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IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

[2019] EWHC 3039 (Admin)



No. CO/3853/2019

Royal Courts of Justice

Thursday, 17 October 2019

Before:

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

B E T W E E N :

NURSING AND MIDWIFERY COUNCIL

Applicant

- and -

QINGLI MAYNARD

Respondent

MS H. HELEN (instructed by Nursing and Midwifery Council) appeared on behalf of the Applicant.

THE RESPONDENT did not appear and was not represented.

J U D G M E N T

THE DEPUTY JUDGE:

- 1 This is an application under Art.31(8) of the Nursing and Midwifery Order 2001 for an extension to an interim conditions of practice order that was made by a panel of the Nursing and Midwifery Council's Investigating Committee on 20 December 2017. The conditions of practice order was initially imposed for a period of 18 months. The applicant is the Nursing and Midwifery Council (the "NMC") and the respondent is Qingli Maynard.
- 2 Qingli Maynard is a registered nurse and she was referred to the applicant in its capacity as a regulator of nurses and midwives on 6 December 2017. Her then employer, East Kent Hospitals NHS Trust, had raised concerns by way of a referral to the applicant regarding the respondent's basic nursing skills and clinical practise which had arisen over a six-month period between June and December 2017 while she was a newly qualified nurse working in an acute surgical colorectal ward of William Harvey Hospital. It is alleged that the respondent failed to prioritise a surgically sick patient; did not give appropriate pain relief to a patient on palliative care; made an error in the recording and medicines administration and did not respond appropriately to a surgical patient's bleeding.
- 3 The interim conditions of practice order, which was imposed on 20 December 2017, was imposed on the grounds that it was necessary for the protection of the public and otherwise in the public interest. It has been reviewed since then on three occasions and each time a panel has considered the continuing proportionality of the existing order and continued or varied the same as appropriate.
- 4 The matter came before the High Court on 19 June 2019 when an extension was granted for a period of four months, expiring on 18 October 2019. When that order was made by Dan Squires QC, sitting as a Deputy High Court Judge, it appears that he remarked that a good reason would be needed for any future application. He had concerns that the matter had been ongoing for some time and should be resolved swiftly.
- 5 The respondent sent through by email to the Nursing and Midwifery Council between 3pm and 4pm yesterday, 16 October 2019, a skeleton argument which was received by counsel who appears on behalf of the NMC, Helen Guest, at around the same time. That skeleton argument was drafted by a Mr S Holborn on behalf of the registrant. I understand that to be a Mr Simon Holborn, who has some role in representing the registrant. His precise status as a representative of the registrant is not clear to me but he has produced on her behalf (I assume with her consent and on her instructions) a skeleton argument running to some seven paragraphs and a chronology. I have also received a skeleton argument drafted by Ms Guest on behalf of the Nursing and Midwifery Council.
- 6 The respondent opposes the application for a further extension on a number of grounds. First, the registrant draws my attention to the comments of Mr Dan Squires QC, that I have already referred to, on the last hearing that any future application would be subject to close scrutiny.
- 7 The response of Ms Guest on behalf of the NMC is that although the further application and further delay is regrettable, there is a good reason why it is necessary. The good reason is, she submits, that at the time of the last hearing it was still hoped that the dispute between the registrant and the NMC could be dealt with by means of a Consensual Panel Determination and indeed a date in July for that hearing was, as I understand it, still booked in at the time that the extension was sought before Dan Squires QC. But in any event, formal notice was given by the registrant on 28 June 2019, but she declined to consent to the Consensual Panel Determination by way of resolving the matter and that meant that the July dates for the

hearing had to be cancelled. New dates for a full hearing with arguments and witnesses and evidence had to be set. The date for that hearing is 12 to 20 December 2019.

8 I accept that that is a good reason for a further application to be made. It is unclear to me why the registrant has decided to pull out of the Consensual Panel Determination. The skeleton argument filed on her behalf does not explain why she pulled out of that arrangement. It is of course a matter entirely for her. It is, as the name suggests, an entirely consensual process so she is free to either consent or not consent to it. However, the fact is that it was hoped and expected that that would be the way the matter was resolved, and it was not until after the last order was made that formal notice was given that consent was withdrawn to that procedure. So, regrettable as it is, it seems to me there is no objection to a further extension of time to accommodate the hearing. At the very least it seems to me subject to other considerations, which I will come to, that is on the face of it a good reason.

