FITNESS TO PRACTISE PANEL
17 & 18 NOVEMBER 2011
7th Floor, St James's Buildings, 79 Oxford Street, Manchester, M1 6FQ

Name of Respondent Doctor:	Dr Shanthini KRISHNAMURTHY
Registered Qualifications:	MB BS 1997 Dr M G R Medical University
Area of Registered Address:	India
Reference Number:	6111314
Type of Case:	Review case of impairment by reason of deficient professional performance.
Panel Members:	Dr A Barker, Chairman (Medical) Dr M Johnson (Medical) Mrs A Thorne (Lay)
Legal Assessor:	Mr J Widdup
Secretary to the Panel:	Ms A Carney

Representation:

GMC: Ms Catherine Cundy, instructed by the GMC Legal Team

Doctor: Not present or represented

Determination on impaired fitness to practise

Ms Cundy:

Service and Proceeding in Dr Krishnamurthy's absence

Dr Krishnamurthy is neither present nor represented at these proceedings today. The Panel has received documentary evidence that notice of these proceedings was sent to Dr Krishnamurthy's registered address on 17 October 2011 by Special Delivery and via email to Dr Krishnamurthy's registered email address on 14 October 2011.

The Panel has also noted the letter dated 16 November 2011 from Dr Krishnamurthy with apologies that she is unable to appear before the Panel today.

You submitted that notice has been properly served on Dr Krishnamurthy and that the Panel should proceed in her absence.

The Panel has determined that the Notice of Hearing was properly served, in accordance with rule 40 of the General Medical Council Fitness to Practise Rules 2004 (as amended) ("the Rules") and paragraph 8 of Schedule 4 to the Medical Act 1983 (as amended). It has determined that it is appropriate to proceed in her absence, pursuant to rule 31 of the Rules. In all the circumstances the Panel is satisfied that it is in the public interest for today's hearing to proceed.

The Panel has drawn no adverse inferences from Dr Krishnamurthy's absence from these proceedings.

Background

The Panel has noted that Dr Krishnamurthy's case was originally considered by a Fitness to Practise (FTP) Panel in April 2009 which found that her fitness to practise was impaired by reason of her deficient professional performance.

The Panel has noted that Dr Krishnamurthy was employed as a second year Senior House Officer in Anaesthetics by the Northern Health and Social Care Trust working at Antrim Area Hospital, Northern Ireland, between January and April 2007.

The 2009 Panel found that Dr Krishnamurthy's acts and omissions in relation to two patients (Mr MP and Mr CL) were not in the best interests of the patients and were below the standard of professional performance expected of a second year Senior House Officer.

That Panel also noted that between January and February 2007 Dr Krishnamurthy was given a score of three out of ten "Performance not adequate" in the Basic Competencies Unit training by the consensual opinion of the consultants and medical staff in Anaesthetics at the Antrim Area Hospital. In April 2007 a Clinical Performance Panel (CPP) at the Antrim Hospital found that Dr Krishnamurthy's performance continued to be unacceptable and that it fell short of the standard expected of a second year Senior House Officer in Anaesthetics and that as a consequence her contract was terminated. Specifically, the CPP found that Dr Krishnamurthy failed to meet expected standards in respect of:

- demonstrating basic practical anaesthetic skills,
- communicating well with work colleagues,
- sustaining and maintaining a consistent and acceptable standard of clinical competence and performance.

The 2009 Panel suspended Dr Krishnamurthy's name from the Medical Register for a period of 12 months. Dr Krishnamurthy was advised that she would be expected to demonstrate insight and to show that she had recognised and remedied the areas where she fell below the standard expected of a second year Senior House Officer.

In April 2010 Dr Krishnamurthy's case was reviewed. That Panel was told that Dr Krishnamurthy had just begun to remediate the deficiencies identified in her

performance, had undertaken relevant courses in India and had commenced a training course that was due for completion in December 2010. That Panel found that Dr Krishnamurthy's fitness to practise remained impaired and it suspended her registration for a further nine months to allow her to complete her training programme.

At Dr Krishnamurthy's next Fitness to Practise hearing on 14 January 2011, the Panel directed that Dr Krishnamurthy's registration be suspended for a period of 6 months and that consideration of her case should be reviewed at a hearing to be held shortly before the end of that period.

That Panel reminded Dr Krishnamurthy that it was her responsibility to demonstrate that she had:

- gained insight into her deficient professional performance,
- recognised each of the areas of deficiency where she fell below the standard expected of a second year Senior House Officer,
- remedied each of these areas of deficiency.

