

Section 29 Case Meeting

15 October 2020

157-197 Buckingham Palace Road, London SW1W 9SP



William Figuracion

Members present

Alan Clamp (in the Chair), Chief Executive, Professional Standards Authority
Mark Stobbs, Director of Scrutiny and Quality, Professional Standards Authority
Kisha PUNCHIHEWA, Head of Legal (senior solicitor), Professional Standards Authority

In attendance

Nicola Greaney, of counsel, 39 Essex Chambers

Observers

Nike Gustave, Senior Scrutiny Officer, 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 object 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 19 October 2020.

6. The relevant decision

6.1 The relevant decision is the Determination of the Panel following a hearing which concluded on 12 August 2020.

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 12 August 2020
- The Authority's Detailed Case Review
- Transcripts of the hearing
- Counsel's Note
- 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.

¹ CRHP v Ruscillo [2004] EWCA Civ 1356

8. Background

- 8.1 The allegations arose in the context of the Registrant's employment as a Band 5 Theatre Practitioner at the North West Anglia NHS Foundation Trust ('the Trust'). Between 2014 and 2017 the registrant created training certificates and other documents confirming that he had attended training events. The majority of the certificates were in connection with training events he had attended, but where formal certificates were not distributed. The registrant provided the certificates to agencies through which he gained secondary employment. In relation to three of the certificates, the registrant was said to have forged the signature of other colleagues. Only one allegation of forgery was proven and this was in relation to a training session which he had not attended. The allegation also included an occasion where he completed a confirmation of training document and used the official trust stamp on the document when in fact this ought to have been completed and stamped by his manager to verify that he had indeed attended the relevant training. It was alleged that all of his behaviour was misleading and dishonest. The registrant admitted creating the various document and also admitted one case of forgery (in relation to the training event he had not attended). He denied the other allegations of forgery.
- 8.2 As part of its investigation of the case, the HCPC engaged the services of a handwriting expert. She was tasked with providing an opinion on the allegedly forged signatures. The expert considered copies of the certificates and not the original documents, which unknown to the HCPC were in the possession of the registrant. The Panel found proved the Registrant's actions were misleading. Other than the charge in respect of which the Registrant admitted dishonesty, the Panel found that the Registrant's actions in creating the certificates and submitting them to employment agencies did not amount to dishonesty.
- 8.3 The Panel determined that the Registrant's fitness to practise was impaired on the personal component only and imposed a caution order for 4 years.

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:
- Was there a procedural irregularity on the part of the Panel in deciding not to adjourn to enable the handwriting expert to review the original certificates?***
- 9.3 The Members discussed whether the Panel should have adjourned to allow the expert witness to review the original certificates.
- 9.4 The Members noted that the HCPC did not make a formal application to adjourn the hearing but that it invited the panel to consider whether it would be assisted by further evidence from the handwriting expert.
- 9.5 The Members carefully considered paragraph 15 of the decision which set out the panel's reasons for declining the HCPC's invitation. The Members were concerned that the Panel stated that it was not its role to assist the HCPC with

its case. The Members agreed that the Panel failed to have in mind its duty to take a proactive role in proceedings before it and to act as a panel of inquiry ensuring that it had all relevant evidence before it. The Members were concerned that neither the HCPC nor the legal assessor brought this duty to the attention of the Panel.

- 9.6 The Members further added that the primary objective of the Panel is the protection of the public and again this consideration was not articulated within the decision.
- 9.7 In relation to the certificates, the Members noted that the handwriting expert had stated in evidence that seeing the original documents would not have altered her decision. The Members noted that her assessment was based on a scale of likelihood and it was not clear whether seeing the originals might have enabled her to be more certain of her decision in respect of some documents.
- 9.8 However, the Members agreed that the Panel had noted that the certificates were an accurate record of the Registrant's CPD and the courses he had undertaken, other than the Manual Handling certificate (he attended that training on a later date). The Members were satisfied that there was certainty in the evidence of the expert and as such concluded that it would not have made a material difference had the panel adjourned to enable the handwriting expert to see the original certificates.
- 9.9 The Members also considered whether the Panel was wrong to apply the test for forgery in criminal law. The Members noted that it was not wrong for the panel to look for guidance with the criminal jurisdiction on how to approach this issue.
- 9.10 The Members also considered whether the panel was obliged to place greater weight on the view of the expert. The Members noted that expert evidence did not carry greater weight than other evidence and a panel was able to reject that evidence (with reasons).

