Case No. FHS 15184

IN THE FAMILY HEALTH SERVICES APPEAL AUTHORITY

Mr. D Pratt - Chair
Dr M Sheldon - Professional Member
Mrs J Purkis - Member

9 October 2009

BETWEEN:

LEWISHAM PRIMARY CARE TRUST

Applicant

-and-

DR RAMANATHAN SHANMUGASUNDARAM

(GMC No. 2418597)

Respondent

DECISION AND REASONS

1. This is an application, dated 14 July 2009, by Lewisham Primary Care Trust ("the PCT"), for the national disqualification of Dr Ramanathan Shanmugasundaram ("Dr Sundaram") from inclusion in any Performers List maintained by a PCT, under Regulation 18A (3) of the National Health Service (Performers Lists) Regulations 2004 ("the Regulations").
2. The application follows the PCT's decision on 11 May 2009 to remove Dr Sundaram from its own Performers List. It was obliged to do so by Regulation 26 (1) (c), because the PCT had been notified that the General Medical Council's Fitness to Practise Panel (FtPP) had on 1 April 2009 suspended Dr Sundaram's registration with immediate effect under Section 38 (1) of the Medical Act 1983. The FtPP had found, on that date, that Dr Sundaram's fitness to practise was impaired and that he had failed to comply with a requirement previously imposed on him as a condition of his registration. It further found that given the serious deficiencies in his general practice and his breach of one of the conditions of his registration, immediate suspension was necessary for the protection of the public and in the public interest.
3. We heard evidence and submissions on 9 October 2009 at the Care Standards Tribunal, Pocock Street, London SE1 0BW, when the PCT was represented by Ms R. Baker, its Deputy Director of Primary Care Commissioning, and Dr Sundaram was represented by Mr Islam Chowdary of Counsel, instructed directly by Dr Sundaram.

4. We first heard an application on behalf of Dr Sundaram to adjourn the hearing.

DECISION

5. Our unanimous decision is that:
    a. The application to adjourn this hearing is dismissed; and
    b. Dr Sundaram be disqualified from inclusion in any Performers List prepared by a Primary Care Trust, or supplementary list as is referred to in Regulation 18A (1) of the 2004 Regulations, as amended.

REASONS

The Legal Framework

6. By Regulation 26 (1) of the 2004 Regulations:
   "Subject to paragraph (2) …. the Primary Care Trust must remove a medical practitioner from its medical performers list where it becomes aware that he is –
   ….(b) the subject of an order or directions made by [the Professional Conduct Committee of the General Medical Council] under section 38 (1) of [the Medical Act 1983] (order for immediate suspension)."
   The exception contained in paragraph (2) is where the suspension is made in a health case.
7. By Regulation 18A (3) of the 2004 Regulations:
   "A Primary Care Trust which has – (a) removed a performer from its performers list…. may apply to the FHSAA for a national disqualification to be imposed on him."
8. If national disqualification is imposed, the practitioner may not request a review until two years have expired, and thereafter at yearly intervals: see Regulation 18A (8) of the 2004 Regulations. However, the FHSAA may direct that a period of five years be substituted for the review period of two years if it "states that it is of the opinion that the criminal or professional conduct of the performer is such that there is no realistic prospect of a further review being successful, if held within the period [of two years]": see Regulation 19 (a).
9. There is no statutory guidance on the factors to be applied in considering national disqualification. It is available whether the ground for removal is a mandatory or discretionary one, and if discretionary, whether it is on grounds of suitability, fraud, or efficiency. In our view these wide powers are conferred on us so that we can deal with the multiplicity of different factual situations which arise without the necessity to pay undue regard to the label attached to the conduct or deficiency.
10. The "Advice for Primary Care Trusts on Lists Management" published by the Department of Health in 2004 says at paragraph 40.4 that a PCT should "*recognise the benefits of a national disqualification both for protecting the interests of patients and for saving the NHS resources"*. It says further that *"this additional sanction is necessary in the most serious cases, only when a doctor has been ….removed by a PCT from its own*

list, and it is imposed by the FHSAA" and *"unless the grounds for removal … were essentially local, it would be normal to give serious consideration to such an application"*.

