

04 July 2014

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**Re: Dr Hohmann v General Medical Council [2013] EWHC 373 Admin**

***Background***

Dr Hohmann's case was considered by the Medical Practitioners Tribunal Service Fitness to Practise Panel ('Panel') in relation to the findings of a German Court which convicted Dr Hohmann of numerous counts of fraud and intentional bankruptcy. The convictions for fraud were equivalent to the offence of obtaining by deception in the United Kingdom.

Dr Hohmann did not attend the hearing nor was he represented and the Panel on 4 April 2013 determined that his name should be erased from the Medical Register and imposed an immediate order of suspension.

Dr Hohmann appealed the decision under Section 40 of the Medical Act 1983.

***Appeal***

The appeal was considered by His Honour Judge Bidder QC on 12 November 2013.

The Judge had to deal with a preliminary application, Dr Hohmann's request for an adjournment. This was dealt with by His Honour Judge Bidder in paragraphs 1-12 of his judgment including setting out in some detail the history of the appeal at paragraphs 6-8.

In determining the application for an adjournment the Judge took into account the overriding objective – to deal with cases justly, which included ensuring that the parties are on equal footing.

He also took into account what seemed to him to be the weaknesses of the grounds of appeal and further, apart from suggesting in the grounds of appeal that the General Medical Council ('GMC') or Panel were wrong to proceed in his absence, and without him being represented, the only reference to any substantive grounds against the Panel's determination was that he was deprived of pointing out factual errors and putting his side of the case, without any indication of what those factual errors were, or what the side of his case actually was.

The Judge also noted that there was no indication of what Dr Hohmann would have said, if he had been present, and no indication that it would have made any material difference.

Having dealt with the application for an adjournment HHJ Bidder then dealt with the appeal (paragraphs 15-28).

The Judge noted that the Panel had a discussion whether or not to hear the case in the doctor's absence. He confirmed that the Panel had properly and, on reasonable grounds, found that the doctor had been properly served with the notice of hearing; they then considered the two relevant authorities; applied them properly and determined the issue taking into account all of the relevant matters including the important fact that it was difficult to see how the convictions for fraud could actually have been challenged by the doctor even if he had attended or been represented (paragraphs 15-16).

The Judge also noted that it had been open to the doctor to confirm in writing any mitigating factors and to make representations in writing as to why findings of misconduct should not have been made by the Panel or in relation to the sanction imposed by the Panel (paragraph 17).

The Judge noted that it was essentially of the doctor's own making he was not present at the hearing (he was in prison at the relevant time) but rather more significantly it was clear that he chose at the time of the hearing not to be represented (paragraph 17). In the circumstances, the Judge considered the decision to proceed in the absence was a correct one.

HHJ Bidder then goes on to determine that the Panel considered all the issues that it had to decide, that the findings of fact were properly made (paragraphs 18-19). In relation to the issue of impairment the finding was, in HHJ Bidder's judgment, inevitable - these were repetitive offences made by a man who had already been convicted of an offence of fraud. The Judge confirmed (paragraph 20):

*'Clearly, he could not be regarded as honest and trustworthy, an essential element in the make-up of any doctor who has to deal with very important matters, to deal with members of the public day-in and day-out, to deal with the prescribing of potentially dangerous, hazardous medication. It is quite essential that doctors have complete integrity and probity. This is a man who had not simply committed a one-off and relatively minor offence of dishonesty but, over a significant period of time, had deliberately defrauded people who he had asked to provide services to him.'*

He confirmed that there was no possible criticism of the findings of misconduct by the Panel (paragraph 21).

The Judge confirmed that the Panel followed faithfully the guidance of how to approach the imposition of sanction, the selection and imposition of sanction. They started by considering the least restrictive, rejected those quite properly for good reason, and worked up, and then correctly ruled on *'ample grounds'* that the appropriate sanction was one of erasure (paragraph 22).

In the circumstances HHJ Bidder confirmed that the Panel was not wrong nor was the decision of the Panel unjust because of any serious procedural or other irregularity in the proceedings.

Counsel for the GMC raised the fact that there were two different bases for the finding of impairment - one based on the conviction and the other misconduct based on the dishonesty in making applications for posts in the UK.

HHJ Bidder goes on (paragraphs 27-28) to deal with the issue of the misconduct. There was clear evidence that the doctor had made applications for posts in the United Kingdom (including the Isle of Man) and he had deliberately lied about his convictions. The doctor had on a number of

occasions said he had no convictions and that was *'patently, to his knowledge, a lie'* (paragraph 27).

Not only at the time of the application but also when he obtained a post there was a rumour that he had been in fact convicted of offences of fraud, and when interviewed lied orally to the person interviewing him, going to the extent of producing a certificate that he was effectively fit to practise in Germany.

The Judge confirmed that this was *'a complete deception which clearly amounted to misconduct'* (paragraph 27).

In the circumstances, the Judge found that there were comprehensive grounds for that finding and the finding was in the context of no submissions to rebut the evidence of the convictions, no challenge to the convictions and no effort to mitigate the convictions.

The finding of the Panel, in relation to misconduct based on the positive acts of the doctor, was also correct (paragraph 28).

In the circumstances the appeal was dismissed.

### ***Salient Points***

- Reminder that when considering whether to proceed in the absence of the doctor the Panel must take into account all relevant matters including, where the doctor is in prison at the time of the hearing, the fact that he could have made written representations to the Panel or instructed a representative on his behalf.
- Reminder that it is essential for doctors to have *'complete integrity and probity'* (paragraph 20).

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