



HEALTH EDUCATION AND SOCIAL CARE CHAMBER

FIRST TIER TRIBUNAL

PRIMARY HEALTH LISTS

Case No. PHL/15479

TRIBUNAL JUDGE: Christopher Limb

PROFESSIONAL MEMBER: Dr Howard Freeman

LAY MEMBER: Professor David Croisdale-Appleby

BETWEEN:

**DR SUBRAMANIAM YOGADEVA
GMC Reg. No. 1637825**

Appellant

and

**NHS NORTHEAST LONDON AND THE CITY
(formerly TOWER HAMLETS PRIMARY CARE TRUST)**

Respondent

DECISION

INTRODUCTION

1. We sat to hear this case in London on 26th November 2012. We were assisted by Skeleton Arguments from both parties and by helpful oral submissions by Counsel for both Parties. No oral evidence was given. We had a bundle of written evidence (to which I further refer to later in this

Decision) largely consisting of the decisions or material relevant to the decisions of the Primary Health List decision of 23rd August 2011 or the decisions of the Fitness to Practice Panel of the General Medical Council of February 2012 and October 2012.

2. The application before us was an application for national disqualification. In the course of this Decision we shall refer to the Parties as “Dr Yogadeva” and “the PCT”.
3. The history of the case is a little unusual and in summary is as follows:
 - 5.11.09 - PCT removes Dr Yogadeva from its Performers List. There had been preceding suspensions both by the PCT in March 2009 and by the GMC in May 2009.
 - 23.8.11 - PHL upholds Appellant’s appeal to the extent of making an order for contingent removal. Such was on the basis of conduct prejudicial to the efficiency of services and not upon the ground of unsuitability. Various conditions were applied to future practice.
 - 3.11.11 - PCT applies for variation of conditions but such is superseded on 1.2.12 by GMC FTTP imposition of 9 months suspension order.
 - 14.2.12 - PCT removed Dr Yogadeva from its Performance List pursuant to Regulation 26(1)(c) of the 2004 Performance List Regulations. Application for variation of conditions was withdrawn.
 - 18.4.12 - PCT applies for a national disqualification order including consideration of a 5-year order (the application now being heard).
 - 30.10.12 - GMC FTTP review hearing decides to permit Dr Yogadeva to remain upon the GMC Register but imposes conditions upon registration for a period of 18 months.
4. The present application is therefore heard in rather different circumstances to most cases. In most cases an application for national disqualification is heard either as part of or at the end of a hearing considering removal and/or very shortly thereafter.
5. The PHL Decision of August 2011 and the GMC decision of February 2012 considered various allegations which were similar to each other but which were not the same. Their findings were in some regards similar but not in all respects the same. The following summary, although lengthy, is not intended

to be in substitution for a full consideration of the allegations and the findings at the two hearings. We take the full Decisions into account.

- (a) The PHL Tribunal in August 2011 found the allegation that Dr Yogadeva did not deliver the Extended Hours Local Enhanced Service Scheme according to its terms and made inappropriate claims under the Scheme. It was however noted that it was not alleged (or found) that the claims were made with intention to defraud the NHS. The Panel did not find proved an allegation relating to manipulation of results of General Practice Assessment Questionnaires. The Tribunal did not find proved an allegation that a vaccine for children had been inappropriately administered to adults. The Tribunal did not find proved an allegation that Dr Yogadeva acted dishonestly in relation to the Prescribing Incentive Scheme. The Tribunal found proved an allegation that Dr Yogadeva acted inappropriately and unprofessionally towards his staff and other professionals. Such was in the nature of a lack of respect for their professional expertise and opinions and an aggressive manner. The Tribunal found proof in the allegation of inappropriate sexualised behaviour towards a member of staff. An allegation that there had been inappropriate sexualised behaviour towards patients was not found proved. An allegation of failure to carry out home visits when appropriate was found proved. An allegation of failure to respond to clinical emergencies was found proved but there was no suggestion that there was any injury or harm to patients resulting. An allegation that Dr Yogadeva discriminated against certain groups of patients was not found proved. An allegation that Dr Yogadeva discriminated against and failed to provide appropriate care to patients with substance misuse was not found proved. An allegation as to inadequate equipment was not found proved. An allegation as to non-compliance with chaperoning policies was not found proved. An allegation that Dr Yogadeva failed to engage appropriately with patient complaints was not found proved. An allegation that Dr Yogadeva failed to ensure patient confidentiality was not found proved. An allegation as to inadequate patient records was found proved and was found to have impacted upon the proper analysis of clinical management of individual patients. An allegation of failing to provide adequate clinical care to patients was found proved. In relation to the findings upheld it was noted that there was no evidence presented to show that patients were dissatisfied with the Extended Hours service, the unprofessional conduct towards staff and professionals was during a period of notable external pressures, the finding of inappropriate sexualised behaviour was at the lower end of the spectrum of seriousness of such cases, the failure to carry out home visits did not involve poor clinical care but lapses in judgment and professionalism, the allegation as to failure to respond to clinical emergencies showed not poor clinical care but lapse in judgment and professionalism, and the allegations raised in relation to recordkeeping were described as either appalling or very poor (depending on the wording of the individual experts in question). The overall view taken of inadequate clinical care and its context is not so clear over and above the issues of maintenance of records and safe systems. Against such background it is expressly said "Taking into account the context of various findings made, and weighing up their

