

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Claim No: CO/1986/2019

BETWEEN:

PROFESSIONAL STANDARDS AUTHORITY FOR HEALTH AND SOCIAL CARE

Appellant

and



(1) NURSING AND MIDWIFERY COUNCIL
(2) LORENA JORGE

Respondents

CONSENT ORDER

UPON the parties having agreed these terms and the statement of reasons as set out in the Schedule and having agreed in particular that it is just and convenient for the Court to make this Order

AND UPON neither party being either a child or protected party and the appeal not being an appeal from a decision of the Court of Protection

AND UPON the Second Respondent being a nurse on the register established and maintained by the First Respondent.

AND UPON a panel of Fitness to Practise Committee of the First Respondent having found on 12 March 2019 that the Second Respondent's fitness to practise was currently impaired by reason of misconduct and imposed the sanction of an 18-month Conditions of Practice order

AND UPON the Appellant having lodged an appeal on 17 May 2019 against the First Respondent's decision pursuant to Section 29 of the National Health Service Reform and Health Care Professions Act 2002

AND UPON the First Respondent and Second Respondent conceding on the grounds of appeal in terms as set out in Schedule A that the decision was not sufficient for the protection of the public within the meaning of Section 29 of the National Health Service Reform and Health Care Professions Act 2002

AND UPON the Second Respondent undertaking to comply with conditions equivalent to those imposed by the Fitness to Practise Committee on 12 March 2019 pending conclusion of the re-consideration of her case by Fitness to Practise Committee as provided for below

BY CONSENT IT IS ORDERED THAT PURSUANT TO SECTION 29 OF THE NATIONAL HEALTH SERVICE REFORM AND HEALTH CARE PROFESSIONS ACT 2002:

1. The appeal is allowed and the decision of the First Respondent's Fitness to Practise Committee imposing an 18 month conditions of practise order is quashed.
2. The factual findings of the First Respondent's Fitness to Practise Committee and its findings in relation to misconduct are preserved (hereafter referred to as the "original findings of fact and misconduct").

3. This matter is remitted to the First Respondent for the addition of a charge or charges alleging dishonesty and thereafter such charges shall be considered by a freshly constituted Fitness to Practise Committee, which shall also re-determine impairment and sanction in light of the original findings of fact and misconduct and any further findings in relation to dishonesty, if so made.
4. The First Respondent shall pay the Appellant's reasonable costs of the appeal up to 27 June 2019, to be subject to detailed assessment if not agreed.

We consent to an order on the above terms:

Dated this 19th day of November 2019

(ANDREW CROMBY)

Andrew Cromby

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Ref: 54170-1011/CK/3770
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First Respondent

Ms Rebecca Austin

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Solicitors for the Second Respondent

Approved

Mrs

19/11/2019

By the Court

SCHEDULE A

1. Ground 1: *The procedure proposed by the NMC, and followed by the Panel, at the hearing on 23 June 2017 was unlawful in that it did not comply with the requirements of the Nursing and Midwifery (Fitness to Practise) Rules Order 2004 (as elucidated by Mrs Justice Laing in PSA v (1) NMC (2) X [2018] EWHC 70 (Admin) at [55]-[57]), in that:*
 - (a) *the NMC did not fully open its case;*
 - (b) *the Panel accepted a submission of no "case to answer" at the instigation of the NMC when the rules permit such an application only at the instigation of the registrant or of its own volition;*
 - (c) *the Panel accepted a submission of "no case to answer" and purported to apply the test in R v Galbraith [1981] 1 WLR 1039 when it had not heard or considered any of the evidence;*
 - (d) *having accept the submission of "no case to answer" in respect of the dishonesty allegation (but not the underlying conduct), it proceeded at a resumed hearing to consider oral and documentary evidence about the underlying conduct and the circumstances surrounding it, but failed to address whether that conduct was dishonest because it had already determined (without hearing or considering the evidence) that there was "no case to answer" on the point*

2. Ground 5: *In determining that a conditions of practice order was an appropriate sanction, the Panel failed to follow through to the sanction stage the force of its earlier findings about the Registrant's lack of insight, understanding and remorse, and its concerns about her attitude and integrity. The Registrant did not give evidence at the sanction stage. The Panel's finding that conditions would be appropriate and workable, and that the Registrant would be "able and willing to respond positively to re-training", cannot be reconciled with its earlier findings about her understanding and attitude.*

3. In respect of these Grounds the First Respondent and Second Respondent concede that there was a procedural irregularity in that there was a failure to place allegations of dishonesty before the Committee. The First Respondent further concedes that there was a failure in the Committee's consideration at sanction stage in any event on the case as found against the Second Respondent. In this latter respect, the Second Respondent does not concede the ground of appeal, but does concede that the sanction decision falls to be reconsidered in any event given the procedural irregularity.

4. In light of the above concessions, the parties agree that the decision of the Committee was insufficient to protect the public; that the sanction decision should be quashed, with the factual findings and the determination at the misconduct stage preserved. The parties further agree that the First Respondent shall formulate charges in relation to dishonesty and thereafter the case shall be remitted to a freshly constituted Committee for determination of the dishonesty charge(s) and for redetermination of impairment and sanction in light of the original findings made at fact finding and misconduct stages, and any further findings in relation to dishonesty, if so made. The parties agree that impairment should be re-considered because the panel on remittal will have before it more evidence than the original panel and on the grounds that the assessment of impairment should be current, not because the original impairment decision was wrong on the information before the original panel or flawed in any way.

5. The parties agree that the documentation to be placed before the Committee on remittal shall include:-

At the first stage of considering the additional dishonestly allegations:

- A summary of the original factual findings as set out in schedule B
- A full copy of the transcripts of the hearing held on 4-12 March 2019 (with the determinations redacted)
- All of the documents placed before the original committee

At subsequent stages, after it has reached its determination on the dishonesty allegations:

- a copy of the original determinations (with sanction redacted)
- subject to the requirements of fairness and relevance, any further documentation either of the Respondents wishes to place before the Committee for the purposes of the remittal hearing.

Schedule B

Heads of charge 1, 2 and 4 were admitted and found proved.

Head of charge 3 was disputed by the Second Respondent but found proved. The Panel accepted the evidence of Dr 4 that she prescribed a treatment dose of Dalteparin that would have been between 10,000 units and 18,000 units for Patient B.

It is not open to the Committee to go behind these findings of fact.

By the Court

