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**Re: Dr Yogendra Dutt Sharma v General Medical Council [2014] EWHC 1471 Admin**

***Background***

Dr Sharma appeared before a Medical Practitioners Tribunal Service Fitness to Practise Panel ('Panel') in January 2014. He was found impaired by reason of misconduct and the Panel determined to suspend his name from the Medical Register for a period of 12 months with immediate effect.

The allegations found proved against Dr Sharma were that he dishonestly failed to inform his hospital employers of a warning given to him by the General Medical Council ('GMC') in 2007; failed to provide good clinical care to a patient ('Patient A'); failed to cooperate with a PCT audit; dishonestly failed in 2010 to complete accurately an Employer Details Form ('EDF') by omitting therefrom details of his hospital employers; dishonestly failed to inform his hospital employers he had been subject to an interim order of conditions and breached the conditions imposed by the Interim Orders Panel ('IOP') which required him to be employed only as a General Practitioner ('GP') and to cooperate with audits and investigations.

Dr Sharma appealed against the Panel's determination in accordance with Section 40 of the Medical Act 1983.

***Appeal***

The appeal was considered by His Honour Judge Pelling QC on 2 May 2014 with judgment being given on 22 May 2014.

HHJ Pelling sets out the background to the case (paragraphs 3-6). He thereafter sets out the Panel's findings and conclusions in some detail (paragraphs 7-16).

The Judge sets out the principles applicable to appeals under Section 40 (paragraphs 17-20).

After setting out the detailed background to the appeal HHJ Pelling identified the key areas of challenge as follows:

1. The finding of dishonesty in relation to the warning and the finding of dishonesty and failure to disclose his employment by Stockport NHS Foundation Trust ('SNHSFT')

2. His failure to inform SNHSFT of the imposition of conditions by the Interim Orders Panel.

### **The 2007 warning issue (paragraphs 21 – 30)**

He confirmed, at the outset (paragraph 21), that the conclusion of the Panel that the doctor was dishonest and failed to inform SNHSFT of the warning was wrong and thereafter set out his reasons.

In his view the effect of the warning letter issued to Dr Sharma in 2007 was clear. The GMC would inform all current employers. The obligation to inform future employers rested on the doctor (paragraph 23). The Judge confirmed that, even if there was a contractual duty owed by the doctor to SNHSFT to notify them of the warning and his failure to do so was plainly a breach of that duty, not every breach of duty is dishonest. Before breach of a contractual or general professional duty could be held to be dishonest, consideration had to be given to all the surrounding circumstances including, in this case, the Panel's conclusion that the omission of any reference to the doctor's and hospital employers in 2006 EDF had not been proved to be dishonest and the terms of the warning letter (paragraphs 24 and 25).

HHJ Pelling concluded (paragraph 30):

*'In my judgment the reasoning given by the Panel does not support the finding made. The warning letter does not impose on the Appellant an obligation to report the warning to all current employers and therefore the Panel's reasoning was to that extent wrong. The primary finding of fact that the Appellant failed to report the warning to the Trust, even if correct, does not of itself lead to the conclusion that the failure was dishonest.'*

### **The 2010 EDF issue (paragraphs 31 -37)**

In relation to this matter HHJ Pelling confirmed the reasoning of the Panel in relation to the 2010 EDF issue showed that its conclusions were ones which paragraph (v) of Langstaff's J's summary of the relevant principles set out in paragraph 18 of his judgment applies. The conclusion of dishonesty was one that depended on inferences to be drawn from the primary facts.

The Judge confirmed that the Panel was fully entitled to reach the conclusion that it reached on the issue and it had not been demonstrated by Dr Sharma that the Panel was wrong (paragraph 31).

HHJ Pelling then set out his reasoning to support this conclusion. To remind himself of Dr Sharma's case which was whilst the form was misleading, it was not intentionally so, because he had proceeded on the basis of a misunderstanding as to what was required. The Judge confirmed that the recipient of the letter sent with the EDF could not have been in any doubt as to what was required or that the GMC considered it was a professional obligation to provide all of the information requested (paragraphs 33-34).

He noted that although the Panel did not refer, in terms, to the covering letter in their reasoning it was part of the GMC's opening referred to, the doctor was examined by reference to it and cross examined in relation to it. No satisfactory explanation had been offered by the doctor for why he did not include the details relating to his hospital appointment notwithstanding the terms of the letter.