11. The principles derived from published Guidance and from cases determined by the FHSAA to date establish, in our view, that:
    a. Serious consideration should be given to national disqualification where the findings against the practitioner are themselves serious and are not by their nature essentially local to the area where the practitioner was working;
    b. Other relevant factors are:
        i. The range of the deficiencies or misconduct identified;
        ii. The explanations offered by the practitioner;
        iii. The likelihood of those deficiencies or conduct being remedied in the near to medium term;
        iv. Patient welfare and
        v. the efficient use of NHS resources;

    but balancing those against -

        vi. The proper interests of the practitioner in preserving the opportunity to work within the NHS (which includes both pursuing his professional interests and earning money).
        vii. Whether national disqualification is proportional to the mischief of the Panel's findings as to the conduct or clinical failings of the practitioner, and to consider the common law requirement that national disqualification is reasonable and fair (see *Kataria v Essex SHA* [2004] 3 AER 572 QBD).
12. The standard of proof which we should apply in determining any factual issue is the balance of probabilities, in accordance with the guidance of the House of Lords in *Re D* [2008] UKHL 33.

<u>Documents</u>

13. The Panel had two pre-hearing bundles. The first comprised documents submitted by the PCT (numbered A1- A20) and by Dr Sundaram (numbered R1 – R2). The second, delivered by or on behalf of Dr Sundaram to the FHSAA on or about 30 September 2009, comprised a bundle numbered 1-30 and divided into sections A (reference material) and B (on-line modules).In addition we have received a written case summary and chronology from Mr Chowdhary on behalf of Dr Sundaram. These documents were consolidated into a hearing bundle lodged with us on the day of the hearing by the PCT, along with its skeleton argument. References in this decision will be to the tabs and pagination in that bundle.
14. In addition we received the following documents from the parties during the course of the hearing:
    Letter GMC – Respondent dated 1 October 2009 now numbered R 31
    Letter GMC – PCT [notice of decision of FtPP 11 February 2008] dated 13 February 2008, and now numbered A17a-g.

Background

15. Mr Chowdhary informed us that he did not challenge any of the findings or conclusions of the GMC's FtPP set out in its various decisions including the most recent one (1 April 2009) within our papers at Tab 1, A9-16. Indeed he relied on various passages within that letter. We therefore accept and adopt the findings and conclusions of the FtPP set out in that determination and also its determination of 11 February 2008 [Tab 1: pages A17a-A17g]. In addition we heard evidence from Dr Sundaram and by agreement were given information by Ms Baker and Mr Chowdhary and find the following facts to be proved.
16. Dr Sundaram was first suspended by his PCT in January 2003 when complaints were received in respect of his management of 6 patients. In respect of those patients he was found guilty of Serious Professional Misconduct by the GMC in November 2004. The Panel found his actions to be irresponsible, inappropriate, not in the best interests of his patients and in the case of two of them, potentially dangerous and subjected him to conditional registration for 2 years, subsequently extended by a further 12 months.
17. From September 2006 to March 2007 Dr Sundaram underwent a retraining course with a Dr Heathcote, who concluded that he was:

    "not confident that he is ready for unsupervised practice and I am concerned that his management planning will make him vulnerable clinically and his organisational skills will restrict his ability to direct his own learning or manage the complexity of contemporary general practice" [his letter to the GMC of 6 February 2009 at Tab 5, R24-25].
18. Dr Sundaram's GMC registration was suspended by its Interim Orders Panel in October 2007 because he had failed all four elements of the National Summative Assessment when he first attempted it. He passed at the second attempt.
19. In February 2008 the FtPP reviewed his case and lifted the suspension but found that his fitness to practise remained impaired and imposed further conditions (set out at Tab 1 page A17e) for a period of 2 years. Those conditions included:

    "7. *You must confine your medical practice in general practice to posts in a partnership/group practice of at least three members under the supervision of a named GP trainer/principal…..*
    and
    10. You must agree to the appointment of a mentor, approved by your Postgraduate Dean/Director of Postgraduate General Practice Education or their nominated deputy".
20. On 17 March 2008 Dr Julia Whiteman, Deputy GP Director of Postgraduate GP Education at the London Deanery, met with Dr Sundaram and (according to her letter of the following date) was told by Dr

Sundaram that a Dr Ratneswaran may be willing to support him while he worked on his Personal Development Plan and reintegration into general practice. He also gave undertakings to Dr Whiteman to:

- Be proactive about finding work and explore possibilities in areas where GP employment prospects were better than in London and the South East,
- Contact Lewisham PCT about remaining on its Performers List and fulfilling its requirements with GP appraisal,
- Clarify the roles of workplace supervisor and remedial supervisor with GMC,
- Keep her informed of progress with finding a mentor so that she could support him as necessary.

