

8 November 2012

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Re: Dr Mona Hosny v General Medical Council [2012] EWHC 2665 Admin

Background

Dr Hosny appeared before a Fitness to Practise Panel ('Panel') between 11 and 13 April 2012. The Panel:

- (i) reviewed her case following the imposition of a period of 12 months suspension by a previous Panel on 16 December 2010; and
- (ii) made determinations of fact, impairment and sanction in respect of a new allegation of misconduct.

The Panel found that Dr Hosny's fitness to practise was impaired and determined to erase her name from the medical register.

Dr Hosny appealed pursuant to Section 40 of the Medical Act 1983 against the findings of the Panel and the sanction imposed.

Appeal

The matter came before His Honour Judge Stewart QC on 29 August 2012 who sets out the approach which the court should take in relation to an appeal under Section 40 in paragraphs 2.1 and 2.2 of his judgment.

Before turning to the issues which are the subject of the appeal he sets out matters, by way of background, relating to the 2010 Panel decision (paragraphs 3 -10).

At the 2010 hearing the Panel found that between March 2008 and July 2009 Dr Hosny had sent a false reference to five health care agencies, representing the reference as genuine. The Panel found that her representation was false and dishonest in that she had written the reference for herself in the name of another. It also found that in July 2010 and August 2010 she submitted, via the internet, applications for employment to two separate bodies and did not disclose details of any restrictions or conditions on her registration. The Panel found her conduct in relation to the application forms was dishonest and she had breached one of the conditions previously imposed by the Interim Orders Panel ('IOP'). The Panel found her fitness to practise was impaired and directed that her name be suspended for the medical register for a period of 12 months. The Panel also directed that there should be a review hearing prior to the expiry of the period of suspension.

Dr Hosny appealed the Panel's determination. The appeal was dismissed by His Honour Judge Behrens on 17 May 2011 therefore the period of suspension commenced on 17 May 2011 and the review hearing was listed together with new allegations on 11 April 2012.

HHJ Stewart then goes on to deal with the new allegations which were considered by the Panel in 2012 (paragraphs 10 - 29.4). The Judge sets out the new allegations, the Panel's findings and Dr Hosny's submissions in some detail, but determined there was no merit in each of the grounds of complaint.

He then turns to deal with the challenge to the finding of impairment (paragraphs 30 - 35).

The Judge sets out the Panel's determination on this issue in full (paragraph 30). He summarises Dr Hosny's appeal grounds, amplified in her submissions (paragraph 33) but he concludes (paragraph 34) that he is satisfied that the 2012 Panel were not wrong in its determination on impairment and, thereafter, sets out his reasons as follows:

'34.1 They were fully entitled to take into account the findings of 2010 FTTP in the way they did. Their concern, as they stated, was that it was within two months of the 2010 hearing she had repeated the same conduct despite her stated assurances to the 2010 FTTP. This was a proper factor to take into account in assessing her present impairment, and her insight. They were entirely correct in not going behind or reopening the findings of the 2010 FTTP.'

'34.2 They accepted that dishonesty could be remediable, whilst stating that it was not easily remediable. They were also fully entitled to find that Dr Hosny's case fell within paragraph 25.50 (c) and (d) of Dame Janet Smith's 5th Shipman Report, referred to in paragraph 29 of Zygmunt i.e breach of a

fundamental tenet of the profession and that the doctor's integrity could not be relied on'.

'34.3 They were also fully entitled to regard Dr Hosny's continuing challenge to the 2010 FTTP findings as lack of insight, for the reasons they gave. Dr Hosny has continued to try to reopen those findings before me, and I have refused to permit her to do so. This is germane to the consideration in paragraph 65 of Cohen v GMC [2008] EWHC 581 (Admin), which says that it is highly relevant to impairment that the conduct is easily remediable, has been remedied and is highly unlikely to be repeated. There is no basis also for saying that the FTTP were looking backwards, not forwards, on the issue of impairment'.

In the circumstances HHJ Stewart concludes there was no basis for the finding that the determination on impairment was wrong.

He then goes on to deal with the issue of sanction (paragraphs 36 -37.4). The Judge sets out most of the Panel's determination on sanction (paragraph 36). Thereafter he notes that Dr Hosny's appeal on sanction makes a number of points (paragraph 37) each of which he dismisses in turn.

HHJ Stewart therefore concludes that the reasons which he has given that the appeal should be dismissed on all grounds.

Salient Points

- a review Panel is entitled to take into account the findings of a previous Panel but they cannot go behind or reopen those findings
- a review Panel is entitled to have regard to a doctor's continuing challenge to a previous Panel's findings as lack of insight

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