

FAMILY HEALTH SERVICES APPEAL AUTHORITY

Case No: 13826

Panel Members:
Mr Christopher Limb – Chairman
Dr E Walsh-Heggie– Professional Member
Mr C Barnes– Lay Member

BETWEEN:

DR JOHN GRAY
GMC Reg No: 2277073

Appellant

and

OLDHAM PRIMARY CARE TRUST

Respondent

DECISION

1. This is our Decision upon the issue of national disqualification. We have previously decided that we found allegations against Dr Gray proved (there being no factual dispute) and to be such as to justify removal from the PCT Performers List. We refer to our Decision of 22nd May 2007.
2. As agreed with Counsel representing both parties and as indicated in paragraph 42 of our previous Decision, the issue of national disqualification was to be decided after further submissions after delivery of the initial Decision. We have received submissions from the Respondent which have also been served upon the Appellant. We refer to the letter to the FHSAA dated 18th June 2007. The Appellant acting by his solicitors has indicated that it is not his intention to lodge submissions on the issue of national disqualification. We refer to the letter of his solicitors dated 12th July 2007. Both parties consent to a decision on the papers without an oral hearing.

Legal framework

3. Section 159 of the National Health Service Act 2006 is the current relevant statutory provision and provides power to impose a national disqualification. In the present context there is power to disqualify from inclusion in the Primary Medical Services Lists prepared by each Primary Care Trust under Section 91 of the 2006 Act. There is similar reference in Regulation 18A of the NHS (Performers Lists) Regulations 2004.
4. There is no statutory guidance as to the principles to be applied in such context but it is in our opinion proper to consider the seriousness of the matters giving rise to removal, whether such matters are essentially local in nature, the length of time for which such matters persisted, and the foreseeability of altered behaviour in the future by reference to the practitioner's insight or other considerations. Overall we consider that we have a duty to consider the reasonableness and proportionality of an Order for national disqualification taking account of both the safety of patients and the practitioner's interests.
5. It is to be noted that the "normal" period before which a review of any national disqualification can take place is two years although such period can be replaced by

one of five years in the circumstances referred to in Regulation 19 of the NHS (Performers Lists) Regulations 2004.

Conclusion

6. As is in our opinion self evident from our previous Decision, we consider that the relevant actions of Dr Gray in relation to the use of pre-signed prescriptions and sickness certificates were very serious in nature and had taken place over a substantial period of time. We took the view that there was a lack of true insight and reflective practise. We refer in particular to the Summary of our conclusions in paragraphs 37 and 38 of the previous Decision.
7. In the context of the seriousness of the allegations and the substantial period of time over which the actions took place and the lack of insight, this is a case in which it is fully appropriate to consider national disqualification as a proportionate and reasonable sanction. The actions do not arise out of "local" circumstances which could not arise elsewhere. There are no further specific matters put forward by Dr Gray for our consideration. We recognise the prejudice to any doctor who is not allowed to practise but the consideration of interests of potential patients makes it reasonable and proportionate to impose a national disqualification.
8. This is not a case in which we consider any extension to the normal review period is required.

Summary

9. We make an Order for national disqualification from inclusion in the Primary Medical Services Lists prepared by each Primary Care Trust under Section 91 of the National Health Service Act 2006.
10. Any party to these proceedings can appeal this Decision under Section 11 of the Tribunals and Inquiries Act 1992 by lodging Notice of Appeal at the Royal Courts of Justice, The Strand, London WC2 2LL within 28 days from receipt of this Decision.

CHRISTOPHER LIMB
Chairman
7th August 2007