

COUNCIL FOR HEALTHCARE REGULATORY EXCELLENCE

NOTE OF CASE MEETING ON 6 JUNE 2005

AT 11 STRAND, LONDON WC2

Re: Dr Camille de San Lazaro OBE

PRESENT: Jane Wesson (Chair)
Professor Norma Brook
Professor Kieran Walshe

IN ATTENDANCE Professor Julie Stone (Deputy Director)
Briony Mills (Fitness to Practise Officer)
Len Murray, Associate, Baker & McKenzie (Legal Adviser)
Andrew Hill, Associate, Baker & McKenzie
Cecilia Fletcher, Associate, Baker & McKenzie

Definitions

In this note, the following abbreviations will apply:

"CHRE"	Council for Healthcare Regulatory Excellence
"the meeting"	Case meeting of CHRE members
"the FPP"	Fitness to Practise Panel
"the GMC"	General Medical Council
"Dr San Lazaro"	Dr Camille de San Lazaro OBE
"the Act"	<i>NHS Reform and Healthcare Professions Act 2002</i>
"the Campbell case"	Judgment of the Court of Appeal in the matter of <i>Campbell v The General Medical Council</i> [2005] EWCA Civ 250
"the Truscott/Ruscillo judgment"	Court of Appeal Judgment in <i>Dr Giuseppe Ruscillo v (1) The Council for the Regulation of Health Care Professionals (2) The General Medical Council and Council for the Regulation of Health Care Professionals v (1) The Nursing and Midwifery Council (2) Steven Truscott</i>

The FPP's decision

The meeting considered whether the decision of the FPP of the GMC on 13 May 2005 to find Dr San Lazaro not guilty of serious professional misconduct ("SPM") should be referred to the High Court under Section 29 of the Act. The FPP's decision followed Dr San Lazaro's admission of the factual matters alleged in charges 1 to 15 of the 16 charges brought against her and the FPP's findings from these factual matters that:

- in relation to the eight children cited during the hearing, Dr San Lazaro's actions were inappropriate in relation to seven, irresponsible in relation to six and unprofessional in relation to five; and

- in relation to a generic report dated November 1994 which Dr San Lazaro prepared at the request of and for the Criminal Injuries Compensation Board ("CICB") ("the Generic Report"), Dr San Lazaro's actions were inappropriate, irresponsible and unprofessional.

Documents

The following documents were before the meeting:

1. Report prepared by Baker & McKenzie dated 2 June 2005;
2. Determination of the FPP dated 13 May 2005;
3. Transcripts of the FPP hearing (13 days);
4. Exhibits C1 - C7 and D1 - D17, which were before the FPP; and
5. Certain correspondence received by CHRE from third parties since the FPP's Determination, as follows:
 - (a) Email to "Exec Pa" from DARETOCARE@aol.com dated 13 May 2005;
 - (b) Letter to Mr Sandy Forrest, Director, CHRE from Ms Madeline Greenhalgh, Director, The British False Memory Society dated 18 May 2005;
 - (c) Email to "Info" (addressed to Mr Michael Andrews) from Tania Hunter (taniach1@tchunter.freemove.co.uk) and attached letter, dated 25 May 2005; and
 - (d) Letter to CHRE from Dr Margaret Bark dated 31 May 2005 with enclosures. (together "Third Party Correspondence").

The meeting noted that it had seen the Third Party Correspondence. However, the meeting was mindful that, in considering the FPP's decision, it should treat with caution any material which was not before the FPP and which the parties had not seen. The Third Party Correspondence was therefore before the meeting as background, rather than forming part of its consideration of specific issues.

Conflicts of Interest

The Chair informed the meeting that the members convened had no apparent conflicts of interest and no conflicts of interest were registered.

