



**Primary Health Lists
The Tribunal Procedure Rules (First-tier Tribunal) (Health, Education and
Social Care) Rules 2008**

Dr Chinatu Akano

V

Herefordshire PCT

[2012]PHL 15510

Heard on 27 and 28 November 2012 at Hereford

Judge	Judge Nancy Hillier
Professional member	Dr Parvinder Singh Garcha
Independent member	Professor Croisdale-Appleby

Dr Chinatu Akano represented himself and gave evidence.

Herefordshire PCT was represented by Mr Philip Grey who called Dr Ilsey to give evidence.

DECISION

Appeal

1. Dr Akano appeals against the decision of the PCT dated 26 July 2012 to refuse his application dated 13 April 2012 for inclusion on its Medical Performers list. The refusal was stated to be pursuant to Regulation 6(1)(d) of the NHS (Performers Lists) Regulations 2004. The appeal is brought pursuant to Regulation 15.

Law

2. The legal framework for this appeal is largely contained in the NHS Performers List Regulations 2004, which sets out the criteria by which applications are to be considered. Regulation 6 (4) provides that “*Where the PCT is considering a refusal of the performers application under paragraph (1) it shall consider all facts which appear to it to be relevant.*” Further, Regulation 6 (5) provides “*when the PCT takes into consideration any of the matters set out in paragraph (4) it shall consider the overall effect of all matters being considered.*”
3. Regulation 8(1) provides that “*A PCT may determine that, if a performer is to be included in its performers list, he is to be subject, while he remains included in that list, to the imposition of conditions*” .
4. We must have regard to the same matters as a PCT and consider the proportionality of imposing conditions, taking into account all the relevant evidence in the case and considering the appellant’s interest in pursuing his profession on the one hand and the possibility of risks to patients on the other. The burden of proof rests on the appellant to demonstrate that he should be listed.
5. Regulation 15(1) provides that appeals are to be heard by way of redetermination and regulation 15(3) provides that the PHL may make any direction which the PCT could have made. Thus the PHL steps into the shoes of the PCT and decides whether conditions are necessary and proportionate in the circumstances of this case.

Background

6. Dr Okano qualified in Nigeria. From 2003 he has worked in the United Kingdom, in general practice from 2004. In 2008 his registration with the General Medical Council (GMC) was suspended by an Interim Orders Panel following concerns about him working excessive hours between April 2006 and September 2007, dishonesty in that he failed to notify NHS Gwent Healthcare that he was fit to work on a day where he

worked for another employer, thereby leading to his dismissal, and failing to disclose that dismissal to Bristol PCT when he applied to join their list in January 2008. There were no expressed concerns as to his clinical competence.

7. From August 2009 Dr Akano worked as an Out of Hours GP in South Wales on the list of Cardiff Local Health Board. His first application to Herefordshire PCT was made on 21st August 2009 when the GMC suspension was lifted, at which time Dr Akano was subject to conditions.
8. The August 2009 application was refused on 17 September 2010. Dr Akano's appeal in respect of that decision was refused on 17 January 2011. A second application, made on 21 January 2011, was withdrawn following his suspension by a GMC FTPP on 14 June 2011. The panel considered matters for which the Interim Orders Panel had suspended Dr Akano, some of which were accepted, and made findings against him. They imposed the sanction that Dr Akano be suspended for 9 months.
9. At a review held on 15 March 2012 the GMC determined that the suspension would be lifted with effect from 12 April 2012. Dr Akano was listed unconditionally by Cardiff LHB.
10. On the expiry of the suspension Dr Akano made this application dated 13 April 2012. In the refusal letter dated 26 July 2012 the PCT relied on 4 main issues for refusal of registration.

Forensic background

11. Dr Akano appealed the refusal of registration dated 26 July 2012 to this Tribunal on 3 August 2012. Following a telephone case management hearing held on the 28 September 2012 the parties were ordered to exchange evidence by 26 October and directions given towards an oral hearing.

Dr Akano's position.

12. Dr Akano asked that he be listed on the Hereford Performers list without conditions. He has made several concessions as to his future conduct, recorded under "agreed matters".

The PCT position

13. The PCT position at the start of the evidence was that they opposed the

appeal and submitted that Dr Akano should not be admitted to the list. Following evidence on the first day of the hearing this position was amended, and the PCT opposed unconditional inclusion on the list. Mr Grey provided a handwritten list of conditions which the PCT submitted should be imposed on Dr Akano's registration. These conditions included the following: That Dr Akano should not undertake out of hours work for the next 6 months and should not work more than 36 hours or 9 sessions per week. Further, that Dr Akano should meet monthly for 6 months with an Educational Supervisor and provide that person with information about his practise. The supervisor would report to the responsible officer at 3 and 6 months into the registration

Agreed matters

- Dr Akano agreed that he would supply a copy of his 1 February 2013 appraisal and the outcome of the review meeting expected to take place in February 2013 with Cardiff and Vale LHB to the PCT on receipt.
- Dr Akano agreed that he would not withdraw from the Cardiff and Vale LHB without notifying Hereford PCT.
- Dr Akano agreed that Hereford PCT and the Local Area Team of the NHS Commissioning board should be permitted to liaise with Cardiff and Vale LHB and to exchange information with them about him.

