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Medical Practitioners Tribunal Service
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Dr Saima Alam v GMC [2015] EWHC 854 (QB)

Background

Dr Alam appeared before a Fitness to Practise Panel of the Medical Practitioners Tribunal Service ('Panel') in a hearing lasting 31 days in January, May, June and September 2014 in relation to allegations which centred on the fact that Dr Alam had knowingly provided false information in documents which included application forms and CV's, and in so doing her actions were misleading and dishonest.

The Panel found Dr Alam's fitness to practise impaired by reason of misconduct and determined that her name should be erased from the medical register.

Dr Alam appealed against the Panel's determination under section 40 of the Medical Act 1983.

Appeal

The appeal was considered by Mr Justice Morgan on 27 March 2015.

Dr Alam accepted the Panel's findings on misconduct and impairment. She therefore also accepted the finding of dishonesty.

Her appeal was in relation to the sanction imposed which she submitted in the circumstances of her case was disproportionate or wrong as erasure would in fact end her career. Further, the Panel had failed to pay any, or sufficient regard, to a number of factors, including:

- her previous good character;
- testimonial evidence that she was a good doctor;

- the absence of any patient complaint or patient harm;
- that the proof of misconduct did not lead to any gain;
- that the misleading information she provided did not have any material impact on those that it was provided to; and
- that the misconduct was remediable and had in fact been remedied.

Mr Justice Morgan puts the appeal into context (paragraphs 1-5) and thereafter sets out, in some detail, the decision of the Panel (paragraphs 6-14).

Counsel for the doctor's submissions are set out in the summary above, in relation to the grounds of appeal (paragraphs 13-16). Counsel for the doctor also addresses the Judge on the question as to the circumstances in which the courts should show a degree of deference to the assessments made by the Panel and the extent of any such deference (paragraph 17).

Counsel for the GMC's submissions are summarised (paragraphs 18-22) including references to Good Medical Practice and the Indicative Sanctions Guidance. He also references the case of Nicholas-Pillai v GMC [2009] EWHC 1048 Admin, where it was considered that when a Fitness to Practise Panel comes to consider the appropriate sanction, it is entitled to take account of what is revealed about the doctor in his or her conduct at the hearing. Counsel for the GMC also reminded the Judge of the principle in Gupta v GMC [2002] 1WLR 1691, (which has been repeatedly followed and applied) that the Panel is not primarily concerned with the punishment of the individual practitioner, but rather with the protection of the public interest and public confidence in, and the reputation of, the medical profession.

Mr Justice Morgan then sets out his discussion and conclusions (paragraphs 23-37). He notes that the appeal was limited to one against sanction, in his view (paragraph 32):

'This is a case where the panel considered the relevant matters, decided what weight should be given to them and took them into account along with other matters which, in the view of the panel, brought the scales down in favour of erasure. In any case, it is now for the court to assess the weight to be given to the relevant matters although the court should only set aside the panel's sanction of erasure if the court is persuaded that that sanction was "wrong".'

Mr Justice Morgan stated that when considering what would be the appropriate sanction the court must have regard to the findings of the Panel as to misconduct, impairment and dishonesty; and it must also have regard to the facts now stressed on behalf of Dr Alam.

He also confirms that the assessment related to the level of response to proven impairment which is appropriate in the public interest and the interest of public confidence in the medical profession.

He confirms that he was assisted by the guidance in paragraph 82 of the Indicative Sanctions Guidance (paragraph 34). In addition he notes the remarks of Mr Justice Mitting in the Nicholas-Pillai case as follows (paragraph 35):

'These cases always result in the balancing of one public interest against another. In cases of actual proven dishonesty, the balance ordinarily can be expected to fall down on the side of maintaining public confidence in the profession by a severe sanction against the practitioner concerned. Indeed, that sanction will often and perfectly properly be the sanction of erasure, even in the case of a one-off instance of dishonesty.'

Mr Justice Morgan considered the Panel's decision to impose the sanction of erasure worked well within its margin of judgment, it was not 'wrong' and it was not an assessment with which the court ought to interfere.

In the circumstances he dismissed the appeal.

Salient Points

- Absence of a motive and/or apparent gain from dishonesty is not in itself sufficient to preclude a finding that the person's actions are dishonest and/or serious.
- A Panel is entitled to come to conclusions on the doctor's attitude/personality based on their submissions and presentation at the hearing.
- The interpretation of 'protection of the public' is not limited to concerns about clinical issues but includes circumstances involving a doctor who was capable of persistent dishonesty.
- Reminder that the courts are not willing to interfere with the decision of Panels unless persuaded that it was wrong or there was procedural irregularity.

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