

A THE CHAIRMAN: Good afternoon, ladies and gentleman. I do apologise for the late start. The circumstances were beyond anybody's control. I hope that we have been able to make some useful progress in the time that we have not been sitting.

B This Panel has convened to consider the case of Dr Jarlath Michael O'Donohoe. The case is being considered by a Fitness to Practise Panel, applying the General Medical Council's Preliminary Proceedings Committee and Professional Conduct Committee Procedure Rules of 1988. Dr O'Donohoe is present and is represented by Miss Mary O'Rourke, Council, instructed by Arthur Cox, Solicitors. Mr Nigel Grundy, Counsel, is instructed by Field Fisher Waterhouse, Solicitors, and represents the GMC. Mr Grundy?

C MR GRUNDY: Sir, there are two preliminary matters in this case. The first relates to my application to make an amendment to the present charge sheet. I do not know if the Panel have a copy of the yellow sheet? If I could take you to charge 2, as presently drawn. It starts with the words, "At approximately 10.30 p.m. you attended, assessed and inserted an intravenous line into Patient A". There is an issue with regard to the time. The time, in fact, is probably immaterial, certainly for the purposes of a charge. Therefore, I would make an application under old Rule 24(4) to delete the words, "At approximately 10.30 p.m." so the charge will simply read to, "you attended". Just to remind the Panel of the old rules, Rule 24(4) is rather similar to the present rules. It says:

D "Where at any stage of an inquiry it appears to the Committee that a charge should be amended, the Committee may, after hearing the parties and consulting the Legal Assessor, if they are satisfied that no injustice would be caused, make such amendments to the charge as appear necessary or desirable."

E Having discussed the matter with my learned friend, she has no objection to such an amendment.

THE CHAIRMAN: Miss O'Rourke?

MISS O'ROURKE: Sir, yes. It does not cause any disadvantage to the practitioner. In the circumstances, we consent to that amendment.

F THE LEGAL ASSESSOR: In those circumstances, consulting with me, I advise that as there is no apparent injustice that is forthcoming, that it is a measure that you are entitled to take and, I think, you would be encouraged to take.

G THE CHAIRMAN: Panel members? Yes. I have taken none verbal instructions from my fellows and all are agreed that we accept the advice of our Legal Assessor and we accept the submission of Mr Grundy. Accordingly, we will amend paragraph 2 to remove, "At approximately 10.30 p.m." and to commence with the word, "You". Mr Grundy?

H MR GRUNDY: Sir, I am obliged for that. The other matter which we have had some discussions about between the defence and the GMC, as this is an old rules case, is the effect of the commencement order, amended the Act of Parliament and the new rules with regard to the standard of proof. For the purposes of this case, I can confirm that the GMC

A take the view that the criminal standard of proof ought to apply to the charges. There are two reasons for that. One is the commencement order, in fact, refers specifically to the new rules and new cases and not to old rule cases. Secondly, this is a case which was originally sent from the PPC back in 2004. It was originally listed in 2005 but because of matters which are beyond the doctor's control with regard to enquiries which were taking place in Northern Ireland, this case has not been listed. In those circumstances, it might properly be said that it would be unfair, in those circumstances, that a different standard of proof should apply today than that that would have applied at the time this case would normally have come on for hearing. Sir, for those two reasons, one substantive, one procedural, we would concede, for the purposes of this case, subject to any advice you take from the Legal Assessor, that it would be proper and appropriate that you apply the criminal standard of proof.

C THE CHAIRMAN: Miss O'Rourke, again, I assume that is not something you would challenge?

MISS O'ROURKE: Sir, I would just like to briefly address you on it and to reinforce it. As

D I say, it is a matter that you should rule upon because were you not to rule upon it and, in particular, were you not to rule upon it in favour of my client, it might give rise, as far as I am concerned, to Rule 24(2).

THE CHAIRMAN: In the light of what has just been said, we will certainly rule on it. In the light of the nature of what was said, I wonder whether---

MISS O'ROURKE: Sir, I will be very brief.

E THE CHAIRMAN: Very well.

MISS O'ROURKE: I agree with Mr Grundy on both his grounds. The commencement order is said to apply to the new rules and new cases and this, clearly, is not one of them. Secondly, this matter was referred by the PPC towards the end of 2004. It was actually listed for PCC hearing in September 2005 and it was stood out because of a public inquiry in Northern Ireland that involved this case and a number of other similar cases. Sir, thirdly, I would say, in any event, it is appropriate because otherwise there would be prejudice to the doctor because of head of charge 5, which includes an allegation of dishonesty. In the circumstances, I say it is the criminal standard, beyond reasonable doubt. I do invite you to rule upon it.

THE CHAIRMAN: Thank you. Legal Assessor.

G THE LEGAL ASSESSOR: Sir, having considered this matter quite carefully and looked at the regulations, my advice to you is that you should proceed as if this were a case coming on before May, that the criminal standard of proof is that which is required by the General Medical Council.

H THE CHAIRMAN: Panel members, do you wish to retire to consider this or are you able to give me a view now? All three members of the Panel have indicated that they are happy to accept the submission and, of course, to accept the advice of our Legal Assessor.

A Therefore, for the two reasons indicated, this Panel will proceed fully under the basis of the old rules. It follows, therefore, that we will be operating on the basis that the standard of proof is that of the criminal courts. Thank you.

B MR GRUNDY: Sir, those are the only two preliminary matters. I think we are now at Rule 27(1)(a) where we turn to the reading of the charges and whether there are any admissions or denials in this case.

