

COUNCIL FOR HEALTHCARE REGULATORY EXCELLENCE

CASE MEETING OF COUNCIL MEMBERS

ON 17TH JUNE 2005

AT 11 THE STRAND, LONDON WC2

**RE: DR MAHESH RAJESHWAR AND THE DECISION OF THE FITNESS TO PRACTISE
PANEL OF THE GENERAL MEDICAL COUNCIL MADE ON 13 MAY 2005**

PRESENT: Peter North (Lay Member, in the Chair)
Nicholas Wood (Regulatory Member)
Sally Williams (Lay Member)

IN ATTENDANCE: Briony Mills (Fitness to Practise Officer)
Christian Dingwall (Legal Adviser, Bevan Brittan)

The Fitness to Practise Panel's Decision

- 1 Dr Mahesh Rajeshwar (Dr Rajeshwar) is a 31-year-old registered medical practitioner. He appeared before the Fitness to Practise Panel (the FTP panel) of the General Medical Council (GMC) on 9–13 May 2005 in relation to a charge of serious professional misconduct.
- 2 The FTP panel heard the case in accordance with transitional arrangements under the Medical Act 1983 and the General Medical Council Preliminary Proceedings Committee and Professional Conduct Committee (Procedure) Rules 1988 (“the 1988 Rules”). The heads of charge and their findings against Dr Rajeshwar were:

Head

1. Between August 2003 and March 2004 you were a General Practitioner Registrar on the Boston Vocational

Finding

Admitted and found proved

Head

Finding

Training Scheme at The Surgery, Springwells, Billingborough Sleaford, Lincolnshire;.....

2.a. On 6 October 2003 Ms S consulted you complaining of a possible chest infection,

Admitted and found proved

b. During the consultation with Ms S you

i. did not offer Ms S the option of having a chaperone present during your examination,

Admitted and found proved

ii. began to unfasten Ms S's bra without seeking her consent,

Admitted and found proved

iii. commented on the fastenings on Ms S's bra,

Admitted and found proved

iv. did not explain to Ms S that you wished to examine her breasts or explain why such an examination might be necessary,

Admitted and found proved

v. squeezed each of Ms S's breasts,

Found proved

vi. did not respect Ms S's right to privacy and dignity,.....

Admitted and found proved

vii. did not record a breast examination in the medical records of Ms S;

Admitted and found proved

c. Your examination of Ms S's breasts was

i. not medically justified,

Found not proved

ii. inappropriately carried out,

Found proved

iii. inadequately recorded;

Admitted and found proved

3.a. On 29 December 2003 Ms B consulted you complaining of ~~severe abdominal pain and not having eaten for the previous 11 days due to pain and vomiting,~~

Found proved

b. During the consultation with Ms B you

i. did not offer Ms B the option of having a chaperone present during your examination,

Admitted and found proved

ii. began to unfasten Ms B's bra without seeking her consent,

Found proved

iii. did not explain to Ms B why you wished to examine her ~~breasts~~ or the area under her breasts,

Found proved

iv. did not explain to Ms B why you wished to examine her breasts,

Found not proved

v. held each breast with one hand whilst pressing the rib

Found proved

Head

Finding

area underneath it,	
vi. asked Ms B if anyone had ever told her she was “a voluptuous woman”,	Admitted and found proved
vii. referred to Ms B’s breasts as “bosoms”,	Admitted and found proved
viii. bounced Ms B’s breasts with your cupped hands,	Admitted and found proved
ix. called Ms B “darling”,	Admitted and found proved
xi. did not record a breast examination in the medical records of Ms B;	Admitted and found proved
c. Your examination of Ms B’s breasts was	
i. not medically justified,	Found not proved
ii. inappropriately carried out,	Found not proved
iii. inadequately recorded;	Found not proved
d. Your examination of the area under Ms B’s breasts was inappropriately carried out in that her bra was removed, ..	Found not proved
e. Your language during the consultation with Ms B was	
i. inappropriate,	Admitted and found proved
ii. disrespectful,	Admitted and found proved
iii. offensive;	Admitted and found proved

- 3** In respect of the matters found proved, the FTP panel found Dr Rajeshwar guilty of serious professional misconduct and imposed conditions on his registration for 18 months.

