

15 September 2015

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## Re: Jayaprakash Gosalakkal v General Medical Council [2015] EWHC 2445 (Admin)

### Abstract

***Dr Gosalakkal appealed the fitness to practise panel's decision to suspend his registration for 6 months.***

***Sir Stephen Silber, sitting as a Judge of the High Court, dismissed all the grounds of appeal.***

### Background

Dr Gosalakkal worked as a Consultant Paediatric Neurologist at Leicester Royal Infirmary (UHL) between January 2002 and October 2011. He was the lead clinician for paediatric neurology and played a key role in establishing the Video Telemetry Unit at UHL.

In January 2011, Dr Gosalakkal was referred to the GMC by the Medical Director of University Hospitals of Leicester NHS Trust, due to a number of concerns in relation to patient care, communication, and failure to engage in the Trust's investigation. As a result of the GMC investigation a number of matters were referred to a fitness to practise panel (see paragraphs 4 – 5). However, this appeal only relates to the following two charges, which were found proved by the Panel:

- i. The safe telemetry charge

The Judge sets out the background to this charge in paragraph 7:

*The safe telemetry charge related to the staffing levels at UHL during video telemetry and the need for monitoring. Video telemetry is a process in which*

*a patient is videoed whilst having the electrical activity in their brain monitored by electroencephalography ("EEG"). At UHL, the patient's anti-epilepsy medication was withdrawn to induce seizures, which could then be monitored. ... The appellant was the Lead Clinician for Paediatric Neurology at UHL and the co-author of the 'Drug withdrawal and admission protocol for paediatric video telemetry' used in the Video Telemetry Unit ("the Protocol"). The Protocol bore the appellant's name and no other name. The case against the appellant on the safe telemetry charge was based on criticism of the Protocol, which stated that:*

*"Nurses in charge at station are requested to monitor as much as possible."*

ii. The email charges

This charge arose from an email that Dr Gosalakkal sent following his exclusion from UHL, in which he alluded to a campaign against him which was based 'on falsehoods' and in which he invites the recipients to send messages of support to senior managers at UHL. See paragraph 8.

The Panel determined that both of the above charges amounted to serious misconduct, and went on to make a finding of impairment. The Panel concluded that the appropriate sanction was to suspend Dr Gosalakkal's registration for six months.

## **Appeal**

In paragraph 17 the Judge summarises the seven grounds of appeal. This circular will only address those that relate to the salient points identified below.

### **Issue 1: The interventions by the Chair of the Panel were procedurally improper (paragraphs 18 – 20)**

At paragraph 19, the Judge confirms that this ground was rejected, not only on the basis that there was no procedural irregularity or injustice, but also because "*... all the interventions from the Chair were relevant as well as being fairly and properly worded.*" Sir Stephen Silber goes on to state: "*The interventions sought to obtain vital information from the appellant who was a very intelligent witness and who was able to stand up for himself.*"

### **Issue 5: The Panel erred in law in finding misconduct in relation to the email charge (paragraphs 56 – 73)**

Dr Gosalakkal's representative sought to challenge the Panel's conclusion that the email charge amounted to serious misconduct, on the basis of the following arguments:

*"... first, it occurred "outwith the course of professional practice itself"; second, that this was a one-off course of misconduct and so would fall short of the threshold required to constitute serious misconduct which required persistent conduct; and third, that his conduct in any event fell short of the threshold required for a finding of serious misconduct."*

The judge rejected these three arguments, and in doing so relied upon the case of [Roylance v. GMC \[2000\] 1AC 311](#) and the comments made by Lord Clyde:

*"So it is not simply misconduct in the carrying out of medical work which may qualify as professional misconduct. But there **must be a link with the profession of medicine**. Precisely what the link may be and how it may occur is a matter of circumstance..."*

*Certain behaviour may constitute professional misconduct even though it does not occur within the actual course of the carrying on of the person's professional practice, such as the abuse of a patient's confidence or the making of some dishonest private financial gain".*

The Judge further relied on the judgment in *Roylance* to confirm that there need not be *"... repeated conduct before conduct can be serious misconduct."*

