Appeals Circular A 20/14

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To: Interim Orders Panel Panellists
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Re: Hayat v General Medical Counsel [2014] EWHC 1477 Admin

Background

On 18 September 2013, Dr Hayat's case was considered by an Interim Orders Panel (IOP). The Panel determined that his registration should be suspended for a period of 18 months.

Dr Hayat made an application to the court to terminate the order under Section 41A (10) Medical Act 1983 (as amended).

Application

Dr Hayat's application was considered by Mr Justice Charles on 3 April 2014.

The Judge sets out the relevant section under which the interim order of suspension was made (paragraph 2) and noted that the first two bases upon which an interim order could be made were potentially engaged before the IOP i.e. it was necessary for the protection of the members of the public or it was otherwise in the public interest. It was the first one which the IOP focussed on.

The Judge noted that before the IOP were reports by two doctors which had recently been carried out and although the Judge did not propose to cite from the reports he did refer to passages which had been cited to him in the course of oral submissions (paragraph 3).

He considered that, standing back and having read the report, having regard to the primary purpose of the GMC namely to protect, promote and maintain the health and safety of the public, the report to which he referred made "troubling reading". He concluded (paragraph 4):

> *"If anything, it seems to me that the conclusions as expressed by the Interim Orders Panel underestimate the risks based on the report that Dr Hayat and*

other doctors in the practice have not been treating patients appropriately and have caused harm to patients. That is the centrally relevant risk".

He noted it was quite properly accepted by the Panel that at this stage it was only a risk but from the reports based on, inevitably, a small sampling, that risk existed (paragraph 5).

The Judge noted that a number of arguments had been put forward to him, in writing and orally on behalf of the doctor, to the effect that the report should not be read in the way in which he had and did not demonstrate the doctor presented a risk to members of the public.

Mr Justice Charles rejected the submissions. Whilst he acknowledged that further investigation may demonstrate that the risks were ill-founded, their existence in the investigation that took place is clear (paragraph 8).

He concluded that he was not going to deal with each and every point raised by Dr Hayat himself, and through his Counsel in submissions, on the basis that *"a fair and proper reading of the reports establishes the risk I have identified. Next it seems to me clear that that is a risk which warrants a suspension for the reasons given by the Panel"* (paragraph 11).

The Judge also confirmed that he had to look at the matter as it existed at the time of the hearing (paragraphs 12 – 13).

Dr Hayat also urged the fact that his partner, Dr Malhotra, had a conditions order placed on his registration was a relevant consideration, as he submitted both doctors should be treated the same. Mr Justice Charles did not accept that this was a significant point and that there were valid distinctions to be made between Dr Hayat and Dr Malhotra which were powerful ones (paragraphs 14 – 15).

Other issues which were considered were the recent reports of the Care Quality Commission, that since the first meeting of the IOP allegations had come to light that Dr Hayat had made a false claim against an insurance policy based upon an assertion that he had suffered a heart attack when in Pakistan which the Police were still investigating (paragraphs 17 – 20).

In conclusion to the relation of the imposition of the order Mr Justice Charles confirmed (paragraph 23):

"... it does seem to me that the GMC are right in their submissions that this is a serious case. Standing back and asking the tests posed in the authorities I have referred to, given the existence of those risks, and the force of the evidence that supports the underlying facts relied on to establish them, to

my mind it is clear that the public would expect such a doctor to be suspended".

The Judge then goes on to consider the length of the suspension (paragraph 24). He concluded that on the reasoning of both of the Panels, both the original IOP and the review IOP, that there was a compelling case that this was not a case of conditions (paragraph 25). However, the Judge was troubled by the approach taken by both Panels to the period relating to the length of the suspension. He confirmed (paragraph 29) that the guidance is very clear and obviously correct and demonstrates that there is a judgmental or balancing exercise to be carried in deciding the period of a suspension, just as there is in ordering the suspension itself.

In this case however, what troubled the Judge was that there was no real reasoning as to why the maximum period was chosen (paragraph 30). He confirmed (paragraph 32):

"... it follows that there is a real need to identify what the next steps are, and how long they are going to take and thereby to seek to minimise the period of any suspension".

He went on to state (paragraph 36):

"I have seen nowhere in the transcript of the Panel Hearing in September, or in the decision of the more recent Panel or in any correspondence, any recognition of the need to get on with the assessment of the relevant risk, to keep the period of necessary suspension to a minimum".

Mr Justice Charles confirmed that in approaching that aspect of the decision the two Panels had failed to take into account relevant factors or to at least explain properly how they had taken them into account, and to his view that would be a ground for shortening the period of suspension.

Although he accepted he was forcing the point in view of the issues to be investigated, including the investigation in respect of the insurance claim, that a fitness to practise panel would convene within the 18 month period, he did not consider that this really addressed the underlying issues (paragraph 40).

In the circumstances the Judge determined to shorten the period of suspension until the end of October 2014.

He also confirmed that if an application to extend was to be made to the Court he would reserve it to himself, if available, so that another Judge did not have to read into the case.

Salient Points

- Reminder to Panels that their reasoning as to the length of any order must be just as cogent as their decision on the type of order imposed.
- Reminder to a reviewing Panel that it cannot change the period of the order.

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