

Section 29 Case Meeting

03 March 2020

157-197 Buckingham Palace Road, London SW1W 9SP



Members present

Tom Frawley (in the Chair), Board Member, Professional Standards Authority
Kisha Punchihewa, Head of Legal (senior solicitor), Professional Standards Authority
Graham Mockler, Assistant Director of Scrutiny and Quality (performance),
Professional Standards Authority

In attendance

Samantha Jones of counsel 39 Essex Chambers

Observers

Rebecca Senior, Solicitor, Professional Standards Authority
Georgina Devoy, Senior Scrutiny Officer, Professional Standards Authority

1. Definitions

- 1.1 In this meeting note, standard abbreviations have been used. Definitions of the standard abbreviations used by the Authority, together with any abbreviations used specifically for this case are set out in the table at Annex A.

2. Purpose of this note

- 2.1 This meeting note records a summary of the Members' consideration of the relevant decision about the Registrant made by the regulator's panel, and the Authority's decision whether or not to refer the case to the court under Section 29 of the Act.

3. The Authority's powers of referral under Section 29 of the Act

- 3.1 The Authority may refer a case to the relevant court if it considers that a relevant decision (a finding, a penalty or both) is not sufficient for the protection of the public.
- 3.2 Consideration of whether a decision is sufficient for the protection of the public involves consideration of whether it is sufficient:
- to protect the health, safety and well-being of the public
 - to maintain public confidence in the profession concerned, and
 - to maintain proper professional standards and conduct for members of that profession.

3.3 This will also involve consideration of whether the panel's decision was one that a disciplinary tribunal, having regard to the relevant facts and to the objective of the disciplinary proceedings, could not reasonably have reached; or was otherwise manifestly inappropriate having regard to the safety of the public and the reputation of the profession (applying *Ruscillo*¹).

4. Conflicts of interest

4.1 The Members did not have any conflicts of interest.

5. Jurisdiction

5.1 The Legal Advisor confirmed that the Authority had jurisdiction to consider the case under Section 29 of the Act. Any referral in this case would be to the High Court of Justice of England and Wales and the statutory time limit for an appeal would expire on 10 March 2020.

6. The relevant decision

6.1 The relevant decision is the Determination of the Panel following a hearing which concluded on [REDACTED].

6.2 The Panel's Determination which includes the charges and findings is set out at Annex B.

7. Documents before the meeting

7.1 The following documents were available to the Members:

- Determination of the panel dated [REDACTED]
- The Authority's Detailed Case Review
- Transcripts of the hearing dated
- Counsel's Note dated 1 March 2020
- The HCPC's Code
- The HCPC's Indicative Sanctions Guidance
- The Authority's Section 29 Case Meeting Manual

7.2 The Members and the Legal Advisor were provided with a copy of a response from the HCPC to the Authority's Notification of s.29 Meeting. The Members considered the response having received legal advice and after they reached a conclusion on the sufficiency on the outcome.

