

Paul Kelly, Chairman
Dr. R. Rathi, Professional Member
Mark Rayner, Member

Dr. J. NEWMAN
(GMC NO. 0580441)

Appellant

and

LIVERPOOL PRIMARY CARE TRUST

Respondent

DECISION WITH REASONS

1. On the 30th January 2009 the Appellant applied to join the medical performers list of the Respondent PCT. The PCT refused the application and communicated the decision by letter of 2nd April 2009.
2. Both parties to the Appellant's subsequent appeal agreed the matter should be determined on the papers.
3. The PCT's refusal to admit the Appellant to the performers list was based on the National Health Service (Performers List) Regulations 2004 reg.6(1)(b) which enable a PCT to refuse to include a person on the list when it is not satisfied with the references provided by the applicant under reg.4(2)(f).
4. In support of his application the Appellant submitted references dated 27th October 2004 from a practitioner who engaged the applicant as a locum; 19th May 2003 from a company recruiting locums, confirming the applicant worked on Army bases and in the prison service for the preceding three years; 7th July 2003 from a practitioner for whom the applicant worked as a locum in 2002; 2nd October 2004 from a practice he worked in as a locum over the previous 18 months; 1st December 1976 recommending him for a post for which he was then applying.

- 5. Whilst acknowledging the applicant's difficulty in providing up to date references the Respondent found it was not satisfied by the material submitted that the Appellant's knowledge, skill and attitude in general practice in the context of consultation, prescribing, referral and administration was sufficiently adequate and up to date.**
- 6. In determining an appeal the FHSAA can come to any decision the PCT could have made upon consideration of the application.**
- 7. Our consideration of the appeal was not helped by not being told what clinical practice (if any) the Appellant had been engaged in since October 2004 – the most recent period of practice recorded by the reference dated 2nd October 2004. We know he applied to join local lists in 2002, 2004, 2005 and 2007 without success. Without knowing the reasons for those refusals we draw no adverse inference from those applications.**
- 8. Significant factors in our decision are the comments contained within the references “...he takes good care of patients and clinical skills are fine.” “He was very conscientious..... He was dependable, punctual.....” “he was very polite and courteous..... reliable and punctual....” “....clinically competent.....”. These indicate a practitioner who was well thought of by his colleagues but in particular fail to indicate clinical shortcomings or other behaviour which might be of concern. We recognise people and personalities change but there is no evidence from which we can infer the skills identified as recently as October 2004 are now absent. For that reason we intend to allow the appeal.**
- 9. Against that we recognise the Appellant is now aged some 67 years and, from the evidence put to us, does not have recent clinical experience. General Practice has changed immensely in recent years and whereas the Appellant's core skills may remain intact we would be concerned if he exercised all the privileges of inclusion on the list without supervision or additional support. Allowing the Appellant to return to restricted practice will have the advantage of subjecting him to GMC annual appraisal. To avoid prejudice to the efficiency of services those on the list perform, the Appellant should be included in the Respondent's performers list subject to the following conditions:-**
 - a. Dr. Newman should work only as a locum/employee in a General Practice with not less than three partners. For the avoidance of doubt Dr. Newman should not provide Out of Hours Service or agency locum work;**
 - b. Six months after commencing the duties at a) Dr. Newman, at his expense, satisfy the Post Graduate Dean for the area of the PCT within six months thereafter that unconditional inclusion on the list would not be prejudicial to the efficiency of the services which those on the list provide.**

10. Either party has the right to appeal this decision under Sec.11 Tribunals and Inquiries Act 1992 by lodging notice of appeal in the Royal Courts of Justice, The Strand, London WC2A 2LL within 28 days of this decision, further, a party may apply to the FHSAA for a review of this decision no later than 14 days after the date on which the decision is sent.

Dated this 14th day of August 2009.

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Paul Kelly, Chairman.