



**First-Tier Tribunal Health, Education and Social Care Chamber
Primary health Lists Jurisdiction**

Considered on the papers 21st June 2013

PHL - 15566

Before:

**Judge John Aitken, Deputy Chamber President
Ms Jane Everitt, Lay Member
Ms Denise Forshaw, Specialist Member**

Dr Sara Lopez Fernandez

Appellant

V

Bestsi Cadwaladr University Local Health Board

DECISION

1. This matter was listed for consideration on the papers. That is permissible under rule 23. However not only must both parties consent, which they have, but the Tribunal must also consider that it is able to decide the matter without a hearing. In this case we have a good picture of the situation, from the papers, there appears to be no substantial factual dispute which might affect our decision and we consider that we can properly make a decision on the papers without a hearing.
2. This is an appeal under Regulation 15(2)(b) of the **National Health Service (Performers Lists) (Wales) Regulations 2004** against a decision of the Bestsi Cadwaladr University Local Health Board dated 21st March 2013 to include the appellant conditionally in their performers list under regulation 8(1) of the Regulations. The Tribunal may under regulation 15(3) make any decision which the Board could have made,
3. Those conditions were modified following a meeting on 3rd May 2013 and the parties understood at the Telephone Case Management Conference on 8th May 2013 that they would be limited to conditions requiring the completion of modules on “*NHS Rules and Regulations*” and *Record Keeping and Audit*” which are elements of the Primary Care Training Scheme outlined by the

Dental Postgraduate department, Cardiff University within 6 months.

4. Ms Fernandez disputes the need to complete such modules on two grounds. Firstly that the experience she has gained in NHS practice since her arrival in the United Kingdom makes the need to do the courses redundant. Secondly that it appears to be the Board's policy to allow other dentists to be included in the performers lists without the need to attend such courses.
5. We have seen notes by the appellant and Mr Emilio Garcia Romero, her tutor under a six month training placement funded by the European Union, which indicate that two other dentists have been employed by the Board without the need to undertake the Primary Care Training Scheme. The names of those dentists are not revealed, as they fear having to undertake the training if this is done. Mr Gareth Lloyd on behalf of the Board does accept that by mistake there may be one inclusion. From this information it is possible however to conclude that there is no policy of inclusion that discriminates against the appellant, there is plainly a policy to require such a course unless sufficient experience or equivalent courses can be demonstrated. Whilst it is always disappointing to note mistakes, we conclude that a mistake and even if that is repeated does not indicate a policy. We conclude that the policy is as stated by the Board and noted above. In those circumstances we do not consider that there is anything in the point raised by the appellant that others have not been required to undertake such a course.
6. As to the need to undertake the modules identified by the Board we have evidence from the appellant of her experience and from the Board, their comments on that and comments arising from a meeting with the appellant. We have borne very much in mind that the meeting with the appellant in which the Board alleges that she was unable to demonstrate familiarity with aspects of NHS rules and practice was something of a surprise to the appellant who had completed a working day and found herself undergoing questioning as to her experience. Of course it may be said that at such times one needs to have this information instinctively and readily available to ensure safety and good practice, but we do make allowances for the situation that the appellant found herself in.
7. We note that the Board are particularly concerned about the appellant's lack of knowledge of continuing professional development requirements, including medical emergencies, and of her legal requirements under the radiation regulations (IRMER) since she relied upon a 2008 course. They were also concerned about her knowledge of the concept of audit and what it involved. In response the appellant indicates she was confused, surprised and under pressure at this interview, which was unexpected as to questioning about such requirements. We note that the emails arranging this meeting did not indicate her knowledge would be tested, we think it would have been better if they had, we do not know if this was spoken of on the phone, but accept what the

appellant has to say, that she was surprised at this. Nonetheless, we do consider that it was still fair to look at her knowledge in the light of such questions. Had there simply been one point of omission or misunderstanding we might well have agreed with the appellant, but there are several and they do tend to indicate as the Board has found that there is a need not only for patient protection, but also the longer term protection of dental practitioners to ensure they have knowledge of the requirements of the NHS rules and regulations. We note also that in respect of audit knowledge that whilst the appellant has filed an example of a practice audit, it remains incomplete in the sense that no final review meeting is mentioned (We note there is an Action plan mentioned), nor an indication of the outcome following the audit. We do understand that there has been little time to do so, but no second cycle is mentioned or figures given indicating what the result has been. In that sense the audit filed provides little evidence to refute the suggestion of the Board that further training should be undertaken.

8. Looking at the experience the appellant has gained generally, we note the very positive references, however we also note that the experience gained in NHS situations is that of work experience, it does not have the benefit of a structure or a formal review system, and is not directly comparable to vocational training undertaken as a year's foundation training. Foundation training has a planned program of 30 study days and the work based experience is continually formally assessed and documented throughout the year by an experienced Deanery Appointed trainer and the practice, procedures and protocols have been inspected. However, we acknowledge that there is no obligation for her to do Foundation Training the main point remains that the training she has done should be equivalent and cover the essential content that the PCT require in the Modules designed by the Dental Deanery at Cardiff University.
9. We do not consider that the prudent steps taken to confirm that part courses are charged pro rata is an indication of the assessors making their minds up in advance.
10. We consider, that whilst there is good evidence that the appellant is a competent dentist, looking at the evidence overall it is proper to impose conditions as indicated by the Board and there is evidence that the appellant's knowledge would be improved by such conditions being imposed and that would be in the interests of both patients and herself.

Decision

The appeal is dismissed

PROTECT

[2013] UKFTT 0359 (HESC)

Judge John Aitken
Deputy Chamber President
Health Education and Social Care Chamber
Wednesday, 26 June 2013



PROTECT

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