

01 April 2016

Medical Practitioners Tribunal Service
Seventh floor, St James's Buildings
79 Oxford Street
Manchester M1 6FQ

To: Medical Practitioner Tribunal members
Legal Assessors

Tel: 0161 923 6263

Fax: 0161 240 7199

Email: enquiries@mpts-uk.org

Copy: Interim Orders Tribunal members
Tribunal Clerks
Medical Defence Organisations
Employer Liaison Advisers

Re: The Professional Standards Authority for Health and Social Care v [1] GMC, [2] Okwuolisa Duke Igwilo [2016] EWHC 524 (Admin)

Abstract

Pursuant to section 29 of the National Health Service Reform and Health Professions Act 2002, the High Court considered whether the decision of the Panel, to find that Dr Igwilo's fitness to practise was not impaired by reason of his misconduct and not to issue a warning, was unduly lenient and whether it was desirable for the GMC to protect members of the public by taking action.

Background

Having qualified as a doctor in Nigeria in 1997, Dr Igwilo registered with the GMC in 2002 and obtained membership of the Royal College of Psychiatrists in 2006, following which he applied to the GMC for a Certificate of Eligibility for Specialist Registration of Forensic Psychiatrists. Dr Igwilo sought to demonstrate the required knowledge, skill and experience for appointment as a consultant by submitting a portfolio of work. Following an unsuccessful application, a further application was made enclosing further evidence in the form of a report, which was signed by Dr Igwilo as his own work. It transpired that this report had previously been submitted by another applicant, and Dr Igwilo had changed the name to his own thereby misleading the GMC about the provenance of the report. Dr Igwilo later withdrew his application for specialist registration.

The matter was referred to the Fitness to Practise Panel, which found that Dr Igwilo had acted dishonestly and that his fitness to practise was impaired because of misconduct. However, it was concluded that at the time of the hearing, his fitness to practise was not impaired, although it had been previously so. It was thought to be an isolated incident of

dishonesty. The Panel accepted that at the time of submitting the portfolio, Dr Igwilo was dealing with severe personal stress and had undergone extensive reflection and remediation. The Panel deemed there to be no risk of repetition, and concluded that public confidence in the profession would not be undermined by a finding of no impairment; a warning was considered to be disproportionate.

Appeal

The PSA referred the matter to the High Court, where in treating the matter as an appeal, Lang J found that the Panel had been unduly lenient in their decision.

It was held that the Panel were entitled to accept and place weight on the fact that 'this was an isolated period of dishonesty which occurred at a particularly stressful time...and [Dr Igwilo] had since undergone an extensive period of reflection and remediation, which meant that there was no risk of repetition' (para 27). Nevertheless, Lang J considered the action of Dr Igwilo to have been a 'very serious and sustained deception of the regulator which he embarked upon, purely to advance his career. He falsified a large number of documents...The scale of the falsification indicated it was an elaborate deception which must have taken some considerable time to plan and implement. His dishonesty affected his professional colleagues, as he represented their work as his own, or claimed that they had approved of his work when they had not done so' (para 28). Lang J observed that an admission of guilt and an apology was made when Dr Igwilo 'realised that he was going to be exposed' (para 29).

In concluding that this case was at the more severe end of the scale of dishonesty matters, Lang J held that 'dishonesty constitutes a breach of a fundamental tenet of the profession of medicine: honesty, openness and integrity are listed amongst the fundamental duties of doctors in 'Good Medical Practice' and being honest and trustworthy and acting with integrity are described by 'Good Medical Practice' as being at the heart of medical professionalism' (para 30).

In finding that the decision was unduly lenient, Lang J observed that by regulating specialist medical lists this provides public protection, including the safety of patients, 'and in the case of forensic psychiatrists, to maintain the standards of expert evidence submitted in court cases' (para 31). By attempting to deceive the GMC that he met the standards required to be included in the specialist list, Dr Igwilo 'jeopardised the integrity of the Specialist Medical List system, and the GMC's ability to regulate it'. Lang J held that there was an error of judgment by the Panel failing to 'sufficiently recognise the seriousness of these factors, and indeed, made no mention of them' (para 31).

It was held that an error of judgment occurred by the Panel 'concluding that the need to maintain public confidence in the profession and the regulator, and to declare and uphold proper standards of conduct and behaviour, was met by the fact that Dr Igwilo had been subject to fitness to practise proceedings and that he had shown insight and remorse' (para 32).

Lang J allowed the appeal, quashing the decision on impairment and substituting a finding of impairment. The case was remitted for the question of sanction to be determined by a freshly-constituted Panel.

Salient points

- Dishonesty constitutes a breach of a fundamental tenet of the profession of medicine
- Being honest and trustworthy and acting with integrity are at the heart of medical professionalism
- The purpose of regulating the Specialist Medical Lists is to protect the public interest, and in so far as forensic psychiatrists are regulated this maintains the standards of expert evidence submitted in court cases
- The fact of being subject to fitness to practise proceedings did not meet the requirement of maintaining public confidence in the profession and the regulator

Tribunal Development Section

0161 240 7292

Tribunaldevelopmentsection@mpts-uk.org