21. We were also told (by agreement) that the same letter advised Dr Sundaram that the Deanery was only able to approve as a suitable mentor a GP who was registered with the Deanery as a trainer. The letter also recorded that if it were not possible to appoint Dr Ratneswaran as a mentor, Dr Sundaram would contact Dr Whiteman at the Deanery and she would put him in touch with the Deanery's mentor network. In fact Dr Sundaram never did so.
22. On 23 April 2008 Dr Whiteman wrote informing the GMC that she had received no response from Dr Sundaram in connection with these undertakings, and that the PCT was also awaiting a response to its correspondence.
23. On 12 August 2008 Dr McMahon and Ms Baker of the PCT had a meeting with Dr Sundaram in which they noted that he hoped to take up a post with Dr Doha, a GP Principal in Southwark, pending confirmation that Dr Doha's practice fulfilled the conditions required by the GMC. Dr McMahon advised him that in view of his lack of progress in training and employment prospects he needed whether to consider removing his name from the Performers List. At the conclusion of the meeting Dr Sundaram agreed to respond to the Deanery and the GMC and inform them of his current position and plans.
24. Dr Sundaram was subsequently informed that Dr Doha's practice did not meet the requirements of the GMC because he was not an approved GP trainer.
25. On 9 September 2008 the Deanery wrote to Dr Sundaram informing him that as he had not contacted them further they could offer no further help and were closing his file.
26. On 4 November 2008 Dr Sundaram emailed Dr Ratneswaran urging him to contact him to discuss a letter from the GMC [Tab 5, R28].
27. On 16 December 2008 Dr Doha wrote "to whom it may concern" stating he was aware of Dr Sundaram's position with the GMC and that since August 2008 he had been shadowing Dr Doha observing consultations, and participating in other practice activities.
28. On 22 January 2009 the GMC wrote to Dr Sundaram notifying him that his case was being brought forward for early review because of his failure to

respond to further requests for information as to his progress or to comment on his apparent breach of condition 10 (see above).

29. Dr Sundaram again emailed Dr Ratneswaran on 20 February 2009, saying he had heard nothing from him and was anxious to know whether he had had an opportunity to speak to Dr Whiteman [R29]
30. On 16 March 2009 Dr Doha wrote another "to whom it may concern" letter [R26] describing his own practice but the letter says nothing about Dr Sundaram or whether he would be willing to be a mentor.
31. On 24 March 2009 Dr Sundaram emailed a Dr Akber Mohammedali [R30] referring to a telephone call he had made that morning seeking his agreement to act as a mentor. Dr Mohammedali replied the same day [R30] stating that after discussion with his partners, he had to inform Dr Sundaram he could not act as his mentor, as he was not on the Deanery list of mentors and would be getting a trainee shortly.
32. On 31 March and 1 April 2009 the FtPP reviewed Dr Sundaram's case, having brought the case forward for early review in light of the fact that the London Deanery had written to say it had not heard from Dr Sundaram, could offer no more help and had closed its file.
33. The FtPP determined that his fitness to practise remained impaired (indeed Dr Sundaram did not argue otherwise) and there had been no change in the circumstances and he had been unable to obtain a suitable supervised placement. The FtPP noted that he had not been employed as a GP since the conclusion of his retraining in March 2007 and he had had periods of unemployment since 2002. It found that he had failed to comply with Condition 10. Having heard evidence from Dr Sundaram it found that:

    *"You have, by your own decisions and inaction, made the current conditions imposed on your registration unworkable"…*and*…"there were no conditions which would be appropriate, workable and measurable".*

