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Professor Christopher Balogun Lynch v GMC [2013] EWHC 3521 Admin

Background

Professor Lynch appeared before a Fitness to Practise Panel of the Medical Practitioners Tribunal Service ('Panel') in May 2013 which determined that his fitness to practise was impaired by reason of misconduct and suspended his registration for a period of six months.

Professor Lynch appealed against the Panel's determination pursuant to Section 40 of the Medical Act 1983 (as amended).

Appeal

The appeal was considered by His Honour Judge Sycamore on 23 September 2013 (with judgment being given on 27 September 2013).

The Judge sets out the details of the allegation and the Panel's determination in paragraphs 5-9.

He then sets out the approach of the court to appeals under Section 40 of the Medical Act (paragraphs 10-13).

HHJ Sycamore sets out the grounds of appeal which were summarised in the General Medical Council's ('GMC') skeleton argument (paragraph 14) as follows:

- (i) The Panel was wrong to conclude that the doctor's arrangement with the hospital involved contracting to undertake medical work in relation to condition 7(a);
- (ii) The Panel should not have found that there was potential risk to patient safety;

- (iii) The Panel should not have made findings about probity, integrity and trustworthiness;
- (iv) The Panel misinterpreted his evidence about the nature of the operation on Patient A;
- (v) The Panel was wrong to identify 'professional arrogance';
- (vi) The sanction of six months suspension was disproportionate.

The doctor's case was that the arrangement with the hospital was such that it did not fall within the ambit of the condition 7(a) as the Interim Orders Panel ('IOP') decision was that he must inform any organisation or person employing or contracting him to undertake medical work of the conditions imposed by them.

The arguments of the parties are set out (paragraphs 15-19) with the Judge concluding that in relation to that issue (paragraph 20) as follows:

'In my judgment, the arrangement between the appellant and the hospital constituted an arrangement for undertaking medical work and the Panel was entitled to so conclude. In those circumstances, the Panel's finding that the appellant had an obligation to notify the hospital under condition 7(a) was correct and this ground of appeal fails.'

Risk to patient safety

HHJ Sycamore deals with this in paragraphs 21-24. He acknowledged that there was no dispute that the conditions imposed by the IOP were expressly imposed to protect patient safety and he refers to a relevant part of the IOP transcript. He concluded that reading the Panel's decision makes it clear that it did not find the doctor's conduct posed a risk to the safety of the patients rather it was a comment on the evidence, the lack of insight and the doctor's attempt to minimise.

He also noted that the doctor had sought to rely on written evidence of his expert as to the minor nature of the surgery. The Judge concluded, as did the panel, that this was irrelevant and again, illustrative of the doctor's attempts to minimise the seriousness of the breach of the condition, which was in his view *'Unambiguous, requiring assistance of a trained surgeon when carrying out 'any gynaecological surgery'* (paragraph 24)'. He considered that there was nothing objectionable in the findings in this regard.

Integrity, probity and trustworthiness

This is dealt with by HHJ Sycamore in paragraphs 25-28 of his judgment. The doctor maintained that the Panel's findings in relation to the allegation amounted to findings of dishonesty and that the use of the term 'probity' by the Panel in its determination was synonymous with dishonesty and, as such, he was deprived of the opportunity to put his

case. Further, there was a failure by the legal assessor to provide appropriate legal advice to the Panel in relation to finding of dishonesty.

The Judge disagreed and confirmed that there was no finding of dishonesty. The nature of the allegation, failing to inform of the conditions, carried with it by definition an allegation of a lack of probity. In expressing itself as it did, the Panel, by the use of the terms of 'probity' and 'trust' was repeating what is said in Good Medical Practice ('GMP') with which doctors are expected to be familiar (paragraph 27).

He confirmed that there is no basis for concluding that the Panel made any finding of dishonesty and he rejected that ground of appeal.

The nature of the operation on Patient A

This is dealt within paragraphs 29-30 of the judgment. HHJ Sycamore confirmed that he had already made reference to the Panel's views to the extent to which the doctor sought to minimise the seriousness of the breach of conditions and his inappropriate reliance on the evidence of his expert. He noted that both the doctor in his evidence and his Counsel in submissions to the Panel maintained that the operation was a minor one. The Judge's view was that the Panel's findings that the doctor was seeking to minimise the seriousness of his misconduct was one properly open to it.

Professional arrogance

This issue was dealt with by HHJ Sycamore in paragraphs 31-32. In his view it was for the Panel to make its findings on the basis of evidence it had heard. He confirmed that the court should be reluctant to interfere and he declined to do so. He made reference to several parts of the evidence and the transcripts of day two of the hearing. He concluded that the Panel's view was one with which it was entitled to reach.

Sanction

This was dealt with by HHJ Sycamore in paragraphs 33 and 34 of his judgment. He had already noted that the Panel had adopted the correct approach in relation to sanction and it was clear that the Panel took into account the doctor's practising history and testimonials and was properly advised by the legal assessor as to the approach to be adopted. He noted that the Panel started with the least serious sanction and worked its way up. Against the background of its findings the Panel was entitled to conclude that neither undertakings nor conditions would be adequate. Given that the case was concerned with the 'flouting' of conditions he concludes (paragraph 34):

'It is clear from the evidence that the appellant had three opportunities to inform the patient but did not do so. The Panel was entitled to conclude as it did in imposing a suspension of six months, one-half of the maximum which

was available. As I observed at an earlier stage of this judgment, the court should recognise the special expertise of the Panel to make the appropriate judgment and be slow to interfere. There is no basis for interfering with the sanction imposed by the Panel.'

In the circumstances the appeal was dismissed.

Salient Points

- There are no new salient points.

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