

IN THE FAMILY HEALTH SERVICES APPEAL AUTHORITY

FHS/ 14224

MRS D SHAW - Chairman

DR P GARCHA - Professional Member

MRS V BARDUCCI - Member

DR TILMANN HAACKER
GMC No. 5999447

Appellant

and

BROMLEY PRIMARY CARE TRUST

Respondent

DECISION WITH REASONS

1. This is an appeal by Dr Tilmann Haacker against a decision of the Bromley Primary Care trust (PCT) effective from 24th December 2007 (postponed to 31st December 2007) to remove him from its Performers List under Regulation 10(6) of the National Health Service (Performers Lists) Regulations 2004 (not performed services within the area for 12 months).
2. In addition the PCT considers the Appellant to be in breach of his undertaking to participate in its appraisal system under Regulation 4(3)(e) of the National Health Service (Performers Lists) Regulations 2004 and as required under Section 68(1) Schedule 6 Part 4 of the National Health Service (General Medical Services Contracts) Regulations 2004.

The Documentary Evidence

3. The Appellant's evidence is that he worked for Northern Doctors Urgent Care (NDUC) from December 2006 until February 2007 and that so far as he can recall he also worked during that time for various locum agencies in the London area, including Bromley. He has provided a list from NDUC of sessions he worked in the northeast between 23.12.06 and 11.02.07 and 16.09.07 and 22.03.08 (*pages A9-10*).
4. He informed the PCT in February 2007 that he was due to travel to the Democratic Republic of Congo to work for Medecines Sans Frontieres for several months and he has provided a letter from this organisation to confirm he worked for them there from 26.02.07 to 31.08.07 (*at page A64*).
5. He has submitted he contacted the PCT in September 2007 to notify them of his return and was told it was fine and that he also then contacted the appraisal office and explained to someone that he would like to undergo appraisal with Dr Foo again, and was told Dr Foo had completed his 2007 quota but if he wished to be appraised by him he should wait until early 2008. He subsequently received an e-mail from Ms Daniel at the PCT dated 04.09.07 referring to their conversation and attaching the GP appraisal forms for his appraisal with Dr Foo for 2007/2008 (*page A66*).
6. He was therefore surprised to receive an e-mail from Ms Daniel dated 15.11.07 (*page A67*) notifying him that appraisals should take place annually and his suggested time scale of March 2008 was not in line with regulatory requirements. He has submitted

he is happy to undergo earlier appraisal and that changes or clarifications of regulations should be communicated to him rather than blaming him. He contends he acted in good faith and refuses to be regarded as not wanting to undergo the appraisal.

7. The Appellant applied for inclusion in the Northumberland Medical Performers List at the end of November/beginning of December. (That PCT has recently confirmed his application has been referred to Northumberland Care Trust for a decision.)
8. By letter dated 27.11.07 sent to the Appellant's German address (and therefore not seen by him until 21.12.07 as he had been working in the UK) the PCT informed the Appellant that he would be removed from its Performers List on 24.12.07 (subsequently extended to 31.12.07).
9. Shortly before the appeal the Appellant confirmed he had renewed his German Registration for 2008 but did not provide any evidence to confirm this.
10. He also submitted his appraisal was scheduled for 20.03.08 with Dr Selby (*page A13*) but at the time of the appeal he had not provided any evidence to confirm this or the outcome of such appraisal.
11. The Respondent's evidence is that it has no evidence that the Appellant has worked in its area since joining its Performers List on 1st January 2005, although he states he last worked in the Bromley area in Spring 2006.
12. The Respondent has also pointed out that the Appellant has not had an appraisal since July 2006, this being a yearly requirement under its local policy and under Section 68 of the National Health Service (General Medical Services Contracts) Regulations 2004. It denies there is any documentation from any PCT officer to state the appraisal could wait until April 2008 and refers to the e-mail from Ms Daniel dated 20.11.07 (*page R7*) notifying him that appraisals should take place every 12 months and his suggested time scale of end of March 2008 was 21 months after his last appraisal and not in line with regulatory requirements.
13. Given the Appellant's application to the Northumberland Medical Performers List and the fact he is no longer on the German Register, the Respondent has submitted the Appellant no longer meets the requirements to remain on its Performers List.
14. Shortly before the appeal the Respondent confirmed that so far as it was aware, the Appellant had not, to date, completed his appraisal for 2007/2008.
15. A few days after the appeal the Appellant forwarded to the FHSAA copies of his completed appraisal forms asking for the Appeal Panel to take them into account, notwithstanding the appeal having already taken place. The FHSAA forwarded this request and the copy documents to the Appeal Panel members.

