

**In the First-Tier Tribunal (Health, Education and Social Care)  
Primary Health Lists**

**[2014]15607.PHL**

**Oral Hearing on 5 November 2014**

**BEFORE**

**First-tier Tribunal Judge Melanie Lewis  
Dr John Chope  
Ms Vivien Lee**

**BETWEEN:**

**Dr Sayed Hossain Faghany  
(GDC no.78378)**

**Applicant**

**AND**

**NHS England (Essex Area)**

**Respondent**

**DECISION WITH REASONS**

**Attendance and Representation**

The Applicant was represented by Mr Partridge, Counsel. Mr Westbury, Dental Protection Limited (DPL) and Mr Morris, DPL, attended as witnesses.

**Application**

1. By application dated 7 July 2014, the Applicant applied for review of a National Disqualification imposed by the then Family Health Service Appeal Authority (FHSAA) on 16 April 2010. The Tribunal imposed a National Disqualification under regulation 18(2) National Health Service (Performers List) Regulations 2004. Pursuant to Section 159 (8) National Health Service Act 2006 they ordered that the period after which an application for a review

should be made should be two years. The current application is made pursuant to Regulations 18 and 19 NHS Regulations 2004

2. At a Telephone Case Management hearing on 4 July 2014 the Respondent confirmed that they did not oppose the Applicant's application, didn't wish to play any further role in the proceedings and that it was content for the Tribunal to determine the application on the material solely provided by the Applicant.

### **Summary of the Background**

3. On 16 April 2010, following the dismissal of Mr Faghany's appeal against his removal from the North East Essex Performers List (on 4 February 2010), the Tribunal imposed a National Disqualification with a 2 year period before any review could be made. As set out in the Tribunal's lengthy determination which we have read and is available on the Tribunal website. The reasons for the disqualification were the widespread and serious, clinical failings found within Mr Faghany's Practice, coupled with a lack of insight and probity.

4. Following the PCT proceedings, Mr Faghany was referred to the General Dental Council. He was suspended from all forms of dental practice whilst disciplinary proceedings were investigated.

5. On 9 May 2011 the GDC's Professional Conduct Committee considered wide ranging charges in relation to Mr Faghany's clinical practice. These charges mirrored the clinical matters dealt with by the PCT in 2010 and adjudicated on by this Tribunal.

6. In the main, the charges were admitted and the committee concluded that his conduct went:-

*'beyond mere negligence and fell seriously below that which could reasonably have been expected of a general dental practitioner. Your actions and omissions were not isolated, covered a wide range of dental disciplines and occurred over an extensive period of time. The committee concluded that the matters proven amounted to misconduct.'*

7. The committee imposed a further 12 month period of conditional registration. They imposed a total of 17 conditions, having determined that a reprimand would not be sufficient and that close supervision and workable proportionate conditions would be adequate to protect the safety of patients and preserve public confidence in the profession.

8. On 28 May 2011 the PCC conditions were amended and continued.

9. On 29 May 2012, the PCC lifted the conditions on the Applicant's GDC registration at a final review hearing.

## The Evidence

10. We were assisted by a well ordered bundle running to a total of 271 pages. We were also provided with a supplementary bundle running from pages 1 to 34 plus the decision of the FHSAA Tribunal.

11. We first heard from Mr Westbury who is a senior dentist with Dental Protection, solely working with dentists on the 'high risk programme'. Mr Westbury had known Mr Faghany for some 9/10 years, including from Colchester where Mr Westbury previously had a practice. Those on the 'high risk programme' pay 5 times the annual fee which is reflected in the high input from DPL. This includes at least an annual review and announced local practice visits for a full half day where clinical records are selected at random and the practice is inspected. We were provided with records of these practice investigations.