### **Issue 6: The Panel erred in law in finding impairment in relation to the safe telemetry and the email charge (paragraphs 74 – 87)**

In considering this issue the Judge re-examines the Panel's findings in relation to Dr Gosalakkal's insight, good character, and risk of repetition of the conduct. He confirmed the Panel's findings in relation to Dr Gosalakkal's lack of insight, in particular that he *"... contested this charge throughout and indicated that he would not do anything different now."*

The Judge goes on to state, at paragraph 85:

*"This clearly showed a lack of insight and the Panel was entitled not to be satisfied that he would not repeat this conduct, which has breached fundamental tenets of the medical profession and has undermined the public's confidence in the profession"*

### **Issue 7: The sanction imposed was disproportionate (paragraphs 88 – 94)**

In considering the issue of sanction, the Judge confirms the Panel's approach of considering the least punitive sanction first, as is usual practice for Fitness to Practise Panels.

In examining the Panel's decision on sanction, Sir Silber draws out the Panel's reasoning (paragraphs 91 – 93):

*"The Panel explained why, even at the time of the hearing, the appellant had not developed sufficient insight into his failings with regard to the need for adequate staffing in order to provide safe video EEG telemetry. In addition, it found that the appellant still had not developed appropriate insight into his wrongdoing in relation to the email charge. In consequence it concluded that in the light of matters such as the appellant's "little, if any insight into [his] misconduct... conditions would not be sufficient to meet the public interest".*

*So the Panel then had to consider the next least onerous sanction, which was imposing an order suspending the appellant. It was satisfied first, that the appellant was a competent clinician passionate about the care he provides to his patients, and second, that his misconduct was remediable by the development of insight, bearing in mind the public interest in his eventual return to unrestricted practice.*

*... The period of 6 months was selected as being a period, which would give the appellant the time and opportunity to reflect on the way he dealt with matters leading to his referral to the regulator and to enable him to develop insight into his behaviour."*

The Judge supports the Panel's decision on sanction, stating at paragraph 94 (hyperlink to relevant judgment added):

*"I do not consider that this finding to be an error especially as was stated in paragraph 6 above in [Fatnani](#) ... [Fatnani and Raschild v GMC [2007] EWCA Civ 19] it was explained that it was necessary to accord "special respect" to the decision of a Panel."*

## **Conclusion**

In his concluding comments the Judge again emphasises the "*expertise and experience*" of the Panel and confirms that all grounds are dismissed.

## **Salient Points**

### ***The Panel***

Throughout the judgment the Judge makes repeated reference to the "*expertise and experience*" of the Panel, and the "*special respect*" that should be afforded to their decisions.

### ***Panel questions***

The Judge confirms that the questions and interventions by the Panel chair were appropriate as they were intended to seek vital information.

Reference may also be made to the judgment of Mr Justice Walker in [Banerjee v GMC](#), that Panels are inquisitorial and that "*panel members can ask questions in an inquisitorial way*".

### ***Findings of serious misconduct***

The Judge confirms the approach set out in *Roylance* and at paragraph 63 states:

*"... the mere fact that the appellant was acting outwith the course of professional practice itself does not prevent him being found guilty of serious misconduct because the sending of the email clearly had in Lord Clyde's words "a link with the profession of medicine"..."*

He goes further when rejecting the submission that misconduct needs to be repeated in order to be considered serious. He emphasises the observations by Lord Walker in [Sadler v. GMC \[2003\] 1 WLR 2259](#) and *Roylance* again, stating:

*"First, Lord Walker was referring to cases of deficiencies in consideration and in courtesy to patients as being the only cases requiring persistent conduct. Second, this requirement of persistent conduct was not referred to by Lord Clyde in Roylance where he explained that an exhaustive definition of serious misconduct could not be given. Third, there is no theoretical or logical justification for requiring there to be repeated conduct before*

*conduct can be serious misconduct. So I reject the appellant's submission."*

***Impairment***

Panels are entitled to consider a lack of insight when considering the risk of repetition of the misconduct. In this case, the Judge supported the approach the Panel took in considering Dr Gosalakkal's lack of insight and remorse, as well as his inability to accept his failings in relation to the conduct.

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