34. The FtPP found that he had ignored advice and had not looked outside the borough in which he was currently residing to obtain a suitable placement, due to family commitments and his current financial situation. He had also admitted that he only wanted an appointed mentor whom he knew and with whom he felt comfortable and therefore only approached three possible candidates, "*rather than go back to the Deanery for its offered assistance"*. We were further informed by agreement during this hearing that the Deanery had informed Dr Sundaram that in the event he was unable to identify a suitably qualified mentor himself, the Deanery would be willing to assist him to find one from a list maintained for that purpose. In evidence, Dr Sundaram told us that he had not approached the Deanery to do so because he was worried that he may be required to pay a mentor and would not be able to afford it.
35. The FtPP noted that serious deficiencies in Dr Sundaram's general practice had been considered in November 2004, since when he had made some progress in addressing the deficiencies but no progress had been made since his last appearance in February 2008. He had not

considered other options suggested by his trainer Dr Heathcote, and subsequently by his PCT in August 2008. He had failed to comply with condition 10 to identify a suitable mentor. He had failed to respond to the GMC's numerous requests for confirmation of his compliance with these conditions. Due to the passage of time since he completed a GP Returners Scheme in March 2007 and had not since practised. It was likely he would be required to undertake a further GP Return to Work course before being able to take up a locum post. These inactions were described as "*woefully inadequate*".

36. The FtPP therefore determined to suspend his registration for 12 months. It advised him [A15] that at the next review hearing it would wish to be assured he was up to date with his continuing professional development. Dr Sundaram would be asked to supply the names and addresses of professional colleagues and persons of standing to whom the GMC could apply for information about him during the period of suspension. It advised him that at the next hearing the Panel "would be assisted by a personal development plan demonstrating your proposals for a return to work".
37. We find that these passages of advice are (in our experience) standard in all notifications of a future review hearing and are entirely neutral as to the view being taken by the FtPP as to how likely it is that the doctor will be able to rehabilitate his career.
38. However the FtPP did go on to determine that "*given the serious deficiencies in your general practice and your breach of one of the conditions on your registration, it is necessary for the protection of members of the public and in the public interest for your registration to be suspended immediately".* It is recorded [A15] that Counsel then acting for Dr Sundaram did not disagree with this course.
39. On 30 June 2009 the GMC wrote to Dr Sundaram asking him to provide, by 31 July 2009, an update on his personal development plan and to send any information he had been gathering since April [R1].
40. On 28 July 2009 Dr Sundaram sent the GMC the document he describes as his personal development plan and which he has submitted to us at R2- 19, under cover of a letter dated 28 July 2009. This consists of a list of topics grouped under three headings of major body systems, together with educational needs and learning objectives [Tab 3, pages R3-4], a list of 6 reference materials, being books and guidelines [R2], and some photocopy pages of an unidentified medical learning book [R5-19]. He described this as incomplete and we understood it was still a work in progress.

<u>Preliminary matters</u>

41. At the outset of this hearing Mr Chowdhary made an application to adjourn the case until after a review of Dr Sundaram's GMC case which is due to be heard by its Fitness to Practise Panel (FtPP) at or shortly before the end of March 2010.

42. This application was made on the basis that it was premature to consider national disqualification before the GMC's FtPP had considered, at that review, whether Dr Sundaram had made sufficient progress towards remedying various deficiencies in his general practice skills, so as to justify lifting his suspension and enable him to return to general practice, with or without further conditions on his registration.
43. Mr Chowdhary submitted that Dr Sundaram was doing everything that was required of him by the GMC, which appeared "happy with what he is doing" on the basis of the letters received by him since April 2008, and that he had produced a draft Personal Development Plan, identified online training modules he intended to do, and a refresher course at Charing Cross Hospital Postgraduate Department he would be attending in March 2010. Mr Chowdhary submitted that this was despite the fact that no conditions are currently imposed on Dr Sundaram, and that people have let him down in the profession. We pointed out that the FtPP had no power to impose conditions *in addition to* suspension, but could merely suggest what kind of evidence it would be assisted by when next reviewing the case.
44. In light of that recent history, the ongoing monitoring by the GMC and the fact that it was "clear the GMC is working towards his re-instatement" Mr Chowdhary submitted that it would be a breach of Dr Sundaram's right to a fair hearing under Article 6 of the European Convention, to proceed to a determination of this application today.
45. The Panel asked Mr Chowdhary, among other things, what steps which Dr Sundaram would otherwise have taken to remedy his deficiencies, improve his skills as suggested and persuade the GMC's FtPP to lift his suspension and allow him back into clinical practice, which he would not be able to do if we imposed national disqualification. Mr Chowdhary was unable to identify any, save that he would suffer stigma. He also suggested that Dr Sundaram would not be able to line up any jobs he may have spotted during his training (albeit that no training involving clinical work with patients is available during his suspension and Dr Sundaram has not arranged any training other than shadowing Dr Doha). He did not suggest that Dr Sundaram would be prevented from putting the material before the FtPP which it had requested should be available.
46. Ms Baker submitted that:
    a. If Article 6 applied, the FHSAA procedure ensured a practitioner was entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
    b. If it was possible to derive a power to adjourn from the FHSAA's statutory powers, then such a power could only be inferred to do what the stature expressly required, and not to frustrate that purpose: in this case a timely decision on the application for national disqualification which had to be made within 3 months of the decision to remove.

