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Medical Practitioners Tribunal Service
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Re: Dr Aditya Agrawal v GMC [2014] EWHC 1669 Admin

Background

Dr Agrawal had been subject to an interim order since 1 May 2012 when conditions were imposed on his registration. Those conditions remained in place, save for a variation on 25 March 2013, and had been the subject of two applications for an extension of the order to the Administrative Court.

The General Medical Council (GMC) made an application to section 41A(6) of the Medical Act 1983 for a further extension of the order of conditions which was considered by HHJ Raynor on 29 April 2014.

Application

HHJ Raynor set out a brief history of the interim order imposed on Dr Agrawal, as counsel for the GMC had accepted, that the evidence before the Judge established that had the investigation been conducted with '*proper expedition*', then at least a year previously Dr Agrawal would have known whether or not there was to be a referral of the matter to a Fitness to Practise Panel. Counsel for the GMC also noted that as a result of the delay, a decision was still to be made and would not be made until the end of May 2014.

In the circumstances HHJ set out a chronology (paragraphs 4 - 22).

He then dealt with the principles to be applied, which he considered were sufficiently set out in the judgment in the Court of Appeal in the case of GMC v Hiew [2007] EWCA Civ 369 (paragraphs 23 – 26).

The Judge noted that he would be not expressing any view on the merits of the case but his function was to ascertain whether the allegations, rather than their truth or falsity, justified the continuation of the interim order (paragraph 28).

HHJ Raynor went on to consider the allegations set out in the Rule 7 letter which related to the clinical treatment of five patients and an alleged failure to supervise a junior doctor (paragraph 29). The judge made some preliminary marks (paragraph 29):

'These allegations on the face of them are serious allegations but Mr Smith submits that this is one of those rare cases where on the evidence before the court it can be seen the claimant's case is very weak and in various instances without merit. Secondly, the allegations are fully answered by the defendant with great particularity and most importantly, his case is supported by other surgeons of unquestioned repute. Thirdly, as I have quoted already, it was the view itself of the Interim Orders Panel, without the benefit of the latest opinion of Mr Peel, that the experts' reports contained very little criticism of clinical performance and much that is supportive.'

HHJ Raynor then went through the case in relation to each of the five patients (paragraphs 30 - 41) and thereafter the remaining allegation of failure to supervise (paragraph 41a). The judge concluded (paragraph 42):

'..based upon the evidence of Mr Peel, which, as I stress, the Interim Orders Panel did not have the benefit of seeing, I consider that the case against the defendant to be weak, and this is a matter I am entitled to take into account when considering whether it is justified to continue the conditions.'

The Judge also considered other relevant matters including the issue of delay (paragraph 43).

In the circumstances HHJ Raynor considered the case was weak, that over a year previously the IOP considered it safe to remove the requirement of direct supervision and the doctor had undergone further training with a leading surgeon, and had a reference that he had read and was now operating on a daily basis, albeit only for 4/5 weeks, under the revised supervision condition (paragraph 44).

In the circumstances having reminded himself that it was for the GMC to satisfy him on the balance of probabilities, that the continuation of the conditions was "necessary" for the protection of members of the public or is otherwise in the public interest he concluded that the GMC had so failed, on the particular facts of this case, that the continuation of the conditions was so necessary or otherwise in the public interest; he refused to extend the interim order.

Salient Point

- Reminder that the principles which the court will apply when considering whether to extend an interim order are those set out in the case of GMC v Hiew – in particular the court can take into account such matters as:

- The gravity of the allegations;
- The nature of the evidence;
- The seriousness of the risk of harm to patients;
- The reasons why the case has not been concluded; and
- The prejudice to the practitioner if the interim order is continued.

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