Matters noted by the meeting

The meeting noted the matters set out below:

The FPP's findings

1. Dr San Lazaro admitted, and the FPP found, that:
 - (a) at the material times, Dr San Lazaro was practising as a Consultant Paediatrician at the Lindisfarne Centre, The Royal Victoria Infirmary, Newcastle-upon-Tyne, where she specialised in the area of child abuse;
 - (b) in 1993 and 1994, Dr San Lazaro examined more than 50 children from Shieldfield Nursery, Newcastle-upon-Tyne, following allegations of sexual abuse at the nursery;
 - (c) Dr San Lazaro produced records in relation to the children which included Child Protection medical records, medical reports, statements for use in criminal proceedings, and the Generic Report;
 - (d) on repeated occasions, Dr San Lazaro provided the Generic Report to the CICB;
 - (e) criminal charges were brought against two workers in the nursery, namely Christopher Lillie and Dawn Reed, in relation to six of the children allegedly abused;
 - (f) on 14 July 1994, Christopher Lillie and Dawn Reed were acquitted on all charges on the direction of the Honourable Mr Justice Holland following the exclusion of video evidence and the Crown Prosecution Service's decision to offer no evidence;
 - (g) Newcastle City Council subsequently appointed a team to review the abuse allegations, the report of which was published on 12 November 1998;
 - (h) Christopher Lillie and Dawn Reed thereafter brought libel proceedings against Newcastle City Council and that Review Team (*Lillee & Anor v Newcastle City Council & Ors* EWHC 1600 (QB) per Eady J);
 - (i) in a judgment delivered on 30 July 2002 in the libel proceedings, the Honourable Mr Justice Eady found that the claimants were entitled to judgment against the Council and members of the Review Team;
 - (j) Dr San Lazaro gave evidence on oath in the libel proceedings, during which she acknowledged that, as most of the children allegedly abused were pre-verbal or poorly verbal, the medical assessments of them were of a potentially critical nature; and
 - (k) in the course of Dr San Lazaro's evidence, she agreed that:
 - i. there were deficiencies and/or inaccuracies in her recording in the Child Protection Medical Records;
 - ii. there were inconsistencies as between her medical records and her medical reports;
 - iii. there were inconsistencies as between her medical reports and police witness statements;

- iv. there were on occasions confusing uses of terminology;
- v. the Generic Report was written to support the claims of parents for criminal injuries compensation on the basis that their children had been sexually abused by Christopher Lillie and/or Dawn Reed;
- vi. she was responsible for the content of the Generic Report;
- vii. she had written the Generic Report without reference to records and notes, and that there were inaccuracies within it; and
- viii. the Generic Report was overstated, exaggerated and emotive.

The FPP's failure to apply the Campbell case properly

2. The FPP noted the admissions made by Dr San Lazaro as to the underlying facts. With respect to Dr San Lazaro's conduct, the FPP found in relation to a number of the children involved in the Shieldfield enquiry that her conduct was inappropriate, irresponsible and unprofessional. However, the FPP's overall finding was that Dr San Lazaro was not guilty of SPM.

3. The FPP heard submissions on the *Campbell* case and received advice from the Legal Assessor. The FPP was referred to certain passages in the *Campbell* judgment. In its determination the FPP decided that the *Campbell* judgment drew a distinction between contextual mitigation (defined by the FPP as the circumstances in which the doctor found himself at the time of the incidents in question) and personal mitigation (defined by the FPP as testimonials and other character evidence). The FPP quoted a particular passage of Lord Justice Judge's judgment where he said that:

"...the error under consideration may need to be examined in the context of a dedicated practitioner working in isolation and under huge pressure of, say, an epidemic. Such circumstances may be relevant to the question whether he should be found guilty of serious professional misconduct. In short, the same facts may on occasion impact both on the question of whether the practitioner's conduct amounted to serious professional misconduct, and on the appropriate consequential action."

4. The FPP therefore decided that it was able to consider what it had defined as contextual mitigation in deciding whether or not there had been SPM. In doing so, the FPP appeared to place too much weight on this particular passage of the *Campbell* judgment. In addition, the FPP did not appear to consider, or take proper account of the overall reasoning in the

Campbell judgment or of the guidance the Court of Appeal provided in the summary of its judgment set out in paragraph 46. In particular in paragraph 46(3) the Court of Appeal stated:

"Although, they [the FPP] can, if they think it right to do so, consider the circumstances in which the practitioner found himself when committing the relevant misconduct, they should always be alert to the possibility that such circumstances may be more properly relevant to the question of penalty rather than to the question whether the professional misconduct was serious; in particular committees should not use personal mitigation to downgrade what would otherwise amount to SPM to some lesser form of conduct."