c. The FHSAA and GMC procedures were separate, and the functions of each were distinct.
d. In any event it was wrong to claim that the GMC was "working towards his re-instatement". The FtPP review was simply to examine the evidence then available and determine what to do about his registration. The GMC letter notifying Dr Sundaram of his suspension explained as much. There was no presumption.

47. The PCT's submissions raised an issue as to whether we had power to adjourn. We note that that since it was established, the FHSAA has exercised a power to adjourn in the interests of justice, and as a necessary incident of its powers to "conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings" [Rule 41 (2) of the FHSAA (Procedure) Rules 2001 ("the Rules")]. The Panel has in any event a free-standing power to "give such directions as are necessary to enable the parties to prepare for the hearing or to assist the panel …. to determine the issues" [Rule 32 (1)]. Directions may, and should where appropriate, include adjournment.
48. Article 6 of the European Convention on Human Rights entitles Dr Sundaram (and indeed the PCT) to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. The prejudice argued by Mr Chowdhary was potentially to the proceedings in the GMC initially, rather than to the proceedings in the FHSAA, although we have assumed in his favour that if he achieved a result in the GMC which enabled him to resume clinical practice, that would be urged on this Panel in due course as a reason for not imposing national disqualification.
49. This Panel has an obligation to *both* parties to ensure the expeditious disposal of this application, so long as that is possible without injustice to either party. We therefore considered whether injustice was made out.
50. We considered carefully the history set out in the documents submitted by the parties and summarised above, and the further information given to us in argument.
51. We were unable to identify unfairness or a denial of justice which would make it appropriate to adjourn this application until after the review hearing which the GMC's FtPP is due to hear at the end of March 2010. As was conceded, it would still be possible for Dr Sundaram to put before that GMC hearing all the information it had requested about his steps to keep his knowledge up to date, his personal development plan and so on. Nothing will change in that respect, whether he is nationally disqualified or not. Given the protracted nature of the GMC proceedings over a period of almost 5 years to date, the lack of any significant progress demonstrated by Dr Sundaram, and his own lack of initiative, organisation or energy in seizing the various opportunities, advice and assistance offered to him in that time, any adjournment is likely to be rather open-ended, and by no means certain to achieve the object of return to clinical practice as a GP.

52. We therefore dismissed the application to adjourn.

The substantive application for national disqualification

53. Ms Baker relied upon the submissions set out in her skeleton argument, in particular at paragraph 14:
    a. The starting point was that in 2004 Dr Sundaram did not have the level of clinical skill expected of a GP in unsupervised practice.
    b. Since 2004, despite significant support from the Deanery, Dr Heathcote's training practice and the PCT, Dr Sundaram had over 5 years failed to remedy his deficiencies.
    c. She relied on the findings of the FtPP delivered on 1 April 2009 that Dr Sundaram had failed to engage with the remediation process. [A12-14]
    d. His deficiencies represented a risk to patients. She relied on the reason given for imposing immediate suspension as "necessary for the protection of members of the public and in the public interest" [A15]
    e. Dr Sundaram had failed to engage to improve his clinical skills to an adequate level and this was damaging to public confidence in the NHS medical services.
    f. His deficiencies are not local in nature and could manifest themselves in any location in which he worked.
    g. The deficiencies are serious.
    h. Dr Sundaram has shown no insight into the serious of his deficiencies or shown a willingness to engage. In either case the argument for national disqualification was strengthened.
    i. The issues of patient protection, maintenance of public confidence in the profession and the NHS service, and upholding proper standards apply nationally, and not just locally.
54. Ms Baker also submitted that the details of online learning modules, and the refresher course at Charing Cross Hospital, which had been given to us, were not describing things he had done but things he was going to do. The correspondence with various parties about training or mentoring places was all in the period just before a GMC hearing and nothing before or after that had been produced. The personal development plan which Dr Sundaram had submitted was produced late, was severely lacking in detail, almost entirely without structure and was incomplete.
55. Mr Chowdhary's written case summary was directed to the arguments he had raised on his adjournment application
56. He called Dr Sundaram to give evidence. Dr Sundaram told us that he had approached Dr Ratneswaran to be his mentor in August or September 2008. That doctor had told him he wished to speak to Dr Julia Whiteman before he gave Dr Sundaram an answer. Dr Sundaram said he had tried to telephone him to chase him. Then he chased him by email in February 2009 [R29]. He replied in March (we have no copy of that email). After that he contacted a couple of other doctors whose names he now forgot. Dr