seriousness, the Panel has concluded that in their totality they do not make Dr Yogadeva unsuitable to continue to work as GP". The conditions then imposed related to formulating a personal development plan with the assistance of the London Deanery, obtaining a placement in an advanced training practice approved by the Deanery and working there under supervision, and thereafter consideration of a report upon such placement before consideration of unconditional inclusion in the list. He was not to work out of hours or as a locum.

- (b) The GMC FTTP found proved an allegation that there had been replacement or avoidance of poor GPAQ ratings but no financial advantage as opposed to reputation advantage. An allegation in relation to the Extended Hours Scheme was found proved including that claims for payment were made on the basis of times of appointment which were not true. It was not found that an inadequate service was thereby provided to the patients in question. An allegation was upheld that there was a claim for equipment under the Prescribing Incentive Scheme which was not then used at the Practice, in the context of an inappropriate crossover between professional and private finances. Allegations relating to failure to make appropriate home visits was upheld and was upheld on the basis of a reluctance to make home visits as opposed to being too busy or under pressure. Allegations relating to failure to heed and to communicate professionally with a palliative care nurse and her concern for a patient were upheld. Allegations relating to inappropriate behaviour to an employee were upheld as were similar allegations to other professionals. Various allegations relating to the premises were upheld. Allegations relating to poor professional performance were upheld. An allegation of dishonesty was upheld in relation to some of the allegations but not others. In particular it was held to have been dishonest behaviour in relation to the GPAQ surveys. Impairment of fitness to practice was found both by reference to misconduct and by reference to inefficient professional performance. It was held that a period of suspension was appropriate and proportionate (suspension of 9 months) but that "bearing in mind your current level of insight, the opportunity for future development, and the mitigating factors...the Panel has concluded that the unprofessional attitudes underlying your misconduct are not so deep-seated as to be irremediable. It considers your misconduct whilst serious is not fundamentally incompatible with continued registration." At the hearing in October 2012 towards the end of the period of suspension it was held that insight into deficient professional performance had been shown and an effort made to update skills and knowledge but that areas of deficient performance had not been addressed and patient safety would be protected if he were returned to unrestricted practice. Various conditions were therefore imposed of which the central condition was development of a personal development plan in conjunction with the post-graduate Dean with a view to addressing specific areas of practice, remaining under supervision, and being subject to assessment. The conditions were to apply for 18 months with a further review shortly before the end of such period.

LEGAL AND REGULATORY FRAMEWORK

6. The relevant Regulations within the NHS (Performance List) Regulations 2004 are principally:
 - (a) Regulation 10(4) providing for discretionary removal on the basis of a finding that inclusion in the Performance List would be prejudicial to the efficiency of services;
 - (b) Regulation 12 providing that in an efficiency case there may be a decision to remove contingently with conditions with a view to removing any prejudice to the efficiency of the services in question;
 - (c) Regulation 18A providing for national disqualification, inter alia upon application of a PCT;
 - (d) Regulation 19 providing for circumstances in which the review period for national disqualification would be other than 2 years;
 - (e) Regulation 26 providing inter alia for compulsory removal from the List in circumstances (inter alia) of a FTTP order of Suspension.

