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General Medical Council v Dr E [2013] EWHC 3425 (Admin)

Background

An Interim Orders Panel ('IOP') imposed an interim order of conditions on Dr E on 23 April 2012. An application was made by the General Medical Council ('GMC') for an order pursuant to Section 41A of the Medical Act 1983 for an order extending by 12 months (to 22 October 2014) that interim order.

Dr E resisted the application.

Application

The application came before His Honour Judge Pelling QC for consideration on 17 October 2013.

Dr E had been subject to conditions which had not differed materially over time. The condition which was material for the purposes of the application for an extension was condition 5 (set out in paragraph 2 of the judgment).

Dr E stated that the effect of the order was for all practical purposes the equivalent of a suspension because he had worked for most of his professional life as a GP and out of hours general practitioner. He resisted the extension on the basis that it was contrary to his interests and disproportionate in the circumstances both because of its practical effects and the delay that had occurred and would occur before the case against him could be placed before a Fitness to Practise Panel (paragraph 2).

HHJ Pelling QC sets out the principles which apply to such applications (paragraphs 3-6).

The allegations faced by Dr E are set out together with details of the GMC's investigation to date at paragraphs 7-11.

The credibility of KA's evidence is a key factor. The Judge notes (paragraph 12) it is not a function of the court to reach judgments as to whether the factual allegations relied upon by the GMC have been proved. However, the facts to which the Judge in the preceding paragraphs (relating to the case) of his judgment referred suggested that the central allegation that Dr E has raped KA on a large number of occasions over a number of years was an unsustainable allegation because it depended exclusively on evidence that was manifestly unreliable.

The Judge notes that this is significant as the GMC's case at each IOP to which the case against the doctor had been presented, had been presented exclusively by reference to that allegation (paragraph 13). He goes on to note that at the hearing the GMC sought to broaden the allegations to include one concerning probity and also to justify the continued imposition of conditions on the basis that even if the rape allegations are discounted as incredible or nearly so, there is nonetheless evidence that the doctor entered into a relationship with a vulnerable adult patient or ex-patient and that should be regarded as at least as serious (paragraph 14).

The Judge also notes that Dr E is not alleged to have any previous findings of misconduct made against him which he considers significant as he had been qualified as a medical practitioner for not less than 20 years (paragraph 15); and further that each of the organisations by whom Dr E was employed professed themselves happy to employ him on an unrestricted basis (paragraph 16).

HHJ Pelling QC concludes (paragraph 17):

'I have come to the conclusion that on the material available to me the evidence of KA appears to be sufficiently unreliable that it must be discounted, save where it is agreed or is supported by other evidence from an otherwise unimpeachable source'.

He goes on to say (paragraph 18):

'Critically in my judgment the allegation that the relationship started while KA was a patient of the defendant is denied and was not supported by KA in a statement she gave at the time of the first investigation'.

HHJ Pelling QC states that the issue that he finds a little more difficult concerns the probity of Dr E which is not an issue which has been considered by an IOP and is said to have only surfaced following a witness statement from Dr Oxtoby, GP Principal, at the surgery where Dr E was a partner and he was required to resign in March 2010.

In summary, the issue is that Dr Oxtoby asked Dr E whether the former patient who he disclosed he was in a relationship with was KA. Dr E refused to give the name of the patient or former patient concerned. In the Judge's view this was not a helpful response,

but did not lack probity because it did not involve any false representation. However, he goes on to say that Dr E did tell his partners that the patient or former patient concerned was not, in his view, a vulnerable adult. The Judge found it difficult to see how that could be regarded as an honest answer in the particular circumstances of the case. He goes on (paragraph 20):

'Whilst I do not consider the probity allegation to be so serious that it ought to lead to suspension rather an interim conditions order, it does of course have an impact on the submission made on behalf of the defendant concerning the relaxation of the conditions which have been imposed upon him by the GMC'.

Before turning to his conclusions he considers the delay in relation to the GMC's investigation (paragraphs 21-23). He acknowledges that the GMC must be particularly astute to protect the interests of vulnerable people and rejected Dr E's submission that KA cannot be allowed to dictate the speed of the investigations if by that it was contended that the speed of the investigation can have no regard to the vulnerabilities of KA. He did, however, accept that the point made on behalf of Dr E that there will come a point where, if there is no evidence to support her complaint, the process must be brought to a conclusion on the basis that she cannot or will not provide a statement to support the allegation that she has made.

It was submitted that on behalf of Dr E that condition 5(a) should be discharged and be replaced with conditions which entitled him to practise as a GP without a chaperone or unless one was requested whereas the GMC sought continuation of the existing conditions.

In HHJ Pelling QC's view neither submissions made by the parties were ones that he could accept (paragraph 26). He then goes to set out his reasons for his view that whilst he considered interim conditions were necessary for the protection of patients and Dr E it was necessary to consider very carefully whether condition 5(a) was proportionate in the circumstances (paragraph 27).

He states (paragraph 28):

'Conditions that are proportionate when they are first imposed can become disproportionate with the passage of time and thus delay is a material consideration in deciding whether it would be proportionate to continue the interim conditions order or relax it in whole or part'.

He goes on to say that he accepts the evidence of Dr E that he has been deprived of most of his income as a result of the conditions imposed and that this seriously affected his ability to provide for his children, including A. However, he concludes that the imposition of condition 5(a) was proportionate, *'that is to say that it represents a minimum*

interference with the defendant's ability to practise medicine that is necessary to achieve the statutory objective set out in section 41A, then these consequences should not lead the court to refuse to continue the order'.

Nevertheless he concludes that in substance condition 5(a) should be replaced with those set out in paragraph 30.

HHJ Pelling QC considered that the revised conditions would enable Dr E to practise as a locum GP during normal surgery hours but at the same time eliminate to the maximum possible extent the opportunity of developing inappropriate relationships with female patients (paragraph 31).

The final question which the Judge had to consider was the length of the extension. He was prepared to extend the conditions, as varied, for a further period of 6 months.

Salient Points

- Reminder that conditions must not be so stringent they are tantamount to suspension
- Reminder that conditions should be drafted to specifically address the specific concerns that subsist when making/maintaining an interim order to ensure that they are proportionate.

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