**Appeals Circular A04/17**

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10 May 2017

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**Re: Dr Igwilo -v-GMC [2017] EWHC 419 (Admin)**

For previous decision see Appeals circular A05/16 dated 1April 2016 [*The Professional Standards Authority for Health and Social Care v- The General Medical Council & Anor* [2016] EWCH 524 (Admin)]

***Summary***

This is an Appeal brought under s.40 Medical Act 1983 against the decision of a Medical Practitioners Tribunal (MPT) to erase the doctor's name from the Medical Register and to impose an immediate order of suspension. Mr Justice Dove dismissed the Appeal.

***Background***

An earlier MPT heard this fitness to practise case and determined that Dr Igwilo's fitness to practise was not impaired. That decision was successfully appealed by the Professional Standards Authority on the grounds of undue leniency and the matter was remitted to a freshly constituted MPT for a decision on sanction. The second MPT erased Dr Igwilo's name from the register and made an order of immediate suspension. Dr Igwilo appealed those decisions.

The factual background was as follows. Dr Igwilo was working as a locum consultant in the private sector. In July 2010 he applied to the GMC for a Certificate of Eligibility for Specialist Registration (CESR) for entry in the Specialist Register of Forensic- Psychiatrists, which would qualify him for appointment as a substantive consultant. In support of the application, he submitted a portfolio of work demonstrating that he had the requisite knowledge, skills and experience. The GMC rejected his application and made recommendations as to what further information he should provide should he wish to reapply. Dr Igwilo re-applied on 15 November 2012, submitting further evidence. The GMC noticed that one of the

The MPTS makes impartial decisions in doctors' fitness to practise hearings. The MPTS is part of the General Medical Council, but it is operationally separate and it is accountable to Parliament.

The GMC is a charity registered in England and Wales (1089278) and Scotland (SC037750)

reports which was signed by him had also been submitted by another applicant. The GMC investigated and in the course of their investigation Dr Igwilo misled the GMC about the provenance of the report. The GMC investigation revealed that in the course of his re-application Dr Igwilo submitted a large number of falsified documents including: 24 documents described as reports in respect of different patients, 5 documents described as reports for Courts and Tribunals in respect of different patients, 7 sets of documents described as section 48 papers for different patients, 1 set of documents described as section 37 paperwork, 4 referral letters, 2 letters to patients' general practitioners and correspondence confirming appointments and placements. The tribunal found that Dr Igwilo's fitness to practise was not impaired on the basis that it was an isolated piece of dishonesty which occurred against a backdrop of severe personal distress and that the doctor had reflected upon and shown insight into his conduct.

### *Appeal by the PSA*

In her Judgment in *The Professional Standards Authority for Health and Social Care v- The General Medical Council & Anor* [2016] EWCH 524 (Admin) Lang, J held that: "*the Panel was unduly lenient in concluding that Dr Igwilo's fitness to practise was not currently impaired, given the very serious and sustained deception to the regulator which he embarked upon, purely to advance his career….The scale of the falsification indicated that it was an elaborate deception which must have taken some considerable time to plan and implement . Plainly cases of dishonesty vary in severity; this case is at the more serious end of the scale".*

The case was remitted to a freshly constituted tribunal with a finding of impairment, for a decision on sanction.

### *The remitted hearing*

The MPT applied the Sanctions Guidance and determined that the only appropriate sanction was erasure and made an order for immediate erasure.

### *The Appeal*

Dr Igwilo appealed on the following grounds:

i) The MPT was wrong to dismiss the appellant's application to adjourn proceedings, brought on the grounds that he was appealing against the decision of Lang, J;

ii) The sanction of erasure was excessive, disproportionate and wrong;

iii) The order for immediate suspension was unnecessary and disproportionate.

**Held:** Appeal dismissed on all grounds. Dealing with the first ground, the position was that there was no outstanding appeal, but an application for permission. Held this was of limited status and not only did the tribunal not err in failing to adjourn but this was the only appropriate decision in the circumstances [para 30]. Turning to the second ground, the background to the MPT's assessment of the appropriate sanction was the judgment of Lang, J, in which she characterised the dishonesty as persistent and at the more serious end of the scale. Against that backdrop the MPT had regard to all the relevant features of this case for and against the appellant, including all the mitigating and aggravating circumstances, and gauged those features against the Sanctions Guidance. Held there was no difficulty in accepting the tribunal's conclusion that no sanction other than erasure was appropriate [para 31]. As to the question of an immediate order, it was entirely necessary and appropriate to impose one given the gravity of the matters and the seriousness of the sanction. There was no substance in the appellant's argument that an order was unnecessary because he did not intend to practise again [para 32].

### *Salient points*

- A refusal to adjourn may be fair notwithstanding that there is a pending application for permission for judicial review.
- The basis on which a matter is remitted to the tribunal will form the backdrop to the assessment of the relevant sanction at that remitted hearing.

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