GAYNOR McALLISTER – 17th June.2004

IN THE HEALTH PROFESSIONS COUNCIL

CONDUCT AND COMPETENCE COMMITTEE (COMPETENCE CASE)

HPC

Applicant

- v -

GAYNOR McALLISTER
(Occupational Therapist)

Respondent

Registrant

THE PANEL

Keith Ross	-	Chair and Council Member
Margaret Jackson	-	Occupational Therapist
Elspeth Metcalf	-	Lay Partner
Karen Rea	-	Legal Assessor

Parties' Representatives

HPC – Ms Nicola Hill, Solicitor, Kingsley Napley, Solicitors

Respondent Registrant – Did not appear and was not represented

HPC Administration Staff Member – Ms Sabrina Adams, Case Manager

<u>The Hearing</u> took place at 10.30 am at the HPC Headquarters, Park House, 184 Kennington Park Road, London SE11 4BU.

INTRODUCTION

The Practitioner was a Senior 11 Occupational Therapist working for The Royal Cornwall Hospitals NHS Trust. She had been responsible for 14 to 16 collective orthopaedic in-patients at a time, home visits and a Pre-Admissions Clinic.

THE ALLEGATION

The allegation was that her fitness to practice was impaired by reason of her lack of competence between 17.04.2001 and 09.09.2003.

SERVICE

The Practitioner was registered as an OT with the HPC on 28.08.1996. She was born on 20.02.1966 (now aged 38). She was served at her registered address:

1. With the notice of allegation on 18.12.2003.
2. With the date of the Competence Hearing on 27.04.2004.
3. With the Hearing Bundle on 02.06.2004.

The Practitioner was not present at the Hearing and had not arrived by 10.35 am. The Panel ruled that it could proceed in her absence under Rules 3(1)(b) and 11 of the HPC (C+C Committee) (P) Rules 2003 ("the said Rules"), service having been proved by the Council and legal advice by the Legal Assessor on this having been given.

THE EVIDENCE

The Council sought to adduce the written evidence of Ms Anne Davidson, Deputy Occupational Therapy Manager of the Trust in her absence due to a sudden family illness. The Legal Assessor advised the Panel under Rule 10(1) (c) of the said Rules 2003 (power of the Committee to hear and receive evidence that would be inadmissible in a Court if it is satisfied that its admission is necessary to protect members of the public). The Panel ruled that it would hear and read that evidence in written form.

The Council's other witness was Ms Sally Condliffe, a Senior/Occupational Therapist at the said Trust, who attended to give her evidence.

The Practitioner's lack of competence was referred to by both witnesses, as follows:

- Extensive sick leave.
- Unacceptable levels of time-keeping.
- Unacceptable levels of attending work.
- Poor professional behaviour.
- Lack of trustworthiness.
- Lack of adequate notes on patients.
- Failure to check post-operative notes to confirm the Consultant's.
- Lack of motivation to complete her work.
- Lack of communication with professional colleagues.
- Poor team worker.
- Lack of reliability for attending meetings.
- No insight into her professional problems/issues.
- Measuring a patient for a knee brace whilst patient still had a Plaster of Paris ("POP") on the affected leg; on being told this, the Practitioner proceeded to fit the brace on the patient's <u>opposite</u> leg.

Despite various and numerous detailed efforts made by the Trust to help the Practitioner plan how to deal with her shortcomings within the Trust's Capability Procedure and on initial positive start by the Practitioner, her work did not improve further with further examples of her poor levels of competence as follows:

- Continuing high levels of sickness days off.
- Continuing incidents of failing to check post-operative notes to confirm the Consultant's instructions and in one case, the patient not checked until the day of discharge.
- Failing to check post-operative notes on a transfer patient.
- Failing to observe or assess the patient's performance and activities.

- Failing to assist or assess a struggling patient trying to get in and out of his chair.
- Frequently delegating her own workload to others who were more junior or who were not qualified OTs and less experienced.
- Failing to perceive how a patient could eat without adaptive cutlery.
- Failing to document restricted movement, this being on basic OT requirement.
- Failing to assess patients on home visits.
- Failing to structure and plan her workload, leaving patients with rushed discharge procedures and vulnerable to foreseeable problems.
- Concocting records so a to fill in gaps in the patients' records.
- Noting a patient's achievements on a record on a day when that patient was in theatre undergoing a Total Knee Replacement (17.07.2003) when it would have been physically impossible for that patient to have been either assessed or achieved the results documented by the Practitioner.
- Leaving a 99 year old female patient with a weighty full POP on her leg in a hoist, purportedly to relieve her pressure areas, when it was a very dangerous position for that patient.
- A general lack of intervention by the Practitioner in her patients' care.

