

06 July 2015

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Re: **Soni v General Medical Council [2015] EWHC 364 (Admin)**

Abstract

Mr Soni, a consultant ophthalmologist, appealed against the MPTS' finding of serious misconduct and its decision to suspend his registration for 6 months.

The Administrative Court allowed the appeal and held that it had not been open to infer that Mr Soni had deliberately withheld payments to the Trust in relation to private patients, and that these actions were deliberately dishonest.

Background

The GMC allegations focussed on the treatment that Mr Soni provided to five private patients between February and April 2008; specifically that he had withheld payments to the Trust in relation to his treatment of these patients.

Mr Soni resigned from the Trust in May 2011; however, the disciplinary investigation (which continued following his resignation) found that he had committed acts of gross misconduct and that Mr Soni would have been dismissed had he still been employed by the Trust.

The matter was brought to the attention of the GMC. In January 2012 the GMC investigation concluded with no further action. However, following a meeting with representatives from the Trust and a notification to Mr Soni, a review of the decision under Rule 12 of the General Medical Council (Fitness to Practise) Rules 2004 was commenced and the investigation was re-opened.

The MPTS hearing took place in early 2014, some six years after the incidents giving rise to the allegation.

Appeal

Mr Justice Holroyde summarises the grounds of appeal at paragraph 50 of his judgment:

The grounds of appeal, in summary, are that the Panel acted as no reasonable Panel would have done in finding the case against Mr Soni proved and were wrong and unjust in that (a) there was an abuse of the process because the GMC and the Trust had acted together to re-open the case against Mr Soni, and had subjected him to inordinate and inexcusable delay; (b) the Panel failed to ensure that Mr Soni had a fair trial; and (c) the Panel's findings were contrary to the weight of the evidence.

The first two grounds of appeal were dismissed by the Court, as detailed in paragraphs 51 to 53 of the judgment.

In paragraphs 54 to 68 Mr Justice Holroyde summarises his approach to the third ground of appeal. In deciding to uphold this ground of appeal, he explores the remit of the Panel to draw inferences from the evidence it heard. At paragraph 61 he states:

The crucial question, therefore, is whether on a fair view of the evidence as a whole it was open to the Panel to infer that Mr Soni had deliberately withheld from the Trust sums of money which he had received from the five patients, and which he knew he should pay to the Trust, and was deliberately dishonest. In my judgment, it was not. Although this was not a criminal charge against Mr Soni, and the GMC only needed to prove its allegation on the balance of probabilities and not to the higher criminal standard, the principle must nonetheless apply that before an inference could properly be drawn, the Panel had to be able to safely exclude, as less than probable, other possible explanations for Mr Soni's conduct.

Mr Justice Holroyde concluded that there was not sufficient evidence to demonstrate that the balance of probabilities was satisfied, and that alternative explanations of innocent oversight or administrative confusion could not be ruled out. He goes on to state, at paragraph 68:

With all respect to the Panel, I am afraid it must have confused grounds for suspicion with evidence sufficient to prove, on the balance of probabilities, a serious allegation against a professional man.

Finally, in deciding not to return the case to the Registrar for a fresh decision Mr Justice Holroyde stated, at paragraph 70:

... the determination of this appeal does not involve any departure from the Panel's assessment of the credibility of the witnesses, all of whose evidence was accepted by the Panel. It does not turn on matters which engage the Panel's specialist knowledge of medical matters. This court is in as good a position as the Panel was to assess the sufficiency of the evidence; and if the evidence is insufficient, then the public interest cannot be served by a further hearing of it.

Salient Points

Balance of probabilities

The Panel must be mindful that when drawing inferences, it has been able to safely exclude, as less than probable, any other explanations for the incident.

Dishonesty

Findings of dishonesty are not necessarily linked to the sum of financial gain involved. However, there must be evidence that justifies the inference of dishonesty. Any absence of financial motive can be a relevant consideration, particularly when coupled with other factors such as the likelihood of risk of discovery.

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