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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
[2019] EWHC 2290 (Admin)



No. CO/2875/2019

Royal Courts of Justice
Tuesday, 6 August 2019

Before:

MR NIGEL POOLE QC
(Sitting as a Deputy Judge of the High Court)

BETWEEN:

NURSING AND MIDWIFERY COUNCIL

Applicant

- and -

WILLIAM SIMPEY

Respondent

MS S. McLEAN (instructed by the 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 The applicant in this case seeks an extension of the interim suspension made by its panel on 27 February 2018 for a period of 18 months. The order was last reviewed by the applicant on 13 February 2019 and it was continued. It is due to expire on 26 August 2019 and the applicant seeks extension for a period of four months, the maximum power being an extension of 12 months, but only four months is sought.
- 2 The respondent was served by the applicant by first class post on 24 July 2019 and I have been provided with a certificate of service, dated the 6 August 2019. I am quite satisfied that respondent has been served with this application. He has not responded to it. I am satisfied that it is in the interest of justice to proceed in his absence.
- 3 The power to grant an extension is given to the court by Art.31(9) of The Nursing and Midwifery Order 2001, and the Court of Appeal has given guidance as to the criteria to be applied in an application to extend in a case concerning parallel powers regarding medical practitioners' cases, *General Medical Council v Hiew* [2007] EWCA Civ 369.
- 4 The criteria are the same as for the original interim order, namely: the protection of the public; the public interest; and the practitioner's own interests. The onus on satisfying the court that the criteria are met falls on the applicant counsel, and the civil standard of proof applies. Relevant factors include: the gravity of the allegations giving rise to the interim order; the risk to patients; the reason why the case has not concluded; and any prejudice to the respondent in continuing the order.
- 5 I have considered the helpful skeleton argument of Sylvia McLean and the witness statement of Alexandra Louca. The matters giving rise to the original interim order included serious concerns about respondent's competence and his ability to practise as a registered nurse. It is alleged that he had failed to carry out clinical observations, on one occasion for up to seven hours, and failed to report an early warning score of 'three' for a patient to the nurse in charge. When later supervised for a shift, following these concerns having been raised, multiple errors were noted, including administration of medicines. He was dismissed by his Trust, and I am informed he has not engaged in the regulatory proceedings which were then brought by the applicant counsel.
- 6 I regard these matters as serious, as of course did the applicant when it made the interim suspension order. In particular, the multiple errors observed, even whilst under supervision, give rise to real concern as to the risk to patients should the respondent's suspension be lifted due to the passage of time and before the regulatory proceedings have concluded their proper course. There is a substantive hearing scheduled for 16 to 20 September 2019.
- 7 The applicant accepts that there have been unjustified delays in the respondent's case through the regulatory process. This was due, in large part, to a case-holder leaving the applicant's employment and a failure to reallocate the case. Quite properly, the applicant accepts responsibility for the delay caused thereby, although it took steps to expedite the case on realising the error. Nevertheless, the applicant's panel has kept the suspension under review and the period of extension sought is only for four months, which will cover the period to the planned hearing date, allowing for extra time in case of any delay in the conclusion of that hearing as sometimes, perhaps even often, happens.
- 8 The applicant also accepts that the four-month extension will potentially cause prejudice to the respondent which it implicitly accepts could have been avoided. The prejudice, of course, is that he will be unable, in this extended period, to work within his profession. That

said, he has not engaged, I am told, in the regulatory process and any prejudice to him has to be weighed against the significant risk, as it appears to me, to patients and the public interest if he is permitted to return to practise before the regulatory proceedings have been properly concluded.

- 9 Bearing in mind all the evidence and weighing the criteria referred to by the Court of Appeal in *Hiew*, I am persuaded that the interim order should be extended, and I do so to 24 December 2019, a period of just under 4 months. The balance is in favour of the need to protect the public given the seriousness of the concerns about the respondent's competence, even though that delay should have been avoided.
- 10 I make the order, as per the draft submitted, extending the interim order to 4pm on 24 December 2019, but ordering that the respondent has permission, on giving three days' written notice to the applicant, to apply to the court to vary or discharge this order. There should be no order as to costs.
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CERTIFICATE

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This transcript has been approved by the Judge.