consultation, asked Patient A to meet him that evening. They did meet, at a Tesco car park; during the meeting Dr Thiguti asked Patient A to attend his home as his wife was away and he kissed Patient A without her consent.

9.4 Patient A complained to the Trust; following an investigation Dr Thiguti was dismissed for gross misconduct and Dr Thiguti then self-referred to the GMC.

9.5 XXX

Facts

10 Dr Thiguti made admissions in relation to having told Patient A that she was attractive and pretty and further that he had held Patient A’s hand and stroked her hand during a consultation. He further admitted to having told Patient A that any rich man in India would want her and to having said a number of other inappropriate things to her. In addition to a number of other admissions regarding inappropriate comments, Dr Thiguti admitted having met Patient A outside of the clinical setting and having kissed her. Having initially denied sexual motivation prior to the MPT proceedings, by the time Dr Thiguti came to make admissions at the hearing, he did also admit that his conduct was sexually motivated. He had previously stated that he was never planning any kind of sexual relationship.
Dr Thiguti apologised at the outset and accepted that his behaviour towards Patient A was sexually motivated and to seek validation in her finding him attractive. He told the MPT that he had been pushing the boundaries with Patient A and it had become like a drug to him. He accepted that he had manipulated Patient A for his own personal gain.

In relation to the facts which were not admitted the MPT found some of them proven and some not proven. The MPT found that some of the inappropriate comments which were alleged to have taken place in the consultation, did not in fact take place during the consultation and therefore on a strict interpretation of the allegations they found those particulars not proven. However, the MPT did not consider amending those allegations, where Dr Thiguti admitted having said the inappropriate comments, albeit in his car when they met in the evening, to accurately reflect when and where the comments had been made.

The MPT did find that the Dr Thiguti kissed Patient A without her consent and that it was not a mutual kiss as described by Dr Thiguti. However, the MPT did not find proven that Dr Thiguti tried to insert his tongue into Patient A’s mouth.

Impairment

Dr Thiguti, through his counsel, conceded that a finding of impairment was necessary to maintain public confidence.

The MPT found that Dr Thiguti had breached a fundamental tenet of the profession in regards his sexually motivated conduct towards Patient A and that such conduct amounted to serious professional misconduct.

In considering the issue of current impairment the MPT found that Dr Thiguti had demonstrated insight into the inappropriateness of his behaviour towards Patient A. The MPT further found that Dr Thiguti’s attempts at remediation to be genuine and focused and that the steps taken towards remediating his behaviour were significant. However, the MPT concluded that Dr Thiguti’s insight and remediation was still developing and as such there remains a risk of repetition.

The MPT found that the conduct amounted to an abuse of position of power and that all three limbs of the overarching objective were engaged as he had jeopardised the health and well being of Patient A and undermined public confidence in the profession and that a finding of impairment was needed to promote and maintain professional standards.

Sanction
The MPT determined to suspend Dr Thiguti’s registration for a period of 12 months with a review hearing. Whilst the MPT noted that Dr Thiguti’s position as a psychiatrist meant that he knew Patient A was vulnerable, amounted to an aggravating feature, it found mitigating factors also. XXX

The MPT concluded that a period of suspension was sufficient to uphold all three limbs of the overarching objective, and that whilst serious, Dr Thiguti’s misconduct was not fundamentally incompatible with continued registration and therefore that erasure would be disproportionate.

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

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.

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”).

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”).

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:

25.1 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?

25.2 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.
25.3 If the answer is yes, then the GMC may exercise its power of appeal

25.4 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).