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Re: Dr Lawrance v The General Medical Council [2016] EWHC 215 (Admin)

Abstract

An appeal was brought pursuant to section 40 of the Medical Act 1983 against the order of the Fitness to Practise Panel ('the Panel'), as it then was, that the Appellant's fitness to practise had been impaired by reason of her serious misconduct and ordered that Dr Lawrance be erased from the medical register. Mr Justice Holroyde dismissed the appeal.

Background

This matter has a long history; in 2014, a fitness to practise panel heard allegations that in County Court proceedings Dr Lawrance had given false and misleading evidence as to the nature of the work that she did, the time period for which she worked and the date she left the medical practise where she worked. That panel found allegations proved and deemed Dr Lawrance to be guilty of misconduct and considered her fitness to practise to be impaired as a result. An order was made that her name be erased from the medical register. An appeal was brought against the determination and, in 2015, Collins J allowed the appeal¹ in part, ruling that the Panel had erred in its approach to a finding of dishonesty and by failing to invite Dr Lawrance to attend and make representations before a decision was made as to sanction – Dr Lawrance having attended on the first day of the hearing and leaving during the second day. The findings of the Panel, that Dr Lawrance's statements and evidence were inaccurate, were deemed to stand and could not be

¹ Ref: MPTS Appeal Circular A13/15

challenged when the matter was remitted for consideration before the second fitness to practise panel, although this Panel was tasked with making a fresh determination as to whether the conduct found proved by the first Panel was misleading or dishonest. A fresh decision on misconduct and impairment was also within the remit of the second Panel.

In October 2015, the matter was heard by a second Panel, which found that as Dr Lawrance did not work at the practice after 7 March 2005 it followed that the evidence she provided to the County Court, namely that she had worked after that date, was untrue and that her conduct was misleading and dishonest. Consequently, it deemed Dr Lawrance to be guilty of serious misconduct and that her fitness to practise was impaired. Erasure was deemed to be the appropriate sanction, which was ordered in absence, Dr Lawrance having absented herself from the hearing.

Appeal

An appeal was brought challenging the decision of the first panel finding allegations proved and therefore against the decision of the second panel in affirming those findings. Further, the appellant challenged the decision of the second panel to consider sanction and erase her from the medical register in her absence.

Holroyde J opined that as findings had been left undisturbed by Collins J in the first appeal, the 'second Panel had to make its determination on the basis that Dr Lawrance has been proved to have made false statements but was still not prepared to make any admission of having done so' [para 36]. In his judgment, Holroyde J found that the second Panel was 'entitled to determine that the false statements proved against Dr Lawrance were not only misleading but also dishonest'. In applying the two-stage approach as set out in *R v Ghosh [1982] QB 1053*, the Panel directed itself correctly.

It was said that 'Dr Lawrance cannot complain about the decision of the Panel to proceed to consider sanction in her absence. She knew what was at stake, and she knew that the Panel had power to proceed in her absence' [para 38]. Holroyde J acknowledged that Dr Lawrance was very distressed, albeit noted that having time to reflect overnight as to the position, she had not taken any steps to contact the Panel, nor asked anybody else to do so, if she wished to defer her submissions until after the weekend, and neither did she provide submissions in writing. The Panel were thus left in ignorance as to why Dr

Lawrance had not attended or whether she intended to return.

In considering sanction, Holroyde J recognised the difficulty that the Panel had by Dr Lawrance maintaining she had done nothing wrong. In upholding the sanction of erasure, it was said that 'this is not a case in which the misconduct proved...can be remedied by retraining or a period of supervision'. If Dr Lawrance returned to practise, she would be doing so on the basis that she 'had been found by a judge in the County Court proceedings to have made false statements in court proceedings and found by a Fitness to Practise Panel of her profession to have been dishonest, but who had refused to acknowledge that she had done anything wrong'. This resulted in Holroyde J upholding the sanction, concluding that this was in line with the Indicative Sanctions Guidance and that 'public confidence in the profession would be damaged if Dr Lawrance returned to practice' [para 40].

Salient points

If a doctor knows that the Panel has the power to proceed in absence, s/he cannot complain if the Panel chooses to do so, even where the Panel proceeds to order erasure from the medical register.

Erasure may be an appropriate sanction where the misconduct does not relate to clinical matters. In the case of a dishonesty finding, where the doctor maintains that s/he has done nothing wrong, following a finding that false evidence had been given in county court proceedings, public confidence in the profession would be damaged if the doctor returned to practice.

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