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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
[2020] EWHC 2577 (Admin)

No. CO/2761/2020

Royal Courts of Justice

Tuesday, 25 August 2020

Before:

MRS JUSTICE EADY DBE

B E T W E E N :

NURSING AND MIDWIFERY COUNCIL

Applicant

- and -

LANGLEY

Respondent

MS B. DONGRAY Solicitor-Advocate (instructed by the Nursing and Midwifery Council)
appeared on behalf of the Applicant.

THE RESPONDENT was not present and was not represented.

J U D G M E N T

MRS JUSTICE EADY:

Introduction

1. This is an application under Article 31(8) of the Nursing and Midwifery Order 2001 (“the Order”), for a seven-month extension of an interim order imposed on the Respondent, suspending her registration as a nurse. In support of its application, the Applicant relies on the witness statement of Julie Pionk, case manager, dated 4 August 2020. I have read that statement, and the documents exhibited thereto, in advance of this hearing.
2. As confirmed by the certificate of service, dated 21 August 2020, the Applicant served the application, and supporting witness statement and exhibits, on the Respondent by means of recorded delivery and first-class post, delivery being signed for at 10.15 a.m. on 18 August 2020. There has been no response from the Respondent, but I am satisfied that she has received the relevant documentation regarding the hearing of this application and has had the opportunity to attend and/or make representations if she so wished. In the circumstances, I am satisfied that it is appropriate to proceed today, in the Respondent’s absence.

The factual background

3. On 4 April 2018, the Applicant received a referral from Eastgate Care (“Case 1”), which concerned the Respondent’s fitness to practise as a nurse. The referral gave detail of allegations that, on 25 December 2017, the Respondent had failed to record observations for a deteriorating patient, to seek medical assistance and to notify the next-of-kin. The Respondent subsequently resigned from her position prior to disciplinary action being carried out.
4. On 7 February 2019, the Applicant received a referral from MPS Care Home (“Case 2”), also raising concerns regarding the Respondent’s fitness to practise as a nurse. The referral gave detail of an allegation that, on 15 December 2018, the Respondent failed to commence the procedure to monitor a resident following a fall, resulting in a delay to treatment for a fractured pelvis. The referral also gave detail of an allegation that, on 16 December 2018, the Respondent did not escalate concerns about a resident having two bouts of stools with blood and blood clots.
5. Both Case 1 and Case 2 were considered by the Applicant’s case examiners on 8 June 2020 and 4 February 2020, respectively. The case examiners found a case to answer in relation to allegations of impaired fitness to practise in relation to both referrals, and the cases were referred to the Applicant’s Fitness to Practise Committee (“FtPC”), with eight regulatory concerns identified as arising from the two cases.

The interim order proceedings

6. The Respondent’s case first came before a panel of the Investigating Committee (“IC”) on 27 February 2019, when an interim suspension order was made under Article 31(2) of the Order, for an 18-month period. The panel concluded that it was necessary for the protection of members of the public or was otherwise in the public interest. Specifically, the panel determined that there would be a risk to patients should the Respondent be permitted to practise without restrictions, taking into account that it had received two referrals over a two-year period relating to similar concerns. In the absence of evidence to suggest the concerns had been addressed, the panel concluded that there was a risk of repetition of that

conduct and that an interim order was necessary for public protection and was otherwise in the public interest.

7. When considering the type of interim order it should make, the panel noted that the Respondent had not engaged with local investigations and there was no evidence that she would be willing to comply with a Conditions of Practice Order. They therefore concluded that an interim suspension was both appropriate and proportionate. The full reasons for the panel's decision are set out in a letter to the Respondent, dated 28 February 2019.
8. The interim order has since been reviewed on three occasions, the last being on 8 July 2020. On each occasion, a specialist panel has confirmed and continued the order, which is now due to expire on 26 August.

My approach

9. In determining an application made under Article 31(8), the court may extend or vary or further extend the period for which the Order has effect, for up to 12 months (see Article 31(9) of the Order). In *GMC v. Dr Stephen Chee Cheung Hiew* [2007] EWCA Civ 369, the Court of Appeal gave guidance on the principles to be applied in applications of this kind, holding that the criteria to be applied by the court are the same as those for the making of an interim order by the regulatory body itself. Relevant factors, in considering whether to grant an extension, include: (1) the gravity of the allegations; (2) the seriousness of the risk of harm to patients; (3) the reasons why the case has not been concluded; and (4) the prejudice to the practitioner if an interim order is continued.
10. The onus of satisfying the court that the criteria are met is on the regulatory body. It is not, however, the function of the court to determine primary findings of fact about the events that have led to the suspension, or to consider the merits of the case for suspension. The court is required to ascertain whether the allegations (rather than their truth or falsity) justify the prolongation of the interim order; in general, it need not look beyond those allegations.

Applications of those principles to this case

11. I am satisfied that the allegation of impaired fitness to practise in this case is serious. The Respondent is alleged to have failed to preserve the safety of residents in her care on three occasions over a two-year period. On each occasion, the Respondent's failure is said to have resulted in a delay in treatment, or referral to medical care, for residents. Such failings would clearly carry significant risk of unwarranted harm to patients.
12. As the Applicant has acknowledged, however, there have been delays in this matter that should not have occurred. In particular, little progress was made in relation to the investigation into Case 1 between 17 April 2018 and 10 October 2018, and there appears to be no explanation for this. Subsequently, once the investigation was completed in January 2019, and referred to the case examiners for their consideration, the matter was then sent back to the investigation team for further investigation, including looking into the Respondent's health. That investigation was completed in February 2020, and the Respondent was then given until 2 March 2020 to provide a response to the case examiners. The case was then not considered by the case examiners until June 2020. That seems to have been as a result of measures taken by the Applicant to deal with the immediate effects of the coronavirus pandemic.
13. It seems that the investigation into Case 2 progressed well and a hearing was scheduled to hear those allegations on 15 to 19 June 2020 but that was postponed, again, as a result of the steps taken by the Applicant to deal with the immediate effects of the coronavirus pandemic.

14. As the Applicant acknowledges, any extension to the interim order has the potential to cause prejudice to the Respondent. In this case it seems that, following the referral of Case 1 to the Applicant, the Respondent indicated that she wished to apply for voluntary removal from the Register. On 2 July 2020, she informed the Applicant that she will not be engaging with the proceedings and that she has no plans to return to nursing - she is now in a new role as a community carer - and would not be providing a response in relation to either case, aside from confirming that she would not attend any scheduled hearing. A note recording this conversation is included within the papers before me in this case and I have read it in advance of the hearing.
 15. Having had due regard to the potential prejudice to the Respondent from granting this application, I am satisfied that the allegations are serious and represent real and significant patient concerns. I am further satisfied that any prejudice to the Respondent in extending the interim order is outweighed by the public interest in ensuring public safety and maintaining confidence in the profession.
 16. I have had careful regard to the further steps that will need to be taken, as set out in the witness statement of Ms Pionk, and note the current difficulties faced by the Applicant in concluding matters at a hearing, not least given the backlog of other cases resulting from the earlier restrictions arising from the ongoing Coronavirus pandemic. In the circumstances, I accept that a longer extension is needed than might normally be the case, and I am satisfied that a period of seven months should be allowed on the grounds that it remains necessary to protect the public and is otherwise in the public interest.
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CERTIFICATE

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Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
CACD.ACO@opus2.digital

This transcript has been approved by the Judge.