The Trust concluded on 08.08.2003 that, despite excellent support to the Practitioner from Ms Condliffe and Ms Caroline Bawn, Head Occupational Therapist, the Practitioner had not taken any or any sufficient responsibility for her own performance. It was felt that there was an over-reliance on others and a failure to plan her work. The Trust decided to invoke their Capability Procedure.

However, this was pre-empted by the Practitioner resigning which letter was dated 9th September 2003, one day before the planned Capability Hearing due on 10th September 2003.

The hearing continued in her absence and the conclusion was that the Practitioner had failed to meet the agreed capability objectives and that she would have been

dismissed had she still been employed on the grounds of her viability to perform her duties satisfactorily.

The Practitioner did not attend the HPC Competency Hearing and was not represented. It was noted that Ms Condliffe stated that even with support the Practitioner would not have been able to gain skill as a competent OT because the Trust had tried to support her and she had not improved. She felt that the Practitioner did not even have the level of competence of a junior OT or of a qualified OT and she would expect better levels of improvement from student OTs than she found with the Practitioner. She had had no contact with the Practitioner since the events of September 2003 and did not know if or where she was working.

She stated in answer to the Panel's questions that the cases put before the Panel today were a "fair proportion" of the Practitioner's workload, which was lighter than normal.

However, she further stated that the Practitioner had received compliments about her work from patients, and acknowledged Mr Davidson's view that she herself may have made it more difficult for the Practitioner to take responsibility for her own work by being "too kind" to her (see Bundle p71, para 4). She acknowledged that the Practitioner had expressed concern about her own struggle to cope with pressures.

Following closing speeches, the Panel were advised by the Legal Assessor that they should consider each allegation separately, and if the allegations are not well founded (Art 29(1) HPO 2001). If so, they should declare that, with reasons. They should then consider if there are allegations that are well-founded and when stating so, should give reasons. In considering whether an allegation is well-founded or not the Panel should consider if they are satisfied:

(i) that the proven facts relevant to the allegation have been proved by the Council;

(ii) that the proven facts amount to incompetence;

(iii) that the incompetence has impaired the Practitioner's fitness to practice so that the public is not protected.

The Panel were advised that the Council have to prove the case on the balance of probabilities; the more serious the allegation, the higher the level of probability. The Panel then retired. Upon their return, the Panel gave their decision that the charge that the Practitioner's fitness to practice was impaired by reason of her lack of competence between 17.04.2001 and 09.09.2003, whilst employed by The Royal Cornwall Hospitals NHS Trust, is well-founded. The Panel felt the evidence was reliable and noted examples of unacceptable standards of note-taking, a failure to provide pre and post-operative assessments, unacceptable patient intervention and deficient workload planning.

The Panel was satisfied that the Practitioner had been given an opportunity to remedy those deficiencies and had not taken them.

Her actions and omissions fell below the standards expected of a registered health professional and as set out in the Standards of Proficiency for Occupational Therapists.

Therefore, the Panel found that her fitness to practice was impaired.

The Panel was then advised that nothing had been received by the Council from the Practitioner in mitigations and that nothing was known about the Practitioner since these events and there was no record of any previous findings. The Legal Assessor then advised the Panel on the various sanctions available to them to impose under Articles 29(4) and (5) (b), (c) and (d) of the HPO 2001, Article 29(5) (b) to (d) to be read **in reverse order**.

The Panel retired. On their return, they imposed a one year suspension Order because of the risk to patients and because a caution or an additional practice Order would not protect the public. The Council was asked to annotate the Register accordingly and the Practitioner was advised on her right of Appeal within 28 days or of a Review within the duration of the Order of 12 months.

The Council then asked for an Interim Suspension Order to be made under Article 31 HPO 2001. The Legal Assessor advised the Panel on their power under Article 31(2)(a) with examples of when Interim Orders can be made; for example, in cases involving serious or persistent failure in clinical care (inter alia). Interim Orders should not be made lightly and the Practitioner was not represented.

The Panel retired. They returned and stated that they had decided to impose the Interim Suspension Order for 28 days. Having already identified the risk to patients in this case by reason of the Practitioner's lack of competence and impaired fitness to practice, and the detailed evidence that supports the persistent failure in clinical care, the Panel felt that the Suspension Order should take effect immediately and so the Interim Suspension Order for 28 days was granted.

That concluded the proceedings.

Karen Rea
Legal Assessor

17th June 2004

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