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## General Medical Council v Theodoropoulos [2017] EWHC 1984 (Admin)

### Learning Points

- When considering whether an act of dishonesty is “an isolated incident” a Tribunal should take into account the nature of what occurred including whether the dishonesty required forethought and planning, and the seriousness of the potential outcome of those dishonest actions.
- In cases involving serious dishonest conduct, it is difficult to regard the *possibility* of developing insight or remediation as a basis upon which it could be said that suspension is appropriate.
- Misconduct does not have to occur in a clinical setting before it renders erasure, rather than suspension, the appropriate sanction.

### Background

This was an appeal brought 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 12 January 2017 suspending Dr Theodoropoulos from the medical register for a period of 12 months.

The allegations against Dr Theodoropoulos were that, following his successful restoration to the medical register without a licence to practise in March 2015, he subsequently accessed his certificate of proof of entry on the medical register (which read that he was registered without a licence to practise), dishonestly amended it to read that he was registered with a licence to practise and then

submitted the altered certificate to a locum agency in an attempt to gain employment.

Dr Theodoropoulos did not attend the MPT hearing, but during the GMC's investigation he did send a lengthy email in which he denied the allegations. He submitted that there was no evidence he had altered the certificate, he had printed it as it appeared on the GMC website and suggested that a GMC staff member must mistakenly have made the alteration.

The Tribunal rejected Dr Theodoropoulos' explanation and found that his actions, in amending the certificate and providing it to the locum agency (with a view to gaining employment for which he was not eligible), were both misleading and dishonest, amounted to misconduct and that his fitness to practise was impaired. The Tribunal determined to suspend Dr Theodoropoulos' registration for a period of 12 months and in doing so stated:

*"...Dr Theodoropoulos's dishonesty was a serious departure from the principles set out in the GMP and constituted a deliberate disregard for them. However, the tribunal noted that his dishonest behaviour was an isolated incident and did not take place in a clinical setting. The tribunal has noted that it has no evidence of insight or remediation... However, neither does the tribunal have any evidence that he is incapable of developing insight and of remediating his behaviour, albeit it recognises that this may be a significant challenge. In these circumstances, the tribunal determined that although Dr Theodoropoulos's behaviour breached a fundamental tenet of the profession, it is not fundamentally incompatible with continued registration and it would be disproportionate to erase his name from the medical register at this time."*

## **Grounds of Appeal**

The GMC appealed against the Tribunal's decision on the following grounds:

1. the Tribunal failed to recognise the seriousness of Dr Theodoropoulos' misconduct and therefore, erred in considering it was appropriate to suspend Dr Theodoropoulos rather than erase his name from the register because the conduct did not occur in a clinical setting. The GMC also submitted there was inconsistency in the Tribunal concluding the doctor had breached a fundamental tenet of the profession and then concluding the conduct was not fundamentally incompatible with continued registration;

2. the Tribunal were wrong to categorise Dr Theodoropoulos' conduct as an isolated incident, with the implication that it was unlikely to recur, given he denied dishonesty and had shown no insight into or remorse about it;
3. the Tribunal failed to have proper regard to the Sanctions guidance which indicates that dishonesty, especially where persistent or covered up, was likely to lead to erasure from the register; and
4. in so far as the Tribunal departed from the approach in the *Sanctions Guidance*, there was a failure to give adequate reasons for doing so.

## Judgment

The Honourable Mr Justice Lewis, first decided to hear and provide judgment in the appeal, in the absence of Dr Theodoropoulos, and then allowed the appeal and directed that Dr Theodoropoulos' name be erased from the medical register.

1. In considering the first ground of appeal the Judge said that, in light of the conclusions reached by the Tribunal, (that the conduct "was a breach of a fundamental tenet of the medical profession....would undermine the trust that the public places in doctors.....could have led to a doctor who did not have a licence to practise medicine...practising when he was not eligible to do so") [para 42] and the established case law on dishonesty of professionals, the appropriate and proportionate sanction for the kind of dishonesty shown by Dr Theodoropoulos was one of erasure from the medical register. The Judge said that "the conduct affected the system of qualifications and the integrity of the system of job applications and put at risk the proper operation of a system that was designed to protect the public by ensuring that only those who were licensed to practise did so" [para 43].
2. The Judge considered the reasons given by the Tribunal for concluding that suspension, not erasure, was the appropriate sanction. He found that when faced with serious, dishonest conduct which was incompatible with a fundamental tenet of the medical profession, the Tribunal was wrong to conclude that it was not fundamentally incompatible with continued registration by relying on; the isolated nature of the incident, the fact it did not take place in a clinical setting, and the absence of evidence that the respondent was incapable of developing insight and remediating his behaviour [para 47].

3. The Judge said that “given the nature of the dishonest conduct, the denials of [Dr Theodoropoulos], and the absence of any evidence of insight or remediation, it is difficult to regard the possibility of developing insight or remediation as a basis upon which it could be said that suspension was appropriate” [para 44].
4. The Judge reiterated that “misconduct does not have to occur in a clinical setting before it renders erasure, rather than suspension, the appropriate sanction” and that this case involved “dishonesty in relation to the qualification system for doctors and in dishonestly seeking to obtain employment, when not eligible, for appointment as a doctor”, which would undermine trust in the profession [para 45].
5. The Judge said that, the Tribunal’s categorisation of the incident as an isolated incident did not accurately take into account the nature of what occurred; the dishonesty required forethought and planning and such a “...calculated and deliberate attempt to circumvent the regulatory system and obtain employment as a medical practitioner when not eligible to do so...” meant that it was not correct to treat that as an isolated incident justifying a sanction of suspension [para 46].
6. The Judge held that the first ground of the appeal was made out and that the Tribunal “failed to recognise the gravity of the misconduct and, in the absence of any evidence of insight or remediation, the proper and appropriate sanction was not suspension but erasure” [para 48].
7. In allowing the appeal, the Judge said it was not necessary to specifically deal with the remaining grounds [para 48].

The Judge quashed the Tribunal’s decision to suspend Dr Theodoropoulos for 12 months and directed that his name be erased from the medical register [para 49].

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