12. We read a witness statement from Jane Griffiths Dental Surgeon who had previously served as a Dental Reference Officer and who completed an audit in March 2014. Although the sample was limited by the limited number of days worked by Mr Faghany who could only treat private patients she concluded that the majority of record keeping radiographs were acceptable and that from an examination of the records and discussion with Mr Faghany that adequate procedures were in place. She concluded that Mr Faghany was currently practising at the standard of a-competent general dental practitioner.

13. As a result of information gathered from a number of sources, Mr Faghany is now placed by DPL at 'standard risk' so paying standard subscription and deemed to be no greater risk than an average general dental practitioner. The lowering of his risk had been reached after considering a number of sources of evidence including from the Deanery, a clinical audit and reports to the General Dental Council. This included the range of evidence presented to us from the Postgraduate Deanery, CPD and reflective learning, practice documents, testimonials and Mr Faghany's own practice audits.

14. Mr Westbury had been particularly impressed, as confirmed by Mr Raja Rayan the local Associate Dean of Postgraduate Dentistry that Mr Faghany was, so far as he was aware, the first 'high risk' member who chose to present a PowerPoint to other dentists, sharing where he had gone wrong in the past, so that others could learn from his mistakes. Mr Westbury felt that this was a useful learning tool and might be adopted on other occasions.

15. Our dental member probed as to issues of honesty and integrity and Mr Westbury's view was that Mr Faghany had not set out to lie, but had been faced with problems that he was not experienced enough to run with. He now had a far better understanding of professional ethics and now turned for help, whereas previously when he had run into difficulties he had not turned to anyone and he had perhaps not understood that a source of assistance would have been the DPL, which could have provided support before problems arose.

16. We next heard from Mr Faghany. We had the benefit of a very full witness statement and each point relied on was supported by documentation. He left his native Iran in 1983, qualified in Denmark in 1998 and came to the United Kingdom in 2000. In March 2002 he purchased a dental practice at 306 Mersea Road, Colchester. He now accepts that this was a mistake and he simply did not have sufficient experience of dentistry, working in the United Kingdom or even use of the English language to equip him to do so.

17. He accepts that when he first started work in the UK he knew nothing about the NHS framework. He has kept himself up to date since his removal in 2008 by attending relevant courses, most recently in 2013 and 2014. He has also benefited from specific ethical training on a course in June 2014.

18. At that time he was attempting to run the practice with his ex-wife who although a dental nurse, like him she had no experience of running a practice. He now accepts that in seeing 30-45 patients a day, three times more than he had seen in Denmark he was considerably over-stretching himself. In oral evidence he told us that ideally he would now wish to limit himself to 15 to 20. He was clear that he was now much more willing to admit that certain areas of work were beyond him and he would refer them on.

19. Mr Faghany accepts that although he doesn't see himself as a fundamentally dishonest person, in the past he has ended up saying something he knew wasn't true just to avoid the problem. He saw complaints about his various mistakes and problems as a personal attack. If the patient complained he assumed it was just because they wanted money. He is now far more familiar with practice within the NHS and patient complaints procedures and doesn't think that way.

20. Mr Faghany said that he had waited until now to make an application for review because he wanted to build up a core body of learning. He has attended a number of key skills courses which he has found helpful. Mr Majithia has been a mentor to him.

21. Mr Faghany has also received support from Mr Raj Rayan, the Associate Postgraduate Dean until he left the Deanery in 2013. He presented an impressive portfolio of courses that he had attended which at times he found difficult to finance. Mr Raj Rayan had helpfully pointed him to ones that were free.

22. Mr Faghany is currently working at the Bermuda Lodge Dental Practice, Monday to Thursday and the Trabrizi Dental Clinic on Friday. Both are aware of his GDC history. He expects to have to leave Bermuda Lodge in January 2015 as he is only providing maternity cover.

23. Mr Faghany faced a number of personal difficulties at the time he was under investigation and the proceedings which followed. His personal situation has resolved and is now more stable.

24. Financially he has also been in great difficulties. He has been declared bankrupt. He has been assisted financially by family and friends and he hopes over time to pay them back, but again this situation is now more stable.

