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**Re: Dr Emad Farag v General Medical Council [2014] EWHC 523 (Admin)**

***Background***

Dr Emad Farag, consultant ophthalmologist, appeared before a Fitness to Practise Panel ('Panel') between 1 - 4 October 2012 and 28 - 29 January 2013. The Panel found that Dr Farag's fitness to practise was impaired by reason of misconduct and determined to suspend his registration for six months.

Dr Farag appealed against the Panel's determination under Section 40 of the Medical Act 1983 (as amended).

***Appeal***

Dr Farag's appeal was considered by Mr Justice Mitting on 18 February 2014.

The Judge set out details of the background to the allegations against Dr Farag (paragraphs 1 - 13). He then dealt with the hearing before the Panel and the Panel's determination (paragraphs 14 - 33).

He noted that the Panel had made clear findings of fact on the two charges, as found proved, against Dr Farag, that he had dishonestly procured medication for himself without prescription, by completing medical forms with information which he knew to be false and by procuring payments for the medication from his employing Trust by falsely representing that the medication was for use by patients; secondly that he dishonestly failed to disclose to another Trust that he was subject to a fitness to practise investigation when he was employed by them.

Counsel for Dr Farag took issue with the reasoning of the Panel in relation to the allegation. Mr Justice Mitting, however, considered it was a very simple allegation (paragraph 15). Whilst he noted '*much forensic effort*' had been devoted to the insignificant question of whether the form he had completed was a prescription, the Panel had addressed the question and concluded that it was a prescription on the basis that any form for obtaining medication that required the doctor's signature is a prescription.

Counsel for the doctor also submitted that that finding was inconsistent with its finding in relation to a previous one that he had procured the medication '*without prescription*'. Whilst the Judge

acknowledged that this was the case, he considered it did not alter the thrust of the charge or undermine the soundness of the Panel's ultimate conclusion that what Dr Farag did was done deliberately and done dishonestly (paragraph 16). The Judge concluded, in relation the completion of medical forms with information which he knew to have been false, the Panel's conclusions were *'plainly unimpeachable'*; (paragraph 17).

The Judge noted that what the Panel had done in relation to the issue of dishonesty was to apply the Ghosh test to what were entirely uncontroversial findings in relation to the completion of the medical forms. He confirmed, (paragraph 18):

*'As the panel observed, the form was false. It gave the clear impression to the suppliers that Dr Farag, as a medical practitioner, was ordering drugs to be administered to a patient, Ms Brown. As the panel observed, that was a lie. It was difficult to conceive how a doctor could consider that that was not dishonest by the standards of ordinary people or ordinary medical practitioners and so did not himself realise that it was dishonest. The challenge to the panel's findings under paragraph 1(b) is, therefore, hopeless.'*

In relation to the charge of procuring payment for the medication, the Judge noted this presented slightly greater difficulties. The Panel heard conflicting evidence from Dr Farag and the person who authorised the payment of the relevant invoices (paragraph 19).

The Judge, however, noted that the Panel founded itself squarely on the documents and in so deciding reached the unavoidable conclusion that the writing of the patient's name on the documents was dishonest (paragraphs 20 – 24). He confirmed that this was a finding that the Panel was entitled to reach. He goes on that any other conclusion would have been *'surprising'*.

In relation to the issue of impairment and sanction, Mr Justice Mitting noted that Dr Farag was asked by the General Medical Council's Counsel about the issue of dishonesty and when had he realised that it was dishonest behaviour (paragraph 25). The Judge noted that Dr Farag's belated acceptance of dishonesty (paragraph 27) was no more than an acknowledgment:

*'by an intelligent man as to what would have been apparent to any medical practitioner, or indeed, any ordinary layman, that ordering drugs for himself, pretending that they were for patients and then not making it clear beyond argument to those who paid for the drugs that they were for him, was dishonest and serious professional misconduct. The findings of the Panel on that critical issue are unassailable.'*

In relation to the second charge which was proved, the only issue was whether or not Dr Farag was dishonest in failing to report receipt of a letter notifying that he was under a fitness to practise investigation to his then employer. He noted that the Panel's findings in this regard were straightforward (paragraph 29).

The Panel noted paragraph 68 of the Good Medical Practice (paragraph 30) and then went on to find that Dr Farag was under a duty to disclose to his employing Trust that he was subject to a fitness to practise investigation and was dishonest in failing to do so.

The Judge concluded the findings of the Panel on charge one were unassailable (paragraph 31). Mr Justice Mitting went on to say (paragraph 33):

*'The panel correctly addressed itself in ascending order of severity of sanctions and concluded that nothing less than suspension would suffice, but that it was not necessary to order the erasure of Dr Farag's name from the Register. No submissions have been addressed to me as to the sanction imposed by the panel. It seems to me that it was a proper and indeed merciful one given the findings that it had made'.*

In the circumstances, Mr Justice Mitting dismissed the appeal.

### ***Salient Point***

- A belated acceptance of dishonest behaviour by a doctor, before a Panel, may be no more than an acknowledgement of such conduct by *'an intelligent man of what would have been apparent to any medical practitioner or indeed any layman'* (paragraph 27). Careful consideration should therefore be given to the weight to be attached to such a concession.

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