

**IN THE MATTER OF AN APPLICATION FOR A NATIONAL  
DISQUALIFICATION**

**NHS PERFORMERS LIST REGULATIONS 2004**

**TRIBUNAL PROCEDURE (FIRST TIER TRIBUNAL) (HESC) RULES 2008**

**BETWEEN:**

**REDCAR AND CLEVELAND PRIMARY CARE TRUST**

**Applicant**

**and**

**DR ULRICH STEIN**

**Respondent**

Before

Judge J Burrow

Dr S Aryianaygam

Ms L Jacobs

Sitting at Pocock Street London SE1 0BW on 22 August 2011.

**1. The application**

1.1 This is an application by Redcar and Cleveland PCT (the PCT) for a National Disqualification to be imposed on Dr Ulrich Stein pursuant to Regulation 18A (3) of the National Health Service (Performers Lists) Regulations 2004 (as amended) (the 2004 Regulations).

1.2 Dr Stein was removed from the PCTs performers list on 19 November 2010. Dr Stein appealed to the First Tier Tribunal (FTT) against that decision on 18 December 2010, but withdrew his appeal on 1 May 2011. The Application by the PCT for a National Disqualification was included in their original response to Dr Stein's appeal against the

removal and renewed on 24 June 2011. Dr Stein submitted his response to the application for a national disqualification on 14 July 2011. The matter was heard on the papers with the consent of both parties, pursuant to Rule 23 of the 2008 Rules.

1.3 The PCT compiled a bundle for the hearing which included the case summary, application form, and the submissions and evidence from both parties. The bundle totalled 344 pages. All matters were taken into consideration by the tribunal.

## **2. Legal framework**

2.1 Regulations 18A (3) and (4) of the 2004 Regulations give a PCT the power to apply to the Primary Health Lists (PHL) within three months of the date of the removal of the practitioner from the Performers List, for a national disqualification to be imposed on the practitioner.

2.2 Regulation 18A(5) provides that if the PHL tribunal imposes a national disqualification on a person, no PCT may include him in any performers list from which he has been so disqualified and if he is included in any such list from which he has been so disqualified, a PCT shall remove him from that list forthwith.

2.3 Regulations 18A (6) and (7) provide that the PHL tribunal may at the request of a person upon whom it has imposed a national disqualification, review that disqualification and confirm or revoke that disqualification.

2.4 Regulation 18A (8) provides that subject to regulation 19, a request referred to in Regulation 18A (6) may not be made before the end of the period of

(a) Two years beginning with the date on which the national disqualification was imposed or

(b) One year beginning with the date of the PHL's decision on the last such review.

2.5 Regulation 19(a) provides that the period for review shall be five years instead of two, if on making a decision to impose national disqualification, the PHL tribunal states that it is of the opinion that the criminal or professional conduct of the practitioner is such that there is no realistic prospect of a further review being successful if held within the period specified in Regulation 18A(8).

2.6 The Department of Health's guidance for PCTs entitled "Primary Medical Performers Lists - Delivering Quality in Primary Care" sets out some of the issues to be taken into account in considering an application for a National Disqualification. We had regard to the statement in the document that we "should recognise the benefits of a national disqualification both for protecting the interests of the patients and for saving NHS resources". We further noted we should have regard to the seriousness of the facts which gave rise to the original removal and to whether the reasons for the removal were "essentially local".

2.7 We further had regard to the proportionality of making an order for national disqualification, taking into account the seriousness of the reasons for removal, including any risks to patients, the explanations and any mitigation submitted by the practitioner, the extent to which the allegations have or can be remedied and any insight shown by the practitioner. We also took into account the interests of the practitioner in being able to pursue his profession.

2.8 The burden of proving an issue lies on the party asserting it to the civil standard. Whether an order for national disqualification should be issued is a matter of judgement for the tribunal, taking into account all the relevant issues.

### **3. Evidence**

3.1 Dr Stein was included in the Medical Performers List (MPL) for Northumberland PCT in 2007. At that time he was working as a locum in a number of prisons throughout England, although none were in the Northumberland PCT's area. On 7 September 2009 the Northumberland PCT removed Dr Stein from their MPL on the basis of a failure to work in their area for 12 months and his appeal to the First Tier Tribunal was rejected on 8 March 2010.

3.2 In 2008 he started working at HMPs Garth and Wymott. These prisons were in the area of the Central Lancashire PCT and on the 19<sup>th</sup> January 2009 he applied to join their MPL. Central Lancashire PCT refused his application on 16<sup>th</sup> October 2009 and Dr Stein's appeal against that decision to the First Tier Tribunal was rejected on 16<sup>th</sup> August 2010.

