

FAMILY HEALTH SERVICES APPEAL AUTHORITY

**IN THE MATTER OF AN APPLICATION FOR NATIONAL DISQUALIFICATION
(DENTAL)**

Case No: 15142

BETWEEN

HAMPSHIRE PRIMARY CARE TRUST

Applicant

And

**MR JONATHAN GREGOR DRUMMOND
(GDC Registration No 61764)**

Respondent

**Heard on: 15th June 2009 at Care Standards Tribunal, 18 Pocock Street,
London SE1**

**Appeal Panel: Mrs D Shaw
Dr H Freeman
Mrs V Lee**

**Chairman
Professional Member
Member**

**Persons present: Ms S Thompson, RadcliffesLeBrasseur
Ms M Copage**

**Appellant's representative
Hampshire PCT**

1. This is our decision upon the issue of national disqualification. On 22nd December 2008 Hampshire PCT (the PCT) removed Mr Drummond from the PCT's Performers List following non-compliance with conditions imposed on 29th April 2008. Mr Drummond did not make an appeal to the Family Health Services Appeal Authority (the FHSAA) against that removal.
2. Prior to the commencement of the hearing all three panel members confirmed they had not had any prior interest or involvement in this matter which would preclude them from considering this application in an independent and impartial manner.

Legal Framework

3. Section 18A of the National Health Service (Performers Lists) Regulations 2004 (as amended) gives the FHSAA power to impose a national disqualification on a practitioner it has removed, which disqualifies such practitioner from being upon the Performers List of any PCT.
 - 3.1 Regulation 18A(2) gives the FHSAA power to remove a practitioner from the Performers List at the conclusion of a case in which it has concluded that the practitioner should be removed from the PCT Performers List.

- 3.2 Regulations 18A(3) and 18A(4) give a PCT power to apply to the FHSAA within three months of the date of the removal for a national disqualification to be imposed on the practitioner following removal from its Performers List.
- 3.3 Regulation 18A(5) provides that no PCT may include a practitioner on its Performers List or, if he is included, must remove him, if the FHSAA imposes a national disqualification upon him.
- 3.4 Regulations 18A(6) - (8) provide for the FHSAA to review a national disqualification at the practitioner's request either two years after the national disqualification was imposed or one year after the FHSAA's decision after the last such review.

History of this application

- 4.1 Following Mr Drummond's removal from the PCT's Performers List on 22nd December 2008, the PCT applied to the FHSAA on 19th March 2009 for his national disqualification, given the serious concerns raised in the evidence which it attached to its application and the fact that Mr Drummond failed to engage in any remediation process.
- 4.2 Mr Drummond failed to respond to Notice of this application sent to him on 24th March 2009, or to any other correspondence, until the FHSAA received a letter on 10th June 2009 (five days before the hearing) from Messrs RadcliffesLeBrasseur confirming they had been instructed by Mr Drummond.
- 4.3 They submitted Mr Drummond qualified BDS from the University of Dundee in 1986, began working as a dentist in 1987 and joined the Berukin practice in Alresford, Hampshire in 1989, working at the practice both as a partner and an associate until the end of 2008. He had never before had to deal with any concerns regarding his treatment of patients and he was extremely concerned to receive the criticisms from the Healthcare Commission, the PCT Practice Adviser, and the Dental Reference Officers which led the PCT to contingently remove him from its Performers List and thereafter to remove him from its Performers List.
- 4.4. They also confirmed Mr Drummond wished to return to NHS dental practice and that he accepted that he had a substantial amount of work to undertake if he was to achieve his aim. They submitted Mr Drummond would be meeting with the local Deanery to prepare a Personal Development Plan and that he wished to undertake a Back to Practice course to prepare for a return to work. They acknowledged that he would need to apply to join a PCT Performers List and that he would do this once he had undertaken his re-training. They confirmed that Mr Drummond undertook to inform any PCT he applies to of the matters that were considered by the PCT in 2008, which should ensure that his history is apparent to any potential PCT or employer.

- 4.5 The decision to remove Mr Drummond from the Performers List was taken on efficiency, as opposed to unsuitability, grounds and because he did not engage in the mediation process. Mr Drummond was now prepared to engage in mediation and to address the concerns raised by the PCT. On this basis, it was submitted a national disqualification would be unfair and disproportionate and that Mr Drummond should be allowed the opportunity to bring his practice up to the necessary standard so that he can apply to join a Performers List. This case was not one where the dentist had committed any criminal offence or been found guilty of any conduct which would render him unsuitable to be on the Performers List. The issue was simply a question of efficiency of clinical performance and criticisms of this nature were amenable to re-training and remediation, which was what Mr Drummond intended to do. He was not currently on a Performers List but he should be allowed to reapply when he has completed his work in addressing these concerns. He understood he would need to disclose the details of his removal from Hampshire PCT's Performers List when he submits any future application, but to prevent him from applying to join a Performers List for at least the next two years would be disproportionate and unfair in the circumstances.

