Primary Health Lists

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

Dr Rapinder Adekola

Applicant

V

NHS England

Respondent

[2014] PHL 15605

Before (on the papers) Judge Melanie Plimmer
Ms Mary Harley
Dr Elizabeth Walsh-Heggie

Sitting on 1 December 2014

DECISION

1. In a detailed application dated 1 May 2014, the Applicant lodged an application to this Tribunal for a review of her national disqualification. In a decision dated 23 February 2012 a Tribunal ('the 2012 Tribunal') imposed a national disqualification on the Applicant. Her application for a review is made pursuant to Regulation 18A(6) of the National Health Service (Performers Lists) Regulations 2004 ('the 2004 Regulations'). On this review we may confirm or revoke that disqualification.

Background to the 2012 Tribunal decision

2. The background to this matter has already been set out in the 2012 Tribunal's decision and is therefore only summarised here.

3. The Applicant worked as a GP from 2005 to 2011 in the Brackley/ Northamptonshire area. Following a referral from another agency in 2009 NHS Northamptonshire ('NHSN') became concerned about the Applicant's lack of insight into working with other agencies. NHSN also attempted to support her when the GP practice she was working for indicated concerns about own health and her severely adverse reactions to any perceived criticism of her.

4. On 30 March 2011 the Applicant was arrested with her husband following a police visit to their home to enquire about the attempted acquisition of scorpion / spider venom for research purposes. The police had been informed by the supplier of this attempted purchase that the request had

come from a company which was no longer trading but had been set up by the Applicant's husband. The police alleged that both the Applicant and her husband were aggressive when contact was initially made and they were both interviewed under caution. No charges were brought against them.

5. On 4 April 2011 the Applicant was suspended from her GP practice pending investigations. At a final disciplinary hearing held on 21 July 2011 the Applicant appears to have been dismissed for gross misconduct, although she contends that she resigned and was constructively dismissed. She sought to make a claim against the GP Practice in the Employment Tribunal in November 2013 but this did not proceed to a full hearing because the claim was made out of time.

6. A multi agency meeting in April 2011 discussed issues of concern regarding the Applicant, including alleged aggression towards police, the attempted acquisition of venom and potential use of venom for research outside an approved research framework. A reference committee was set up to investigate these concerns and the hearing took place on 21 September 2011. The Applicant was invited to participate but did not attend. At that hearing the committee concluded inter alia that: the Applicant failed to cooperate with and engage with the PCT / NHSN following the referral in 2009; in March 2011 she had been actively involved in planning research involving death stalker scorpion and black widow spider venom; when the police attended to discuss the referral she behaved in a highly aggressive manner; she failed to cooperate with NHSN thereby demonstrating an unwillingness to be regulated; she failed to keep NHSN apprised of her current address / telephone number / disciplinary proceedings in breach of Regulations.

7. The committee concluded that there was sufficient evidence as a result of these findings for the Applicant to be removed from the list on 'unsuitability' grounds. The committee also concluded that failure to engage in both 2009 and 2011 indicated a pattern of non-cooperation demonstrating an unwillingness to be regulated and a breach of the GMC Good Medical Practice guidelines. NHSN also referred the case to the General Medical Council ('GMC') and Dr Adekola was suspended by the Interim Orders Panel from 30 August 2011.

2012 Tribunal decision

8. The Applicant did not engage with the 2012 Tribunal's proceedings and did not submit any detailed evidence or outline her position in response to the allegations made by NHSN. The Tribunal regarded this to be deliberate [5] and drew adverse inferences from the Applicant's failure to engage with the PCT [24]. The Tribunal concluded that the Applicant consistently failed to engage with NHSN and ignored the most basic regulatory requirements, and therefore nationally disqualification was justified.

2012 Tribunal decision to present

9. Since the 2012 Tribunal there has been a particularly significant event. In a decision dated 11 June 2013 the GMC's investigating officer indicated that the case examiners had completed enquiries into the complaint made by NHSN. They decided to "*conclude [the] complaint with advice*" on the basis that the specific allegations before them (which were referred by NHSN in June 2011) did not meet the 'realistic prospect test'.