3.3 Dr Stein was referred to the GMC Interim Orders Panel (IOP). In a decision letter dated 18<sup>th</sup> January 2010 the IOP considered a number of allegations concerning Dr Stein, including the allegations in the Cottam reports, which are relied on by the Redcar and Cleveland PCT in their application for a national disqualification. The IOP accepted that there had been an issue of clinical performance in Dr Stein's failure to refer patient AR, but the panel took into account an explanation put forward by Dr Stein that a different system of referral existed in Germany and that he had expressed regret for his shortcomings in respect of the management of this patient. They concluded overall that an interim order was not necessary.

3.4 Dr Stein was later referred to GMC case examiners to consider whether the matter should be referred to a Fitness to Practice Panel. The case examiners concluded that the allegations against him represented a significant departure from the GMC's Guidance for doctors, the "Good Medical Practice". The GMC independent medical expert who reported to the examiners concluded that the care and treatment provided by Dr Stein for patient AR on 16<sup>th</sup> July 2009 was neither appropriate nor adequate. It was said it would have been reasonable to expect Dr Stein to refer patient AR for further examination. The medical notes written by Dr Stein were unclear as to whether the examinations carried out by Dr Stein were either adequate or appropriate.

3.5 It was said by the independent examiner that it would have been reasonable for Dr Stein to consider a diagnosis or differential diagnosis of testicular cancer. It was further said Dr Stein's record keeping was not of a good standard. The expert concluded that Dr Stein's overall standard of care fell below that expected of a reasonably competent GP. It was said that Dr Stein's clinical management plan was unclear as was the information given to patient AR by Dr Stein on 16<sup>th</sup> July. They issued a warning to Dr Stein that his conduct had not met the standards required of a doctor and must not be repeated. Dr Stein accepted the warning.

3.6 On 28<sup>th</sup> April 2010 Dr Stein applied for inclusion in the Redcar and Cleveland PCT MPL. That application was refused by the PCT on 19<sup>th</sup> November 2010. Dr Stein appealed against that decision on 18<sup>th</sup> December 2010, but withdrew his appeal on 1<sup>st</sup> May 2011. The Redcar and Cleveland PCT applied for a national disqualification against Dr Stein on 24<sup>th</sup> June 2011. Dr Stein served his response to that application on 14<sup>th</sup> July 2011.

### **Grounds for Application**

3.7 The PCT's grounds for application for a national disqualification closely followed the grounds on which Dr Stein's application to be included on their MPL was refused. The PCT relied firstly on two reports prepared by Dr Cottam, a GP trainer and tutor. In his first report dated 13<sup>th</sup> May 2010 Dr Cottam considered Dr Stein's performance in relation to patient AR, a prisoner at HMPs Wymott and Garth. Patient AR, who was later diagnosed as suffering testicular cancer, was seen by Dr Stein in 2009.

3.8 Firstly, Dr Cottam concluded that the standard of clinical records made for the consultations by Dr Stein on 20<sup>th</sup> May 2009 and 16<sup>th</sup> July 2009 were inadequate, being scanty in detail, difficult to follow, and with no clear differentiation between history and examination. There was no record of clinical reasoning process or management plan beyond review in two months. He concluded that the standard of record keeping fell below that of a reasonable GP.

3.9 Secondly, Dr Cottam concluded in respect of the consultation on 20<sup>th</sup> May 2009, that Dr Stein had failed to put himself in a position to make an accurate diagnosis. He concluded this consultation constituted a standard of care falling significantly below that of a reasonable GP.

3.10 Thirdly, at the consultation with patient AR on 16<sup>th</sup> July 2009 no history is recorded by Dr Stein in the case records. Further, examination of the testes should have triggered urgent specialist urological referral. Dr Cottam concluded the failure to make an urgent specialist referral constituted a standard of care falling significantly below that of a reasonable GP.

3.11 In Dr Cottam's second report of 30<sup>th</sup> June 2010 he took a dip sample of 20 written records of consultations carried out by Dr Stein while he was working at HMPs Wymott and Garth in January 2009. After examining the records he concluded that the overall standard was inadequate. He said there was widespread paucity of detail, absence of important and relevant clinical (history and examination) findings, no objective measurements were recorded, there was an absence of clinical reasoning and (in most cases) management plans

and no recording of what patients had been told. He concluded that the standard of record keeping fell below that of a reasonable GP.

3.12 He further stated that an assessment of clinical process was made difficult by the limited information contained in the recordings, nevertheless he concluded the lack of mental health assessment records in several patients and the information actually noted in two other patients raises concerns regarding the quality of clinical management. The FTT generally supported the findings of the Cottam reports and upheld the decision of the PCT to refuse admission to the MPL.