Documents

- 4** The following documents were before the meeting:

- (1) Determination of the FTP panel
- (2) Transcript of hearing
- (3) Exhibits before the FTP panel
- (4) Witness statements of Ms B, Ms S and Dr Parry
- (5) Report of Dr Harker for the GMC
- (6) The GMC’s guidance *Seeking Patients’ Consent*
- (7) The GMC’s Indicative Sanctions Guidance
- (8) Lawyers’ report by Bevan Brittan LLP prepared 14 June 2005
- (9) Section 29 Process and Guidelines (November 2004).

Conflicts of Interest

- 5 Mr North declared that he is a lay assessor for the GMC but had no involvement in Dr Rajeshwar's case.
- 6 Ms Williams declared that she is a lay visitor for the Joint Committee for Post Graduate Training in General Practice but has had no involvement in Dr Rajeshwar's case and in her role as visitor has not visited the relevant location.
- 7 The members declared that they had no conflicts of interest and none was apparent.

Jurisdiction

- 8 The members noted that the purpose of the meeting was to decide whether to exercise the CHRE's statutory discretion to refer to the High Court under Section 29 of the NHS Reform and Health Care Professions Act 2002 ("the 2002 Act") the FTP panel's decision in respect of Dr Rajeshwar.
- 9 It was agreed that the CHRE had the power to refer this case under Section 29 (4) (a) of the 2002 Act if they considered that the decision of the FTP panel was unduly lenient and it was desirable so to refer for the protection of members of the public.
- 10 The CHRE's time for referring the matter under Section 29 will expire on 7 July 2005.

Matters noted by the members

- 11 At the time of the matters alleged Dr Rajeshwar was a general practitioner registrar on the Boston Vocational Training Scheme in Lincolnshire.
- 12 The heads of charge against Dr Rajeshwar were in summary that:
 - On 6 October 2003 he examined Ms S who complained of a possible chest infection. He did not offer Ms S a chaperone during the examination and began to unfasten Ms S's bra without seeking her consent. He did not explain to her that he wished to examine her breasts, or why such an examination might be necessary. He squeezed each of her breasts. He did not respect her right to privacy and dignity. He did not record the breast examination in her medical records. The breast examination was not medically justified, inappropriately carried out and inadequately recorded.

- On 29 December 2003 he examined Ms B who complained of abdominal pain and vomiting. He did not offer her a chaperone during the examination and began to unfasten her bra without seeking her consent. He did not explain to her why he wished to examine the area under her breasts. He asked her if anyone had ever told her she was “a voluptuous woman,” and referred to her breasts as “bosoms.” He called her “darling”, did not respect her right to privacy and dignity and did not record the breast examination in her medical records. His language during the consultation was inappropriate, disrespectful and offensive.

13 It was not alleged that Dr Rajeshwar’s conduct was indecent or sexually motivated.

14 The FTP panel received evidence on behalf of the GMC from

- Ms S – a patient of Dr Rajeshwar
- Ms K – Ms S’s daughter
- Ms B – a patient of Dr Rajeshwar
- Mr B – Ms B’s husband
- Dr Jonathan Parry – Principal General Practitioner, Billingborough
- Dr Richard Harker – expert witness

and on behalf of Dr Rajeshwar from:

- Dr Rajeshwar himself
- Dr Maurice Healy – expert witness
- Dr Nicholas Humphry – a trainer in General Practice and VTS Course Organiser, Boston.

15 The FTP Panel delivered their determination on findings of fact, serious professional misconduct and sanction on 13 May 2005. They found some but not all of the heads of charge proved. In summary they found proved that:

- Dr Rajeshwar began to unfasten both Ms S and Ms B’s bras without seeking consent;
- Dr Rajeshwar did not explain to Ms S that he wished to examine her breasts or explain why such an examination might be necessary;
- Dr Rajeshwar squeezed each of Ms S’s breasts;
- Dr Rajeshwar’s breast examination of Ms S was inappropriately carried out and inadequately recorded;

- Dr Rajeshwar did not explain to Ms B why he wished to examine the area under her breasts;
- Dr Rajeshwar held each of Ms B's breasts with one hand whilst pressing the rib area underneath it; and
- Dr Rajeshwar used language towards Ms B that was inappropriate, disrespectful and offensive.

16 In summary they found **not** proved that:

- Dr Rajeshwar's examination of Ms S's breasts on 6 October 2003 was not medically justified, given her presenting symptoms;
- Dr Rajeshwar examined Ms B's breasts. It followed that they further found not proved that he did not explain to Ms B why he wished to examine her breasts, that the breast examination was not medically justified, inappropriately carried out and inadequately recorded; and
- His examination of the area under Ms B's breasts was inappropriately carried out in that her bra was removed.