ISSUES

7. We take into account the full detail of the submissions made by both sides both orally and in writing and the following summary must be understood in such context.
8. The PCT contend that a national disqualification is to be seriously considered whenever there are findings of a serious nature which are not essentially local in character. It is said that the present case involves dishonesty and that such is another important factor in such context. It is noted that despite the history of this case the most recent FTTP hearing found that there were still areas of deficient performance which have not been addressed by Dr Yogadeva. Reference is made to the lack of courtesy and appropriate behaviour both towards patients and towards other professionals and it is suggested that in the context of a 70 year old practitioner it is unrealistic to think that such behaviour will now change. Recognising the likely (and actual) argument on behalf of Dr Yogadeva that both the PHL and the GMC have made orders allowing continuing practice subject to conditions and that a national disqualification would be a very different overall judgment, it is said that a national disqualification is fair, necessary and proportionate where the deficiencies are notable and serious and have not been addressed despite opportunity to do so.
9. On behalf of Dr Yogadeva it is submitted that the Decisions of both the PHL and GMC Panels are of major significance and also indicate the notable progress made in relation to insight and remediation of deficiencies. Emphasis is placed upon the various indications by one or both Panels (some

of which we have made express reference to) indicating conclusions of insight and remediability and that Dr Yogadeva is not fundamentally unfit or unsuitable to continue practice so long as appropriate conditions are imposed.

DECISION

10. It is appropriate to note two legal principles which were advised by the Judge to the other members of this Panel and which were indicated to Counsel for both Parties and agreed by them to be correct. First, this Panel takes into account the findings of the previous Tribunals (both PHL and GMC) and gives respect to them, but is not bound by their conclusions and it must make its own independent determination and findings. Secondly, this Tribunal does not have any evidence before it other than that which is within the Bundle and which is the evidence before the previous Tribunals.
11. We make our Decision upon the basis of all the evidence over the past few years and the consequent position as of today. We agree with the view of previous Tribunals that the findings upheld against Dr Yogadeva are in several respects serious matters and show notable and important shortcomings both in terms of dishonesty/misconduct and in terms of clinical practice. We also note that both the PHL Panel and the two FPHP Panels have concluded on the evidence before them that Dr Yogadeva both showed insight and was considered to be capable with appropriate supervision and assistance of remedying his shortcomings. In relation more recent evidence we were impressed by the report of Dr Linney of 29th October 2012. Dr Linney is the supervisor for Dr Yogadeva under the general auspices of the London Deanery. He gives a very positive and optimistic report and assessment including his conclusions that Dr Yogadeva is “capable of assessing, investigating and treating patients appropriately”, that Dr Yogadeva has fully participated in discussions relating to proper records, that Dr Yogadeva’s own records lead Dr Linney to say that he was “impressed by his ability to produce concise and focussed summaries”, and that Dr Linney saw appropriate interaction in observation sessions and in in-house nurse-led diabetes clinics. He also indicates his view that Dr Yogadeva has reflected at length on aspects of dishonesty and fully accepts his failings with significant remorse. Dr Linney expresses the overall opinions that Dr Yogadeva has a good basic medical knowledge and is essentially a potentially capable and competent doctor, that such is based upon a relatively limited amount of time working with him but in the context of him having worked with many learners/trainers over the years, and (overall) that the Deanery Induction/Refresher Scheme would enable him to demonstrate that he has addressed performance deficiencies and help him develop his reflective capabilities. Dr Linney (in effect) leaves the issue of dishonesty/probity to others.
12. Taking into account the substantial evidence before us and having heard the various submissions made we have come to the conclusion that although various allegations of a serious nature have been found proved, it is appropriate to conclude by reference to both the previous Tribunal’s findings and the absence of any contradictory evidential basis that Dr Yogadeva has appropriate insight and willingness to deal with his failings in the context of

the conditions to which he is now subject. In such context it is not just appropriate or proportionate to impose an order for national disqualification. In such a context we do not expressly further direct our Decision towards the issue of whether any such order should be subject to review after 2 years or 5 years.

13. No order for national disqualification is made.

CHRISTOPHER LIMB

Tribunal Judge

9 December 2012

