Appeals Circular A07/16

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Re: *Johnson-Ogbuneke v GMC [2016] EWHC 1474 (Admin)*

Abstract

The appellant appealed, pursuant to section 40 of the Medical Act 1983, against the decision to erase her, with immediate effect, from the medical register.

Background

A number of allegations were found proved against the appellant, a trauma and orthopaedics specialist, which resulted in a finding that the appellant's fitness to practise was impaired by reason of her serious misconduct. The Panel found that the appellant had 'repeatedly sought to blame other doctors for her failings and did not appear to have any insight into her conduct, or the impact that her conduct had on others' as well as producing incomplete and inaccurate patient notes, which was felt had been done to cover up clinical failings and an exaggeration of clinical and surgical experience and ability, with blatant failures in surgical procedures (para 2). In terms of the misconduct arising from the poor standard of surgical skills, the Panel felt this aspect was capable of being remedied. However, the Panel determined that due to the 'consistent unwillingness to accept responsibility and her continued argument that she was not at fault, demonstrating her lack of insight' that suspension would not be appropriate nor proportionate, and that because of 'departures from the principles of Good Medical Practice and… subsequent misconduct and dishonest behaviour' this was indicative of the appellant being 'fundamentally incapable of working as a doctor'. The appellant was erased from the medical register with immediate effect. That decision was appealed to the High Court.

Appeal

Before Irwin J, the appellant complained that the hearing before the Panel had been unfair – she was representing herself and the final hearing bundle was received by her the day before the hearing. Irwin J observed that the appellant had received the same materials nine months prior, with the Rule 7 letter, and could not see a basis on which the Panel misdirected themselves or was wrong to refuse the late application for an adjournment.

A further ground of appeal related to the fact that evidence was admitted in a statement which was prepared by Mr Christopher Rand, a senior consultant orthopaedic surgeon, who at the time of the hearing was deceased. Mr Rand had raised concerns about the appellant and had written to the Medical Director of the Trust in this regard. Irwin J rejected criticism of the decision to admit the statement of Mr Rand as hearsay evidence and did not consider there to be a basis for asserting that her submissions were not considered by the Panel in relation to this evidence. There was nothing to suggest that the Panel 'were not properly able to understand and accommodate the lack of cross-examination of the witness' (para 28).

The appellant further suggested that Mr Rand was biased against her and that he rallied up other witnesses who were critical of her performance. It was alleged that Mr Rand was racist and sexist towards the appellant. Irwin J observed that Mr Rand was critical of the quality of medicine provided by the appellant and of her surgery, and her failure to comprehend what she had done wrong. In the witness statement, amongst other things, Mr Rand said that he declined to have her operate on any of his patients. The Panel rejected the assertion of bias and found his 'written evidence to be credible' (para 40). Irwin J held 'there was ample evidence before the Panel upon which they could exclude bias and conclude that there was a consensus supportive of the criticisms formulated by Mr Rand' (para 40).

The appellant considered the Panel to be biased against her complaining that she was prompted to move on, and the Panel were overly hostile to her. Irwin J held that there was no evidence of any improper handling of the appellant by the Panel. He said 'it was clear in the hearing before me that the Appellant's submissions were diffuse, often repetitive and unfocussed. Making every allowance for the difficulties of a litigant in person faced with the end of her professional career, it appeared to me that the appellant often advanced what she wished would be the case rather than the facts…In any significant hearing, case management and some limitation on time is inevitable and appropriate…' (para 60).

In summary, Irwin J held that there was nothing before him to demonstrate the substantive determinations of the Panel were wrong, and considered the basis for concluding the sanction was reasonable.

Salient Point

- The Panel were entitled to manage the proceedings by putting some limitation on time, in this case by prompting the appellant to move on with her submissions

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