17 The FTP Panel determined that Dr Rajeshwar was guilty of serious professional misconduct. They decided that a reprimand would be insufficient. They placed the following conditions on his registration for a period of 18 months:

- (1) From February 2006, or earlier if that is possible, Dr Rajeshwar will undertake 12 months further training as a GP in the vocational training post offered by East Trent Deanery with Dr Nicholas Humphry of Sleaford Medical Group as his trainer. Dr Rajeshwar must allow Dr Humphry to review his professional performance and comply with any recommendations made by him about Dr Rajeshwar's practice. Dr Rajeshwar must allow Dr Humphry to report to the GMC in advance of any review hearings of his case.
- (2) At any time when Dr Rajeshwar is not employed in this position, he must confine his medical practice to NHS posts approved by the East Trent Deanery, and where he will be supervised by another registered medical practitioner.
- (3) Except in life threatening emergencies, Dr Rajeshwar must follow the current GMC guidance on intimate examination of patients.

18 In respect of Ms S, the members noted the FTP panel's findings that:

- (1) Dr Rajeshwar did not offer Ms S a chaperone
- (2) He began to unfasten her bra without her consent
- (3) He did not explain the purpose of the examination to her
- (4) He squeezed each of her breasts
- (5) His examination of Ms S's breasts was inappropriately carried out (in that it was technically clumsy)
- (6) The breast examination was inadequately recorded (because there was no record of it)
- (7) The breast examination was medically justified (given Ms S's presenting symptoms).

19 The members further noted in respect of Ms S that:

- (1) Dr Harker (transcript D3/5) and Dr Healy (D4/18-19) both stated that when conducting a breast examination, the doctor must examine under the patient's arms. There was no evidence that Dr Rajeshwar did so.
- (2) Ms S gave evidence that when Dr Rajeshwar "examined" her breasts, she was sitting upright at 90 degrees (transcript D2/24). Dr Parry (transcript D2/39) and Dr Harker (transcript D3/8) both gave evidence that a breast examination could not be carried out if the patient was sitting upright. Dr Healy was not questioned on the point in his evidence. Dr Rajeshwar stated that Ms S was sitting at 45 degrees but the agreed notes of the meeting on 15 January 2004 (exhibit C6) indicate that he agreed that Ms S was "sitting up". His solicitors Messrs Radcliffes LeBrasseur stated on his behalf (letter dated 5th July 2004) that, "He examined her whilst she was in an upright position."
- (3) Dr Harker stated (transcript D3/19) that, "My problem is that on all the information I have been given, and from what I have heard, what I am honestly saying is that I see no reason there and then to have performed a breast examination." Dr Healy stated (transcript D4/14) that the breast examination was "perfectly justified".
- (4) Dr Rajeshwar stated in evidence (transcript D3/73-75) that at the consultation Ms S was, "Someone who was very ill," but he did not record any such findings in his contemporaneous notes, requested no follow-up investigations except a chest x-ray, and recommended only salt water gargles, rest and analgesia (transcript D3/75). His

solicitors Messrs Radcliffes LeBrasseur stated on his behalf (letter dated 5th July 2004) that, “He advised the patient [Ms S] that his diagnosis was a sore throat or upper respiratory tract infection.” Ms S herself stated (transcript D2/13), “I believed I had a chest infection. We were going on holiday to Cyprus, so I just did not want to arrive on holiday ill, so it was a preventative measure...” In cross-examination she stated that she thought she was coming down with a chest infection but otherwise disputed that she was ill (transcript D2/21) and said that although she took the day off work, she returned to work the next day (transcript D2/22).

- (5) When asked during cross-examination, “Do you accept from that, that had she not been as ill as you describe, you would not really have needed to do a breast examination, would you?” Dr Rajeshwar replied (transcript D3/79) in terms that he would not have needed to do a breast or abdominal examination.
- (6) Ms S stated in evidence that Dr Rajeshwar examined her breasts using one hand (transcript D2/15). Dr Rajeshwar stated in evidence that he used both hands (transcript D3/81) but the agreed notes of the meeting on 15 January 2004 (exhibit C6) indicate variously that, “MR [Dr Rajeshwar] doesn’t remember how he examined the breasts... He used both hands... He agrees with the sitting up but says he used both hands. He added that the whole event was difficult to recollect but he couldn’t believe he examined the breasts without both hands”.
- (7) Ms S gave evidence that when Dr Rajeshwar “examined” her breasts:
 - “It felt sexual. It did not feel like a breast examination. It did not feel like how a doctor had examined me before. I had started to hear alarm bells. I just felt so uncomfortable, I did not really know what to do.” (Transcript D2/16)
 - “I would describe it as a boyish squeeze or a grope.” (Transcript D2/27)
- (8) Dr Rajeshwar agreed (transcript D3/83) that his examination of Ms S’s breasts could well have been interpreted by her as sexual.
- (9) Counsel for the GMC submitted that, “It is, the Council would submit, not a matter on which Ms S is really likely to be confused between a deliberate squeeze, a grope and something which, perhaps, was carried out rather hurriedly, rather clumsily but in the correct form – albeit that we do have the evidence of Dr Rajeshwar at the very end of his evidence, in answer to the questions from the Chairman, that one of them may have been in the form of a squeeze.”