That Panel indicated that the next Panel reviewing the case would be assisted by receiving documentary evidence from Dr Krishnamurthy including:

- a copy of her Personal Development Plan,
- the results of any audits she may have undertaken in respect of her clinical practice,
- written evidence that she had participated in Continuing Professional Development, details of any training she had undertaken, as well as her performance on these courses,
- evidence of the work she had undertaken in India over the past two years, her current clinical role and level of practice as well as written evidence from her supervisors regarding her clinical competence,
- any workplace assessments,
- any 360 degree feedback she may have received.

The Panel in January 2011 further stated that it was Dr Krishnamurthy's responsibility to provide clear, detailed and objective evidence of her clinical practice during her period of suspension. It also stated that the next Panel would be assisted by independent evidence of the extent of Dr Krishnamurthy's involvement in the log of some 948 procedures and her involvement in any further cases carried out since the log was completed in December 2010.

On 25 July 2011 a Fitness to Practise Panel convened to hear Dr Krishnamurthy's case but adjourned part-heard. That Panel extended the suspension imposed on Dr Krishnamurthy's registration for a further two months. It reconvened on 23 September 2011 and determined to recuse itself so that the question of Dr Krishnamurthy's fitness to practise could be considered anew by a freshly constituted Panel. It extended the suspension imposed on Dr Krishnamurthy's registration for a further one month.

The current Panel has reviewed Dr Krishnamurthy's case and considered whether her fitness to practise remains impaired by reason of her deficient professional performance. In doing so, it has considered all the evidence and the submissions made by you on behalf of the GMC.

The Panel has noted the certificate dated 18 July 2011 from the Division of Anaesthesiology, Southern Railway Headquarters Hospital, Chennai, certifying that Dr Krishnamurthy underwent training as a post graduate student in Anaesthesiology from February 2009 to February 20011.

The Panel has had regard to the log provided by Dr Krishnamurthy of the 948 procedures undertaken by her and annotated to indicate which she performed independently, which were supervised and those in which she had assisted. The Panel notes that there is no objective evidence of the quality of Dr Krishnamurthy's work.

The Panel has noted the letter dated 11 July 2011 in which Dr Krishnamurthy stated that she was working as a junior Anaesthetist in an Opthalmic Hospital. She indicated that she was presently doing an audit and would provide her supervisor's feedback during her training period by post.

The Panel has taken account of the letter from Dr Krishnamurthy dated 31 October 2011 in which she stated that she understood her deficiencies and that in her view, she has taken sufficient steps to improve her skills. She stated that she is currently undertaking pre-operative assessments and routine anaesthesia for short day care. She indicated that she is also providing anaesthesia in geriatric and paediatric surgeries. Dr Krishnamurthy gave the name of two referees: Dr A and Dr B.

The Panel has had regard to the email dated 4 November 2011 from Dr A in which he stated that he had previously given a testimonial when he supervised Dr Krishnamurthy as a DBN post graduate trainee. He reported that he left the hospital a few months later and that at present he knows nothing of Dr Krishnamurthy's work. Significantly, he stated that Dr Krishnamurthy never told him about the various incidents which took place when she was employed in the United Kingdom and which brought her to the attention of the GMC.

The Panel has noted that there is no new testimonial from Dr B, Head of Department, Southern Railway Headquarters Hospital, but it has noted the testimonial he gave on 8 April 2011 in which he stated:

> "Dr Krishnamurthy could manage ASA 1-111 cases confidently and also managed high risk cases under supervision."

In a further letter dated 16 November 2011 Dr Krishnamurthy apologised for not attending today's hearing and stated that she is not planning to return to work in the United Kingdom. She reiterated that she has already undertaken steps to improve her performance and completed her two year training programme. She observed that it is difficult to secure a reference during the first year in post and that she therefore could not obtain a reference from her current employer. She asked to be pardoned and to be given an opportunity to continue in this specialty.

The Panel has noted the certificates from anaesthesia courses dated January, February and October 2011.

Ms Cundy, on behalf of the GMC, you have submitted that the information supplied by Dr Krishnamurthy is insufficient to establish that she is now fit to practise. You have submitted that Dr Krishnamurthy has not shown insight into her deficiencies. You have further pointed out that Dr Krishnamurthy has not engaged fully with the GMC and has provided only cursory information at a late stage to the current Panel as well as to previous Panels. You have observed that Dr Krishnamurthy has failed to set out in any detail where she has been working and in what capacity. You have submitted that in light of the paucity of information on essential matters regarding Dr Krishnamurthy's level of skills, this Panel has no basis upon which to conclude that Dr Krishnamurthy is fit to practise. You have submitted that Dr Krishnamurthy's Fitness to Practise is impaired by reason of her deficient professional performance.

