

07 12 2015

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Re: *Yassin v The General Medical Council [2015] EWHC 2955 (Admin)*

Abstract

An appeal was brought pursuant to section 40 of the Medical Act 1983 against the direction of the Fitness to Practise Panel ('the Panel') to erase Dr Yassin from the medical register. Mr Justice Cranston dismissed the appeal.

Background

Dr Yassin came before the Panel in 2011 and 2015. In 2011, this related to events as a Foundation Year 1 doctor in 2009. Dr Yassin was suspended for three months for dishonestly changing marks awarded in feedback by colleagues; she also fabricated a story to explain a failure to order blood tests and was said to have demonstrated a serious lack of insight into her failings by denying allegations and deflecting responsibility for her actions to others.

Following referral in 2012, 53 charges were found proved (nine involved dishonesty) by the Panel in 2015, which related to events between August 2011 and July 2012. The Panel said Dr Yassin was vague, evasive and untrue when giving evidence, and by failing to be honest and trustworthy, and continuing to deny matters, her conduct was found to have fallen short of the standards of a doctor, and fitness to practise was thereby impaired. The lack of reflection on her failings, either since the 2011 hearing or the second referral in 2012, combined with the absence of an apology and maintaining her denial of wrongdoing

demonstrated a lack of insight into how her failings had impacted upon patient safety and she therefore posed a continuing risk.

Medical evidence was adduced to address the impact of epilepsy upon Dr Yassin – the Panel did not find it was suggestive that epilepsy may be responsible for dishonesty, although it was accepted that her health condition may have been a factor in some instances of clinical omissions. Similarly to 2011 proceedings, Dr Yassin was seeking to blame others for her actions and lacked insight into her misconduct. The similarity between the matters heard in 2011 and those in 2015 was noted; it was felt that Dr Yassin could have demonstrated her integrity in the interim but had failed to do so and repetition of the misconduct was highly likely.

Appeal

In relation to the 2015 proceedings, Cranston J heard the appeal on the following grounds:

i. Insufficient particularisation of charges

The two-stage test set out in *R (Johnson and Maggs) v Nursing and Midwifery Council* [2008] EWHC 885 (Admin) was cited by Cranston J (para 18) – (i) did the charges provide sufficient information to enable those charged to know, with reasonable clarity, the case they have to meet, and (ii) did they know enough about the charges to prepare a defence.

Although the charges did not give precise details, the Panel found there to be reference to a pattern of behaviour and thus it was difficult to provide specific dates; Dr Yassin had been given sufficient information to understand the charges she faced. Concurring with the Panel, Cranston J held 'the fact that the charges did not cite specific occasions did not make the Panel's conclusions unfair'. He went on to say 'allegations of dishonesty need to be carefully formulated and specific allegations need to be made. That does not mean that a Panel cannot fairly consider someone's state of mind in relation to false claims, save by reference to the circumstances of a specific case. The key is fairness'.

ii. Findings of dishonesty

Pursuant to CPR PD52D, section 40 appeals are by way of re-hearing and, in accordance with CPR 52.11 an appeal can only be allowed where it is shown that the Panel's decision was wrong or unjust because of a serious procedural or other irregularity in its proceedings.

The principles of interfering with the Panel's decisions were recited (para 32), recognising that the Panel had heard from many witnesses, made sound findings of fact and recognised that 'the inferences it drew and the secondary findings of fact it made are

entitled to considerable deference' . It was further said 'the fact that the reasons may not be perfect, [does] not mean that the Panel was not entitled to reach the view that it did...' (para 33).

iii. New medical evidence

Additional evidence regarding epilepsy was adduced on appeal. Applying *Ladd v Marshall* [1952] 1 W.L.R. 1489, Cranston J held that the second limb was not met because evidence could have been adduced before the Panel for this long-standing condition, for which Dr Yassin was hospitalised in 2004. Further, the Court was not persuaded that the medical evidence would probably have had an important influence on the Panel's determination in any event, as it does not address the period during which some of the misconduct occurred.

Key Points

- Anonymity: the test of protecting Dr Yassin's interests, as set out in CPR 39.2(4), was achieved by holding the hearing in relation to health grounds in private. Anonymity would be disproportionate as it would prevent Dr Yassin's identity being known in relation to other grounds of appeal.
- Where it is not possible to provide precise details in charges, it will suffice if adequate information had been provided for the registrant to understand the charges.
- Despite imperfections in panel reasoning, the appeal court will be slow to interfere as the Panel heard witness evidence before making their findings; an appeal can only be allowed where it is shown that the Panel's decision was wrong or unjust because of a serious procedural or other irregularity in its proceedings.

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