

28/11/17 S.T

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

CASE NO: CO/1976/2017

BETWEEN:



THE GENERAL MEDICAL COUNCIL

Appellant

and

(1) DR NICHOLAS BROOKE

(2) PROFESSIONAL STANDARDS AUTHORITY FOR HEALTH AND SOCIAL CARE

Respondents

CONSENT ORDER

JFS
20.11.2017

UPON the parties having agreed to the terms of this Order; In particular, that it is just and convenient for the Court to make the Order set out below

AND UPON no 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 Medical Practitioners Tribunal ("the Tribunal") having directed on 30 March 2017 that no action be taken against the First Respondent ("the Decision"), having made findings of dishonesty, misconduct and impairment

AND UPON the Appellant having lodged an appeal on 21 April 2017 against the Decision pursuant to Section 40A(3) of the Medical Act 1983

AND UPON the Second Respondent becoming a party to the appeal pursuant to Notices it served upon the Appellant and the First Respondent pursuant to section 40B(2) of the Medical Act 1983

AND UPON the First Respondent conceding that the Decision was not sufficient for the protection of the public within the meaning of Section 40A of the Medical Act 1983 on the basis set out in the Schedule

BY CONSENT

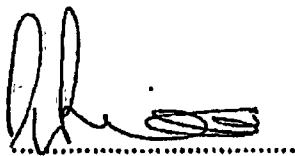
IT IS ORDERED THAT:

1. The appeal be allowed and the Decision be quashed.
2. The Decision be substituted with an order that the First Respondent's registration in the register shall be suspended for a period of three months.
3. The three month suspension imposed pursuant to (2) above (the "Substituted Order") shall take effect 14 days from the date of this sealed Order.
4. There be no review of the Substituted Order.
5. The hearing of 21 November 2017 be vacated.
6. No Order as to costs

We consent to an order on the terms above.



Dated this 17 day of November, 2017 20.11.2017



Dated: 17 November 2017

Dated: 17 November 2017

Dated: 17 NOVEMBER 2017

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For the First Respondent
Ref: TJF/JAC1/900100.11983

For the Appellant
Ref: MS/Brooke/Lit

For the Second Respondent
Ref: SATK02/0396580061

By the Court

SCHEDULE

1. The First Respondent is a Consultant Neurosurgeon specialising in spinal surgeries. He was employed by the University Hospital Southampton NHS Foundation Trust since 1996 and also carried out private work at Spire Southampton Hospital.
2. The particulars of the Allegation, alleged against the First Respondent, with which the Appeal was concerned were that:
 - (1) On 21 September 2012, when carrying out spinal surgery on Patient A you:
 - (a) carried out the surgery at L4/5 of the patient's spinal column;
 - (b) failed to carry out the surgery at the correct level of the spinal column for which Patient was admitted, namely L5/S1;
 - (2) You failed to inform Patient A when you knew that you had carried out the surgery at the wrong level of his spinal column.
 - (3) You failed to inform your employer, the University of Southampton NHS Foundation Trust, when you knew that you had carried out the surgery at the wrong level of Patient A's spinal column;
 - (4) Your actions at paragraphs 2 and 3 were:
 - (a) misleading;
 - (b) dishonest.
3. The particulars of the Allegation (along with other particulars alleged in relation to three other patients) were found proved on the basis of the First Respondent's admission to them.
4. The Appellant appealed against the Decision on the grounds that it was not sufficient to protect the public, and the Grounds of Appeal of the Appellant were that:

Ground 1 - The Tribunal failed to have regard to the over-arching objective in section 1(1A) of the Medical Act 1983, being the protection of the public

Ground 2 - The Tribunal erred by giving weight to irrelevant material

Ground 3 - The Tribunal erred by failing to have regard to relevant material

Ground 4 - The Decision was a decision no reasonable tribunal could have reached
5. The Second Respondent supported the Grounds of Appeal of the Appellant in particular in that the Tribunal failed to identify the full extent and therefore seriousness of the First Respondent's conduct.
6. The Second Respondent submitted additionally that the failure described at paragraph 5 above would have been avoided if the full extent and seriousness of the First Respondent's conduct had been properly reflected in the particulars of the Allegation and therefore the deficiencies in the Tribunal's reasoning and findings arise from a serious procedural irregularity.

7. The First Respondent accepts:

- a. grounds 1,2,3 and 4 of the Grounds of Appeal of the Appellant at paragraph 4 of this Schedule; and
- b. the Second Respondent's grounds for supporting the appeal summarised in paragraphs 5 and 6 of this Schedule.

And, consequently, the First Respondent concedes that the Decision was not sufficient for the protection of the public within the meaning of Section 40A of the Medical Act 1983.