Doha was looking on his behalf. He remembered talking to Dr Julia Whiteman in March 2008 (her letter of 18 March 2008 refers to this conversation). He thought she did not give him a list of approved mentors but it was agreed on her behalf that her letter of 18 March offered this assistance if he was unable to make an arrangement with Dr Ratneswaran. Dr Sundaram said "when Dr Ratneswaran did not respond I did not go back to Dr Whiteman and say what had happened and could she help".

57. Dr Sundaram was next asked about his personal development plan. He said the material listed from various books was reference material he was "reading as necessary". He has attached copies of the books and periodicals he had read but not all of them. Page R4 was not complete. He was going to submit a final one to the GMC before April 2010. He described the way he had approached some of the online BMA modules at Tab 4 page 23. This appeared to involve printing out the questions, reading up about them in books, then doing the test on screen. He had not yet submitted the answers. As for the refresher course at Charing Cross Hospital due to take place in March 2010, he had not yet booked onto that course, because they had not yet sent the registration documents. It was a 5 day course.
58. He was asked about national disqualification and said it would be detrimental to his career. He would like to go back to being a GP and follow whatever conditions the GMC imposed.
59. Dr Sundaram told the Panel in answer to its further questions that he did not have a tutor or mentor now but met informally with Dr Doha a couple of times a week. Up to 2008 he had shadowed him 5 days a week. We asked about evidence that he was meeting his learning objectives. He said he was just looking at books and discussing patients with Dr Doha. He had been receiving treatment for his own ill health, which he did not specify.
60. Dr Sundaram told us that he had not actively followed up finding a mentor since his unsuccessful efforts in and prior to March 2009. He thought people would not be keen to be a mentor if they had to give a report to the GMC. Because of his family commitments he had not looked for work outside south east London. He had to take his 3 daughters, aged 15, 12 and 9, to school. Two of them were in schools on the further border of the catchment area. His wife could not drive.
61. In re-examination Dr Sundaram said that he had not approached the Deanery for help in providing a list of potential mentors because of his financial position; he was worried he would not be able to pay them regularly.
62. Closing submissions from the representative of the parties followed their original submissions. Mr Chowdhary also submitted that we should not take into account anything prior to March 2009 because this application arose from the GMC decision on that date.