25. In response to our dental member who asked him how he would cope with pressure, he gave examples of recent pressured days in surgery. His response essentially was that he was much more willing to admit what was beyond him and to ask for help or refer on.

### **Conclusions and Reasons**

26. In reaching our decision we have had regard to all the evidence, both written and oral and the oral submissions made by Mr Partridge.

27. We find force in each submission made by him and have concluded that on balance, there are now no issues that would justify continued national disqualification. We have had regard to the seriousness of the previously identified issues which went beyond any local boundaries and we are satisfied that they have been remedied. Our starting point was the decision of the FHSAA Tribunal and what remedial action has been taken.

28. We have looked at Mr Faghany's character, particularly his probity and integrity and issues of professional competence. We are satisfied that Mr Faghany has provided an explanation of what went wrong when he purchased the practice at Mersea Road in 2002. In short, he was out of his depth. He tried to run before he could walk.

29. Mr Faghany has accepted that he did wrong. He has not tried to avoid the very serious findings made against him or be selective with what courses and professionals he would work with.

30. Since his National Disqualification we are satisfied Mr Faghany has reflected and tried to learn from what went wrong. Whilst we note the two year period, was imposed so that he did not deskill we are satisfied that is not the case and that he has waited four years so that he could build up a core of evidence. In the past he has tried to run too fast which is where it went wrong for him. The past four years show steady steps of progress which give us confidence that Mr Faghany has learnt his lesson.

31. We were assisted by the evidence of Mr Westbury, a witness with impressive credentials. We place weight upon the fact that he has known Mr Faghany for over nine years and worked consistently with him. We are satisfied that the DPL process for 'high risk' dentists is a rigorous one, with a high level of input as reflected in the high fee charged. We find no reason to go behind the conclusion of Dental Protection, who are essentially a commercial organisation that henceforth Mr Faghany will practise in an honest and professional manner. He has moved forward and been graded as a 'standard risk.'

32. This is supported by the conclusions of the GDC in 2013. Mr Faghany had some 17 conditions imposed on him which he worked with. When released from them he was found to also be no longer 'impaired' to practise. Nothing since then would cause us to go behind that conclusion. Mr Faghany has continued to take courses in particular around NHS practice and procedures.

33. There is evidence on this from a range of sources. Mr Faghany has co-operated with the Postgraduate Deanery. He has adhered to all programmes he has been asked to undertake to address his impairment and has identified his own learning needs taking an impressive number of direct and on-line courses. He has been visited at a local level.

34. Additionally, Mr Faghany despite the difficulties which inevitably arose when he was subject to practice conditions and was also unable to work within the NHS, has identified an NHS work place supervisor.

35. Again, despite what we accept are difficulties in gaining employment with restrictions, he has been able to bring himself to a position of almost full employment. His current employers write favourably of him as do other staff who work with him.

36. Mr Faghany has stated categorically that he would not run his own NHS Practice again, accepting that he is not the right person to do so. There will be a brake on that should he be tempted, because he has been declared bankrupt and will find it difficult to secure a loan.

37. We also hope that there will be another brake on him, namely self restraint in the light of his experience. This is a practitioner who had very considerable defects as reflected in the decisions of the FHSAA Tribunal and the GDC. However, he has also put very strong effort into remedying that which was wrong. We acknowledge that this has taken strength of character for Mr Faghany and that it has been a long and difficult journey to remediation. This should stand him in good stead when he is under pressure in the future or tempted to take on too much work, in an attempt to clear his debts. Having run too fast in the beginning, we express the hope that in the future he will not do so again having seen where it led him and how hard it was to build himself back up to a point where both dental professionals and patients could have confidence in his abilities.

## **Decision**

**Application for Review of National Disqualification allowed.**

**National Disqualification removed.**

**Judge Melanie Lewis  
First-tier Tribunal (Health Education, Social Care)**

**Date Issued: 12 November 2014**