

IN THE FAMILY HEALTH SERVICES APPEALS AUTHORITY

Case No:FHS/13798
Heard: NHS Litigation Authority
On : 3 .08.2007

MS M LEWIS - CHAIRMAN
Dr S ARIYANAYAGAM - PROFESSIONAL MEMBER
MS J EVERITT - LAY MEMBER

Between

DR DAVID NZEGBULEM
(GMC NO. 4340881)

Appellant

AND

CITY AND HACKNEY PRIMARY CARE TRUST

Respondent

Representation

For the Appellant: Did not attend nor was he represented
For the Respondent: Mr M Ackary, Performance Liaison Manager, North-East
London Family Health Services Consortium

DECISION WITH REASONS

1. By letter dated 30 April 2007 the Appellant sought to appeal the decision of the North-East London Family Health Services Consortium dated 24 April 2007 to remove him from the Performers' List of the City and Hackney PCT, on the basis that he had not demonstrated that he had performed services within the area of the PCT during the preceding 12 months: Regulation 10(6) National Health Service (Performers Lists) Regulations 2004.

2. It is unfortunate that this matter got off on the wrong basis as the pro forma from letter dated 9 January 2007, due to administrative oversight made reference to Regulation 9, which to declaring criminal convictions. Dr Nzegebulem took exception to that. The PCT has no concerns about Dr Nzegebulem. Mr Ackary explained that the PCT is proactive in asking doctors to come off their list if they are not actively employed within their area.

3. By letter dated 11 May 2007 the PCT advised the FHSAA that they wished to have an oral hearing in this matter, which Mr Ackary told us was because he thought it might help clarify matters. We are satisfied that the Appellant had notice of the hearing, including an email from the FHSAA Secretariat on 25 July 2007 asking him to confirm whether he would be attending. Dr Nzegebulem replied:-

Dear Miss Richards

1.

After careful consideration, I have decided that, irrespective of the outcome of the appeal, I would not want to remain within the City and Hackney PCT.

I am satisfied that Mr Ackary wrote, rescinding the reference to the NHS paragraph which relates to doctors under investigation.

I would however, ask City and Hackney to give me sufficient time to move across to my local PCT.

Many thanks

3. Mr Ackary has at all times been ready to accede to that request. However this appeal is pending until such time as the Appellant formally withdraws the appeal in writing signed by him or his representative: Rule 9 Family Health Services Appeal Authority (Procedure) Rules 2001. He has not done so and we must therefore proceed to determine the appeal. Mr Ackary has been attempting to contact Dr Nzezbulem by both telephone and email in recent weeks, but without success. It is unfortunate that he did not attend the hearing, which would have provided a further opportunity for negotiation to take place and give him a flexible time scale in which to transfer to another PCT, if he has not already done so. In accordance with Rule 40 of the Procedure Rules we are satisfied that Dr Nzezbulem put forward no reasonable excuse for his absence so accordingly we go on to hear and determine the appeal in his absence.

4. The PCT's response to the appeal acknowledges that thereafter there was some delay in dealing with Dr Nzezbulem's request for the allowance for undertaking his appraisal. According to the standard practice operating in the PCT, Dr Nzezbulem was to be given plenty of notice to apply and transfer to the list of another PCT. In telephone conversations with Mr Ackary, Dr Nzezbulem informed him that he wished to apply to the Tower Hamlets PCT. The North-East London FHSA agency handles the practitioner list administration for Tower Hamlets PCT but it has not come to Mr Ackary's attention that any application had actually been made. A second notice was sent to Dr Nzezbulem on 24 April in accordance with the time scales that the Regulations require, since no representations against the proposed action to remove him had been received from Dr Nzezbulem and he had not returned a completed application for the Tower Hamlets list.

5. In the absence of the Appellant we queried whether as suggested in the email from Dr Nzezbulem dated 10 January 2007 to Charlotte Hughes of the PCT, that the information requested by the PCT was made available prior and during the appraisal process. Mr Ackary confirmed that there was no such information.

Conclusion and Reasons

6. In determining this appeal we have had regard to all the written evidence, which although limited we are satisfied sets out the chronology and correspondence that has passed between the parties. We accept Mr Ackary's disappointment that this matter could not be resolved by negotiation, which was his intention. However a formal appeal process was started and must be concluded by a decision.

7. The only decision we have to make is whether the Appellant can demonstrate that he has performed services within the area of City and Hackney PCT during the preceding 12 months. We are satisfied that no evidence has been adduced that he did so and we are satisfied that the PCT was entitled to remove him from its Performers' List pursuant to Regulation 10(6) National Health Service (Performers Lists) Regulations 2004.

Decision

The appeal is dismissed.

Ms M E Lewis
Chair

Dated 3 August 2007

Either party to these proceedings has the right to appeal this decision under and by virtue of Section 11 Tribunals and Inquiries Act 1992. Any appeal should be made by lodging a notice of appeal in the Royal Courts of Justice, The Strand, London WC2A 2LL within 28 days from the receipt of this decision.