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Dr Bhatnagar v GMC [2013] EWHC 3412 Admin

Background

Dr Bhatnagar was suspended by the Interim Orders Panel ('IOP') on 17 January 2013 for a period of 12 months.

He made an application to the court under section 41A(10) of the Medical Act 1983 seeking termination of the interim order.

Application

Dr Bhatnagar raised the following issues in his application which was considered by Mr Justice Edwards-Stuart in June and October 2013 (judgment being given on 11 November 2013) as follows:

1. It was unfair to impose an interim suspension order;
2. It was disproportionate to impose an interim suspension order;
3. It was wrong to impose an interim suspension order;
4. The IOP failed to give reasons, alternatively adequate reasons, to explain its decision.

Mr Justice Edwards-Stuart sets out the remit of the court in considering such applications (paragraphs 4-5). He thereafter sets out the facts of the case (paragraphs 6-14).

The Judge noted that Dr Bhatnagar had appeared before a fitness to practise panel in 2008-9 which concluded that his fitness to practise was impaired and imposed a period of six months' suspension. He then goes on to consider the hearing before the IOP on 17

January 2013 including the submissions made by the parties and the IOP's determination (paragraphs 15-24).

Mr Justice Edwards-Stuart then sets out the provisions of section 41A of the Medical Act 1983 and references to the relevant authorities and helpful extracts referred to by the parties at the hearing (paragraphs 25-29).

The Judge then considered material which was considered by the IOP specifically that produced by a Mr Manglam (paragraphs 38-49), the evidence of Sian Morris (paragraphs 50-51), the Care Quality Commission allegations (paragraphs 52-53) and the matters before the 2008/9 FTP Panel (paragraphs 54-56).

Mr Justice Edwards-Stuart acknowledged (paragraph 57) that the issue for the IOP was whether the combination of the allegations made by the Care Quality Commission and the allegations of dishonesty made by Mr Manglam, together with the conduct revealed by Ms Morris' witness statement and his findings of the 2008-9 FTP Panel justified suspension.

He goes on to say that the IOP had asked itself – and did ask itself – what a reasonable onlooker would think, in the event of the doctor ultimately being convicted of the formal allegations arising from the complaint being allowed to go on practising in the meantime (paragraph 58). He considers that if the hypothetical onlooker would expect the doctor to be suspended from practice, then it would be legitimate to conclude that it was necessary that he should be suspended in order to maintain confidence in the medical profession.

Counsel for the doctor made the point that there was no allegation that Dr Bhatnagar had caused any harm to a patient nor was there any suggestion that he had ever been guilty of harming a patient through medical malpractice. The Judge commented that in the context of his suspension it was a powerful point and if the doctor had practised for many years without directly harming a patient what justification existed for suspending him.

He goes on to say (paragraph 60):

'In my view the answer lies in the allegations of dishonesty in connection with his practice and, in particular, dishonesty calculated to pervert the course of the GMC's regulatory procedures. This is, to my mind, quite different from, for example, committing fraud by abusing a position as a governor of a school.'

He goes on (paragraph 61):

'I consider that a reasonable onlooker would be concerned if a doctor who was accused of fabricating or altering the records of one of his clinics in order to avoid suspension was permitted to continue to practise, assuming of course that the allegations appeared to be supported by cogent evidence and were not just unsubstantiated claims. He or she would be reinforced in his conclusion if he or

she knew that at an earlier hearing another FTP Panel had found that Dr Bhatnagar had been guilty of dishonesty in the management of the clinic.'

He concluded in relation to this issue (paragraph 62):

'The reasonable onlooker test is, in effect, a combined test of necessity and proportionality. However, it still remains for the IOP and the Court to consider the consequences of the sanction in the context of the individual case. I agree with the IOP that, on the material before it, there was no appropriate condition that could meet the circumstances of this case: the question was whether or not Dr Bhatnagar should be permitted to continue to practise pending the final hearing.'