10. The Respondent has provided us with a print out from the GMC Register as at 10 November 2014. This states that the Applicant voluntarily relinquished her registration on 1 November 2013, having previously been registered with a licence to practice. It also states that she "*is not on the Medical Register and may not practice as a doctor in the UK*".

Legal framework

11. Regulations 18A(6) and (7) provide that a person who is nationally disqualified may apply for a review. The review cannot be made before the end of the period of two years beginning with the date on which the national disqualification was imposed or one year beginning with the date of a subsequent review. The Tribunal may confirm or revoke the disqualification.

12. Regulations 18A (national disqualification) and 19 (review periods on national disqualification) of the 2004 Regulations continue to apply for the purposes of any appeal or review relating to a national disqualification imposed under those provisions prior to the date of transfer – see Schedule 2(10) of the National Health Service (Performers Lists) Regulations 2013.

The evidence

13. We are grateful to both parties who have worked together to provide us with extremely detailed evidence. The two bundles of evidence for this case ran to just under 1400 pages. The Applicant has prepared extensive written submissions supported by exhibits. Both parties have contributed to a helpful Scott Schedule in which the Respondent identifies its past and current concerns against the Applicant, and the Applicant has set out her detailed responses to this.

Hearing

14. During the course of initial case management hearings the Applicant was keen to have an oral hearing. At a directions hearing on 8 August 2014 the parties were requested to reflect upon whether or not they required an oral hearing. At a further directions hearing on 9 October 2014 both parties indicated that they wished the hearing to take place on the basis of the papers only and this was request was granted. The Tribunal has reconsidered the appropriateness of dealing with this case without an oral

hearing and has decided that in all the circumstances it is appropriate to do so.

The issues

15. The Applicant has placed a wide range of allegations and detailed submissions before the Tribunal. These were clarified and narrowed during the course of directions hearings. The manner in which the issues have narrowed can be summarised in three ways. First, the Applicant agreed that she did not seek to set aside or appeal out of time against the 2012 Tribunal decision. She however wished for this Tribunal to consider those findings unsatisfactory because that Tribunal did not have the benefit of her active participation in the proceedings together with the much more detailed evidence that we now have. Second, irrespective of any past findings she is now currently suitable because there are no longer any extant disciplinary / criminal / regulatory investigations concerning her. In support of this the Applicant has drawn our attention in particular to the June 2013 GMC decision. Third, whilst the Applicant raised a number of allegations against the Respondent's conduct in the past, she has expressly agreed that the sole question for the Tribunal to determine is her current suitability for inclusion on the performers list in light of all the evidence now available – see the directions dated 8 August 2014 and 5 September 2014. Throughout these proceedings the Respondent has relied on the Applicant's lack of suitability. The Respondent's more particularised concerns are set out in the Scott Schedule, and the Applicant has of course responded to these.

16. In our view the overarching issue for is to determine is the Applicant's suitability for inclusion in the national performers list in light of all the evidence available to us at the date of hearing this matter on the papers.

Findings

17. After carefully considering all the evidence available to us together with the detailed representations from both parties we have concluded that the Applicant's national disqualification remains appropriate and proportionate in this case. We set out our reasons for reaching this conclusion in more detail below. In so doing we have not considered it appropriate to address each of the Respondent's concerns and the Applicant's responses as set out in the Scott Schedule but we have considered this document with care and taken it fully into account.

18. We acknowledge and accept that the Applicant has co-operated with the Tribunal in pursuing her review application before us. She has provided us with detailed submissions and evidence. In our view this should be contrasted with the Applicant's unwillingness to co-operate with the Respondent and its predecessors. The Applicant has demonstrated long-standing hostility toward NHSN and this has continued toward the current Respondent. The Applicant remained reluctant during these proceedings to disclose her correspondence details to the Respondent and the Tribunal

had to make specific directions to ensure that the parties were in adequate communication.

19. The Applicant has described why she should not have been registered with Northamptonshire PCT and why NHSN did not have the legal basis to take action against her between 2009-2012. We do not accept this. Whilst there was some understandable confusion as to who was the correct body to hold responsibilities for the Applicant's performer's list inclusion due to reconfiguration changes to the NHS structure, we are satisfied that NHSN was entitled to take the steps that it did. We accept the evidence of Dr Hopton that the Applicant has sought to raise obscure and irrelevant issues relating to the historic transfer arrangements to the PCT's lists in 2006 and the alleged failure on the part of NHSN to issue her with a certificate of inclusion then. We accept that it was lawful for the Applicant as a GP to be transferred to another PCT upon the dissolution of a previous PCT in accordance with the PCT (Establishment and Dissolution) (England) Order 2006 and that PCTs did not routinely issue certificates of inclusion on performers lists.

