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

To: Fitness to Practise Panel Panellists
Legal Assessors

Tel: 0161 923 6263

Fax: 0161 240 7199

Email: enquiries@mpts-uk.org

Copy: Interim Orders Panel Panellists
Panel Secretaries
Medical Defence Organisations
Employer Liaison Advisers

Re: Rehan Ahmed Khan v GMC [2015] EWHC 301 Admin

Background

Dr Khan's case was considered by a Fitness to Practise Panel of the Medical Practitioners' Tribunal Service ('Panel') on 19 and 20 February 2014 in relation to criminal offences for which he was sentenced to nine months immediate imprisonment.

The Panel determined that Dr Khan's fitness to practise was impaired and that his name should be erased from the Medical Register.

Dr Khan appealed the Panel's determination under Section 40 of the Medical Act 1983.

Appeal

The appeal was considered by Mr Justice Mostyn on 28 January 2015.

Dr Khan appealed against the finding of impairment and sanction of erasure.

The Judge sets out the relevant sections of the Medical Act 1983, Indicative Sanctions Guidance and case law dealing with findings of dishonesty (paragraphs 2 -14). He noted that dishonesty will be (paragraph 7):

'...particularly serious where it occurs in the performance by a doctor of his or her duty and/or involves a breach of trust placed in the doctor by the community. Both elements are serious and aggravating features and both are present in a case of dishonestly using prescription forms to obtain drugs.'

He goes on to say (paragraph 8):

'In cases of proven dishonesty, the balance can be expected to fall down on the side of maintaining public confidence in the profession by a severe sanction against the doctor concerned'.

He concludes in relation to this issue (paragraph 9):

'Where proven dishonesty is combined with a lack of insight (or is covered up) the authorities show that nothing short of erasure is likely to be appropriate'.

The Judge also sets out the rules governing an appeal and the relevant case law (paragraphs 10 - 14).

Mr Justice Mostyn sets out in detail the facts of the case (paragraphs 15 to 27) including reference to the Crown Court proceedings when Dr Khan was found guilty of two offences of theft in relation to the possession and use of two prescriptions and two offences of fraud in relation to those prescriptions.

The Judge noted that Dr Khan did not attend the fitness to practise hearing but on 18 February 2014 wrote the Panel a one and a half page letter *'which was long on seeking the mercy of the panel but which was short on a candid explanation for what he had done'* (paragraph 26).

In relation to the finding of impairment, Mr Justice Mostyn considered this to be an *'inevitable finding'* (paragraph 27). He also noted in relation to the appeal (paragraph 28):

'Very surprisingly the Appellant appealed to this Court on 30 March 2014. I say very surprisingly as it is arguably an abuse of process to appeal when you have not troubled to engage anything other than minimally with the FTTP proceedings and have not attended that hearing'.

He also noted that Dr Khan had sought to adduce evidence concerning alleged comparable cases, such application however failed.

The Judge then goes on to consider each of the five grounds of appeal (paragraphs 29 to 36).

Mr Justice Mostyn looked at the fourth ground first, which is set out in full at paragraph 29. In the Judge's view, the statements made by Dr Khan *'very considerably'* aggravated the doctor's position. The suggestion that the first prescription was not dispensed was a *'flat lie'* to the Court. The prescription was dispensed as the evidence of the pharmacist, which was not challenged in the Crown Court, demonstrated (paragraph 30).

Further, the suggestion that the forms were not stolen was another lie and the suggestion that the GMC have made no effort to check with the patient's medical practitioner was to the Judge's mind *'completely outrageous'* (paragraph 31).

The Judge then turned to the fifth ground of appeal which is fully set out in paragraph 32. In relation to this ground he said it:

'...is replete with self pity. It is the first acceptance that I have read by the appellant of any culpability at all but here, I suggest, he is damned by a faint admission. The statements in that ground, to my mind, trivialise his conduct and, as I have said, they considerably aggravate the position even over and above that as obtained before the panel. But it gets worse. The appellant has gone on to aggravate his position still further.'

The Judge refers to the offer the doctor made to the GMC to consent to his appeal being allowed setting out in detail the terms of the offer.

Mr Justice Mostyn confirms (paragraph 33):

'This email was written in the context of what the appellant regarded was an unhelpful response to the GMC for a freedom of information request where the appellant wanted to find out how many doctors with criminal convictions be allowed to carry on practising. At the hearing before me, I asked the appellant if he would like now to give me a fully candid account of the whole story but he confined himself to the story that he had given to the probation officer that the prescriptions were no more than payment to SK in exchange for a puppy and that was it. No further detail was provided to me as to what happened in what must have been an elaborate exercise.'

The Judge noted that Dr Khan relied on cases where the Fitness to Practise Panel had not erased doctors with criminal convictions, and whilst the Judge held the fresh evidence to be inadmissible as Dr Khan was a litigant in person, he allowed him to speak about the issue.

The Judge confirmed (paragraph 34):

'...it is the decisions of this court, the Administrative Court, the appellate court, that provide the relevant sentencing guidelines in my judgment and those must be taken in combination with the indicative sanctions guidance. The line taken both in the decisions of this court and in the indicative sanctions guidance is that prescription fraud will almost invariably result in erasure even where there has been a guilty plea. The comparators relied [on] by the appellant are not true comparators as in none of them was the doctor in question given a heavy, immediate custodial sentence following a trial where he pleaded not guilty and where thereafter he continued to maintain his innocence.'

He confirms this is the way in which he has dealt with the second ground of appeal.

Mr Justice Mostyn then goes on to consider the first ground of appeal which is the suggestion that the Panel drew adverse inferences from the doctor's absence (paragraph 35).

The Judge confirms that it was clear to anyone reading the panel's decision that this was not the case. He confirmed he himself had read the decision and no sense of adverse inference from the non attendance of the doctor jumped out from the page to him.

The Judge then goes on to deal with the third ground of appeal, that the sanction of erasure was disproportionate (paragraph 36). He concludes:

'In my judgment, the reasoning of the panel cannot be faulted. Indeed, in my judgment, the decision of the panel is plainly right. I would go further and say that had no erasure been ordered on the facts of this case that would have been a decision which was both irrational and perverse. This was a case of prolonged dishonesty, lack of insight, lack of candour and lack of remorse. There was plainly a risk of repetition and in any event, the public could have no confidence in the profession were the appellant to be allowed to resume practise. In my judgment, the sanction was proportionate and right.'

In the circumstances, the appeal was dismissed.

Salient Point

- Panels must consider the Indicative Sanctions Guidance in conjunction with the relevant case law when determining the appropriate sanction and not by an analysis of other alleged comparable fitness to practise cases.

Panel Development Team
0161 240 7292
pandevteam@mpts-uk.org