### **Insight and Remedial Actions**

3.13 The PCT were concerned about Dr Stein's apparent lack of insight. They drew on a number of aspects to support their concerns. Firstly they referred to the contested appeal against the Central Lancashire PCT decision to refuse admission. The decision letter indicates that rather than undertake the self-introspection into why the performance deficits had occurred, which the development of full insight requires, Dr Stein opted to seek to blame the systems at the prison, the poor working conditions, even patient AR himself who he described as "not an easy patient" and as someone who had made untrue complaints in the past. He went on to challenge Dr Cottam's methodology and suggest the case notes relied on were taken out of context.

3.14 Even after the PHL panel had found the charges proved and upheld the decision of the PCT, in his letter of 17 September 2010 to the Redcar and Cleveland PCT about the Central Lancs appeal, Dr Stein continued to challenge the case against him and sought to lessen the strength of the criticisms. He again blamed the working conditions and equipment at the prison. He suggested all doctors had difficulties with the system. He appeared to blame the system of handwritten notes for his shortcomings in record keeping. Nowhere in the letter did he indicate that he recognised his own deficiencies in performance and nowhere did he suggest any remedial actions he was taking in respect of those deficiencies. The PCT regarded Dr Stein's letter as being dismissive of what had happened, and indicated a lack of insight.

3.15 The PCT also suggest that in Dr Stein's appeal form dated 14<sup>th</sup> March 2011, lodged in respect of the Redcar and Cleveland PCT's decision to refuse him admission, he referred to the GMC's IOP decision and to the fact two health care providers in the Redcar and Cleveland PCT had offered him a permanent GP position. Dr Stein also referred to the fact that the witnesses he had requested to be present at the PCT hearing were not present. Again nowhere in his grounds of appeal did he acknowledge the criticisms of his performance that were made in the Cottam reports.

3.16 Dr Stein set out in his grounds of appeal, the few remedial steps he had taken, these being a study of British Guidelines, books and educational websites, with special attention to record keeping, history taking and examination. He also mentioned a registered GP trainer and appraiser Dr Gossow who was a partner in a medical practice who had offered Dr Stein a position. However, there was no indication of any programme of retraining actually being

undertaken with Dr Gossow. Neither was there any indication of a concerted effort to put together a retraining programme, or any attempt to enlist the help of the Deanery, or even to undertake web based courses. Dr Stein concluded his grounds by saying that he expressed his regrets and was disappointed in himself in not referring patient AR immediately.

3.17 Dr Stein's apparent inability to demonstrate insight or remedial actions was perpetuated even as late as his response of the 14 July 2011 to the PCT's application for a national disqualification. He appeared to blame the PCT for his failure to implement remedial steps because they failed to meet him to discuss the issue. He appears to suggest he has shown insight because "I have never denied any activities to improve nor have I ever expressed any rejection of PCT processes." He again refers to being offered permanent positions by two health care providers and to Dr Gossow's remarks that he was a conscientious, caring doctor.

3.18 He said the IOP panel did not suggest any lack of insight and he referred to his readiness to intensify studies of English guidelines and regulations. He again referred to the lack of witnesses at his appeal against the Lancashire PCP refusal to admit him to the MPL. The PCT noted that nowhere in his grounds is there an acceptance of the deficiencies in his practice described by the Cottam reports. Also nowhere was there a description of adequate remedial steps having been taken.

3.19 The Redcar and Cleveland PCT noted when they came to consider Dr Stein's application on the 19<sup>th</sup> November 2010 that Central Lancashire had refused a similar application on the 16<sup>th</sup> August 2010, just 12 weeks before. The PCT believed that Dr Stein had not shown any or any sufficient insight into the deficiencies in his clinical performance and they did not accept that Dr Stein had undertaken any or any sufficient remedial actions in respect of those deficiencies.

### **Explanations by Dr Stein**

3.20 The explanations for the deficiencies highlighted in the Cottam reports are contained firstly in the decision letter relating to his appeal against the refusal of Central Lancashire PCT to allow him onto their MPL. In respect of poor record keeping he said he was working in a difficult environment. He said the patient files were incomplete, that clinicians were subject to time constraints, that some prisoner patients attempted to obtain drugs for resale and that new receptions were not accompanied by discharge notes.

3.21 Dr Stein did accept that the medical record entries for AR on 20<sup>th</sup> May and 16<sup>th</sup> July 2009 were scanty and did not set out the history. He denied, however, not treating the patient properly. Dr Stein also accepted that entries in some of the cases noted in Dr Cottam's second report were insufficient; however Dr Stein said they were taken out of context and to assess clinical competence the whole file was required.

3.22 In respect of patient AR he said he was not an easy patient, who had obtained extensive prescriptions for pain relief and had been seeing doctors about his testicles since July 2008. He said in the course of his clinical management that Patient AR claimed not to

have been examined when he had been. He said there was no change in the patient's condition between his examinations in May and July. He said there had been no red flag indicating a referral was necessary.