20. In any event, the Applicant has singularly failed to acknowledge that whatever historic concerns she had, a NHS body was entitled to regulate her inclusion on the performers list at the relevant time. We note that the matter was scrutinised in some depth and in accordance with the appropriate procedures by NHSN. This included a NHSN reference committee meeting being held in July 2011 as well as reference committee hearings in August and September 2011. We consider that NHSN acted in good faith at all material times and the Applicant has unnecessarily and unreasonably sought to question historical matters, without demonstrating any insight at all into the fact that the matters of concern required investigation and that she should assist with that investigation.

21. We do not accept that the Applicant was entitled to ignore NHSN in the manner that she has done when they sought to investigate concerns. We accept the evidence summarised in Ms Field's witness statement that the Applicant had numerous opportunities to engage with NHSN and chose not to do so. We also accept that the Applicant chose not to comply with the most basic requirements of the relevant Regulations such as failing to provide current contact details. She also failed to inform the PCT that interim conditions were imposed by the GMC. The Applicant explains that this was not done partly because NHSN was not the appropriate body to regulate her inclusion on the performers list and in any event she had immigrated to Australia. We do not accept the former for reasons we have provided above. We find that even if the Applicant did emigrate as claimed that there was sufficient time for her to comply with the reasonable requests made by MHSN and she deliberately chose not to do so. We are satisfied that the Applicant deliberately failed to acknowledge emails and telephone calls. A courier's delivery was refused by her husband on 28 July 2011. The courier reported that he "*was met by Mr Adekola who knew what the envelope was about, refused to accept it and was aggressive and abusive".* We do not accept that the Applicant played no

role in this. We note that an extract from her website dated 21 May 2012 makes it clear that couriers came to her home to deliver letters from the PCT but she did not accept them. This behaviour is consistent with her refusal to accept delivery of the letter from her GP practice informing of her dismissal in July 2011. An email of the letter was sent but not acknowledged although an email delivery receipt was obtained. It is of significant concern that the Applicant considered it appropriate to simply ignoring the reasonable steps that were taken to engage her by NHSN. Her failure to supply the most basic information under the relevant Regulations and her refusal to accept normal, recorded and special delivery mail from NHSN also demonstrate an unwillingness to be regulated.

22. The Applicant could and should have outlined her response to NHSN at the relevant time, even if was to explain her concerns regarding historical matters to the relevant committees. It was highly inappropriate to ignore and avoid NHSN. The Applicant has also put before us detailed evidence to support her submission that she did not know about the 2012 Tribunal hearing and it was therefore unfair for it to proceed in her absence. We do not accept this submission. It is clear from the 2012 Tribunal decision that the Tribunal was able to establish contact but the Applicant refused to accept communications with the Tribunal at that time. We note that the Applicant attended a GMC meeting on 24 February 2012 and was legally represented. This is made clear in a GMC letter written to NHSN dated 28 February 2014, in which they outline the conditions placed on the Applicant's registration for a period of 18 months.

23. We are also very concerned about the Applicant's attitude and behaviour toward the GP practice she worked at. We have considered the witness statement of Dr Perrott, a partner at the GP practice together with detailed evidence from the Applicant. We accept that the Applicant failed to tell the GP practice that she had been arrested. The Applicant's disciplinary hearing was rearranged on a number of dates in 2011 for her convenience but like the reference committee hearing she failed to attend without a cogent explanation. She also failed to conduct communications with the GP practice in a professional manner as described above. Whilst the Applicant purported to resign from the practice she did not give sufficient notice and this was not accepted. We accept that the Applicant was dismissed for gross misconduct and she did not exercise her right to an internal appeal. As we have already indicated she appealed to the Employment Tribunal substantially out of time. In addition, the Applicant seems to have wholly omitted to mention her arrest the night before to her appraiser on 31 March 2011. Although she denies doing anything improper she has maintained that in any event this was a personal matter that did not require disclosure. We disagree. The Applicant signed a probity declaration yet she did not even mention the significant events of the night before.

