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Dr Malik v GMC [2013] EWHC 2902 Admin

Background

Dr Malik was referred to the Interim Orders Panel ('IOP') in relation to probity issues arising from the submission of assessments over a period between 4 August 2010 and 5 April 2011 in support of his E-Portfolio which were falsified. The IOP imposed an order on 14 March 2013 suspending his registration.

Dr Malik applied to the court for the order to be terminated under Section 41A(10) of the Medical Act 1983 (as amended).

The matter was considered by HHJ Raynor QC on 8 August 2013.

Application

The Judge sets out a summary of the relevant sections of the legislation and the case law to be considered when the court is asked to terminate an order of suspension (paragraphs 2 - 3). He thereafter sets out the facts of the case including the Determination of the IOP (paragraphs 4 - 17).

Having heard submissions from the parties, the Judge considered that he was (paragraph 19):

'...wholly unsatisfied on the evidence before me that there is any real risk as a result of lack of clinical competence to the patients of Dr Malik. That is not just my view; that is, in fact, the view of those who had direct responsibility for his supervision and training. It is how the case was presented before the Interim Orders Panel, and the view that it was not a case of clinical competence was no doubt one that was taken after consideration and was a considered view.'

In the circumstances, he confirmed that he was satisfied that the order of suspension could not be justified as being necessary for the protection of members of the public. He went on to consider whether it could be justified and ought to be upheld as being otherwise in the public interest (paragraph 21).

He confirms (paragraph 23) that the answer, in the circumstances of Dr Malik's case, as to whether an interim order of suspension ought to be continued is:

'...that there is no evidence of any lack of probity or misconduct after the period with which I am concerned, and it is not right, it seems to me, to proceed upon the basis – there being no allegation of any dishonest conduct after the last of the created documents other than the different explanations – during the period of the investigation there is likely to be serious risk of any repetition of dishonest conduct'.

He considered that Dr Malik's case was not such a one that where the public, if the charges are ultimately proven, will say that it was wrong to allow the doctor to continue as a trainee GP under supervision (paragraph 23).

In the circumstances he concluded that it was wrong to continue the order of suspension on the particular facts of the case.

Sallent Point

- Where probity relates to a single historic issue and where there are no *live* concerns about competence or the continued integrity of the doctor, suspension is unlikely to be an appropriate order.

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