Whilst the Panel has borne in mind your submission, the decision as to whether Dr Krishnamurthy's fitness to practise is impaired is one for it to reach, exercising its own judgment.

The Panel has noted that Dr A has provided two letters of support at previous review hearings. It was very concerned by the comments in his recent email in which he stated that Dr Krishnamurthy had not informed him of the various incidents that took place in the United Kingdom. It has noted however that in an email dated 6 December 2010 Dr D stated that "I was aware of the fact that she was terminated from a job in the United Kingdom..." This Panel has no evidence that Dr Krishnamurthy has informed all her employers of the details regarding the determinations of previous Panels. This Panel is concerned that this demonstrates a lack of insight and possibly a lack of probity as well.

The Panel has reminded itself of the serious nature of Dr Krishnamurthy's deficiencies in 2007. It has found that they are fundamental to basic anaesthetic procedures. The Panel is concerned that even Dr B's testimonial dated 8 April 2011

stated that she has only managed high risk cases “under supervision”. The Panel is concerned by Dr C’s email dated 18 December 2010 in which he stated: “I have no hesitation in recommending her to practise in the UK. If she intends to work in Anaesthesia she should work in a larger hospital under supervision.“

In a letter dated 11 July 2011 Dr Krishnamurthy stated that she was undertaking an audit and would provide her supervisor’s feedback. To date she has provided no such information.

Although Dr Krishnamurthy has provided certificates of her attendance at anaesthesia courses, the Panel cannot make an assessment of the quality of these courses. No other evidence of Continuing Professional Development has been provided by Dr Krishnamurthy, nor has she provided any evidence that the specific deficiencies identified in 2007 and 2009 have been addressed.

The Panel has found that Dr Krishnamurthy has been informed on several occasions that it is her responsibility to provide evidence that she has addressed her deficiencies. It has noted that she was given clear indications of the specific information required to demonstrate her progress in addressing the deficiencies. The Panel has found that despite being given ample opportunity, Dr Krishnamurthy has not provided the information requested and that she has in fact provided minimal information. The Panel has found that Dr Krishnamurthy has therefore failed to engage fully with the GMC.

This Panel has found limited evidence of Dr Krishnamurthy’s current clinical practice. The Panel has no evidence of any formal assessment Dr Krishnamurthy may have undergone, so it is unable to properly assess her current standard of clinical practise. It has not received her Personal Development Plan, so it is unable to assess the extent of her understanding of her failings and her proposals for remediation.

The Panel has borne in mind the case of CHRE v NMC in which Cox J said this at paragraph 71 of her judgement

> “It is essential, when deciding whether fitness to practise is impaired, not to lose sight of the fundamental considerations... namely the need to protect the public and the need to declare and uphold proper standards of conduct an behaviour so as to maintain public confidence in the profession”

Later on in her judgement at paragraph 76 Cox, J referred to Dame Janet Smith’s Fifth Report in which the following question was asked

> “Do our findings of fact in respect of the doctor’s deficient professional performance show that his/her fitness to practise is impaired in the sense that she has in the past acted an/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm?“

The Panel has also borne in mind Cohen v GMC [2008] EWHC 581 (Admin) in which Silber J said at paragraph 65

> "It must be highly relevant in determining if a doctor's fitness to practise is impaired that first his/her conduct which led to the charge is easily remediable, second that it has been remedied and third that it is highly unlikely to be repeated."

Taking all the evidence into account and having regard to these cases, the Panel has determined that Dr Krishnamurthy's fitness to practise is impaired by reason of her deficient professional performance.

The Panel will now invite you to make further submissions as to the appropriate sanction, if any, to impose in this case. Submissions on sanction should make reference to the Indicative Sanctions Guidance (August 2009) where appropriate.

Determination on sanction

Ms Cundy:

Having determined that Dr Krishnamurthy's fitness to practise is impaired by reason of her deficient professional performance, the Panel must now determine what action, if any, to take on her registration.

You have submitted, on behalf of the General Medical Council (GMC), that Dr Krishnamurthy's fitness to practise remains impaired and that erasure is the appropriate sanction in this case. You submitted that Dr Krishnamurthy has asserted that she is safe to practise but that she has not demonstrated that she is fit to do so. She has failed to provide objective evidence of her work as required by the previous Panels. You referred this Panel to paragraphs 113 and 116 of Indicative Sanctions Guidance (April 2009, as amended) (the Guidance), which stipulates that no doctor should be allowed to resume unrestricted practise following a period of suspension unless the Panel considers that he/she is safe to do so.