The Judge also reminded himself (paragraph 36) that before a dishonesty finding could properly be made:

*'... the Panel has to be satisfied on the balance of probabilities that (a) what was done was dishonest by the standards of reasonable and honest people and (b) that the practitioner must have realised that what he or she was doing was dishonest applying those standards. In my judgment there was before the Panel more than sufficient evidence to enable it properly to find both these elements were satisfied in relation to the issue I am now considering'.*

He concluded (paragraph 37) that the reasoning of the Panel supported its conclusion that the 2010 EDF is not as clearly focussed or expressed as it might have been. However, the material before it supported its conclusions on the issues for the reasons that the Judge had already indicated.

### **The Interim Order Information Issue (paragraphs 38 – 44)**

The Judge set out, in some detail, the issues raised and confirmed that the conclusion of the Panel that the doctor did not inform the Trust of the Interim Orders Panel ('IOP') order and the decision not to do was deliberate and was dishonest and the conclusion which was clearly open to the Panel on the evidence. The Judge set out (paragraph 43) some of the evidence relied on. He also identified an additional factor which the Panel did not refer to but which it would have been entitled to rely on (paragraph 44).

### **Non-cooperation – impairment (paragraph 45-47)**

HHJ Pelling concluded that the Panel was entitled to reach the conclusion that it did concerning impairment for the reasons which it gave. The point made on behalf of Dr Sharma was that the non-cooperation was the result of an ongoing rancorous dispute between him and Dr Bani. The Panel were required first to consider whether the facts as found amounted to misconduct. They did so for the reasons set out and they were fully entitled so to conclude. They then had to turn to the issue of impairment (paragraph 45).

As the Judge acknowledged not all misconduct leads to the conclusion that fitness to practise is impaired. However, current impairment is determined having regard to the manner in which the practitioner has conducted him or herself in the past. On the facts of this case, whilst the failure to cooperate with the audit process and to comply with the IOP imposed conditions relating to cooperation might have been driven by the dispute with Dr Bani the decision by the doctor could not be justified for the reasons set out in paragraph 46 of HHJ Pelling's judgment.

He concluded that in the circumstances (paragraph 47):

*'... the Panel was fully entitled to conclude that the Appellant's conduct impacted adversely on the trust of the public in medical practitioners. The public are entitled to expect that the Regulator will investigate any allegation of misconduct by a practitioner and that the practitioner will cooperate in the timely completion of such investigations, whatever the practitioner might subjectively think about the substance of the allegations or the source of them. The Panel was entitled to conclude that no insight had been demonstrated by the Appellant into this very important point and that the conduct which had been found proved might in consequence occur in the future. This was classically an issue where the decision of a specialist tribunal is entitled to most respect'.*

HHJ Pelling concluded the appeal by asking whether it was necessary for the decision to suspend the doctor for 12 months was rendered wrong by reason of the Panel having reached one conclusion in relation to a dishonesty allegation that was wrong. In his judgment it was not.

He concluded that the reasons why the Panel considered it was appropriate to suspend were not affected by the conclusion that it was wrong to reach the conclusion that it did in relation to the failure to inform SNHSFT of the warning in 2007 (paragraph 48):

*'The decision to suspend involved the Panel in looking at all the allegations found proved in the round. It concluded that suspension was in principle the appropriate course to adopt because it concluded that on the whole of the findings made there had been a persistent lack of insight that had not been remedied but was capable of being remedied. The view that there had been a persistent lack of insight was driven not merely by the findings of dishonesty but by the findings made in relation to Patient A, disregard of NICE Guidelines and the requirements of Good Medical Practise and the failure to cooperate with the audit process over what was on any view a long period'.*

He also confirmed that whilst all findings of dishonesty are serious some inevitably are more serious than others, the finding in relation to the 2007 warning was at the less serious end of the spectrum when compared with the other findings of dishonesty. He further confirmed that the conclusion in relation to impairment and the need for suspension in consequence would inevitably be the same whether or not the finding in relation to the 2007 warning had been made or not (paragraph 49).

In the circumstances the period of 12 months suspension remained sound notwithstanding the conclusion that HHJ Pelling reached concerning the 2007 warning. The appeal was therefore dismissed.

### ***Salient Points***

- A Panel is entitled to conclude that the GMC will investigate any allegation of misconduct by a practitioner and that the practitioner will co-operate in the timely completion of such investigations whatever the practitioner might subjectively think about the substance of the allegations or the source of them (paragraph 47)

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