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Medical Practitioners Tribunal Service
Seventh floor, St James's Buildings
79 Oxford Street
Manchester M1 6FQ

To: Interim Orders Panel Panellists
Legal Assessors

Tel: 0161 923 6263

Fax: 0161 240 7199

Email: enquiries@mpts-uk.org

Copy: Fitness to Practise Panel Panellists
Panel Secretaries
Medical Defence Organisations
Employer Liaison Advisers

Re: Bawa-Garba v GMC [2015] EWHC 1277 (QB)

Background

On 8 January 2015 the Interim Orders Panel (IOP) imposed an order of suspension on Dr Bawa-Garba's registration for a period of 18 months.

Dr Bawa-Garba, a Paediatric Specialist Registrar, has been charged with manslaughter of a young boy, who suffered from T21 Down's syndrome and had atrioventricular septal defect repair when only four-and-a-half months old. He died on 18 February 2011 after his admission to Leicester Royal Infirmary.

Dr Bawa-Garba challenged the Panel's decision to impose an interim order of suspension under S41.A (10) Medical Act 1983.

Appeal

The appeal was considered by Mr Justice Knowles CBE on 24 March 2015.

The Judge sets out the background to the matter and details of the Panel's determination (paragraphs 1-9).

Mr Justice Knowles emphasised that he was only considering the question of interim suspension pending a final determination on the evidence of allegations, not any orders that may be appropriate if the allegations be found proved against her.

The Judge noted that what was not in dispute was that for a short period on 18 February 2011 Dr Bawa-Garba stood down the resuscitation efforts because she mistakenly thought a 'do not resuscitate' order was in place for the child before realising that order related to a different child (paragraph 10).

What was not clear was whether Dr Bawa-Garba accepted four other criticisms (paragraph 11):

- a) a failure to understand and communicate the significance of a blood result;
- b) poor communication of the clinical condition;
- c) a failure to fully appreciate the young boy's overall clinical condition;
- d) a failure to engage a timely cardiological opinion.

Mr Justice Knowles also bore in mind that for a charge of manslaughter to be brought, the Crown Prosecution Service would have been satisfied that there was evidence sufficient to provide a realistic prospect of conviction and that a prosecution was in the public interest (paragraph 12).

He confirms that having examined the reasons given by the Panel in their determination he was not able to see the particular reasons why they thought conditions would not be sufficient (paragraph 13). Whilst he accepted that the Panel had the question of conditions in mind, they stated their conclusion that there was a risk to patients and a risk to public confidence but they did not state how the risk to patients would arise in circumstances of conditions applying and their treatment of risk to public confidence would lead, on the face of it, to a decision to suspend in every case where an allegation of manslaughter was to be proceeded with.

A number of matters (set out in paragraph 14) persuaded the Judge that it was not necessary that Dr Bawa-Garba should be subject to suspension on grounds of risk to patients whilst matters proceeded to a final determination. He goes on to note the guidance to the Panel at paragraph 20 which requires Panels to consider information to the likelihood of a further incident or incidents occurring during the relevant period. He goes on to say (paragraph 15):

'The mere fact of a criminal charge, even a very serious one such as manslaughter, does not, in my assessment, automatically mean that suspension is necessary or appropriate; there is a judgment to be made. The guidance at paragraph 36 makes that, in my view, clear. I add further that the examples given in paragraph 36 of the guidance... can have particular implications when an interim period is under consideration. This is also clear from paragraphs 24 and 33 of the guidance. The examples can, in that respect, be distinguished from a case such as the present, of alleged gross

negligence at a particular point in time, albeit with the most serious and tragic outcome, but coupled with evidence of later work without negligence and of arrangements to restrict the duties of the practitioner for the interim period.'

In the case of Dr Bawa-Garba Mr Justice Knowles confirms (paragraph 16):

'...in my judgment, the public, if properly informed... can be expected to accept that a responsible and proportionate course is taken if Dr Bawa-Garba works with the Trust but without patient contact, pending her trial in the Crown Court or any determination at a final stage by the GMC. If, after hearing evidence on both sides, the jury gives a verdict, guilty or not guilty, that will be quite different. So too if the GMC reaches a final determination.'

Mr Justice Knowles concludes that the case whilst unsuitable for an interim suspension order would have been suitable for an appropriately framed order for interim conditions (paragraph 18).

In the circumstances the Judge terminated the interim order of suspension.

Salient Points

- Reminder that where a doctor is the subject of a criminal charge, even a very serious one, it does not mean that suspension is always necessary or appropriate. The Panel must make a judgment on the facts of the individual case and give very clear reasons why it has decided to impose an interim order of suspension.
- Reminder of the need to take into account what the public, if properly informed, would think – see also Patel v GMC [2012] EWHC 3688 Admin (Appeals Circular A2/13).
- Reminder of the need for Panels to give reasons to explain their conclusions as to the risks to patient safety and/or public confidence.

Panel Development Team
0161 240 7292
pandevteam@mpts-uk.org