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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
[2019] EWHC 3038 (Admin)

No. CO/3749/2019

Royal Courts of Justice
Tuesday, 15 October 2019

Before:

MR JOHN KIMBELL QC
(Sitting as a Deputy Judge of the High Court)

B E T W E E N:

HEALTH AND CARE PROFESSIONS COUNCIL

Claimant

- and -

WALSH

Defendant

MR M. STANDING (instructed by BDB Pitmans) appeared on behalf of the Claimant.

THE DEFENDANT was not present and was not represented.

J U D G M E N T

THE DEPUTY JUDGE:

1 This is an application by the Health and Care Professions Council ("HCPC") for an extension of an interim order under Art.31(8) of the Health and Social Professions Order 2001. Art.31(9) of that 2001 Order gives the court a discretion to extend for up to a period of 12 months. The principles that are applicable in an application of this sort are those which are set out in the Court of Appeal decision in *General Medical Council v Stephen Hiew* [2007] EWCA Civ 369. At para.28 in that Decision the court of appeal says this:

"Section 41A(7) does not set out the criteria for the exercise by the court of its power under that subsection in any given case. In my judgment, the criteria must be the same as for the original interim order under section 41A(1), namely the protection of the public, the public interest or the practitioner's own interests."

2 Pausing there, although the provisions in that case are slightly different, because it concerned a different health professional, the relevant power is in the same terms and counsel who appears for the HCPC today, Mr Michael Standing, has submitted, and I accept, that the criterion applied in that case are the same as apply in this case. Continuing with the citation from para.28:

"This means, as Mr Englehart QC, for the GMC, submits, that the court can take into account such matters as the gravity of the allegations, the nature of the evidence, the seriousness of the risk of harm to patients, the reasons why the case has not been concluded and the prejudice to the practitioner if an interim order is continued."

3 Those are the standard five criteria that are considered in a case such as this. The onus of satisfying the court of the criteria falls in each case on the applicant. Those matters are to be proved on the civil standard.

4 The evidence in this case is in the form of a witness statement of Mr John Barwick, who is the Executive Director of Regulation at the HCPC and he has served a long and helpful witness statement of 20 September 2019, which I have read. The defendant is a registered radiographer.

5 On 1 February 2018 the HCPC received a referral from Manchester University Foundation Trust setting out concerns about the defendant's fitness to practise. On 24 January 2018 the defendant had been admitted to Manchester Royal Infirmary and admitted using controlled drugs, allegedly taken from Wythenshawe Hospital where he was employed. The defendant was suspended from his position at the Trust on 25 January 2018. The Trust carried out an internal investigation and held a disciplinary hearing on 21 June 2018. The outcome of that hearing was that the defendant was summarily dismissed.

6 On 1 March 2018 the defendant pleaded guilty to the theft of medical drugs and associated items belonging to the Trust. The HCPC contacted the police to ask for information about the investigation and received a memorandum of conviction on 19 July 2018 and a copy of the defendant's Police National Computer record on 7 November 2019. Since then, the HCPC has sought further information, including medical records, which have been received following a signed consent form from the defendant. That was signed on 26 January 2019 but the defendant's medical information was not received by the HCPC until 15 March 2019.

- 7 Having gathered that information, the HCPC applied to a panel of its Investigating Committee for an interim order and that order was made pursuant to Art.31(2) of the 2001 Order that I have just referred to.
- 8 At a meeting of the investigating committee, which took place on 17 April 2018, which the defendant participated in by telephone, the panel considered the interim order was necessary for the protection of members of the public, was in the public interest and was also, somewhat unusually for these cases, in the defendant's own interests on the grounds that there would be a risk of repetition of the defendant's conduct if he were permitted to work in an environment with ready access to controlled drugs and that confidence in the profession would be undermined if no restriction were placed on the defendant's practice.
- 9 The order was scheduled for review in October 2018. An adjourned hearing took place on 16 November 2018. The defendant was neither present nor represented at that hearing. However, he had emailed the HCPC on 15 November inviting them to continue the order and had provided a statement setting out his personal and professional circumstances. I have not seen that statement and I understand from Mr Standing, who appears today on behalf of the HCPC, it contains matters which pertain to the defendant's own health and, therefore, they would be matters that, if it were necessary to refer to them, I would consider whether to holding this hearing (or at least parts of it) in private and possibly giving judgment in part in private, but as it has turned out, having read the evidence or Mr Barwick, it does not seem to me to be necessary to go into any more detail about these matters. It is sufficient to note both that the Investigating Committee considered that it might well be in the defendant's own interest for the interim order to continue and that, at a later hearing in November 2018, the defendant himself sought a continuation of the order. There have been since then a number of reviews, the final one being on 29 July this year, and the Panel again determined that the order ought to be continued.
- 10 Things have now moved and HCPC instructed its solicitors, Kingsley Napley, to prepare a case for a final hearing. The hearing was listed for 14 and 15 October this year, that is to say yesterday and today, and I have been informed by Mr Standing that the hearing did indeed commence yesterday and is expected to continue today. I am also told that the defendant has not taken part in those proceedings. So the position today is that there may well be a decision at the end of today and it may be that any further extension of this order is unnecessary.
- 11 The application that is made is for an extension for a further 12 months until 16 October 2020. In principle, it seems to me that, having considered the matters in Mr Barwick's witness statement, the gravity of the allegations is at the higher end of the scale leading, as it has done, to a criminal conviction for theft of controlled drugs. The nature of the evidence, as I see it, is that it seems that the defendant is not disputing any of the material facts and has indeed made an application at one stage that an interim order be continued in his own interests. The seriousness of the risk of harm to patients it seems to me is high and the reasons why the case has not yet been concluded are reasonable. The delay in dealing with it to date has been the result of the heavy workload of the HCPC and the fact that crucial information, such as medical records, has not been received in time in order for a full panel to convene until recently. The fact is now that the full panel has convened and has been carrying out its hearings yesterday and is expected to conclude today. It seems to me also, finally, that the prejudice to registrant in this case is minimal, not least because I have mentioned a few times already he himself, at least at one stage, sought the continuance of the interim order for his own reasons.

- 12 In all those circumstances, I grant an order extending time. However, I am not persuaded that it is appropriate to grant a further twelve months. What I propose to do given what I have heard about the progress of the hearing is to grant an order for six months. Therefore, it will expire on 16 April 2010.
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CERTIFICATE

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This transcript has been approved by the Judge.