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Re: Steven Bradshaw v General Medical Council [2010] EWHC 1296 (Admin)

Background

Dr Bradshaw appeared before the Interim Orders Panel ("IOP") on 1 February 2010. The Panel determined to suspend his registration for a period of 18 months.

Dr Bradshaw made an application to the court under section 41A(10) of the Medical Act 1983 for an order terminating the suspension.

Appeal

Dr Bradshaw's application came before His Honour Judge Roger Kaye QC. The Judge sets out the background to the referral to the IOP in paragraphs 2-10 of his judgment. The proximate cause of the investigation into Dr Bradshaw by the Civil Aviation Authority (CAA), by whom he had been employed as a medical officer between 1 March 2007 and 31 October 2008, appears to have arisen out of an alleged affair between Dr Bradshaw and Dr J.

A thorough investigation had been carried out and the main conclusions reached are summarised in paragraph 10 as follows:

- That Dr Bradshaw had made allegations of misconduct against Dr J knowing them to be false and in doing so lied to the CAA;
- That Dr Bradshaw had lied to Dr Johnston '*on numerous occasions and in numerous respects*' with the intention of perverting the course of the investigation;
- That Dr Bradshaw had fabricated and altered original documents in order to discredit Dr J and another so as to undermine their testimony against him;

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- That Dr Bradshaw had abused CAA's sickness absence procedures by claiming he was sick when he was in fact fit for work;
- That he had breached CAA's code of conduct by offering or promising to take steps to procure CAA's endorsement for glasses in return for a substantial share in the venture.

His Honour Judge Kaye sets out the key conclusions of the IOP which were set out in a letter to the doctor dated 2 February 2010.

The Judge also notes that the transcript of the IOP referred to the same issues and further that the IOP had taken on board Counsel for Dr Bradshaw's representations about the absence of any adverse comments on his clinical competency and performance, about the positive testimonials presented on his behalf and the financial hardship an order of suspension would cause.

He acknowledges that the Panel were also aware that Dr Bradshaw's current training would also be put in jeopardy such that he might never be able to resume it (paragraph 14). Two further issues, which Counsel for Dr Bradshaw relied on at the hearing, were that the IOP had wrongly relied on a mistake in the CV and the lack of support from the Postgraduate Dean since they were not matters formally alleged against him of which he had notice and only arose during the course of the IOP hearing (paragraph 14). The Judge agreed, later in his judgment, with Counsel for Dr Bradshaw's submissions regarding those two latter points that the IOP ought not to have relied on those two extra matters in support of its determination (paragraph 26).

His Honour Judge Kaye acknowledges the further submissions made by Counsel for Dr Bradshaw that the doctor *"strenuously and emphatically denied the charges and would be contesting the GMC hearing when it took place vigorously. He would deny the relationship.....none of the allegations related to or concerned his clinical performance which both his CV and testimonials demonstrated as unblemished. There was thus no evidence of risk to patients"* (paragraph 15).

The Judge also summarises the Counsel for the GMC's submission in support of the decision of the IOP (paragraph 16) including that:

"The allegations call into question qualities at the heart of the doctor/patient relationship even though she accepts there is no criticism of Dr Bradshaw's clinical performance: they call into question his probity, his duty to cooperate with investigations....., his requirement to establish and maintain good relationships with colleagues, his obligation duty to be honest and trustworthy and act with integrity. A doctor who is not open and honest with colleagues or with investigators may well, she submitted, pose a risk to patient safety."

The Judge then sets out the powers of the IOP under section 41A of the Medical Act 1983 (paragraphs 17 and 18) and thereafter the relevant case law (paragraphs 20 and 21) on the exercise of the court's jurisdiction. In particular the Judge notes the latest relevant authority, a decision of Nicol J in **Sandler v GMC [2010] EWHC 1029 Admin** – in particular paragraph 12 of Nicol's judgment.

He noted that there had been some debate before him (as there had been in **Sandler**) about the relevant "yardstick" to apply in the case of suspension on public interest grounds. It was at least common ground that suspension to protect members of the public could only be done if it was "necessary" but the question was whether it was also required if suspension was also on public interest grounds as in Dr Bradshaw's case.

The Judge found paragraph 14 of Nicol J's judgment in Sandler "illuminating and helpful" and set it out in full and confirmed in paragraph 22 that he agreed with the analysis.

The Judge confirmed in (paragraph 23) that he had taken into account all that Counsel on behalf of Dr Bradshaw had said and thereafter set out his analysis of the points raised and also references to the cases of Sosanya v GMC [2009] EWHC 2814 (Admin) and Shiekh v GMC [2007] EWHC 2972 (Admin).

His Honour Judge Kay concludes (paragraph 31) as follows:

"It seems to me that the IOP.....considered and balanced the key factors. They were aware of the harm to Dr Bradshaw from suspension; they were aware of the issue of proportionality as well as the risk to the public and to the reputation of the profession from allowing him to continue. They were well aware of the fact that the allegations against him did not involve his clinical competence. Indeed they identified the real gravamen of the case that takes this case out of what might otherwise be regarded as a local domestic dispute not likely to involve members of the public as involving "allegations that you made false allegations against a colleague, lied to an investigation and fabricated evidence, is one of the relatively rare cases in which an order of interim suspension is necessary'."

The Judge also acknowledges (paragraph 32) that he was well aware of the risk of Dr Bradshaw losing his training and the impact this might have on his career. He was also aware that the doctor had denied the allegations and did not attend the disciplinary hearing on legal advice. However, equally he could not overlook the "care, cogency, thoroughness of and careful reasoning in the report made by Dr Johnston after a lengthy investigation and the conclusions of the CAA Disciplinary Hearing."

In the circumstances he dismissed the application.

Salient Points

- Confirmation of the approach in *Sandler* that whilst s41A(1) allows suspension on public protection grounds only if it is 'necessary' there is no such qualification in the public interest and *Sheikh v GDC [2007] EWHC 2972 Admin* where it was accepted that if the public interest grounds is to be relied on then it '*does at least carry some implication of desirability*'.
- The panel should not rely on matters which are not formally alleged against the doctor, of which he had no notice, and which only arise during the course of the IOP hearing.

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