¹ CRHP v Ruscillo [2004] EWCA Civ 1356

8. Background

- 8.1 The Registrant qualified as a [REDACTED] in [REDACTED] and moved to the UK in [REDACTED]. He completed a Masters in [REDACTED] at [REDACTED] in [REDACTED].
- 8.2 The Registrant started his own private [REDACTED] practice in [REDACTED] and created a limited company [REDACTED] ('the company'). His wife is stated to have assisted with the administration of the business between [REDACTED] [REDACTED].
- 8.3 In [REDACTED] the Registrant became 'accredited' with [REDACTED] as a medical expert.
- 8.4 [REDACTED] is an online platform used to facilitate the sourcing of medical reports in soft tissue injury claims brought under the [REDACTED]. One of the key roles of [REDACTED] is to arrange accreditation for experts and monitor the quality of medical reports which are produced. Experts can be instructed directly by solicitors via the [REDACTED] online platform ('the platform').
- 8.5 In [REDACTED], [REDACTED] became aware that the Registrant had used the title 'Dr [REDACTED]' and charged VAT on a report produced for [REDACTED], a law firm. [REDACTED] advised that as a result, civil proceedings had been stayed to allow another medical examination to take place, which had led to costs being incurred by both parties.
- 8.6 The HCPC were informed and initially concluded their investigation on [REDACTED] finding that the title 'Dr' had been used in error. The Registrant was also initially suspended by [REDACTED]. An investigation commenced and the Registrant provided evidence of several other instances where he had used the title 'Dr' and charged VAT on his reports.
- 8.7 During the investigation the Registrant contacted several former clients to clarify that he was not a medical doctor. The emails are identical in content and claim that the contracts the Registrant had with other medical agencies considered him a doctor. Those contracts were then provided to his assistant, who subsequently initialled the reports as 'Dr'.
- 8.8 The HCPC investigation was subsequently re-opened in [REDACTED] when [REDACTED] informed them of 16 occasions between [REDACTED] and [REDACTED] where the Registrant had used the title 'Dr' when signing off medical reports. A further 9 instances were also identified in relation to VAT being charged on reports where the Registrant was not registered for VAT.
- 8.9 The Registrant refunded the VAT charged on each of the 9 reports (£36) and maintained that the title 'Dr' had been used in error. He was reinstated by [REDACTED] on [REDACTED] following a finding that he had used the title Dr 'in error'.
- 8.10 However, the Registrant was re-suspended in [REDACTED] when [REDACTED] became aware that the HCPC were taking further action.
- 8.11 The HCPC allegation before the Panel was that whilst registered with HCPC as a [REDACTED], between [REDACTED] and [REDACTED] you:

1. Used the prefix 'Dr' to describe yourself on at least 12 medical reports when you were not qualified to do so.
 2. Charged Value Added Tax to the recipients of at least 9 medical reports, when you were not registered for VAT purposes.
 3. Your actions as described in paragraphs 1 and 2 were dishonest.
 4. The matters set out at paragraphs 1 – 3 constitute misconduct.
- 8.12 At the hearing the Registrant made a partial admission to allegation 1 in that he accepted he had used 'Dr' yet denied that he was not qualified to do so as he was entitled to use the term in [REDACTED]. He also admitted particular 2. Dishonesty was denied.
- 8.13 The Panel found particulars 1 and 2 proved. Dishonesty was not found as the Panel were not satisfied that the Registrant had any intention to mislead others that he was a medical doctor, thus would not be found to be dishonest by the standards of ordinary decent people.
- 8.14 Dishonesty was also not found in relation to charging VAT. The Panel were of the view that the Registrant was genuinely confused about his understanding of VAT. The Panel accordingly found that allegations 1 and 2 were not so serious, either individually or cumulatively, to constitute misconduct.

9. Applying Section 29 of the 2002 Act

- 9.1 The Members considered all the documents before them and received legal advice.
- 9.2 The Members discussed the following concerns about the decision:

The allegations did not sufficiently reflect the extent and gravity of the Registrant's misconduct as an expert witness

- 9.3 The Members considered that the allegations failed to allege at all that the Registrant was acting as an expert witness with duties to the Court under Part 35 of the Civil Procedure Rules 1998. Further, the allegations failed to allege that the Registrant had breached his duties as an expert witness by using the title 'Dr' in the reports and that, as a result, he had put forward misleading information to the Court. While the Panel were aware that the Registrant was acting as an expert witness, the failures in the drafting of the allegations meant that there was little to no attention given to the seriousness of an expert's duties to the Court to not provide false and/or misleading information.
- 9.4 The Members further noted that the allegations failed to allege that the Registrant was dishonest and/or misleading and/or acted without integrity and/or breached his duties as an expert witness in respect of the statements in his reports about his [REDACTED]-legal experience. The Registrant variously stated in his expert reports, dated between [REDACTED] to [REDACTED], that he had 8 to 10 years of [REDACTED]-legal experience, but the evidence indicated that the Registrant only started to undertake [REDACTED]-legal work when he became accredited by [REDACTED] in [REDACTED]. Further, there was a failure to

allege that the statement in the amended CV that he had over 10 years' [REDACTED]-legal experience was inaccurate.

