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Dr Promod Kumar Bhatnagar v GMC [2014] EWHC 2562 Admin

Background

Dr Bhatnagar, a Consultant Ophthalmologist, was the subject of an interim order since 17 January 2013. Initially the order was one of suspension but at reviews on 16 July and 11 October 2013 the interim order of suspension was replaced with one of conditions.

On 7 April 2014 a differently constituted panel of the Interim Orders Panel ('IOP') reviewed the order of conditions and determined that an order of suspension was appropriate.

Dr Bhatnagar brought an application under Section 41A(10) of the Medical Act 1983 (as amended) seeking the termination of the interim order of suspension. The issues raised by his application were whether the decision of the order was unnecessary, disproportionate and wrong in all the circumstances.

Application

The application was considered by the Honourable Mr Justice Supperstone on 11 July 2014 (with judgment being given 24 July 2014).

Supperstone J set out the material facts relating to the period up to the hearing before the IOP on 17 January 2013 at paragraph 4 – adopting the summary set out by Edwards – Stuart J in his judgment [Bhatnagar v GMC \[2013\] EWHC 3412 Admin](#) at paragraphs 6 to 14.

The Judge then set out (paragraphs 5 – 9) a summary of the history of the IOP orders since its imposition on 17 January 2013.

He then went on to consider the decision of Edwards – Stuart J on 11 November 2013 (paragraphs 10 - 15) in which Edwards – Stuart J was of the view that his decision to dismiss the previous appeal should stand.

Supperstone J sets out a summary of the decision of the IOP on 7 April 2014 (the subject of the application) (paragraph 16) noting that the IOP stated it was *'mindful that the last two interim order panels had imposed interim conditions upon [Dr Bhatnagar's] registration and of the need for consistency between IOP panel decisions'*. However, in reviewing Dr Bhatnagar's case and *'considering all the current circumstances'* the IOP decided on that occasion to vary the interim order and replace it with one of interim suspension. The Judge set out the reasons for the IOP's decision (paragraph 16).

He then set out details of the statutory framework (paragraphs 17 to 19) and the GMC's guidance on the imposition of interim orders (paragraph 20).

Counsel for the doctor submitted the decision of the IOP was *'fundamentally wrong and disproportionate'* for three reasons (paragraph 21):

- The IOP concluded that they were considering *'new allegations'* which were not before the IOP in 2013;
- Dr Bhatnagar had a legitimate procedural expectation that the orders made on three previous occasions ought not to be thwarted; and
- The IOP failed to consider whether an order for interim conditional registration would be appropriate and proportionate and failed to give reasons why it was not satisfied that conditions would appropriately address the public interest test, which it had identified.

Supperstone J referred to the relevant parts of the IOP's decision in relation to the first contention (paragraph 22). He summarised Counsel for the doctor's submissions in relation to his argument that the allegations faced by Dr Bhatnagar on 7 April 2014 had not changed in nature and/or substance (paragraph 23) as follows:

- The allegation concerning Dr Bhatnagar dishonestly obtaining insurance cover was before the IOP on previous occasions; and
- The witness statement provided by Mr Manglam (dated 18 November 2013) amounted to no more than Mr Manglam maintaining that Dr Bhatnagar had fabricated notes of meetings retrospectively – these allegations, documents and evidence were before the IOP in July and October 2013.

Counsel for the GMC submitted that the new witness statements from Mr Mangat and Mr Manglam could not be disregarded as suggested by Counsel for the doctor. His observations are set out in paragraph 24.

Counsel for the GMC submitted that there were five matters to which the IOP could have proper regard when deciding that it was necessary to impose an interim order of suspension which are summarised in paragraph 28 as follows:

- The IOP had the benefit of the carefully considered and detailed analysis in the reserved judgment of Edwards-Stuart J;
- There was the new evidence which included the witness statements of Mr Mangat and Mr Manglam and the exhibits thereto;
- There was the new particularisation of the charges made against Dr Bhatnagar which had been synthesised into Rule 7 particulars;
- There was the new procedural step, namely the Rule 7 letter;
- There was new information available to the IOP which was also of relevance on the issue of proportionality, namely the position Dr Bhatnagar adopted before the IOP which was not that there should be an order of conditions but that the order should be revoked.

Counsel for the doctor submitted that none of the matters referred to above equated to 'new allegations'.

Supperstone J considered that Counsel for the doctor attached too much weight to the use of the word '*new*'. He confirmed it was clear from the IOP's determination that it had a clear understanding of the nature of the case that had been made against Dr Bhatnagar at earlier hearings and how the case was put on 7 April 2014 (paragraph 29). He went on to state (paragraph 30) that:

'The Panel, as it recognised, had to exercise its own independent judgment... and had to make a decision, having considered all the circumstances relating to the case, including any new information that was available to it on 7 April 2014.'

He considered that having regard to the relevant legal principles the IOP was entitled to reach the conclusion that it did and, indeed, he would have reached the same conclusion on the material before it.

The Judge then dealt very shortly with the two other grounds of challenge (paragraph 32). He rejected Counsel for the doctor's suggestion that Dr Bhatnagar had been '*subjected to game changing*'. He confirmed the IOP on 7 April 2014 had to reach its decision on the basis of the evidence presented at the hearing.

He then rejected the criticism that the IOP failed to consider whether an order of interim conditions would be appropriate and proportionate. Dr Bhatnagar was not seeking such an

order. The IOP was of the view that neither revocation of the interim order, nor maintenance of the order of interim conditions was appropriate.

Supperstone J considered (paragraph 32):

'...the Panel was entitled to decide that in the current circumstances, having regard to the wide ranging and extremely serious nature of the allegations and the weight that it attached to them that the only appropriate and proportionate order was one of suspension.'

Salient point

- Reminder that at a review hearing the IOP must consider the circumstances of the case as at the date of the hearing, including any new information available to them.

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