20 In respect of Ms B, the members noted the FTP panel's findings that:

- (1) Dr Rajeshwar did not examine Ms B's breasts but instead the rib area beneath them
- (2) He did not offer Ms B a chaperone
- (3) He began to unfasten her bra without her consent
- (4) He did not explain the purpose of the examination to her
- (5) He held each breast in one hand whilst pressing the rib area beneath it
- (6) He bounced Ms B's breasts with his cupped hands
- (7) He asked her if anyone told her she was a "voluptuous woman", referred to her breasts as "bosoms" and called her "darling"
- (8) He did not record the examination.

21 The members further noted in respect of Ms B that

- (1) Ms B's evidence was that Dr Rajeshwar did examine her breasts
- (2) At the disciplinary meeting on 4th March 2004 (exhibit C7, page 2), when Dr Parry asked, "Does this not add up to a sexual motive in this consultation?" Dr Rajeshwar replied, "It does seem that way."

Members' consideration

22 Taking account of all the matters they noted above, the members considered that the case raised the issue of public protection both in terms of the extent to which Dr Rajeshwar's actions caused or could have caused direct or indirect harm to patients and in terms of maintaining the reputation of the profession and public confidence in regulation.

23 The members considered that there was sufficient evidence for the GMC to have alleged that Dr Rajeshwar's examinations of both Ms S and Ms B were medically inappropriate or clinically not indicated because his conduct was indecent or otherwise sexually motivated.

24 There was no apparent reason why the GMC did not allege that his conduct was indecent or otherwise sexually motivated.

- 25** The members considered that if the GMC correctly did not allege indecent or sexual motivation, then the FTP panel's findings may have been lenient but not unduly so.
- 26** But if the GMC incorrectly did not allege indecent or sexual motivation then the FTP panel would have been wrongly constrained from finding such a motive and their decision would be flawed.
- 27** The members considered that if Dr Rajeshwar's conduct was indecent or sexually motivated, then the conditions (with resumed consideration) would not be an adequate sanction by themselves to ensure that Dr Rajeshwar does not represent a danger to patients. For example, on resumed consideration the FTP panel would not be assessing his understanding of sexual boundaries. Further the FTP Panel's decision would be wrong in light of the need for general deterrence for offences of the kind that he committed, the need for public trust in practitioners and the need to maintain public confidence in the system of regulation.

Conclusions

- 28** Dr Rajeshwar would represent a danger to the public if his conduct had been indecent or sexually motivated in the matters complained of.
- 29** The FTP panel's decision was unduly lenient because the case against Dr Rajeshwar was apparently under-prosecuted. The GMC should have, but did not, allege that his conduct was indecent or sexually motivated.
- 30** If the FTP panel had found that Dr Rajeshwar's examinations of Ms S and/or Ms B were indecent or sexually motivated, then the only appropriate sanction would have been erasure.
- 31** Subject to the conclusions below, it is desirable for protection of members of the public for the Council to refer the case to the High Court under Section 29(4)(a) of the 2002 Act.
- 32** The members concluded that if the GMC do not satisfactorily explain why they did not allege that Dr Rajeshwar's conduct was indecent or sexually motivated, then the case should be referred to the High Court. If the GMC agree that the FTP panel's decision was unduly lenient, then subject to agreement of appropriate terms, it would be appropriate to invite the High Court to direct that the case should be remitted for redetermination by a FTP panel.

33 The Council should invite the GMC to explain why they did not allege that Dr Rajeshwar's conduct was indecent or sexually motivated. The members reserved to themselves the final decision whether or not the case should be referred to the High Court, which they expect to make by 1st July 2005.

.....

Dated**2005**

Peter North (Chair)

Time of commencement of meeting: 14.50

Time of conclusion of meeting: 16.30