

Claim No: CO/386/2017

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

BETWEEN:

PROFESSIONAL STANDARDS AUTHORITY FOR HEALTH AND SOCIAL CARE
Appellant

and

(1) GENERAL MEDICAL COUNCIL
(2) DR DOMINIC RAJKUMAR

Respondents



CONSENT ORDER

UPON the parties having agreed these terms and the statement of reasons as set out in the schedule;

AND UPON the First Respondent conceding that the decisions made at the hearing of the Medical Practitioners Tribunal ("the previous Tribunal") on 1 December 2016, which is the decision under appeal (the "Decision") that

- (i) the Second Respondent's fitness to practise was not impaired; and,
- (ii) the Warning Order

were 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;

BY CONSENT

IT IS ORDERED THAT:

- 1 The appeal be allowed and the Decision be quashed.
- 2 The matter be remitted to a freshly reconstituted Medical Practitioners Tribunal for redetermination of the following matters within 3 months of the date of this order:
 - (a) the factual conclusion that the Second Respondent was not dishonest;
 - (b) the determination as to whether the Second Respondent's fitness to practise is impaired; and

- (c) the decision as to any sanction.
- 3 At the hearing referred to in paragraph 2 above, the Tribunal shall have placed before it:
- (a) A copy of this Consent Order, including the Schedule;
 - (b) The documents placed before the previous Tribunal at the substantive hearing on 25 April and 28 June 2016;
 - (c) Complete transcript of the previous Tribunal hearing between 28 November and 1 December 2016; and
 - (d) Record of Determinations of the previous Tribunal dated 30 November and 1 December 2016.
- 4 The appeal hearing listed on 6 July 2017 with a time estimate of one day be vacated.
- 5 The First Respondent shall pay the Appellant's reasonable costs of the appeal, to be subject to detailed assessment if not agreed, up to and including the date of this Order.


We consent to an order in the above terms.

Dated this 27 day of April 2017

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Ref: HB3/55056.00024

Solicitors for the Appellant


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First Respondent

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Representatives for the Second Respondent.

ADMINISTRATIVE COURT OFFICE
BY CONSENT ORDER AS ASKED

22 MAY 2017
MShearer
.....
PHILIP A SHEARER
ALSO LAWYER

PURSUANT TO CPR 54.1A

By the Court

Schedule 1

Set out below is the agreed statement of reasons and the wording of the directions to be placed before the panel of the MPTS on remittal of the Decision, explaining the considerations which led to the Decision being quashed and the agreed remittal:

- 1 At the conclusion of a hearing which took place on 28 November to 1 December 2016, the Tribunal determined that Dr Dominic Rajkumar had:
 - (a) From 10 June 2016 to 26 August 2015 failed to have adequate indemnity insurance cover ("Cover") in place when he worked at the Hassel Grange Medical Centre, Hull ("the Practice");
 - (b) From on or around 18 June 2015 to 25 August 2015 he:
 - i. knew that he did not have cover in place; and
 - ii. failed to inform his GP partners at the Practice that he did not have Cover in place;
 - (c) that these actions had been misleading;
 - (d) and that this amounted to misconduct.
- 2 The Tribunal determined that his actions had not been dishonest.
- 3 The Tribunal then determined that his fitness to practise was not impaired, but issued Dr Rajkumar with a warning.
- 4 The Professional Standards Authority for Health and Social Care (PSA) appealed this decision on sanction to the High Court pursuant to Section 29 of the National Health Service Reform and Healthcare Professions Act 2002. Among others, its appeal relied on the following grounds with which the General Medical Council concurs:
 - (a) The Tribunal's approach to the question of whether or not Dr Rajkumar had been dishonest was wholly inadequate and the MPTS was wrong to conclude that Dr Rajkumar was not dishonest;
 - (b) The GMC was wrong to concede in its submissions made after the Tribunal has announced its findings of fact that Dr Rajkumar's fitness to practise was not impaired;
 - (c) the Tribunal, when deciding Dr Rajkumar's fitness to practise was not impaired, failed to consider adequately or at all the need to protect the public, to maintain confidence in the profession and to uphold standards, and as such came to the wrong conclusion as to fitness to practise
 - (d) the Tribunal failed to give adequate reasons for its conclusions as to dishonesty and impairment of fitness to practise

- 5 The GMC concedes that the Tribunal's decision was insufficient for the protection of the public within the meaning of S29 of the National Health Service Reform and Health Care Professions Act 2002. It was agreed between the PSA, the GMC and Dr Rajkumar that the decision of the MPTS not to find his fitness to practise impaired and to issue him with a warning should be quashed and the matter should be remitted to a Panel of the MPTS for redetermination.

Directions to the MPTS Panel

- 6 The case is being placed before you for determination of misconduct, impairment and sanction. As well as this Consent Order, you have before you the documents placed before the previous panel of the MPTS, the transcripts of the findings of the previous panel of the MPTS and its previous decision as to misconduct and impairment. In addition, the PSA, GMC and Dr Rajkumar have agreed to you being directed as follows:
- a) You should find that the facts set out in paragraph 1 above remain proved, including that Dr Rajkumar's actions amounted to misconduct;
 - b) You should invite further submissions from the parties as to whether Dr Rajkumar's actions were dishonest as well as misleading and you should have regard to:
 - i. any contradictions in Dr Rajkumar's evidence;
 - ii. Dr Rajkumar's admission in cross-examination that he had made false statements to his colleagues and to the GMC;
 - iii. Dr Rajkumar's admission in cross-examination that one of his reasons for not telling his partners that he did not have insurance was the cost of employing a locum to undertake his work when he was not permitted to work and such a reason related to his own interests;
 - iv. the weight to be given to the evidence of witnesses who commented on Dr Rajkumar's presentation at the time he was without insurance when they gave that evidence in ignorance of the facts, and in particular where they did not know that Dr Rajkumar had been warned in advance that he would not be insured;

c) When considering whether Dr Rajkumar's fitness to practise was impaired, you should give explicit consideration to:

a. Whether the findings in a) and b) above are such that it is inevitable that Dr Rajkumar's fitness to practise is impaired, and the case of *CHRE v NMC and Grant [2011] EWHC 927 (Admin)*;

b. the public interest, and in particular the need to maintain confidence in the profession and uphold standards, particularly with regard to practising without professional indemnity insurance and dishonesty;

c. the need to provide reasons for your decision.

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CONSENT ORDER

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SLE/HB3.55056.24

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