

Primary Health Lists

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

[2014] 2325.PHL

Dr Inderbhan Singh Palahey

Applicant

v

NHS Commissioning Board
(Leicestershire & Lincolnshire Area Team)

Respondent

Before (on the papers) Judge Melanie Plimmer
Mr Martyn Green
Ms Kate Wortham

Sitting on 2 June 2015

DECISION

1. The applicant has applied for a review of his national disqualification in an application dated 4 December 2014.

Background and procedural history

2. The background to this matter is set out in a skeleton argument provided by the applicant and a position statement relied upon by the respondent, and the chronology included in the bundle. It is sufficient to simply summarise the background.
3. The applicant is a dentist who graduated in 1992 before opening his own practice in 1996. In September 2004 he pleaded guilty to the offence of acting with intent to defraud and received a 200-hour community order.
4. In 2005 the applicant was nationally disqualified from the NHS Dental Performers List and erased from the General Dental Council (GDC) Register. In 2007 the applicant was restored to the GDC Register and he resumed private practice. In 2010 Dental Protection Ltd (DPL) recognised

the applicant as an ordinary member having downgraded his risk status from 'passive risk' after a risk management programme.

5. It is important to recall as confirmed in directions issued by the Tribunal dated 25 March 2015, that the respondent has not opposed this appeal on the basis that the ambit of the appeal is expressly limited to the question as to whether the appellant's national disqualification should be lifted. Whilst the respondent initially opposed the appeal, it did not have all the relevant salient information available at that time.
6. The appellant has confirmed that he does not seek an order for inclusion in the performers list from the Tribunal in these proceedings and has accepted that any such application should be made directly to the respondent in accordance with Regulation 4 of the National Health Service (Performers Lists) (England) Regulations 2013.

Legal framework and approach to the evidence

7. The applicant's national disqualification in 2005 was made under a different statutory regime that has now been replaced. However paragraph 10 of Schedule 2 to the 2013 Regulations makes it clear that Regulation 18A of the 2004 Regulations apply to any review relating to a national disqualification imposed under those provisions. Regulation 18A was not in force at the time of this applicant's national disqualification, which was imposed under section 49N of the NHS Act 1977.
8. In any event both representatives agree that the correct question for the Tribunal is whether the national disqualification should be confirmed or revoked after a full review on the merits.
9. We have approached this question after considering all the material available to us in a carefully prepared and detailed bundle.

Findings

10. In making our findings we have considered the applicant's detailed evidence. We note that the respondent has not sought to question the credibility and genuineness of the applicant's evidence. We consider that the respondent was correct to take this approach. We note that the applicant's evidence is corroborated by his wife, who has worked closely with him and longstanding patients. All of this is of course undisputed. We consider it significant that the respondent does not oppose the application and has confirmed that it shall not take further part in the proceedings.
11. We have nonetheless considered the application to revoke the applicant's national disqualification for ourselves. We regard the applicant's offence to be a serious one for the reasons set out by the previous panels in 2005. It involved cheating the public revenue and a breach of trust of a significant sum of money. We note that the Family Health Services Appeal Authority in addition found the offence to have been committed over an extended period and indicated systematic planning and determination. It

therefore dismissed the applicant's appeal on 9 June 2015. Indeed these observations are very similar to those made by the GDC when they decided to erase the applicant in October 2005. On the other hand, the applicant pleaded guilty and paid back all sums due to the NHS in full. He was able to demonstrate insight as early as 2007 and was successful before the GDC at this time, which restored him.

12. This means that the applicant has been able to practice for a lengthy period (over eight years) since his restoration. That entire period has been without complaint or adverse reported incident. During that time he has been and continues to be the registered manager of two dental practices regulated by the CQC. The applicant has also been able to demonstrate a clear and practical commitment to further training. After three years of monitoring and training he transferred to DPL standard membership.
13. We are satisfied that the applicant has not sought to criticise or minimise his criminal conviction, deregistration or national disqualification. He has demonstrated comprehensive and wide-ranging genuine insight as set out in detail in the evidence available to us. To the applicant's credit he has not rushed into this application but waited for a significant passage of time before applying for a review of his disqualification.
14. We have balanced the seriousness of the offence with all the other relevant factors in this case and reached the clear conclusion that it is appropriate and proportionate to now revoke the applicant's national disqualification. We acknowledge the need for the public to have confidence in those trusted to undertake publicly funded work. We are satisfied that the risk of this applicant repeating his past offending is extremely low. The level of regret and insight demonstrated is very impressive. The applicant has been able to establish over a period of eight years that he can practice as a dentist with skill and integrity.

Decision

15. We revoke the applicant's national disqualification.

Judge Melanie Plimmer
Lead Judge, Care Standards / Primary Health Lists
First-tier Tribunal (Health Education and Social Care)
Date Issued: 2 June 2015