The Judge acknowledged that as at Dr Bhatnagar's age (66 years) suspension would likely make it difficult, if not impossible, for him to find other work, it would therefore appear a draconian measure. However, in the Judge's view, Dr Bhatnagar had demonstrated that he is not to be trusted. He had shown a persistent disregard for the requirements of good management and that he was prepared to resort to calculated dishonesty in order to get his way.

Mr Justice Edwards-Stuart then turned to the adequacy of the IOP's reasons (paragraphs 65-71).

He made reference to the GMC's guidance as observed by Lindblom J in Abdullah v GMC [2012] EWHC 2506 Admin (paragraph 65).

He noted that the IOP made it clear that the interest embraced in the case was a public interest and noted that there were no substantive clinical issues before the panel. The IOP then went on to address the seriousness of the allegations and that there were no conditions which would adequately provide sufficient safeguards for the public interest and that the public confidence in the medical profession would be seriously damaged if Dr Bhatnagar were allowed to have a restricted registration whilst these allegations were resolved (paragraphs 66-67).

The Judge concludes whether one agrees or not with the IOP, in his view the reasons given for its decision were perfectly clear and he therefore rejected this ground of complaint.

He concluded (paragraph 69) that since the allegations made against Dr Bhatnagar included very serious allegations of dishonesty in connection with his practice, the reasonable onlooker would be concerned if he were allowed to remain in unrestricted practice until the allegations against him had been resolved. He therefore considered it was one of those 'rare cases' where interim suspension was justified and that the IOP was entitled to reach the conclusion that it did.

Following the hearing in June whilst the parties were aware of the outcome, the Judge did not provide his written reasons. In the meantime, a further hearing before the IOP took place and the interim order of suspension was substituted with one of conditions. In the circumstances Dr Bhatnagar made an application to the Court to adduce further evidence (paragraphs 72-84).

In relation to the subsequent decision of the IOP (which was differently constituted) the Judge considered its decision to substitute conditions for suspension on 16 July 2013 in relation to the reasons given were *'fairly cursory'* (paragraph 76). It appeared to the Judge that Dr Bhatnagar had drawn the IOP's attention to various documents which he said supported his refutation of the allegations made against him and explained how, since his suspension, he had not been able to find work and as a consequence had financial difficulties.

The Judge sets out the decision of the IOP (paragraph 77) and he also notes that a further IOP considered Dr Bhatnagar's case again on 11 October 2013 (again differently constituted) and sets out various reasons for maintaining the interim order of conditions (paragraph 80). The Judge considers in relation to this determination that the IOP's observations do not provide much assistance in understanding what it was that led the previous IOP to substitute conditions for suspension.

He goes on (paragraph 81):

'It seems clear that both panels were concerned at the effect on Dr. Bhatnagar of an order of suspension from practice. This is a factor that inevitably has more weight as time goes on without any date for a hearing of the allegations having been fixed. It appears also that the panel may have given some weight to the submissions of Mr. Butler as to the "paucity of information provided in support of the allegations" against Dr. Bhatnagar. This is not a submission that found much favour with me for the reasons that I have already given.'

He concluded that his decision to dismiss the appeal would stand and he summarised that the reasons for his decision (paragraph 83) were as follows:

1. He had already made his decision and communicated it to the parties;
2. His decision was based on the situation in January 2013;
3. The determination of the IOP in July 2013 suggests on the face of it that it took into account some further information;
4. Even if the IOP, albeit differently constituted, had simply changed its mind as to the sanctions that would have been appropriate in January of 2013, that is not of itself a reason why his appraisal of the situation - reached independently should change.

In the circumstances he did not consider that the two subsequent decisions of the IOP provided any justification for altering the conclusion reached following the hearing.

Salient Points

- The question which the IOP has to ask itself is – what would a reasonable onlooker think, about a doctor being allowed to go on practising, in the event he/she is ultimately convicted of formal allegations arising from the complaints.
- Where allegations of dishonesty arise in connection with a doctor's practice and, in particular, where this dishonesty is calculated to pervert the regulatory process, an IOP would be justified in suspending a doctor.

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