24. We fully accept that the GMC case examiners concluded on 11 June 2013 that they did not have sufficient evidence to prove that the Applicant's

fitness to practice was impaired. We are not bound by the GMC decision but must attach such weight to it as in the circumstances we think fit. We are prepared to attach some weight to the views expressed by the case-examiners but we must decide the relevant issues on the basis of all the evidence now available to us over a year after that decision.

25. We note that the GMC was considering a complaint dating back to June 2011. We have a vast amount of detailed information that is much more up to date. We also have the benefit of the Applicant's extensive submissions in which she repeatedly makes serious allegations against other professionals and organisations whilst spending very little time reflecting on any of her own shortcomings. We note that the case examiners advised the Applicant to reflect on her behaviour toward the PCT and colleagues at the GP surgery and whether she might have reacted differently. We can see very little evidence that the Applicant has even begun a process of self-reflection. In her evidence before us the Applicant has shown no insight whatsoever into her actions and omissions at that time.

26. We take into account that the GMC case-examiners did not consider the examples of unreasonable behaviour available to them were sufficient to establish that the Applicant's fitness to practice is impaired. We however have no doubt on the material available to us that the Applicant was unsuitable to be on the national performers list when her case was considered by NHSN in 2011, by the 2012 Tribunal and is currently unsuitable on the evidence available to us.

27. We have considered the Applicant's responses to the allegations made against her by this Respondent in these proceedings. She has belatedly chosen to address the long-standing concerns against her. Whilst that is encouraging we remain concerned that the Applicant continues to demonstrate a blatant disregard for the role of the Respondent and its predecessors in regulating her as a NHS performer and in investigating matters of concern. We bear in mind the Applicant's assertion that she does wish to be regulated and was regulated in the past. Nonetheless it is clear to us that this assertion is not consistently maintained or genuinely stated. Such an assertion is entirely inconsistent with what is contained in the Applicant's website, her attitude to NHSN in the past and her continuing failure to demonstrate insight. This causes us significant concern. The Applicant does not seem to appreciate the need for regulation by the Respondent. She appears to be of the view that the GMC is the only relevant regulatory body for doctors (see her submissions at page 229) and as they have not taken action against her that means that she is suitable for inclusion on the performers list, whatever her attitude toward the Respondent and its predecessors. In our view it is more likely than not that the Applicant will not comply with the regulatory regime operated by the Respondent. This in itself renders her unsuitable for the purposes of the Regulations.

28. We have a number of additional concerns which taken together is an additional reason for finding the Applicant unsuitable. First, whatever the Applicant's role in acquiring venom, we are satisfied that she has not cooperated with the attempts to investigate that role by NHSN. This was a very serious allegation that justified careful enquiry. There was prima facie evidence that the Applicant made email enquiries in March 2011 for the acquisition of venom. We have seen the email correspondence and note this was treated as an unusual request by the provider such that it was passed on to the police. The Applicant has not shown any understanding of why an investigation into this was necessary on the part of NHSN or the police.

29. We have taken into account the case examiners' finding that the allegations that the Applicant allowed her name to be used to procure venom and caused a police officer to fear for her safety do not satisfy the realistic prospect test. However the case-examiners have not considered the Applicant's unreasonable response to the NHSN's investigations as we have done or her failure to be candid about her arrest with her appraiser and GP practice. In addition, whilst the GMC was considering whether or not a police officer feared for her personal safety, we have considered the broader picture of what happened when the police attended the Applicant's address on 30 March 2011. Whilst the Applicant may not have sworn at the police or threatened them we consider that she asserted her view that she did not wish to answer any questions in an obstructive and overly aggressive manner. The police officer involved wrote a very measured letter on 11 May 2011 in which she explained why the bizarre behaviour exhibited justified their call for back up in order to arrest the Applicant and her husband. We have considered this together with the evidence relied upon by the Applicant including a letter describing the event in detail dated 24 May 2011. We accept that the police simply wanted to ask the Applicant and her husband some questions. The Applicant overreacted to such an extent that she had to be arrested in order to answer those questions. This raises serious concerns about the Applicant's ability to react calmly and rationally when faced with any form of perceived criticism. This incident is not an aberration because similar concerns had been raised previously by the GP practice and NHSN. The concerns emanating from the former are set out in a measured way in a witness statement prepared by Dr Cargill, a partner at the GP practice.

