

**IN THE FIRST TIER TRIBUNAL**

**Case No: PHL15277**

**MRS J R CRISP                      TRIBUNAL JUDGE  
DR A ARIYANAYAGAN      PROFESSIONAL  
MRS ISOBEL DALE              MEMBER**

**B E T W E E N:**

**NHS NOTTINGHAMSHIRE**

**(“THE PCT”)**

**Applicant**

**And**

**DR BARRINGTON BARBER  
Registration No: 2312677**

**Respondent**

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**DECISIONS AND REASONS**

**Tribunal Primary Health Lists 29<sup>th</sup> July  
2010**

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1. This is an application by a letter dated the 21st May 2010 by Nottinghamshire PCT (“The PCT”) for an extension of the period of suspension imposed upon Dr Barrington Barber (“Dr Barber”) under the terms of regulation 13 of the National Health Service (Performers List) regulations 2004 (“The Regulations”). The PCT’s application is for an extension for time for a period of 6 months from the 30th May 2010.

2. There has been no correspondence from Dr Barber to confirm whether he opposes the application.

### **Preliminary Matters – consideration without a Oral Hearing.**

1. By its application form dated the 16<sup>th</sup> June 2010 The PCT asked for the matter to be considered on the papers without an Oral Hearing. Dr Barber has not confirmed whether he is content for the matter to proceed on the basis of an Order Hearing.
2. The tribunal procedure (First-Tier Tribunal) (Health, Education, and Social Chare Chamber) Rules 2008 rule 23 provides that a Hearing must be held unless each party has consented to the matter being decided without a Hearing we have therefore determined the Application which was considered on the 29<sup>th</sup> July 2010 at the Nottingham Magistrates Court, Nottingham.

### **Factual Background**

1. Dr Barber was suspended from NHS Nottinghamshire's Counties medical performance list on the 23<sup>rd</sup> November 2009, pending consideration of whether he should be removed under regulation 10 or regulation 12 of the regulations.
2. Since the 14<sup>th</sup> January 2010, Dr Barber has not been able to attend any Oral Hearing due to illness. The PCT sought medical advice and were advised that Dr Barber was fit to attend an Order Hearing, which had been arranged for the 1<sup>st</sup> July 2010.
3. Further problems arose and that Hearing was adjourned until the 25<sup>th</sup> August 2010.

### **The Law**

1. Under regulation 13(1)(a) of the regulation, (if a “PCT” is satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest, it may suspend a performer from its performers list in accordance with the provision of this regulation: -
  - a. While it decides whether or not exercise its powers to remove him under regulation 10 or contingently remove him under regulation 12.
  - b. By regulation 13(4) the period of suspension under paragraph 1(a) or (b) may extend beyond 6 months if: -
    - i. On the application of The PCT, the FHSAA (now First-Tier Tribunal) so ordered or
    - ii. The PCT applied under sub – paragraph (a) before the expiry of the period of suspension, that the FHSAA has not made an Order by the time it expires, in which case it continues until the FHSAA makes an Order
    - iii. By regulation 13(5) if the (First – Tier Tribunal) does make an Order under 13(4). It shall specify –
      - a. The date on which the date of suspension is to end;
      - b. An event beyond which it is not to continue; or
      - c. Both a date upon which it is to end and in an event beyond which it is not to continue, in which case it shall end on the earlier on that date or the event as the case may be.

### **Consideration and Decision**

1. We must be satisfied that it is necessary to extend the suspension for the protection of members of the public or that it is otherwise in the public interest. We are satisfied on both accounts. The PCT has not concluded its

<sup>rd</sup> November 2009.

2. We consider that it is appropriate to make an Order in the alternative form as prescribed in regulation 13(5)(c).

### **Decision and Order**

1. Dr Barber's suspension from the Performers List shall be extended until the earliest of the following: -
  - a. Notification to him of any decision by The PCT not to remove him from the Performers List; or
  - b. 28 days after notification to him of any decision by The PCT to remove him from its Performers List<sup>6</sup> (whether conditionally or absolutely); or
  - c. The 23<sup>rd</sup> November 2010 whichever is earliest.