3.23 Dr Stein's explanations in respect of alleged lack of insight or remedial steps are contained in his response to the PCT's application for a national disqualification dated 14<sup>th</sup> July 2011 and in his grounds of appeal against the decision by Redcar and Cleveland to refuse his application. He mentions using the internet to study British guidelines and that he had reviewed UK textbooks. He mentions the offer of Dr Gossow to provide educational support.

3.24 He said he had tried to find an explanation why he did not deem it necessary to record negative findings in the case of AR but had been unable to do so. He said he has referred other patients in similar circumstances. However he then went on to criticise Dr Cottam's analytic procedures in producing his report, suggesting entries were taken out of context. He said substandard working conditions and logistics in the two prisons made it difficult for all GPs there to adhere to their usual standard.

3.25 He said the fact the GMC IOP had not imposed an interim order, and the fact he had been offered employment by a healthcare provider within the PCTs area, should be taken into account.

#### **4. Consideration by the Tribunal**

4.1 We first considered the seriousness of the allegations against Dr Stein. We accepted his failure in respect of Patient AR were serious. They had caused or contributed to a delay in diagnosing the patient's testicular cancer. The shortcoming in record keeping in that case were confirmed as not being merely a "one off" aberration, by Dr Cottam's second report where a dip sample showed continuing, widespread and significant deficiencies. Adequate record keeping, especially in a prison where both doctors and patients tend to have a significant turnover, is of considerable importance. Failures to record information about the treatment of a patient have the potential to cause significant harm. We accepted the deficiencies were serious.

4.2 We considered insight. We accepted the view of the PCT that Dr Stein had not shown adequate insight. He had perpetuated his stance of criticism of the case against him up until the present time. He had never displayed the appropriate introspection that well founded criticisms of a professional's standard of practice should engender as a precursor to achieving insight. He has never indicated he fully accepted the criticisms in the two Cottam reports, even after they had been upheld by the PHL tribunal. He had sought to place the blame elsewhere than on himself for his poor performance. He has apologised for his failures but he has not in our view demonstrated full or adequate insight.

4.3 We considered the extent of the remedial steps taken. We did not accept a reference to web based material or UK text books was sufficient. We noted the correspondence from Dr Gossow, a trainer who was with a practice who had offered Dr Stein employment. However

there did not seem to be any attempt to develop a training programme with Dr Gossow. We recognised the difficulties of a practitioner who was not on an MPL, to implement remedial training, but in Dr Stein's case there was no indication of any concerted effort to put together any kind of appropriate retraining programme.

4.4 The Deanery had not been contacted for assistance. There had been no attempt to undertake web based training programmes. There had been no attempt to attend courses or lectures in relevant areas of practice. There had been no attempt to develop a training plan with Dr Gossow, or even ask him what might be appropriate to include in such a programme. Instead, Dr Stein sought to blame others for his misfortunes, including the PCT for failing to meet to discuss the issue. We accepted that Dr Stein had not demonstrated any appropriate remediation of his poor performance.

4.5 We considered Dr Stein's explanations for his poor performance. He admitted most of the deficiencies in record keeping, and that he should have referred patient AR to a specialist. However the remainder of his explanations have been dealt with above and do nothing to establish that the alleged deficiencies in performance did not happen or that Dr Stein is accepting appropriate responsibility in respect of them. The decision of the GMC not to impose an interim order merely in our view reflected the different responsibilities and objective of the two jurisdictions. A warning was imposed by the GMC assessors.

4.6 We considered proportionality, setting Dr Stein's right to pursue his profession against the interests of patients. We concluded that because of a lack of appropriate insight or remedial steps there was still a potential risk to patients. We further noted Dr Stein's readiness to apply to further PCTs when he has been refused admittance to an MPL, thereby requiring input from professional and administrative staff in processing his applications and using scarce NHS resources. We concluded that a national disqualification was an appropriate and proportionate measure and we granted the PCT's application.

4.7 We considered extending under Regulation 19 of the 2004 Regulations the period within which an application for a review cannot be made to 5 years. We noted no such application had been made by the PCT. We concluded on the evidence before us that at the current time that it was difficult to make a judgement of the likelihood of success should any such an application be made. We concluded this judgement should be left to the reviewing panel should such an application be made and we did not extend the time under Regulation 19.

### **We ordered**

1. That an order for national disqualification from any of the lists set out in Regulation 18(1) of the 2004 Regulations be made in respect of Dr Stein
2. No order to be made under Regulation 19 of the 2004 Regulations.

John Burrow

Judge HESC/PHL

31.8.11

