

IN THE FAMILY HEALTH SERVICES APPEAL AUTHORITY
CASE: 13840

Mr P Kelly - Chairman
Dr. G Sharma - Professional Member
Dr. D Ratzer - Member

WESTMINSTER PRIMARY CARE TRUST

Applicant

and

DR. HTAY KYWE
(GMC reg: 2469306)

Respondent

DECISION WITH REASONS

1. This is an application by Westminster Primary Care Trust ("the PCT") for an order of national disqualification under the terms of National Health Service Act 1977 Sec.49N (as amended) against Dr. Htay Kywe ("Dr. Kywe"). The application was considered on the basis of written representations and although Dr. Kywe did not strictly comply with time limits for submission of representations he should know we took into account his written submissions dated 17th August received on 20th August.
2. A short chronology is useful:-
 - In March 2006 Dr. Kywe was removed from its performers list by the PCT for failing to co-operate with an NCAS assessment and referral.
 - Dr. Kywe appealed that decision to the FHSAA. The appeal was compromised on the 5th July 2006 on terms agreed with Dr. Kywe and his then advisers that he would co-operate in the NCAS assessment and any recommendations. He was contingently removed from the list on those terms.
 - NCAS completed its draft report in October 2006. Following an invitation to comment on the report Dr. Kywe said he would not undertake any educational training recommended in the report and that he intended to cease practice. Shortly after he said he would undertake MSc training and would continue with limited practice.
 - The NCAS final report indicated Dr. Kywe needs to improve his performance in a number of areas and that supervision either within his own practice or within a teaching practice was necessary. Dr. Kywe did not accept the recommendations and said so in his reply to the assessment - Part F.
 - Failure by Dr. Kywe to comply with NCAS recommendations was judged by the PCT to put him in breach of his contingent removal with the consequence it removed him from the list on 16th January 2007. Dr. Kywe appealed that decision but withdrew his appeal on the 1st May 2007.

3. It is put to us by the PCT that Dr. Kywe's refusal to accept NCAS findings and act to improve his skills as a General Practitioner is sufficiently serious to justify national disqualification. For his part Dr. Kywe remains convinced the NCAS referral was inappropriate and unnecessary; the report itself was unfair and not impartial and NCAS and PCT representatives behaved in a discriminatory and racist manner.
4. The chronology shows that Dr. Kywe set his face against the NCAS referral from the beginning. He alleges bad faith on the part of the PCT and NCAS. He does so in non-specific terms. Nothing he put in submissions goes anywhere near satisfying us that either organisation has acted in a manner other than consistent with its respective duty and responsibility. The PCT was right to call for the assessment and the report itself was couched in entirely appropriate and responsible language. The report (independent, impartial and specialised) speaks for itself and demonstrates some seven areas where improvement was necessary and goes on to say how that improvement may be achieved – conclusions wholly rejected by Dr. Kywe.
5. We are bound to have concerns about a practitioner who, even when his professional career might depend upon it, so steadfastly refuses to accept his practice needs improvement. This demonstrates an unacceptable fixedness of opinion and an unwillingness to embrace changes intended to improve patient care and safety. The gravity of the shortcomings identified by the report persuades NCAS that Dr. Kywe should be supervised during the period necessary to address identified shortcomings and, coupled with his complete lack of insight, also satisfies us national disqualification is a rational and proportionate response.
6. For those reasons we disqualify Dr. Kywe from inclusion in any performers list held under and by virtue of The National Health Service (Performers Lists) Regulations 2004 or any amendment thereto. Dr. Kywe should know he is entitled to apply to review this decision after two years beginning with the date of this decision.

7. Finally, in accordance with Rule 42 (5) of the Rules we hereby notify that a party to these proceedings can appeal this decision under Sec 11 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 28th August 2007

.....

Paul Kelly, Chairman