The decision as to what sanction to impose, if any, is a matter for the judgment of the Panel.

The Panel has had regard to the GMC's Guidance. The purpose of a sanction is not to be punitive but to protect patients and the public interest. The public interest includes the protection of patients, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour. Throughout its deliberations the Panel has taken into account the principle of proportionality, weighing the interests of the public with Dr Krishnamurthy's interests.

The Panel has already given a detailed determination on impairment and it has taken all of the matters cited in that determination into account during its deliberations on sanction.

The Panel first considered whether it would be appropriate to conclude Dr Krishnamurthy's case by taking no action on her registration. The Panel considered that, in the light of the seriousness of the deficiencies found in Dr Krishnamurthy's professional practice in 2007 and the lack of sufficient evidence of remediation since then, it would not be appropriate to conclude the case by taking no further action.

The Panel next went on to consider whether it would be appropriate to impose a period of conditional registration. Any conditions would need to be appropriate, proportionate, workable and measurable. The Panel determined that no conditions could be formulated that would protect the public interest and maintain public confidence in the medical profession. The Panel has minimal information before it of the action Dr Krishnamurthy has taken to date to remedy the deficiencies in her clinical practice. The Panel is concerned about Dr Krishnamurthy's lack of insight and understanding of the seriousness of her clinical deficiencies. In these circumstances no conditions can be formulated which would enable Dr Krishnamurthy to practise safely.

The Panel then went on to consider whether suspension would be an appropriate sanction. Paragraph 27 of the Indicative Sanctions Guidance states:

"Suspension is also likely to be appropriate in a case of deficient performance in which the doctor currently poses a risk of harm to patients but where there is evidence that he or she has gained insight into their deficiencies and has the potential to be rehabilitated if prepared to undergo a rehabilitation programme. In such cases to protect patients and the public interest the panel might wish to impose a period of suspension, direct a review hearing and recommend the type of educational programme the doctor might undergo during the suspension, or action he or she might wish to take."

At the review hearing in January 2011 the Panel was satisfied that Dr Krishnamurthy appeared to be committed to remedying her clinical practice even though the evidence of remediation was very limited. That Panel made it clear to Dr Krishnamurthy that it was her responsibility to provide evidence of her remediation. This Panel has noted that Dr Krishnamurthy asserts that she is fit to practise, but she has provided cursory evidence to support this contention. This Panel is not satisfied that Dr Krishnamurthy has the insight, understanding or commitment to engage in the work need to address her deficiencies.

The evidence before the Panel in 2009 disclosed serious failings covering a wide range of basic anaesthetic skills which put patients at risk. In his email dated 18 December 2010 Dr C stated: "If she intends to work in Anaesthesia she should work in a larger hospital under supervision."

It is four years since the events giving rise to Dr Krishnamurthy's referral to the GMC and two and a half years during which her registration has been suspended. In that time this Panel would have expected her to remediate her clinical shortcomings. There is no objective and independent evidence of this remediation. On the contrary

the previous Panel gave clear and comprehensive indications of acceptable ways to demonstrate a commitment to addressing her shortcomings in order to satisfy this Panel that she has done so. She has failed to submit, among other things a Personal Development Plan or its equivalent; an appraisal or assessment of her clinical practice; or a report of any audit.

The Panel does not accept Dr Krishnamurthy's assertion that she has been unable to provide a reference from those supervising her current clinical work. The Panel is concerned that she failed to inform one of her referees, Dr A, of her clinical failures in 2007. The Panel has concluded that she has persistently demonstrated a reckless disregard for the principles set out in Good Medical Practice and for patient safety. In all the circumstances the Panel has concluded that a further period of suspension would be futile. This Panel finds that the risk of future harm to patients is both real and serious.

It follows that this Panel has concluded that the only sanction which can be imposed is one of erasure. It has borne in mind the GMC's Indicative Sanctions Guidance paragraph 82.

Accordingly, the Panel has determined to direct that Dr Krishnamurthy's name be erased from the Medical Register. In the light of all the evidence presented to it, it is satisfied that erasure is a proportionate sanction in his case.

The effect of the foregoing direction is that, unless Dr Krishnamurthy exercises her right of appeal, her name will be erased from the Medical Register 28 days from the date on which written notice of this decision is deemed to have been served upon her. The sanction of suspension currently imposed on her registration will remain in effect until the appeal period has concluded. If Dr Krishnamurthy does exercise her right of appeal the sanction currently imposed on her registration will remain in effect until the outcome of the appeal has been decided."

That concludes the case.

Confirmed

18 November 2011 Chairman