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Re: Rashid v General Medical Council [2012] EWHC 2862 Admin

Background

On 24 April 2012 the Interim Orders' Panel ("IOP") made an order suspending Dr Rashid's registration for a period of 18 months. Dr Rashid appealed to the Administrative Court seeking a termination of the order under section 41A(10) of the Medical Act 1983 (as amended).

Appeal

Dr Rashid's appeal came before His Honour Judge Gosnell on 18 September 2012.

The Judge sets out details of how the court should consider an appeal under section 41A(10) in paragraphs 2-6 of his judgment.

He notes that an IOP is not intended to hear evidence and make findings of fact and nor is the court. He sets out the facts which the IOP took into account and their reasons for the decision. He summarises this in paragraphs 7-14.

HHJ Gosnell notes that the IOP appeared to rely on eight allegations in support of their decision to suspend Dr Rashid (paragraph 14) and they further appeared to have decided to make an order on the basis of all three limbs under section 41A of the Medical Act 1983. He further notes that Counsel for the GMC, at the hearing before the IOP, contended that both protection of members of the public and the public interests applied

but at the hearing before him accepted that only the public interest limb could be justified. The Judge agreed with the concession made.

HHJ Gosnell criticises the *“somewhat formulaic nature of the last few paragraphs of the decision, and the failure to analyse the parties competing cases before coming to a decision”* (paragraph 15) which makes it difficult to give the type of respect for the decision which the authorities referred to in paragraphs 3-6 of his judgment.

He goes on to say:

“It is clear that no specific reasons were given in this case, save that ‘the matters alleged give rise to such serious public concerns that only an order for suspension will be sufficient to maintain confidence in the profession. The following paragraph dealing with proportionality has all the hallmarks of a generic pre-prepared statement not tailored to the facts of the particular case’.”

The Judge confirms that although he was critical of the way the decision was expressed he accepts that it was made in good faith by the IOP and, in the circumstances, he was required to examine, for himself, whether it was in fact objectively justified (paragraph 16).

He goes on to consider whether singly or cumulatively each of the allegations are serious enough to justify suspension and then turns to the individual reasons which it appears the IOP had taken into account (paragraphs 17-21).

HHJ Gosnell then goes on to consider (paragraph 22) the assessment of whether an allegation is serious enough to raise such public concerns as to warrant a suspension of a doctor. It seemed to him to involve two elements:

1. the nature of the offence, and
2. the cogency of the evidence.

He acknowledges that while the IOP are not making findings of fact, they are assessing risk and clearly the stronger the evidence against the doctor the more likely he is to be convicted. He confirms this helps the *“alternative result assessment”* which was set out in paragraph 26 of Sosanya v GMC [2009] EW8C 2819 Admin (set out in paragraph 6 of HHJ Gosnell's judgment).

He goes on to say the risk of an injustice is all the higher where the evidence is weak and in Dr Rashid's case he considers the evidence was *“sparse”*.

HHJ Gosnell concludes (paragraph 26) as follows:

“With respect, I do not think the panel in this case has given sufficiently cogent reasons why Dr Rashid should be suspended as an interim measure... I am not

satisfied that the allegations, either individually or cumulatively, are sufficiently serious to justify his suspension. Such a sanction is neither necessary, desirable or proportionate in this case”.

In the circumstances he terminated the interim order of suspension.

Salient Points

- Reminder that an order of suspension solely on the ground that it is in the ‘public interest’ should only be made in cases where the allegations are sufficiently serious taking into account the nature of the offence and the cogency of the evidence (paragraph 22).
- Reminder of the need to give reasons which are tailored to the individual case both as to the need to make an order, the basis of the order and the nature of the order (proportionality) (paragraph 15).

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