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Re: Dr Dowson v The General Medical Council [2015] EWHC 3379 (Admin)

Abstract

An appeal was brought pursuant to section 40 of the Medical Act 1983 against the order of the Fitness to Practise Panel ('the Panel') to suspend Dr Dowson for a period of four months. Edis J dismissed the appeal, upholding the findings of the Panel save for the findings in relation to one charge of misrepresenting results to a conference.

Background

Dr Dowson conducted clinical research trials on behalf of pharmaceutical companies. He held the role of Chief Investigator on the 'Botox trial', and was Principal Site Investigator on another matter. After an investigation whereby Dr Dowson admitted 'protocol non-compliance and misconduct', he was removed as Chief Investigator for the 'Botox trial' and his role as Principal Site Investigator was curtailed. During this time, Dr Dowson was appointed as Chief Investigator of the 'MIST trial', and disclosed problems with the 'Botox trial' to the MIST sponsor but not to the Research Ethics Committee approving that trial.

The GMC had reason to investigate Dr Dowson in relation to the 'Botox trial', due to false declarations being made, and in 2006 the Fitness to Practise Panel found misconduct had occurred and deemed Dr Dowson to be impaired; he was not found to have acted dishonestly. The Panel accepted undertakings from Dr Dowson as to his future conduct.

In subsequent proceedings, which became the subject of appeal before Edis J, the Panel found 7 charges proved, including dishonesty in 2 cases, but dismissed other charges. After finding impairment, Dr Dowson was suspended for four months.

The matters found proved may be summarised as follows: (para 19)

- i. Failure to disclose the hourly payment rate when submitting the protocol to the Multi-Disciplinary Research Ethics Committee (MREC)
- ii. Dishonestly failing to inform the MREC, when submitting the protocol, that he had been referred to the GMC in relation to the 'Botox trial'
- iii. At the start of the 'MIST trial' failed to disclose that he had been dismissed from the 'Botox trial'
- iv. Dishonestly signing a Clinical Trial Agreement on behalf of his company that he wasn't involved in any regulatory / misconduct litigation and that no data produced by Dr Dowson had been rejected due to concerns of accuracy
- v. Failed to disclose the outcome of the GMC 'Botox trial' proceedings in 2006 to members of the 'MIST trial'
- vi. Failed to disclose the outcome of the GMC 'Botox trial' to the MREC
- vii. Failed to report details to a conference which resulted in positively misleading them

Appeal

An appeal was brought challenging the findings of the Panel, asserting that the conclusions were not supported by evidence. Edis J stated that *'the substance of the complaint is not generally about conclusions of fact, but about the determination of whether those facts disclosed misconduct and,...dishonesty'* (para 21).

In considering dishonesty, it was held that the Panel *'was scrupulously fair and adopted an approach which favoured [Dr Dowson]'* because they did not use findings of dishonesty in one charge as *'cross-admissible evidence of dishonesty in respect of other charges'* (para 28). Edis J confirmed that the Ghosh test applies to disciplinary proceedings and relied upon *Kirschner v The General Dental Council [2015] EWHC 1377*. The modified test as set out in *Hussain v The General Medical Council [2014] EWCA Civ 2246* was cited, which considers the *'standard of reasonable and honest doctors [not people]'*.

In considering the dishonesty test, it was held *'it is reasonable to assume that the medical profession is at least as scrupulous about integrity in its professional work than the population at large might be'*. It was then said *'in this case it seems to me that the relevant standard is the same whether it is derived from the standards of reasonable and honest doctors or reasonable and honest people. What is necessary is to attribute to which ever notional group is the theoretical arbiter enough knowledge of the context and*

purpose of the activity involved to allow an informed judgment to be developed' (para 49).

The court recognised that *'the Panel was required to make a series of ethical judgments...and decide what [Dr Dowson] ought to have done in particular circumstances, and whether his failure to act in that way amounted to misconduct'*. Edis J recognised that *'these judgments could not be made by simply applying GMP or [the World Medical Association Declaration of Helsinki 2000] because there is no code which covers every factual situation to be found there'*. In considering whether the Panel ought to simply adopt expert evidence, Edis J determined that was not acceptable, recognising *'...if the evidence is that particular conduct is widely accepted as appropriate by the profession that will be powerful evidence that it is not misconduct. In the end...the decision is for the Panel and not any witness'* (para 61).

When considering the procedural irregularity of not properly putting allegations to the doctor, it was held that *'it would have been open [to Counsel for the appellant] to apply to recall any witness during the hearing before the Panel who might have been able to elucidate any issues which arose after the evidence of that witness. It would equally have been open to him to seek to recall the appellant if he had some answers to the allegations which he had not given because they had not been put to him'* (para 73).

In dismissing the appeal, Edis J held that save for the matter in relation to the conference, the *'conclusions of the Panel were not wrong and should be upheld'* (para 72).

Key points

- Doctors involved in clinical research trials are required to have a *'very high level of integrity'* (para 4).
- A finding of dishonesty in one charge is not indicative of an overall finding of dishonesty.
- In considering the applicability of the dishonesty test, *'it is reasonable to assume that the medical profession is at least as scrupulous about integrity in its professional work than the population at large might be'* (para 49)
- It is *'not the function of witnesses to decide whether a doctor's behaviour amounts to misconduct or dishonest behaviour'* (para 74); this is a matter for the Panel, although witness evidence will be 'powerful' in determining whether conduct did not amount to misconduct if widely accepted as appropriate by the profession (para 61).

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