30. Second, we have been provided with extracts from a website operated by the Applicant. Some of the website was downloaded on 21 May 2012 and other parts on 28 July 2014. We agree with Dr Hopton that some of the contents of this website gives rise to serious concerns about the Applicant's fitness to practice generally as well as demonstrating continuing disrespect to and a lack of regard for authority and statutory agencies. This website describes what the Applicant claims has happened to her. She blames a number of public authorities for her current predicament. The website includes the following extract:

"*An institutional assault: the secret shame of the British system*

The following are excerpts from my upcoming book. The book will be available for free on the internet.

It describes my experiences…in facing a hidden system in the UK, where victimisation is carried out in secret, in the dark, in order to cause harm and suffering to a few handpicked individuals. There is an organised structure within this 'system' whereby such bullies are assigned roles in the black art of how to victimise the chosen individual, should they come across them, These are people placed in British institutions such as the police, the judiciary, the NHS, the prison service, the Council, social security and even the media.

Some of these people are torturers…

I will talk about the latter again, but first allow me to describe my own personal experiences in my work as a doctor…"

31. We bear in mind that the Applicant's lack of insight has been continuing for a significant period of time. The 2012 Tribunal concluded and we accept that a great deal of resources had been expended in trying to engage the Applicant in both 2009 and 2011 and she had refused to engage for more than a short time. Her lack of insight remains a major concern for us on the evidence available. The Applicant has demonstrated paranoid thinking toward the Respondent and other statutory agencies, which adversely impacts upon her ability to work within the relevant Regulatory framework.

32. We note that a consultant psychiatrist concluded in February 2012 that there is no psychiatric reason to suggest that the Applicant is not fit to practice and there is no need for further investigations. In reaching our findings we have taken this evidence into account. We do not know why the Applicant has taken such an obstructive attitude to the Respondent and its predecessors or why she has chosen to continue placing material in the public domain that calls into question her ability to remain professional in relation to the Respondent and other agencies such as the police. On our findings she has taken an unreasonable and inexplicably hostile approach to the Respondent and those who seek in any way to question her and this, together with all that we have set out above, renders her unsuitable to be on the national performers list. This is notwithstanding the fact that there are no outstanding disciplinary / criminal / regulatory proceedings in relation to the Applicant.

33. Finally, we have considered the position overall and the proportionality of maintaining an order for national disqualification in this case and concluded that the seriousness of the reasons for removal, the continued disdain toward the Respondent and other agencies, the absence of cogent and credible mitigation submitted, together with the complete lack of insight means that the decision is proportionate and balanced, and should therefore be confirmed.

34. We have also taken into account the interests of the Applicant in being able to pursue her profession. It is of course a very strong measure to impose a National Disqualification for a sustained period of time thereby preventing the Applicant from working for the NHS, but we have concluded that in all the circumstances her interest in pursuing her career in the NHS must be denied because she is not suitable to do so. We note that in any event the Applicant is currently unable to practice as a doctor having voluntarily relinquished her registration in November 2013.

Review period

35. We have considered extending the period within which an application for a review may not be made under Regulation 19 of the 2004 Regulations. Whilst we have significant concerns that there is no realistic prospect of a further review being successful unless and until the Appellant undertakes a comprehensive period of self-reflection followed by demonstrable insight (and the Appellant is some distance away from this), the Respondent has not made an application under Regulation 19. We conclude that in the circumstances such an extension is not warranted. There remains the possibility that with or without professional assistance the Applicant will undertaken the necessary self-reflection and be able to demonstrate the insight necessary.

IT IS ORDERED that

(1) an order for national disqualification shall continue in respect of the Appellant;

(2) there shall be no order under Regulation 19 of the 2004 Regulations;

(3) there shall be no order as to costs.

Judge Melanie Plimmer
Lead Judge Care Standards and Primary Health Lists
Date Issued:3 December 2014