Issues

14. The panel identified the following issues for consideration in respect of the conditions which Hereford sought to impose:

- Should Dr Akano's working hours be restricted and if so to what level and for what period?
- Should Dr Akano be prevented from out of hours working for 6 months?
- Should Dr Akano be required to meet monthly with an educational supervisor?

Decision with reasons

15. We have carefully considered the written evidence contained in the bundle and the additional documentation supplied by the PCT and Dr Akano during the course of the hearing. We are grateful to Dr Ilsley and his colleagues for their reflection on the position when we had obtained the GMC decision on dishonesty and clarification on the chronology. We are

also grateful to Dr Leach for agreeing to assist with resources for an educational supervisor if necessary. We were impressed by the PCT willingness to reflect and assist, and whilst we heard Dr Akano's view that the PCT were working against him we do not believe that to be the case. There has been a regrettable breakdown of communication in the case, and we hope that now matters have been clarified constructive dialogue will be possible between the parties.

16. This is an unusual case. Dr Akano is listed unconditionally by Cardiff LHB. He has not been the subject of clinical complaint and the dishonesty found by the GMC did not relate to patient care. It is important to note that Dr Akano was not investigated nor found guilty of fraud. It was found that he had worked on 8 February 2008 for an agency. This was his day off and he was not paid by his employer in any event, the dishonesty relating only to his failure to notify the employer that he was fit to work on that day. There can be no doubt that he has worked excessive hours, and that such working put both himself and his patients at risk. We have had the benefit of reading his self reflection on that issue and hearing his evidence and we are satisfied that he is at low risk of repeating the circumstances which lead to his excessive hours. We find that Dr Akano wants to work "normal" hours and to enjoy family life. He wants to 'draw a line in the sand' and move to a new geographic area and make a fresh start.

Should Dr Akano's working hours be restricted and if so to what level and for what period?

17. The panel concluded that Dr Akano's working hours should be restricted for a short period of time but to a level which would allow him to continue his employment with the MoD. We agree with the PCT that it is a legitimate and appropriate matter to restrict his hours as Dr Akano returns to work. The PCT suggestion that the hours should be set at 36 hours or 9 sessions would prevent Dr Akano working in his current and prospective positions with the MoD, and would in our view be counterproductive. The MoD placement which he is now undertaking replicates GP practise in many ways, including some work with families and the elderly. It is clear that since September 2007 there have been no further concerns raised about Dr Akano working excessive hours. Whilst Dr Akano assures us that

the financial pressures which lead to the over work have now been dispelled due to his bankruptcy there needs to be a final sustained period of working "normal" hours for him to readjust and demonstrate to the PCT that he can be trusted to regulate his working hours. We have decided that a period of 3 months will be adequate to demonstrate this change, and that a restriction to the end of February 2013 will allow for a period of 3 months from the end of his suspension to reinforce a pattern of 'normal' working. The limit in terms of hours worked per week which we impose is 48 hours, a level previously imposed by the GMC.

Should Dr Akano be prevented from out of hours working for 6 months?

18. The purpose of restricting out of hours working is to ensure that Dr Akano is reintegrated to primary care and is fully up to date with, for example, care of the elderly. Although Dr Akano is not working in primary care at the moment the panel were satisfied that he was working in Primary care until his suspension and that the work he has been undertaking for the MoD has given Dr Akano sufficient reintegration opportunities as he has been undertaking some work in environments which are very similar to the GP role and has been undertaking out of hours calls. We have decided that this, coupled with a short term restriction on the number of hours worked and the potential to meet with a mentor, is sufficient to ensure that Dr Akano can return safely to primary care without the need for further restriction on his employment.

Should Dr Akano be required to meet monthly with an educational supervisor?

19. We reject Mr Grey's submission that the PCT is entitled to "some commitment" in respect of monthly meetings even if Dr Akano is working abroad. Dr Akano is working in Germany and may be sent further afield. He has assured us that if he is in England or Wales he would make every effort to meet with a mentor in Hereford, but that the logistics of a monthly meeting would be impossible if he remains stationed abroad. To require him to return to England for sessions may cost him his employment or set him up to fail his conditional registration. We are not satisfied that an educational supervisor is in any event appropriate to Dr Akano, whose clinical competence has not been called into question. We feel that he

would benefit from a mentor who could give him advice about local issues and working practices and possibly help him to make contacts in the area. That person could act as a critical friend and speak with him about any relevant concerns brought on by a change of location and discuss personal and professional issues in a confidential setting. We hope that the PCT may be willing to fund sessions with a mentor rather than an educational supervisor, on a voluntary basis, should Dr Akano be able to attend Hereford. We do not feel that there should be any element of compulsion either way or that it would be appropriate to impose the provision of a mentor or attendance at sessions with a mentor; however we are of the view that it would be mutually beneficial and encourage both parties to give it serious consideration.

20. In all the circumstances we have decided to allow the appeal in part, and to direct registration subject to a condition restricting working hours until the end of February next year.

ORDER:

Appeal allowed in part. Hereford PCT are directed to admit Dr Akano to its performers list with immediate effect with the following condition:

Until 28 February 2013 you will not work more than 48 hours per week and will provide evidence of your hours worked to the PCT if requested.



Judge Nancy Hillier

Lead Judge Care Standards and Primary Health Lists

10 December 2012