5. The meeting considered that the FPP incorrectly applied the *Campbell* case either because in the circumstances of this case it was not appropriate to take the context into account in deciding whether or not there had been SPM or, if this in itself was not inappropriate, the FPP did not properly apply the principles of the *Campbell* case by giving too much weight to the context to find Dr San Lazaro not guilty of SPM.
6. In addition, the FPP may also have inappropriately had regard to personal mitigation in considering whether there had been SPM. In considering what the FPP had defined as contextual mitigation, the FPP referred to the testimonial provided by Professor Christopher Hobbs, Consultant Paediatrician at the St James University Hospital, Leeds and the FPP noted that it had heard a "*great deal of praise of your pioneering work in establishing the Lindisfarne Centre*".

Under prosecution

7. The meeting had regard to the comments of the Court of Appeal in the *Truscott/Ruscillo* judgment concerning under prosecution.
8. The charges brought against Dr San Lazaro did not allege matters to the effect that her conduct involved dishonesty or untrustworthiness or a serious compromise of her professional integrity. The meeting considered, given the matters noted below, that there were grounds to consider issues such as whether Dr San Lazaro's conduct had been dishonest or untrustworthy or seriously compromised her professional integrity. The omission of these or similar grounds addressing these issues from any of the heads of charge appeared to prevent the FPP from giving proper consideration to the characterisation and implications of Dr San Lazaro's

conduct. The meeting therefore considered that there may have been under prosecution in this case.

9. The meeting was referred to extracts from the judgment of Mr Justice Eady in the libel proceedings. The meeting noted the judge's findings concerning Dr San Lazaro, particularly the following:
 - (a) *"However ready Dr San Lazaro may be now to recognise her human frailties, and the improved techniques available today for dealing with such cases, there are certain facts that cannot be obscured. The truth is that Dr San Lazaro's professional judgment and objectivity were in some cases hopelessly compromised. In particular, I can hardly sweep under the carpet the untrue accounts she was giving to the Criminal Injuries Compensation Board with a view to assisting some of the parents to recover compensation out of public funds. She herself recognises there were "inaccuracies". She could hardly do otherwise. I am afraid, however, that the problem is more fundamental and goes to professional integrity rather than competence." [paragraph 546]*
 - (b) *"She actually admitted to Miss Page that she had adopted the role of "advocate" for the children's compensation claims and this inevitably seriously compromised her professional independence and integrity. Many thousands of pounds of public money were paid out at least in part as a result of her assertions." [paragraph 648]*
10. Although the FPP was referred to the comments made by Mr Justice Eady during the course of the hearing, it did not appear to have considered them and it was not referred to his judgment. The meeting considered that, given the findings made by Mr Justice Eady in his judgment, the FPP should have had access to it. The meeting also noted that Mr Justice Eady had awarded each of Christopher Lillie and Dawn Reed the maximum possible award of damages for libel.
11. There was also a degree of under prosecution because the FPP did not hear from witnesses who could have given evidence about the impact of Dr San Lazaro's conduct in terms of harm to the parents and children involved. For example, it may have been appropriate for the FPP to have heard evidence from practitioners involved in the care of the children concerned after steps had been taken due to the initial allegations about the Shieldfield nursery. This was also relevant to the FPP considering all relevant matters in relation to whether or not a finding of not guilty of SPM would maintain public confidence in the profession.

