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To: Fitness to Practise Panel Panellists
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Re: Dr Catherine Lawrance v GMC [2015] EWHC 586 Admin

Background

Dr Lawrance's case was considered by a Fitness to Practise Panel of the Medical Practitioners Tribunal Service (Panel) in April 2014 in relation to allegations of dishonesty.

The Panel found Dr Lawrance's fitness to practise to be impaired and erased her name from the medical register.

Dr Lawrance appealed against the decision of the Panel under section 40 of the Medical Act 1983 on the basis that:

- the decision to proceed in her absence had been unfair;
- the Panel should not have found the facts against her proved and, in particular, should not have found her to be dishonest; and
- even if the findings of the Panel could not be impugned the sanction of erasure was too harsh and should not stand.

Appeal

The appeal was considered by Mr Justice Collins on 11 February 2015 with judgment being given on 13 March 2015.

Mr Justice Collins sets out the background to the matters (paragraphs 4-13) including setting out the allegations for consideration by the Panel at the hearing (paragraph 13).

He then sets out in some detail the way the matter proceeded before the Panel (paragraphs 17-27) which also deals with the arguments put forward on Dr Lawrance's

behalf that the Panel should not have proceeded in her absence and the directions given by the Legal Assessor should have highlighted the risk of a wrong decision being made in the absence of any proper testing of the evidence against the doctor since there was a serious possibility of erasure if the charges were established (paragraph 25).

The Judge confirmed that as the Legal Assessor's direction was in accordance with the authorities and gave the Panel all the necessary warnings, he had no doubt that the Panel was entitled to continue in the doctor's absence (paragraph 27).

Mr Justice Collins also confirmed that it was not open to Dr Lawrance to reargue her case or to produce evidence that she could have produced or given had she not acted as she did (paragraph 28).

He sets out the directions given by the Legal Assessor as to the approach to be applied in finding facts including whether the doctor was dishonest (paragraph 34) which he considers entirely correct and no elaboration was needed in relation to establishing whether the doctor's statement and evidence were accurate.

Mr Justice Collins also confirms, however, in relation to the issue of dishonesty (paragraph 35) the Legal Assessor should have directed the Panel that they should only find dishonesty established if they were satisfied that there was cogent evidence of dishonesty.

He confirms:

'The civil standard applies, but where dishonesty or particularly a serious offence is alleged the decision makers must be aware of the need for such cogent evidence. A direction making clear that need is in my judgment required coupled with a requirement for them to consider the full circumstances including in particular the bitter dispute and the findings of the judge which did not rule out the possibility that the appellant had done some work for her husband and which did not regard Dr Underwood in particular and to an extent Ms Charlton as model witnesses'.

Whilst Mr Justice Collins confirmed that the Panel were entitled to find that the doctor had not worked at the practice as she had alleged (paragraph 36), it would have been open to them to have decided to proceed to hear the witnesses but only to decide the facts and to seek to notify the doctor with a view to her attending on the issue of dishonesty (paragraph 37).

Mr Justice Collins confirms (paragraph 38):

'Dishonesty by a doctor can undoubtedly amount to misconduct. Indeed, it usually will, even if it has nothing to do with professional competence. Maintenance of public confidence in the profession and the upholding of

proper standards of behaviour and conduct is important. The panel considered that the fact that the dishonest conduct took place in the context of legal proceedings was of particular concern. If perjury was on its findings committed, that can be regarded as an exacerbating factor. However, there is another side to that coin, namely the descent into irrational and untypical behaviour because of the unpleasantness of the dispute.'

Mr Justice Collins was in no doubt the Panel ought to have considered, before imposing any sanction, whether attempts should have been made to contact the doctor or to enable her to put forward any mitigation particularly as they clearly had erasure in mind (paragraph 39).

He was of the view that fairness dictated the Panel should have been prepared to adjourn to give Dr Lawrance an opportunity to attend before the appropriate sanction was imposed (paragraph 39).

Mr Justice Collins concluded that the Panel erred in its approach for finding dishonesty and in failing both before finding dishonesty and particularly before deciding on sanction to contact the doctor to make representations. He allowed the appeal and determined it should be sent back to a Panel for consideration (paragraph 42).

Salient Points

- Reminder that a Panel must look critically at any evidence advanced in support of a finding of dishonesty and that any such evidence must be cogent.
- Reminder that Panels should exercise caution when proceeding in the absence of the doctor.
- Whilst Mr Justice Collins suggested that, in the interests of ensuring a fair hearing, prior to the Panel making a decision at each stage, the absent doctor should have been given the opportunity to give evidence this is only relevant to the specific (and unusual) circumstances of this case and is not of general application to cases where the doctor absents themselves from the whole of the proceedings. In those circumstances, once a decision has been made by the Panel to proceed with the hearing in the absence of the doctor, the expectation of the MPTS is that the Panel will not adjourn at each stage to give the doctor an opportunity to attend.

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