THE PANEL SECRETARY: The Panel will inquire into the following allegation against Dr Jarlath, Michael O'Donohoe, MB BCH 1978, National University of Ireland:

That being registered under the Medical Act:

- C 1. On 12 April 2000 you were employed as a consultant paediatrician at the Erne Hospital, Enniskillen.
2. You attended, assessed and inserted an intravenous line into Patient A, and in so doing you did not:
- D a. Make an adequate assessment of the condition of Patient A.
- b. Calculate an acceptable plan of fluid replacement.
- c. Ensure that a record was made on 12 April 2000 of your:
- E i. Assessment and diagnosis.
- ii Management plan, including a fluid management plan.
- iii Calculation of fluid replacement requirements.
- iv Fluid prescription stating the identity of the fluid and the rate of infusion over time.
- F d. Ensure that the nursing staff upon the ward knew of an adequate:
- i. Fluid replacement plan.
- ii. System of monitoring its progress.
- G e. Monitor or check Patient A again prior to a crash call at about 3 a.m.
3. You instructed Staff Nurse Swift to administer a solution:
- a. Off 0.18% sodium chloride / 4% dextrose.
- b. At a rate of 100 mls per hour until Patient A had passed urine.
- H 4. On 14 April 2000 you made a record of what your fluid management plan for

A Patient A on 12 April 2000 had been, as being:

- a. A bolus of 100 mls over 1 hour.
- b. Followed by 0.18% sodium chloride/4% dextrose at 30 mls per hour.

B 5. Your record was:

- a. Inaccurate.
- b. Misleading.
- c. Dishonest.

C 6. The fluid regime set out at paragraph 4 above was:

- a. Not communicated properly by you to those administering the fluid.
- b. Not monitored or checked by you to ensure that it was followed.
- c. Not appropriate in any event.

D 7. Your actions or omissions as described at paragraphs 2, 3, 4, 5 and 6 above were:

- a. Not in Patient A's best interests.
- b. Below the standard to be expected of a reasonably competent consultant paediatrician.

E and that in relation to the facts alleged you have been guilty of serious professional misconduct.

THE CHAIRMAN: Panel Secretary, thank you. Miss O'Rourke, may we first identify the doctor?

F MISS O'ROURKE: Sir, yes.

DR O'DONOHUE: My name is Jarlath Michael O'Donohue. My GMC registration number is 2635147.

G THE CHAIRMAN: Doctor, thank you very much indeed. Miss O'Rourke, will you indicate to the Panel whether any or all of the matters read out by the Panel Secretary are admitted, please?

H MISS O'ROURKE: Sir, head of charge 1 is admitted. Head of charge 2, the stem, as now amended, is admitted. 2(c) is admitted in respect of all four parts; that is (i), (ii), (iii) and (iv). 2(e) is admitted, 3 is admitted as in the stem and (a) only. 6(b) is admitted; the stem and, obviously, (b). Sir, can I just make clear at this stage that 4 is not admitted for this reason only: I raise it now because, of course, the Panel, under the old rules, does

A have a power to amend of its own volition, should it think appropriate at any further moment. Should head of charge 4 have had the word "recollection" inserted in the stem of it, so that it read:

"...You made a record of what your recollection of your fluid management plan for Patient A had been, as being..."

B Then we would have admitted it. Because the word "recollection" is not included in there we say it is not appropriate to admit. In due course you will see the relevant note. Sir, it is not that we are not saying that he made a note as to he did a bolus or the solution but we are saying that the note clearly stated two days later, or 36 hours later, this was his recollection.

C THE CHAIRMAN: Miss O'Rourke, thank you very much. Paragraph 1 is admitted and found proved. The stem of paragraph 2 is admitted and found proved. The whole of paragraph 2(c); that is to say, (i), (ii), (iii) and (iv), are all admitted and found proved. 2(e) is admitted and found proved; 3, the stem and (a) are admitted and found proved; 6, the stem and 6(b) are admitted and found proved. The specific none admission in respect of paragraph 4 has been noted and also Miss O'Rourke's indication to the Panel that it is open, at an appropriate stage, should it so wish, to consider the potential for amending, in particular by the insertion of the word "recollection" in respect of fluid management. D That is noted. Thank you very much.

E MR GRUNDY: Sir, if I could then turn to the GMC's opening in this case? In a moment I will hand up an agreed Panel bundle. Before I do that, just to deal with the matter pragmatically, given the time that we have started now, I did have two witnesses potentially lined up to give evidence. One who has flown in from Northern Ireland first thing this morning and, in fact, has been up, I think, since half-past three this morning. In the circumstances, it is clear that we were not going to get to her evidence today. She has returned to Northern Ireland, or is in the process of returning. I have pencilled her in now to return on Wednesday morning.

F As far as tomorrow is concerned, we had always had a video link set up for tomorrow morning, with a witness to give evidence from Northern Ireland. It is proposed that that is, in fact, what we will do tomorrow morning. I suppose it may be said to be taking that witness out of order. It seems convenient now to continue with that. We will have video link evidence first thing tomorrow morning and then a further witness tomorrow afternoon, and then Wednesday morning, returning to the witness who will be Nurse Swift, who I will refer to in my opening. Then the GMC have an expert witness, Dr Evans, who will be giving evidence either Wednesday or Thursday.

G Hopefully, that will assist the Panel as far as, certainly, where we are likely to reach during the course of this week. I should say, with regard to the video link evidence, the matter has been discussed with the defence and there is no issue that, in fact, the witness is too ill really to attend. On that reason it has been agreed that she can give evidence via video link. We will not need to trouble the Panel with a number of authorities on whether it is appropriate, in the circumstances, for video link evidence to be given.

H That being said, could I hand up a copy of the Panel bundle, which can be marked C1?