Dishonesty

- 9.11 The Members considered whether the Panel's decision on dishonesty and specifically the Registrant's actual state of mind when creating the certificates was one that was open to it on the evidence before it. The Members took into account the following:-
- 9.12 He had attended the courses referred to the certificates in heads of charge 1 – 5 (except that he had not completed manual handling training on 18 November 2014 (head of charge 2(b)), had not attended Paediatric Life Support on 10 August 2015 (although had attended that course on 18 March 2015);
- ii. The Trust did not issue or did not routinely issue certificates for these courses at the time;
 - iii. The registrant created the certificates himself using the Trust's official logo thus suggesting to a third party that these were official trust documents;
 - iv. He gave evidence that he did not think that there was anything wrong in creating his own certificates using the Trust logo;

- v. He admitted that he had not asked his line manager or the Trust's learning department if he could create the certificates and that he had wanted the employment agencies to think the Trust had issued the certificates;
 - vi. He stated in evidence that he wanted the certificates to look like they were issued by the Trust;
 - vii. Three colleagues accepted that they had signed the certificates when he presented them to them for signature;
 - viii. He initially put them in a CPD file, for his own use, but later submitted them to employment agencies in order to get paid work (to supplement his NHS income).
- 9.13 The Members noted that Panel's explanation appeared to attach weight to the following: that in 2014 when he created the first certificate the registrant had attended the training course and did not understand that it was wrong to create that certificate of attendance; the Trust logo was generally available on the intranet to which staff had access and that his genuine belief that his actions were acceptable were reinforced when he asked a colleague to sign the certificate and he had done so without querying it. This rationale was carried across to the later documents created by the registrant and it was noted by the panel that each time he did this and was not questioned by colleagues, his view that this conduct was acceptable was reinforced. Where there was an error with dates, the Panel accepted that these were genuine mistakes.
- 9.14 The Members also considered whether the creation of certificates to look like official Trust documents for the purpose of securing remunerated work was arguably dishonest whether or not he had, as a matter of fact, attended the courses.
- 9.15 In considering this issue the Members had in mind the conclusion they had reached that the panel had not erred in concluding there was no forgery in regard to heads of charge 1(b) and 2(c).
- 9.16 Whilst the Members agreed that the Registrant's actions were foolish, they were ultimately persuaded that Panel's reasoning was not wrong, in particular noting that the Registrant had attended the majority of the courses at the time he created the certificates (other than the Manual Handling course) and the panel's decision on forgery (charges 1(b) and 2(c) were ones that were open to it).

Did the Panel sufficiently consider all aspects of the personal and public components when considering impairment?

- 9.17 The Members considered whether all of the issues in relation to the personal component of impairment (the terminology used by the HCPC) had been adequately considered by the panel.
- 9.18 The Members acknowledged the potential harm to patients that could have arisen had the Registrant continued to hold himself out as having completed Life Support and AED training (the training he had not been able to attend) but this was balanced against the insight shown by the registrant, the low risk of repetition and the significance of the fact that he had not obtained work on the back of the certificate purporting to confirm he had undertaken updated Life Support and AED training.

Did the Panel consider and weigh all material factors when deciding that a sanction of a four-year caution order was sufficient?

- 9.19 The Members agreed that the Panel had identified all relevant mitigating and aggravating factors, noting in particular that the Registrant had insight into his misconduct and the reflective pieces he had provided.
- 9.20 The Members reached the view that a four-year caution order was within the range of reasonable outcomes available to the panel, and that there were factors in the HCPC's sanctions guidance for a caution order that were present in this case.
- 9.21 The Members did note that a short period of suspension may also not have been unreasonable but did not consider a caution order for the length of time imposed (noting 5 years being the maximum for a caution order) was unreasonable.

Conclusion on insufficiency for public protection

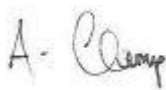
- 9.22 Whilst the Members had some concerns regarding the Panel's not taking a proactive approach or acting as a panel of enquiry, they concluded that the decision was not one which no reasonable Panel could have made. In all the circumstances, therefore, it was not insufficient for public protection.

10. Referral to court

- 10.1 Having concluded that the panel's Determination was not insufficient for public protection, the Members were not required to consider whether they should exercise the Authority's power under Section 29 to refer the case to the relevant court.

11. Learning points

- 11.1 The Members agreed that the learning points set out at Appendix C should be communicated to the HCPC.



24 November 2020

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Alan Clamp (Chair)

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Dated

12. Annex A – Definitions

12.1 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	William Figuracion
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 12 August 2020
The Court	The High Court of Justice of England and Wales
The Code	Regulator's Code of Practise
The SG	Regulator's Indicative Sanctions