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Re: Dr Loutfi v GMC [2016] EWHC 1620 (Admin)

Abstract

An appeal was brought pursuant to section 40 of the Medical Act 1983 against the determination of a Medical Practitioners Tribunal to erase the appellant from the medical register, after making a finding of impairment following fifty four charges being found proved.

Background

Dr Loutfi was a practitioner in obstetrics and gynaecology, and was the subject of charges referred to the Tribunal relating to matters of clinical misconduct and misleading / dishonest conduct. The charges of clinical misconduct concerned three patients in respect of whom the Tribunal found there to have been incorrect diagnoses, inappropriate decisions as to which steps to take, and incorrect procedures and force used to deliver a baby. This Tribunal found the actions of Dr Loutfi to have fallen seriously below the standard expected of a reasonably competent senior registrar in Obstetrics and Gynaecology. It was also found that Dr Loutfi had acted in a dishonest and misleading manner, such that he had stated to a consultant colleague that he had delivered a baby whilst under direct supervision, when he had not been directly supervised at the relevant time. Further, a finding of dishonestly and misleadingly completing an application form for a locum consultant post was made, as a result of a failure to disclose a warning that had been issued by the GMC and having been the subject of separate fitness to practise proceedings. It was further found that Dr Loutfi had

dishonestly and misleadingly failed to disclose that he was involved in an investigation by the Parliamentary Health Service Ombudsman, who was proposing to uphold a complaint against him. Following these findings, the Tribunal declared that Dr Loutfi's fitness to practise was impaired by reason of misconduct. In relation to clinical matters, it was said that there was a lack of insight into clinical deficiencies by consistently maintaining that he did no wrong, and the doctor had failed to genuinely apologise. As far as the dishonesty and misconduct findings, these occurred over a significant period of time and were serious matters which presented a risk to patients, and brought the profession into disrepute. As a consequence, Dr Loutfi was erased from the medical register.

Appeal

Before Cranston J, the appellant unsuccessfully challenged the acceptance of the expert evidence by the Tribunal. Cranston J held 'The Tribunal correctly recounted that the role of an expert is to assist it on specialist or technical matters that are within that expert's area of expertise' [para 16]. The appellant also disagreed with the findings of incorrect diagnoses, and referred to an email whereby his consultant colleague stated that the management of the case was discussed and agreed with her, and was appropriate. Cranston J observed that a witness statement had not been provided to the Tribunal to this effect, regardless of the fact that the colleague could not attend due to professional commitments. In relation to the finding of dishonesty and misleadingly failing to notify of the warning, the appellant argued that as the warning was in the public domain, a prospective employer could have discovered the warning. Cranston J held there was a positive duty to disclose, and upheld the finding of the Tribunal. Cranston J dismissed the appeal against the Tribunal's findings, concluding that they were entitled to make the findings that they did.

Salient points

- The role of the expert is to assist the Tribunal on specialist or technical matters which are within that expert's area of expertise.

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