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General Medical Council v Dr Iheanyi Chidi Nwachuku [2017] EWHC 2085 (Admin)

Learning Points

- It will be an unusual case where dishonesty is not found to impair fitness to practise
- When considering admissions of dishonesty, consider carefully when those admissions were made.
- When considering whether a doctor's conduct is remediable and the doctor has remediated, look for evidence that demonstrates the doctor has accepted responsibility for his/her conduct and has taken steps to ensure there is no repetition.

Background

This was an appeal by the General Medical Council ('the GMC') pursuant to section 40A of the Medical Act 1983 against a Medical Practitioners Tribunal ('the Tribunal') decision dated January 2017 which found Dr Nwachuku's fitness to practise was not impaired by reason of misconduct. The Tribunal issued Dr Nwachuku with a warning.

Dr Nwachuku also sought judicial review of the Tribunal's decisions that his conduct had been dishonest and therefore, to issue a warning in respect of his dishonesty.

The allegations against Dr Nwachuku were in relation to three (SHO) locum night shifts he carried out at the Royal National Orthopaedic Hospital in October 2015 ('the locum shifts'), whilst he was also in the final year of speciality training as a GP. Dr Nwachuku admitted (amongst other facts) that; at the end of the last shift he left the hospital earlier than he was contracted to, without conducting an adequate handover or there being adequate SHO cover in place, and when he had been asked not to do so. He also admitted that he subsequently submitted to the locum agency a claim form for payment stating that he had worked the full length of the last shift, which was misleading.

The Tribunal also found that Dr Nwachuku had acted dishonestly when submitting the claim form and that the above actions amounted to misconduct.

However, the Tribunal determined that Dr Nwachuku's fitness to practise was not impaired by reason of this misconduct based on the following:

- testimonials submitted on his behalf as to his honesty and integrity, in addition to his clinical skills;
- there was no information to suggest that he had behaved dishonestly or had neglected his obligation to provide continuity of care to patients, before or after these events;
- Dr Nwachuku submitted a written statement reflecting on his conduct and confirming that he no longer undertakes locum posts;
- Dr Nwachuku accepted in cross-examination that his actions relating to the claim form were dishonest;
- the Tribunal was satisfied that the misconduct was remediable; and
- the Tribunal did not consider that public confidence would be undermined if no finding of current impairment was made.

Instead, the Tribunal determined that a warning was appropriate in the circumstances.

Judicial Review

In considering Dr Nwachuku's application for permission to seek judicial review, Mrs Justice O'Farrell held that it was not reasonably arguable that the Tribunal made an error of law in making a finding of dishonesty [para 28]. She said that the Tribunal had correctly considered the *Ghosh* test (which was, at the time,

applicable) and that there was ample evidence upon which to base a finding of dishonesty [paras 29-32].

The Judge found there was no merit in the first ground upon which Dr Nwachuku was seeking judicial review and therefore the second ground fell away. Therefore, the Judge refused permission to seek judicial review and dismissed the claim for judicial review [para 36].

GMC Appeal

The GMC (supported by the PSA) appealed against the Tribunal's decision that Dr Nwachuku's fitness to practise was not impaired on the following grounds:

1. this was a serious case of dishonesty;
2. Dr Nwachuku denied the allegation of dishonesty in the disciplinary proceedings and, although he admitted dishonesty following the Tribunal's finding, he had attempted to overturn that during the appeal and judicial review proceedings;
3. there was other serious misconduct which created a potential for serious harm to patients; and
4. the Tribunal attached too much weight to the mitigating factors relied on by Dr Nwachuku; namely his testimonials and reflective witness statement.

Judgment

Mrs Justice O'Farrell held that the Tribunal had been wrong to find that Dr Nwachuku's fitness to practise was not impaired. She said that:

1. it will be an unusual case where dishonesty is not found to impair fitness to practise¹ [para 48]. The dishonesty in the case was serious: Dr Nwachuku had knowingly submitted a false claim form for personal gain and despite having opportunities to do so, he had not sought to correct this [para 54].
2. the Tribunal had placed undue weight on Dr Nwachuku's admission of dishonesty. The admission had not been made in his witness statement or in cross-examination during the hearing, but had been made following the finding of dishonesty by the Tribunal. Dr Nwachuku's position during the

¹ PSA v Health and Care Professions Council & Ghaffar [2014] EWHC 2723

disciplinary proceedings was that he was guilty only of disorganisation or negligence, rather than dishonesty. The Judge said that “the attempt to avoid responsibility for his dishonest conduct should have been an aggravating factor, rather than one of mitigation” [para 56].

3. the dishonesty, together with the other serious misconduct, amounted to serious breaches of *Good Medical Practice* and “warranted a finding of impairment to protect the public and maintain confidence in, and the reputation of, the profession” [para 58].
4. although the Tribunal had been entitled to have regard to the testimonial evidence produced, it did not address the question of Dr Nwachuku’s honesty and therefore, was of limited relevance when considering impairment [para 55].

The Tribunal had rightly taken into account that there had been no misconduct before or after the incident in question, but “placed too much weight on Dr Nwachuku’s reflective statement in concluding that the misconduct was remediable”. Although he had stopped agency locum work, he continued to carry out GP locum work, including night shifts. The Judge said that “there was no evidence that demonstrated [Dr Nwachuku] accepted responsibility for his conduct and had taken steps to ensure there was no repetition” [para 57].

The Judge quashed the Tribunal’s determination on impairment, substituted a finding of impairment and remitted the matter to a Tribunal to consider the issue of sanction [para 59].

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