9 I now turn to consider the points raised by the respondent in the skeleton argument submitted on her behalf.

10 In para.3 of the respondent's skeleton argument, it said that no issue of fitness to practise has been found against the registrant. That is of course correct but as Ms Guest correctly points out we have not yet got to a full hearing or any sort of determination. Therefore whilst what is stated in para.3 is correct, it is irrelevant to the present application. The present application is concerned with whether it is appropriate to maintain conditions of practise before a determination of the underlying allegations has been made.

11 It said in para.4 of the skeleton argument is said that the issues presented to the NMC have led to an offer of a managed outcome,

“So it would seem that even the NMC as a regulatory body do not attach an over degree of concern as to the actions of the registrant”.

That seems to me to be something of a non sequitur and an unfair comment. The fact that the NMC has sought an offer of managed outcome or Consensual Panel Determination is something to be commended. Its concern, as Ms Guest in my judgment correctly submits, at this stage is with the management of safety and risk and how that is best achieved pending a determination of one sort or another is a matter of pragmatic judgement. The fact is, as things stand today with the withdrawal of the consent to the Consensual Panel Determination, the only way in which the matter can proceed further is by way of a full hearing and, as I have said, arrangements have been made for that to take place in December 2019.

12 The skeleton argument returns to the question of there being no need for ongoing conditions of practise and it said on behalf of the registrant that she has shown appropriate insight and accepted shortcomings and adjusted her practise. It says on her behalf in para.7(K) that the registrant is of the view that she is now a safe practitioner. That may well be the case. Whether it is or not is for the panel to determine.

13 I have read the witness statement of Lloyd Emeny which sets out the background to the allegations and the reasons why there was an initial delay between January and March 2018 while the case was allocated to an investigator. That is of course regrettable but is something that I cannot remedy now. I have to decide whether to exercise the discretion to extend the time as things stand today and in the circumstances as they are today. As I have said, the current position is that, for the reasons I have outlined, there is now a full panel determination due to take place in December 2019.

- 14 I must have regard to the five factors that are set out in para.28 of the Court of Appeal decision in the *General Medical Council v Hiew* [2007] EWCA Civ 369, namely: first of all, the gravity of allegations; secondly, the nature of the evidence; thirdly, the seriousness of the risk of harm to patients; fourth, the reasons why the case not been concluded; and fifth, the prejudice to the practitioner if an interim order is continued.
- 15 I am satisfied that, looking at those factors in this case, the order sought is one that I ought to grant. I do not in any way belittle the difficulty that the registrant no doubt faces with her career whilst the conditions of practise are in place. It is no doubt a great inconvenience to her but the NMC must balance against that, and I must balance against that, the gravity of the allegations which I have outlined. They seem to me to be, although they are not at the very serious end of the spectrum, matters which do give rise to concern about the capacity of the registrant to care properly for patients and, given the nature of the evidence I have seen, in particular what is said on behalf of the registrant in paras.7(H) and (K); namely that she has accepted that there were shortcomings and has adjusted her practise.
- 16 So in terms of the nature of the evidence, not only do I have the evidence for how the allegations have come about, but there is some evidence, at least in the form of what is said in the skeleton argument, that the registrant herself accepts that there are shortcomings that need to be addressed. I have already mentioned the seriousness of risk to harm to patients given the nature of the allegations I have seen. I have dealt with already the reasons why the case has not been concluded.
- 17 It is regrettable, it seems to me, that on the information available to me it would have been better for the matters have been dealt with by a Consensual Panel Determination, but there it is. That is not how things have turned out and although I can see that there is real prejudice to the practitioner if the interim order is granted, I am satisfied that in all the circumstances I ought to grant the extension that is sought so I make an order to that effect.
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This transcript has been approved by the Judge