Oral hearing

Summary of submissions at the Hearing

- 5.1 Despite his solicitors confirming he would be present, Mr Drummond did not attend the hearing. Ms Thompson, his representative at the hearing, confirmed he was aware of the hearing but was content for her to represent him without being present.
- 5.2 Ms Copage for the PCT submitted the reasons the PCT was concerned throughout the process were fully set out in the papers. Mr Drummond failed to engage with the process at all, which was why the PCT felt it had no alternative but to remove him.
- 5.3 Since Mr Drummond's removal the PCT had continued to receive complaints, either directly or via his practice, about treatment he had provided. Despite the PCT having forwarded the complaints it had received to Mr Drummond, he did not engage with them at all, so the PCT had forwarded them to the GDC. The practice had also forwarded the complaints it had received to him but he had also failed to engage with the practice in the resolution of those complaints.
- 5.4 In response to questions Ms Copage confirmed that Mr Drummond had been on the PCT (or its predecessor's) Performers List for some considerable time (about 15 years). Prior to the complaint which led to this process there had been some issues relating to Mr Drummond's health but she was not aware of their magnitude or scope and she did not believe the PCT had taken any prior disciplinary action against him.

- 5.5 The local PCT policy was to engage with practitioners at the earliest opportunity. Mr Drummond had been asked to respond to the patient complaint (which led to this process) at the earliest opportunity and the PCT had tried to engage with him on several occasions but he never responded. The PCT had hoped his contingent removal, which required him to liaise with the PCT, would work, but he still failed to engage with them, i.e. to meet with the PCT to discuss the issues identified and to try and understand the reasons for the shortcomings in his clinical performance. Although the PCT had offered him meetings and its Dental Practice Adviser had requested an appointment with him, Mr Drummond had not responded. The case had also been referred to the dental Dean who had attempted to make contact with him, but as far as the PCT was aware, no contact had been made and nothing had been done in response to the conditions imposed on Mr Drummond.
- 5.6 The PCT referred Mr Drummond to NCAS on 25th March 2008 but it did not make a referral for assessment. Where the PCT had concerns relating to patient safety it referred to NCAS for advice but Ms Copage suspected that as the PCT never reached the point where it felt it was engaging with Mr Drummond, it never pursued the matter further with NCAS.
- 5.7 Despite one of the PCT's Dental Advisers having a dual role within the Deanery, the PCT had not heard Mr Drummond had made contact with the Deanery.
- 5.8 Ms Thompson for Mr Drummond submitted that he did not dispute the factual chronology of this case or that he had failed to engage with the PCT. He accepted he had not complied with the conditions the PCT had imposed in April 2008 and he apologised for his error of judgment. He did now want to fully engage in the process and continue with his career as a NHS dentist. He accepted he had a lot of work to do and he had now contacted the Postgraduate Dean and wanted to compile a Personal Development Plan. He also accepted he needed to undertake a Back to Practice course and hoped the Postgraduate Dean would identify any other relevant training needs. As far as Ms Thompson was aware, no formal referral for assessment had been made to NCAS.
- 5.9 Ms Thompson submitted national disqualification was unnecessary because this was a removal from the Performers List on efficiency grounds. There was no indication Mr Drummond was unsuitable and accordingly, national disqualification, which was for a minimum of two years, would be unfair and disproportionate.
- 5.10 In response to questions Ms Thompson confirmed Mr Drummond was aware he needed remediation to get onto a Performers List. He had not worked at all since 31 October 2008; this was of his own volition as opposed to by reason of a GDC Interim Order.

- 5.11 Ms Thompson believed Mr Drummond had contacted the Postgraduate Dean in the last month but she was not sure of the date. She was not aware that a meeting had been set up and had no evidence to confirm contact, but it had resulted in the two suggestions of Mr Drummond preparing a Personal Development Plan and attending a Back to Practice course.
- 5.12 Mr Drummond did have some professional, as well as personal, issues. He had felt pressured and unsupported at work and he accepted he had not managed the pressures very well; it was a mixture of the two.
- 5.13 Mr Drummond had not engaged with the process because he felt pressured, his morale was low and he had felt at his wit's end. He accepted this was an error of judgment and he now felt able to engage with the process
- 5.14 Mr Drummond accepted that as he had not worked since October 2008 there was a large degree of de-skilling and he was under no illusion that he needed a lot of re-training before he could go back to work; he was willing to take the necessary steps.