Failure to meet appropriate standards

12. Given that Dr San Lazaro admitted the facts underlying the charges, the FPP concluded that Dr San Lazaro's conduct had been inappropriate, irresponsible and unprofessional in certain respects. However, in reaching conclusions from these matters, the meeting considered that the FPP also failed to consider, or to consider properly, the standard of conduct that might have been expected from Dr San Lazaro.
13. Reference was made by the FPP to certain guidance which was applicable at the time at which the incidents considered by the FPP occurred:
 - (a) with respect specifically to child sexual abuse; and
 - (b) with respect generally (the GMC's document "Professional Conduct and Discipline: Fitness to Practise (January 1993)").
14. The meeting noted that the extracts of the documents which were provided to the FPP with respect to child sexual abuse focused on issues of record keeping and the use of consistent terminology in reporting, rather than generally in relation to the precepts of good medical practice in the area of child sexual abuse.
15. The meeting noted that the FPP referred to the GMC's 1993 document with respect to good standards of medical care and to the signing of documents by doctors containing statements which are untrue, misleading or otherwise improper and to its finding that Dr San Lazaro did not adhere to the principles of good practice outlined in these documents in her production of medical records, medical reports and police statements with regard to seven children. The meeting considered that, given these and the other findings made by the FPP with respect to Dr San Lazaro's conduct, the FPP should have considered, in assessing whether or not there was SPM, whether Dr San Lazaro's conduct had been dishonest or untrustworthy or seriously compromised her professional integrity.
16. The FPP accepted Dr San Lazaro's evidence that she was looked upon as the person with most expertise in her speciality in her region, had been a senior lecturer in paediatric forensic medicine for four years, had been responsible for training paediatric colleagues, organised conferences on child abuse both nationally and internationally and was an acknowledged author in the field. The FPP also recognised that she had a responsibility, not only in relation to her individual practice, but also as a supervisor of more junior colleagues, to set an example by complying with the standards set in the guidance relevant at the time. However,

it appeared that the FPP did not consider the wider impact of Dr San Lazaro's behaviour in terms of setting an example, or did not take proper account of these matters, in deciding whether there had been SPM.

Undue lenience and public protection

17. The meeting supported the proper and appropriate reporting by practitioners of child protection issues. However, given the matters noted above, the meeting considered that the FPP's decision did not protect the public and the reputation of the profession, which includes maintaining public confidence. The meeting also considered, based on the matters noted, that finding Dr San Lazaro not guilty of SPM was unduly lenient.
18. In particular, given the underlying facts admitted by Dr San Lazaro, that this is a particularly sensitive field where harm can be caused to children and parents by improper reporting which is not within the relevant guidelines, and her position as someone who should have set an example to other practitioners, the meeting considered that the finding that she was not guilty of SPM was inadequate in terms of the message sent to the profession and the public.

Remittal of the case to the FPP

19. The meeting considered that because of the FPP's failure to apply the *Campbell* judgment properly and the apparent under prosecution of parts of the case it would be appropriate for the case to be remitted to the FPP with appropriate directions from the Court. The meeting therefore decided it would not be appropriate to consider the specific alternative sanctions that might have been imposed had the FPP found that there had been SPM. However, the meeting considered that it would be appropriate for the FPP to impose some form of sanction given that the meeting's view was that finding Dr San Lazaro not guilty of SPM and not imposing a sanction failed to protect the public and was unduly lenient.

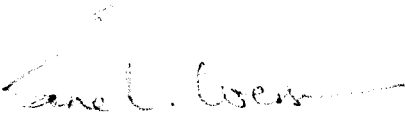
Conclusion

The meeting concluded that:

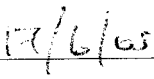
1. It had jurisdiction under section 29(4)(b) of the Act to consider whether or not to refer this case to the High Court.

2. Based on the matters noted by the meeting at paragraphs 1 to 19 above, the relevant decision of the FPP of the GMC to find Dr San Lazaro not guilty of SPM was unduly lenient and should not have been made and it is desirable for the protection of members of the public for CHRE to refer this case to Court.

3. The meeting decided that it would be appropriate to exercise CHRE's discretion to refer this case to the Court, including so that the Court would be able to consider how the *Campbell* case should be applied by all of the regulatory bodies.



Jane Wesson (Chair)



Date: