Meeting of the s40A Panel to consider the case of Dr Anthony Donadio

Held on 20 March 2020.

Panel members present

Charlie Massey, Chief Executive (in the Chair)
Colin Melville, Medical Director and Director of Education and Standards
Anthony Omo, General Counsel and Director of Fitness to Practise

In attendance

Jacqui Eden, Senior Legal Adviser
Jim Percival, Principal Legal Adviser and Deputy General Counsel
Tim Swain, Head of OCCE, Corporate Directorate (Panel Secretary)

Purpose of this note

1 This meeting note records a summary of the Members’ consideration of the relevant decision of the Medical Practitioners Tribunal (‘MPT’) which considered the Doctor’s case (“the decision”), and the Panel’s decision on behalf of the General Medical Council as to whether or not to exercise the power to appeal the decision pursuant to section 40A Medical Act 1983.

The relevant decision

2 The Principal Legal Adviser confirmed that the decision was a relevant decision for the purposes of s.40A, being a decision under s35D giving a direction for suspension, within the meaning of s40A(1)(a) Medical Act 1983.

Consideration

3 The Panel considered the record of the MPT’s determination and the legal advice in detail.
On reviewing the MPT’s findings, the Panel highlighted that the conduct of the doctor was of the upmost seriousness and to breach the conditions on his registration constituted a direct risk to patient safety.

Moreover, he was found to be repeatedly and seriously dishonest, showing a lack of candour and a disregard for the action taken by his professional regulator in the interests of patient safety. In addition, his continued denials meant there was no sign of any insight or remediation into his conduct.

The Panel reviewed the decision of the MPT in arriving at a sanction of suspension rather than erasure and considered its rationale was unclear. The Panel was of the view that the MPT gave disproportionate emphasis on both the briefness of the misconduct and the fact that this was the doctor’s first time before the tribunal.

The Panel concluded that in the circumstances of this case and the ongoing level of risk presented by this doctor meant that a sanction of erasure was the only reasonable outcome.

The Panel therefore decided to appeal the MPT’s decision pursuant to section 40A Medical Act 1983.

27 April 2020

Charlie Massey (Chair) Dated

Background

This case concerns the determination of an MPT, which concluded on Wednesday 26 February 2020, considering the matter under Part 4 of the General Medical Council (Fitness to Practise) Rules 2004 (‘the Rules’). The outcome was that Dr Donadio’s (‘Dr D’) fitness to practise was found impaired and a sanction of 12 months suspension was imposed.

Dr D was working as a Locum Consultant Radiologist at Kettering Hospital (‘Kettering’) from January 2018. Prior to the commencement of his employment with Kettering, concerns had been raised with the GMC regarding Dr D’s performance and
health, during the course of that investigation, on 9 July 2018, Dr D was made the subject of an interim order of conditions. That investigation subsequently concluded with Dr D agreeing undertakings with the GMC.

11 The interim order included conditions requiring that Dr D:

11.1 notified the GMC of his current post, allowing the GMC to exchange information with that employer;

11.2 work at a level lower than that of a Consultant;

11.3 was directly supervised in all of his posts by a clinical supervisor, who was also required to be approved by Dr D's Responsible Officer;

11.4 was required to notify his employer of the interim order.

12 Dr D worked at Kettering as a Consultant on three occasions between 9 July 2018 and 10 August 2018 for a total of 10 days. During this period Dr D failed to inform the GMC of his employment at Kettering and failed to inform Kettering of the interim order of conditions on his registration, meaning that during these periods Dr D was also working at a level not permitted by the interim order of conditions and was unsupervised. Dr D had therefore acted in breach of his interim order of conditions and had acted dishonestly in failing to act in accordance with those conditions.

13 It was Dr D’s case that he was not aware of the imposition of the interim order of conditions, due to problems he had with receiving emails. This was despite having been notified by email on 27 June 2018 of the referral to the interim orders tribunal and that the hearing would take place on 9 July 2018 and having responded to that email. Dr D had also corresponded with MPTS regarding his desire to attend the hearing but stating that he was abroad and would be in difficulty attending the hearing – information was subsequently received that Dr D was in fact working at Kettering on the date of the IOT hearing and not that he was out of the country as he suggested.

14 Dr D had also corresponded from the email address with his locum agency on 12 July 2018, following the date that the interim order was imposed and where the outcome letter from the interim orders tribunal had been sent.

MPT hearing

Facts

15 Dr D did not attend the hearing and provided written submissions shortly before the hearing commenced. The MPT found the majority of the allegations proven including that Dr D had falsely represented himself as being able to carry out locum shifts as a Consultant; that Dr D had worked in breach of his interim order of conditions
between 12 July 2018 (the date by which the MPT were satisfied that Dr D would have been aware of the outcome of the interim orders tribunal) and 10 August 2018 and that he had done so dishonestly, as his actions had permitted him the opportunity to work in a position which was prohibited by his conditions.

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Impairment

17 In finding misconduct, the MPT found that Dr D’s misconduct was not isolated and had the potential to put patients at risk. The MPT noted Dr D’s ‘lack of candour’ with the GMC and MPTS and that he chose to put his own interests above others and his duties as a doctor. Whilst the MPT noted a lack of repetition, they also acknowledged that Dr D had been working outside of the UK. The MPT determined the conduct was remediable but that the doctor must develop insight before any such remediation could take place.

18 In finding impairment, the MPT noted Dr D’s complete denials and that ‘it was more likely than not’ that he had failed to develop any insight, noting there had been no evidence presented as to insight or remediation and therefore remained a risk. The MPT found that even had this evidence been presented a finding of impairment was required to uphold public confidence and standards.

Sanction

19 The MPT found that Dr D’s ‘continued denial’ (of the allegations) ‘compounded his dishonest behaviour’ and further that Dr D attempted to mislead the GMC saying his emails had been deleted when in fact he had communicated from that same email address with his locum agency following the receipt of the GMC’s emails. They found that although the dishonest acts only covered a short period it was repeated and compounded by his communications with the GMC and MPTS. The only mitigating factors being, a lack of evidence of repetition and this being Dr D’s first appearance before MPTS.

20 In determining to impose 12 months suspension, the MPT noted the relevant engaged paragraphs of the Sanctions Guidance on erasure, however, they found the conduct fell ‘just short’ of being fundamentally incompatible with continued registration. In doing so they had regard to the conduct being short lived, after which he ‘removed himself from the workplace’, the dishonest conduct ceased before it was discovered and no repetition. The MPT were satisfied that erasure would be disproportionate.

The General Medical Council’s power to appeal pursuant to s.40A

21 With effect from 31 December 2015, the General Medical Council acquired the power to appeal to the High Court (or equivalent courts in Scotland and Northern Ireland
where relevant) against relevant decisions of a Medical Practitioners Tribunal ("MPT") if it considers that the decision is not sufficient (whether as to a finding or a penalty or both) for the protection of the public.

22 The basis upon which the GMC will consider whether or not to exercise this power to appeal is described in “Appeals by the GMC pursuant to s.40A of the Medical Act 1983 ("s.40A appeals") – Guidance for Decision-makers” ("the Guidance").

23 Decisions concerning the exercise of the s40A power to appeal were originally delegated by the Council to the Registrar. However, following recommendations from Sir Norman Williams’ Review Council agreed that decision-making in prospective appeals involving decisions of Medical Practitioners Tribunals be delegated to a three person Executive Panel comprising: the Chief Executive and Registrar as Chair; the Medical Director and Director of Education and Standards; and the Director of Fitness to Practise (or their nominated Deputies if not available) ("the Panel").

24 As the Guidance makes clear, when considering whether to bring a s.40A appeal in a particular case, it will be necessary to consider the following questions:

24.1 Based on their assessment of all of the information held, and in the particular circumstances of the case, and having regard to the factors set out in the Guidance, does the Panel consider that the MPT’s decision is not sufficient to protect the public?

24.2 If the Panel is of the view, on its assessment of all the information held, in the particular circumstances of the case, that there are grounds to consider that the MPT’s decision is not sufficient, it will consider whether exercising the power of appeal would further, rather than undermine, the achievement of the over-arching objective.

24.3 If the answer is yes, then the GMC may exercise its power of appeal.

24.4 In considering that question the Panel will be required to consider and weigh a number of competing factors (including its assessment of the prospects of success of the appeal, and the nature and importance of the issues which would be aired).