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Fopma v General Medical Council [2018] EWHC 714 (Admin)

Learning Points

- Even if a doctor is dishonest in one application, if there are lasting consequences and the dishonesty is fundamental to his/her registration or entitlement to practise, then the act of dishonesty can be said to continue throughout the employment/registration; it would not be correct to characterise it as isolated.
- A failure to disclose information, such as a conviction or other fitness to practise proceedings, can also be said to be persistent as it is ongoing throughout that period during which the disclosure should have been made.

Background

This was an appeal made by Dr Emke Fopma, pursuant to section 40 of the Medical Act 1983, against a Medical Practitioners Tribunal's ('Tribunal') decision in June 2018 to erase his name from the register, having found that his fitness to practise was impaired by reason of a conviction and misconduct.

The allegations against Dr Fopma were that:

- on 15 September 2004 he was convicted of a criminal offence in the Netherlands, namely that in his professional position as a doctor, he had indecently touched a young patient whilst she was recovering in hospital;
- on 26 October 2004 in an application form he made to join the GMC Specialist Register in the UK, Dr Fopma dishonestly failed to declare: that he had previously been convicted of a criminal offence in the Netherlands, details of

any previous complaints made and upheld against him, details of any regulatory proceedings or any other matters that may affect his registration or his eligibility to a certificate of good standing in any countries in which he had worked;

- he failed to notify the GMC that he had been charged or convicted with a criminal offence, which was dishonest.

All of the charges were admitted and the Tribunal also found that Dr Fopma made his application at a time when criminal proceedings continued to be pending against him in the Netherlands and therefore making it, in practical terms, impossible for him to work in the Netherlands. Dr Fopma practised in Scotland until October 2007 and then in Jersey until resigning in December 2015, following receipt of an anonymous email to the hospital suggesting that Dr Fopma had a criminal record in Holland (which he did).

The Tribunal found Dr Fopma's fitness to practise impaired by reason of conviction and misconduct and determined to erase his name from the register and indicated that both the conviction and misconduct as '*discrete and separate matters, would each give rise to a sanction of erasure*'.

The Tribunal said that '*[T]here was persistent dishonesty by Dr Fopma which began in 2004 and which continued for a period of around 11 years. Dr Fopma would not have voluntarily disclosed the conviction, and accepted that he would have carried on working, if not for the receipt of the anonymous email in 2015.*'

Grounds

Dr Fopma challenged the Tribunal's decision on impairment, but the main focus of his challenge was that the sanction of erasure was disproportionate. One of the grounds of challenge was in relation to the Tribunal's finding that the dishonesty was persistent, which was a significant element both in relation to the Tribunal's conclusion on impairment, and that the dishonesty here was such as on its own to have rendered erasure the only proper sanction. Dr Fopma submitted:

- (a) that in truth there was but a single dishonest act, namely providing the false answers on the application form; and
- (b) since there was no explicit specific duty to report criminal convictions stated in the GMC's GMP then in force, the failure to report the conviction should be regarded as somewhat less serious than it might otherwise have been.

Judgment

At the outset of his judgment, Mr Justice Baker indicated the disposal of this appeal does not give rise to any new point of principle or any matter of practice or approach of any general significance and that the case turned on the facts before the Tribunal. He dismissed the appeal, but in doing so made the following points of interest in relation to the above grounds and the Tribunal's finding that the dishonesty was persistent:

1. "The dishonesty here was fundamental to the registration that Dr Fopma enjoyed in this country and by reference to which he conducted his practise as a doctor between late 2004 and December 2015 when he resigned in Jersey. The dishonesty in relation to the Specialist Registration form, if it stood alone, therefore, would not be correctly characterised as isolated, but was dishonesty with lasting consequences by reference to which in effect Dr Fopma was exercising his professional registration for upwards of a decade" [para 81];
2. "In any event, the failure to disclose, even if there had never been a Specialist Registration application form submitted, was ongoing throughout that period, as Dr Fopma plainly, it seems to me, appreciated throughout. In those circumstances, in my judgment, there is nothing whatever in the suggestion that the tribunal erred in finding that the dishonesty was persistent" [para 82];
3. "the extensive dishonesty in this case, persisting for a long period and going to the heart of Dr Fopma's entitlement to be practising as a doctor and his relations with the GMC as his regulator, is the sort of dishonesty in relation to which, with respect, it would have been surprising to this court if the tribunal had not concluded that erasure was required. Certainly, its conclusion that erasure was required cannot be said to be flawed" [para 84].

Kind regards

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