<u>Consideration</u>

63. The Panel unhesitatingly rejects the submission that it should ignore matters prior to March 2009. We have a duty to take into account all relevant matters in considering the factors set out at paragraph 11 above. Moreover the decision taken by the FtPP on 1 April 2009 relies upon and takes into account the whole history. This is only right and appropriate: Dr Sundaram's proficiency as a GP must be judged in this light. It is not a partial snapshot but a comprehensive judgement, starting with the findings of his deficiencies in 2004 and testing his remedial steps and improvements, if any, since then. The submission is a surprising one given that much of the material put before us as to matters prior to March 2009 was put in by Mr Chowdhary, presumably on the basis that it was (and we agree it was) relevant.
64. We find that the deficiencies which were identified as long ago as 2004 and have persisted to a significant degree since then are serious. His management of two of his patients was found to be potentially dangerous. The deficiencies identified by Dr Heathcote (see paragraph 17 above) also affect fundamental aspects of GP practice. As recently as 1 April 2009 the GMC's FtPP found (and we accept) that "*given the serious deficiencies in your general practice and your breach of one of the conditions on your registration, it is necessary for the protection of members of the public and in the public interest for your registration to be suspended immediately",* and Dr Sundaram did not then argue to the contrary.
65. These serious deficiencies are not essentially local to the area where he was working, but would arise wherever he worked as a GP.
66. The history of the last 5 years provides no reassurance that Dr Sundaram has addressed, or even properly appreciated, these deficiencies satisfactorily. Quite the reverse. Despite receiving significant offers of assistance and advices from the Deanery, Dr Heathcote and the PCT, as set out above, it appears to us that Dr Sundaram has not availed himself of this help, and his reasons for not doing so appear inadequate. We have no evidence that he pursued Dr Ratneswaran until after he had received a letter from the Deanery telling him that in view of his non-responses it could offer no further help. His activity to find a mentor or trainer was tardy, inadequate, and mostly occurred shortly before he was due to appear in front of the FtPP again. He also seems to have relied on Dr Doha to put him in touch with possible mentors, to no great effect, while ignoring the obvious step of getting the Deanery to provide names from its own list, as it had offered to do. This is consistent with the finding of the FtPP that he only wanted to have a mentor with whom he felt comfortable.
67. The persistence of Dr Sundaram's lack of insight or grasp is further demonstrated by the personal development plan which he put before us (and has sent to the GMC). He told us that he had been on a course about how to create such a document but his personal development plan betrays little evidence that he has attended such a course. It makes no reference to the mechanism by which he will demonstrate that the educational needs he has identified have been met or fulfilled. The list of areas requiring

attention is incomplete (as he concedes) and he has not completed a single one of the on-line modules listed, by submitting his test results. This is not an exhaustive list of its deficiencies. We are disappointed to note that it is incomplete even after many years of GMC proceedings and input from trainers, the Deanery and a specific course.

68. Even half way through the period of 12 months suspension from the register, all of the remedial steps presented remain to be done in the future. None have yet been completed. He has taken no step to find a mentor who would satisfy the PCT or GMC since the beginning of April 2009.
69. The explanations offered by Dr Sundaram for his continuing failure to remedy the deficiencies do not satisfy us that he has seriously or actively pursued initiatives or properly complied with the conditions imposed. The FtPP found, and we accept for the same reasons, that he had failed to comply with its Condition 10 (para 19 above). The surrounding facts show an extremely passive approach to compliance, and a fatalistic acceptance of failure when things were more difficult than he might have hoped.
70. Patient welfare is in our view affected by the deficiencies, which concern basic GP skills in conducting consultations, and formulating a management plan. It cannot therefore be predicted exactly how and to what degree any individual patient may be put at risk.
71. The efficient use of NHS resources is in our view likely to be adversely affected whether by processing applications to be admitted to the Performers List in light of the deficiencies he has yet to remedy, or in providing support in time and manpower if he were to be admitted contingently.
72. Sadly, we are driven to the conclusion that national disqualification would be proportionate and is necessary for the reasons set out above. The main concern is one of patient safety and welfare. We are conscious of the potential impact on Dr Sundaram, but do not believe that his career prospects will be significantly worsened by national disqualification, beyond the inevitable effect of his current GMC suspension and the period of formal retraining which (given it is now 2 ½ years since he last engaged in any clinical practice) must inevitable follow the lifting of any suspension, if the FtPP is so minded.
73. Our attention was drawn to the possibility of extending the standard period of 2 years for an application to review national disqualification, pursuant to Regulation 19(a) of the 2004 Regulations, as amended, but we agree with Mr Chowdhary that such an extension (to 5 years) is not necessary and might be disproportionate.
74. After balancing these factors we therefore conclude that a national disqualification is necessary and proportionate.
75. In accordance with Rule 42 (5) of the Family Health Service Appeal Authority (Procedure) Rules 2001 the Appellant is hereby notified that he may have the right to appeal against this decision under Section 11 of the Tribunals and Inquiries Act 1992. Any appeal shall be made by lodging a

notice of appeal in the Royal Courts of Justice, The Strand, London WC2A 2LL within 28 days from the receipt of this decision.

Signed 

Duncan Pratt
Chair of the Panel

Dated 13 October 2009