Consideration of the Evidence

16. The Respondent has submitted the Appellant, by his own admission, last worked in the Bromley area in Spring 2006. However, we note this submission appears to derive from the Appellant's e-mail dated 13.11.07 (*page RR9*) in which he states "*I have last worked in Bromley (and other areas around Bromley) early last spring*" and which we believe is meant to indicate Spring 2007.
17. However, the Appellant has failed to produce any evidence to verify either this submission or the submission in his appeal (*page A2*) that he had worked in early 2007 for various locum agencies in the London area, including Bromley. He has produced a copy of his Tax Return for the year ended 5th April 2007, indicating he earned income in the UK, but this does not indicate where in the UK he worked. The only evidence he has produced relates to sessions he worked in 2007 and 2008 for Northern Doctors Urgent Care.

18. We note from the e-mail correspondence between the Appellant and the PCT relating to appraisal that Ms Daniel forwarded GP appraisal forms to the Appellant on 04.09.07 *"for his appraisal with Dr Foo in 2007/2008"* and that whilst she does not specifically state in her e-mail dated 15.11.07 that appraisal could wait until April 2008 and she confirms it is a regulatory requirement to undergo an annual appraisal, she also continues to refer to the financial year. Accordingly, we consider the Respondent initially failed to clearly convey to the Appellant the need to undergo GP appraisal every 12 months.
19. However, we note that Ms Daniel's e-mail dated 20.11.07 unequivocally states that appraisals should take place every 12 months and that the Appellant's suggested time scale of end of March 2008 was 21 months after his last appraisal and not in line with regulatory requirements. We therefore consider that this requirement was made entirely clear to the Appellant by 20.11.07. Whilst we appreciate the Appellant did not receive the Respondent's letter dated 27.11.07 informing him that he would be removed from its Performers List on 24.12.07 for some time as it was sent to his German address when he was working in the UK, we do consider that by the second half of November at the latest he must have known of the possible detrimental outcome if he did not address appraisal and that if he had wanted to, he could have organised an appraisal very quickly and probably within a couple of weeks. However, the only evidence of any appraisal at the time of the appeal was the Appellant's unverified submission that it was scheduled for 20.03.08 with Dr Selby, but he failed to provide any confirmation that it was carried out or of its outcome until after the appeal. We also note the PCT was not aware of his having completed an appraisal for 2007/2008 at the time of the appeal.
20. Notwithstanding the late submission of his completed appraisal form and personal development template we accept that the Appellant has now been satisfactorily appraised. However, this does not alter the fact that the Appellant has failed to produce any evidence to indicate he worked for the Respondent at any time during 2007.
21. We are aware of the Department of Health Advice for PCTs on list management, that it is recommended good practice for PCTs to periodically review their lists in order to maintain contact, to confirm that the entries are up to date and to ensure that individual members continue to perform services in the area, with a view to reducing the administrative burden in relation to those who are no longer performing services within its area. We also note that the Performers Lists Regulations prevent removal from the list of those who, for example, are serving in the Armed Forces or are medically unwell, but otherwise the decision to remove under Regulation 10(6) is within the discretion of a PCT to be exercised fairly.
22. Despite what we consider to be a rather casual approach to his predicament, exemplified by his failure to quickly arrange an appraisal or to provide verified evidence in support of his submissions despite our directions to do so (for example, in relation to his claims to have worked in early 2007 in the Bromley area and to have renewed his German registration), we have some sympathy for the Appellant. There is no allegation before us of any clinical shortcomings, improper practice or unfitness to perform services and we now have evidence of a satisfactory appraisal. However, the fact remains that subject to the obligation to exercise its discretion fairly, the Respondent should be able to manage its list as it thinks fit and having considered the circumstances of this Appellant, and the lack of evidence to rebut the grounds for his removal, we are satisfied the Respondent was entitled to remove him from its list.

Conclusion

23. Having reconsidered all of the evidence which was before the Respondent and having also taken into account the additional evidence submitted for this appeal and the appraisal documents submitted after the appeal, we conclude that the decision of the Respondent to remove the Appellant from its Performers List was fair in all the circumstances, given there is no evidence that he has performed services within the area for 12 months.
24. We wish to point out that there were no allegations relating to the clinical aspects of this doctor's conduct before us, he has now undergone a satisfactory appraisal and nothing in

our decision prevents the Appellant from re-applying to join this or any other performers list in future.

25. Finally, in accordance with rule 42(5) of the Family Health Services Appeal Authority (Procedure) Rules 2001 we hereby notify that a party to these proceedings can appeal this decision under Section 11 of the Tribunals & Inquiries Act 1992 by lodging notice of appeal in the Royal Courts of Justice, The Strand, London WC2A 2LL within 28 days from receipt of this decision.

Dated this day of 2008

.....
Debra R Shaw
Chairman of the Appeal Panel