- 9.5 The allegations failed to allege that the Registrant was dishonest and/or misleading and/or acted without integrity and/or breached his duties as an expert witness in respect of the statements in his reports about the number of [REDACTED]-legal reports that he had completed. The Registrant claimed in his expert reports to have completed over 100 [REDACTED]-legal reports per month but the evidence indicated that between [REDACTED] and [REDACTED] he had only conducted 18 examinations for [REDACTED] and produced in the region of 16 reports.
- 9.6 The allegations failed to allege that the Registrant had acted outside of his expertise by opining on psychiatric conditions, in breach of CPR Part 35.3 and CPR Practice Direction 35 paragraphs 2.4(a) and 3.2(4). The reports variously demonstrated that the Registrant had provided opinions on the condition and prognosis of the patient's psychiatric conditions, including shock, travel anxiety, disturbed sleep and whether an individual presented with "psychotic features, delusional ideas or thought disorders".
- 9.7 The Members considered that as a result of the failures in the investigation and drafting of the allegations, the Panel's decision-making was significantly undermined by a serious procedural error in that members were unable to appropriately consider the full extent and seriousness of the Registrant's actions in submitting reports to Court as an expert witness which contained false statements.

The Panel erred in its assessment of the seriousness of the misconduct

- 9.8 The Members were concerned that the Panel failed to identify adequately or at all that the Registrant had fundamental duties to the Court as an expert witness to be honest and to act with reasonable care and skill in writing his reports. The Members considered that the Panel failed to identify that it was within that context that the misconduct should be assessed.
- 9.9 The Panel erred in its conclusion that the impact of the Registrant's conduct was minimal. While the Members noted that the Panel accepted the Registrant had corrected his mistake of using the title 'Dr' with his solicitors, the Panel failed to take account of the following material facts that was in evidence before them:
- That in one reported instance, as a result of the Registrant's actions, court proceedings had to be stayed, a further medical examination undertaken of the Claimant and significant costs were incurred by the solicitors for the Claimant and the Defendant;
 - That there were at least 12 reports that had been submitted by the Registrant over a ten-month period which contained misleading information as to his title;
 - That of those 12 reports, there were between 4-6 inaccurate reports that had been relied upon in settled cases as they could not be corrected or modified by the Registrant before the proceedings had concluded;

- That reports with false information had the potential to mislead the Court;
- That to submit reports with misleading information was a breach of the Registrant's duties as an expert witness.

The allegations were too narrowly drafted such that there was a serious procedural irregularity

9.10 The Members considered that the allegations were inadequately drafted as it excluded from the Panel's decision-making consideration of whether the Registrant's actions were misleading and/or whether the Registrant had acted without integrity and/or whether the Registrant had breached his duties as an expert witness. It was not left open to the Panel to find in the alternative that the actions of the Registrant were misleading, rather than dishonest. The Members agreed that part of the Panel's finding on misconduct flows from its decision in respect of allegation 3 and that decision is arguably wrong where it fails to take account of the misleading nature of the Registrant's actions.

Conclusion on insufficiency for public protection

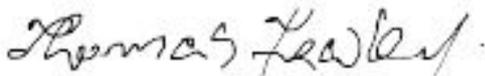
9.11 The Members concluded that the panel's decision was insufficient for public protection, for the reasons detailed above.

10. Referral to court

10.1 Having concluded that the panel's Determination was insufficient for public protection, the Members moved on to consider whether they should exercise the Authority's discretion to refer this case to the relevant court.

10.2 In considering the exercise of the Authority's discretion, the Members received legal advice as to the prospects of success and took into account the need to use the Authority's resources proportionately and in the public interest.

10.3 Taking into account those considerations, along with advice on the prospects of success, the Members agreed that the Authority should exercise its power under Section 29 and refer this case to the High Court of Justice of England and Wales.



Tom Frawley (Chair)

08/04/20

Dated

11. Annex A – Definitions

11.1 In this note the following definitions and abbreviations will apply:

The Authority	The Professional Standards Authority for Health and Social Care
The Panel	A Conduct and Competence Panel of the HCPC
The Registrant	[REDACTED]
The Regulator	Health and Care Professions Council
Regulator’s abbreviation	HCPC
The Act	The National Health Service Reform and Health Care Professions Act 2002 as amended
The Members	The Authority as constituted for this Section 29 case meeting
The Determination	The Determination of the Panel sitting on 13-[REDACTED] [REDACTED]
The Court	The High Court of Justice of England and Wales
The Code	Regulator’s Code of Practise
The SG	Regulator’s Indicative Sanctions Guidance