

Hearing held in public

Summary

Name:	BAYANI, Mojtaba [Registration no: 119321]
Type of case:	Interim Orders Committee (review)
Outcome:	Suspension continued
Duration:	For the remainder of the High Court extension
Date:	29 November 2019
Case number:	CAS-186978

The role of the Interim Orders Committee (IOC) is to undertake a risk assessment based on the information before it. Its role is to assess the nature and substance of any risk to the public in all the circumstances of the case and to consider whether it is necessary for the protection of the public, is otherwise in the public interest, or is in the registrant's own interests to impose an interim order on their registration. It is not the role of the IOC to make findings of fact in relation to any charge. That is the role of a differently constituted committee at a later stage in the process.

Neither party was present at today's hearing. The Council invited the Committee to review the interim order on Mr Bayani's registration on the basis of the papers without the parties present.

Service:

The Committee first sought to determine whether notice had been served on Mr Bayani in accordance with Rules 35 and 65 of the *General Dental Council (GDC) (Fitness to Practise) Rules 2006* ("the Rules").

In reaching its decision, the Committee considered the documentation before it, which included a copy of the notification of today's hearing sent to Mr Bayani by way of Tracked and Signed Delivery. Notice was served on Mr Bayani's registered address on 15 October 2019. The notice outlined the date, time, location and purpose of today's hearing. The notice also informed Mr Bayani of the Committee's power to proceed with today's interim order review hearing in his absence. The Committee notes the GDC submission that Mr Bayani's representatives at BLM Law were also sent a copy of the notification of today's hearing via email on 15 October 2019. Receipt was acknowledged by BLM Law on 30 October 2019.

The Committee noted that the letter referenced a hearing date of 27 November 2019. However, it has since seen correspondence dated 18 November 2019 from the GDC seeking confirmation of a change of the review date from the 27th to the 29 November 2019. BLM Law responded in an email dated 19 November 2019 which stated, "*I have no objection to the review of Dr B's interim order being moved to 29 November 2019.*" The Committee noted the letter of notification of today's hearing dated 15 October 2019, sent to Mr Bayani and his representatives, which indicated that the GDC proposed the hearing should be considered on the papers alone. The Committee was satisfied that the GDC had made all reasonable efforts to provide Mr Bayani with notice of this hearing.

The Committee heard and accepted the advice of the Legal Adviser. The Committee had regard to the provisions of Rule 65 and S.50A of the Dentists Act 1984 and noted that the Council is not required to prove that notification was received, simply that the notification was sent. On the basis of the information provided to it, the Committee concluded that service of the notice of today's hearing had been properly effected in accordance with the Rules.

Proceeding in the absence of Mr Bayani and on the papers alone:

As the Committee found that the notice had been properly served, it went on to consider whether to exercise its discretion under Rule 54 to proceed with the hearing in Mr Bayani's absence and on the papers alone, as was the request of the Council. The Committee remained mindful of the need to approach this issue with the utmost care and caution.

The Committee was of the view that in the absence of any request from Mr Bayani for an adjournment, no useful purpose would be gained by adjourning today. Further, the Committee notes that Mr Bayani is represented. It had regard to the comments from his representatives at BLM Law in a letter dated 30 October 2019 which confirms that Mr Bayani will not be attending the review hearing, will not be represented at the review hearing and understands that the hearing will proceed in his absence.

Accordingly, the Committee determined to review the Interim Order on the basis of the papers before it and in the absence of both parties.

Decision on the review of the Interim Order:

This is the fourth review of an interim order of suspension that was first imposed on Mr Bayani's registration by the IOC on 22 March 2018 for a period of 18 months. The order was reviewed and continued on 12 September 2018, 26 February 2019 and 15 August 2019. On 5 September 2019, a High Court Extension was granted to extend the Interim Order for a period of 10 months until 26 July 2020.

At the initial hearing, the IOC determined that an interim order of suspension was necessary for the protection of the public and was otherwise in the public interest. The order was made in relation to concerns that had been referred to the GDC about Mr Bayani's standard of care and treatment of a number of patients. Particular concerns were raised in relation to Mr Bayani's diagnostic practice, quality of treatment, record-keeping, radiography, cross-infection controls and disease management.

This Committee has today comprehensively reviewed the order. In so doing, it took account of the information contained in the bundle, as well as the written submissions made by the GDC. The Committee noted that the GDC is obtaining an expert opinion on the standard of care for the nine patients and that the PCC hearing is listed for to take place between 11 – 19 May 2020. In addition, the Committee noted that the GDC is also seeking to obtain factual evidence from a number of the patients, and former colleagues of Mr Bayani.

The GDC submits that there has been no material change since the initial IOC hearing which might necessitate a change in the order. Mr Bayani's legal representatives have not opposed the continuation of the order. The Committee was satisfied that the order remains necessary on the same grounds and for the same reasons as stated by the IOC on 22 March 2018 and the subsequent reviewing Committees. The Committee further determined that an order of suspension remains the appropriate and proportionate order and that conditions cannot adequately address the risks that have been identified.

Review of the Interim Order:

Unless there has been a material change of circumstances, the Committee will review the interim order on the papers at an administrative meeting within the next six months. The Committee will be invited by the GDC to confirm the order, and Mr Bayani will be asked

whether there are any written submissions to be put before the Committee on his behalf. Mr Bayani will then be notified of the outcome in writing following the decision of the Committee.

Alternatively, Mr Bayani is entitled to have the interim order reviewed at a hearing. This means that he will be able to attend and make representations, send a representative on his behalf or submit written representations about whether the order continues to be necessary. Mr Bayani must inform the GDC if he would like the interim order to be reviewed at a hearing. Even if Mr Bayani does not request a hearing, where there has been a material change of circumstances that might mean that the order should be revoked or replaced, the Committee will review the order at a hearing to which Mr Bayani and his representatives will be invited to attend.

That concludes this hearing.