Consideration and conclusions

- 6.1. We have carefully considered the written and oral submissions for both parties. We consider the issue of national disqualification by reference to those submissions and by reference to the findings of the PCT's Contractor Performance Panel (the PCT Panel) as recorded within its letter dated 13th October 2008.
- 6.2 We are guided by the Primary Medical Performers List Guidance issued by the Department of Health in 2004 and in particular to *[emphasis added]*:
 - 6.2.1 paragraph 40.2 which expresses the view that the FHSA can itself decide to impose a national disqualification if, having rejected an appeal, it considers that the facts that gave rise to the removal decision are *so serious that they warrant disqualification*; and
 - 6.2.2 paragraph 40.4 which suggests PCTs should *recognise the benefits of a national disqualification both for protecting the interests of patients and for saving the NHS resources*. It says further that "*unless the grounds for removal ... were essentially local, it would be normal to give serious consideration to such an application*".
- 6.3 Accordingly, although there is no statutory guidance as to the principles to be applied in such context, we consider it is appropriate to consider national disqualification in those cases where the findings against the

practitioner are serious, and not by their nature essentially local in the sense of being objectively unlikely to have arisen had the practitioner been practising in a different area of the country.

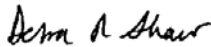
- 6.4 We have carefully considered all of the further submissions in the light of the PCT Panel's findings. In particular, we consider the matters set out below to be relevant:
- 6.5 Mr Drummond demonstrated a complete failure to engage with the PCT throughout the entire process leading to his definitive removal. He failed to engage with the conditions imposed on his contingent removal, or indeed at all, until the last moment. We are also concerned that he failed to attend this hearing with his representative, although this in itself has not influenced our consideration.
- 6.6 The PCT told us that Mr Drummond has failed to respond to any of the further patient complaints received following his removal
- 6.7 Although we were informed Mr Drummond has contacted the Deanery in the last month, this is over 13 months after his contingent removal. We consider that even if he only contacted the Dean as recently as, say, two weeks ago, he should still have been able to devise and produce to us a copy of his Personal Development Plan. However, he has failed to produce any evidence to confirm this contact.
- 6.8 We consider the deficiencies in Mr Drummond's conduct are wide-ranging and serious. We note that he was provided with the opportunity to address these deficiencies with PCT support by way of contingent removal but that he completely failed to avail himself of this opportunity.
- 6.9 Taking into account all of the above, we consider the seriousness of the breaches giving rise to the PCT Panel's decision, coupled with the fact that they were not essentially local to this PCT and are equally relevant to any other List, renders it reasonable, necessary and proportionate to impose national disqualification upon Mr Drummond.
- 6.10 We are aware of the likely effect of such an Order upon Mr Drummond and of the practical effect of preventing him from pursuing his career as a dental practitioner within the NHS. We weigh such considerations against the risk to patient safety and the prejudice to the efficiency of services, thereby also presenting a risk to NHS resources if such an Order is not made.
- 6.11 If Mr Drummond wishes to continue practising as a NHS dentist in the future we hope that he will usefully utilise the period of his disqualification to engage with the Deanery and follow its advice with regard to the re-training it considers he needs to undertake, so that if and when he does wish to apply for a review of his national disqualification he is able to provide evidence of the steps he has taken to improve his standard of practice to an acceptable level.

- 6.12 Accordingly, we order national disqualification from inclusion in all lists referred to in Regulation 20 of the National Health Service (Performers Lists) Regulations 2004 and we direct that a copy of this decision be sent to the persons and bodies referred to therein. In the case of Regulation 20(1)(g) the relevant body is the General Dental Council.

Supplementary matters

- 7.1 In accordance with Rule 42(5) of the FHSAA (Procedure) Rules 2001 we hereby notify the parties that they have the right to appeal this decision under section 11 of the Tribunals and Inquiries Act 1992 by lodging notice of appeal in the Royal Courts of Justice, The Strand, London WC2A 2LL within 28 days from the date of this decision.
- 7.2 Under Rule 43 of the FHSAA (Procedure) Rules 2001 a party may also apply for review or variation of this decision no later than 14 days after the date on which this decision is sent.

Dated this 22nd day June of 2009



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Debra R Shaw
Chairman of the Panel