

**FAMILY HEALTH SERVICES APPEAL AUTHORITY
IN THE MATTER OF AN APPLICATION FOR NATIONAL DISQUALIFICATION
(DENTAL)**

Case No: 15203

BETWEEN

MEDWAY PRIMARY CARE TRUST

Applicant

and

**MR EOIN MACCORMIAC
(GDC Registration No72709)**

Respondent

**Appeal Panel: Mrs D Shaw
Dr D Kooner
Mr W Nelson**

**Chairman
Professional Member
Member**

The Application

1. This is an application by Medway PCT ("the PCT") for a national disqualification to be imposed on the Respondent by the Family Health Services Appeal Authority pursuant to Regulation 18A of the National Health Service (Performers Lists) Regulations 2004 as amended ("the Regulations").

Legal Framework

2. Sections 18A(3) and (4) of the Regulations give a PCT power to apply to the FHSAA within three months of the date of the removal for a national disqualification to be imposed on the practitioner following removal from its Performers List.
3. Section 18A(5) provides that if the FHSAA imposes a national disqualification on a person, no PCT may include him in any list from which he has been so disqualified and if he is included in any such list, a PCT shall remove him from that list forthwith.
4. Sections 18A(6) and (7) provide that the FHSAA may, at the request of a person upon whom it has imposed a national disqualification, review that disqualification and confirm or revoke that disqualification.

5. Section 18A(8) provides that subject to regulation 19, a request referred to in paragraph 18A(6) may not be made before the end of the period of—

(a) two years beginning with the date on which the national disqualification was imposed; or

(b) one year beginning with the date of the FHSAA's decision on the last such review.

6. Section 19(a) provides that the period for review shall be five years instead of two, if on making a decision to impose national disqualification, the FHSAA states that it is of the opinion that the criminal or professional conduct of the performer is such that there is no realistic prospect of a further review being successful if held within the period specified in section 18A(8).

History

7. On 8th July 2009 the PCT removed the Respondent from its Performers List pursuant to section 10 of the Regulations on the grounds of inefficiency, fraud and unsuitability.

8. The Respondent did not appeal that decision and therefore his removal took effect from 5th August 2009 in accordance with section 10(14)(a) of the Regulations.

9. The PCT made this application having regard to the Department of Health Guidance on Primary Medical Performers Lists and to its findings at the removal hearing (details of which are set out in the PCT's submissions dated 8th September 2009 at pages A2-A13 of the case papers) that the Respondent:

(a) falsified invoices in order to access PCT funds

(b) inappropriately disposed of patient records

(c) routinely made inappropriate claims for payment to the PCT in respect of primary dental services

10. The PCT contended in those submissions that the Respondent:

(a) Acted dishonestly - by claiming false invoices and by his inappropriate claiming of Units of Dental Activity ("UDA") to exploit the system for financial gain

(b) Disregarded patient confidentiality and legal obligations in respect of data protection - as he admitted he bore ultimate responsibility for the improper disposal of patient records

(c) Compromised the oral health of his patients - by providing care to patients on an ad hoc basis and in a manner which did not accord with good clinical practice

- (d) Exploited the system for financial gain – by both fabricating invoices in order to obtain a PCT grant and by making inappropriate claims to maximise his UDA, the respondent demonstrated an intent to derive financial benefit from the PCT, to which he was otherwise not entitled
 - (e) Acted contrary to the public’s confidence in the dental profession – by abusing the trust the NHS places in dentists by putting his own interests before those of his patients in compromising their care to maximise his claims for UDA, deliberately misleading the PCT in respect of those claims and breaching his duty of confidentiality towards his patients in permitting their records to be improperly disposed of.
11. As the matters before the PCT were not local in nature the PCT submitted that the Respondent should be subject to a national disqualification.
12. The PCT further submitted that as there was no realistic prospect of a further review being successful if held within two years because:
- (a) the Respondent’s conduct had demonstrated repeated dishonesty over a number of years; and
 - (b) the Respondent’s conduct was fundamentally incompatible with the performance of dental services
- the FHSAA should consider the application of section 19(a) of the Regulations, should it decide to impose a national disqualification.
13. The Respondent failed to respond to notification of the PCT’s application sent to him by the FHSAA on 9th September 2009 or to the Notice of Hearing sent to him on 29th September 2009.

Directions issued to the Appellant

14. On 9th November 2009 the Appeal Panel chair issued directions to the parties. The Appellant was asked to, inter alia, provide confirmation of whether he intended to oppose the application and, if so, to provide a statement of the grounds on which he relied in opposing it, and also to confirm whether he wished the application to be disposed of by consideration of the papers instead of in an oral hearing. The Appellant failed to respond
15. On 23rd November 2009 the FHSAA e-mailed the Respondent asking if he had received the documents and if he wished to oppose the national disqualification. It attached the Notices sent and Directions issued to the Appellant.
16. On 25th November 2009 the Appeal Panel chair issued a further direction to the Appellant that if he continued to fail to respond to

directions, the Appeal Panel would assume that he did not intend to attend the hearing scheduled for 1st December 2009 and would determine the appeal in his absence. The Appellant failed to respond.

17. On 27th November 2009 the Respondent e-mailed the FHSAA apologising for not having previously replied as he did not have regular access to his e-mails. He confirmed that as he was not currently in the UK he would not be able to attend the hearing.
18. The FHSAA confirmed that whilst it had e-mailed to the Respondent a copy of the FHSAA's acknowledgment of the PCT's application, Notice of Hearing and Directions, he would not necessarily have seen the case papers as they had only been sent to his UK home address.
19. On 30th November 2009 the FHSAA reverted to the Respondent asking him to confirm that he was content for the national disqualification hearing to continue even though he had not seen the case papers and to respond as soon as possible. The Respondent failed to respond although the PCT noted he had read this e-mail on 5th December 2009.

Appeal

20. Given the Respondent had confirmed he would not be able to attend the hearing, the PCT confirmed in writing that it would have no objection to the application being determined on the papers alone without an oral hearing.

Preliminary Issue

21. The appeal panel decided it would postpone making a determination until the Respondent had been given sufficient time to access the latest e-mail from the PCT dated 30th November 2009.
22. On 7th December 2009 the PCT confirmed the Respondent had read this e-mail on 5th December 2009 but had failed to respond to it.
23. The appeal panel first considered whether they should proceed to consider the application, given the Respondent would not necessarily have seen the case papers as they had only been sent to his UK home address. They considered that even if he had left the UK before the papers had been sent to his home address, he had now acknowledged receipt of Notices and Directions issued to him, yet had failed to respond to the Directions other than to indicate that as he was not currently in the UK he would not be able to attend the hearing. They further considered that he had certainly known of the application for his national disqualification since at least 27th November, and as an educated professional who had been before both the PCT and the GMC, he would have sufficient understanding

both of how the application process would work and also the content of the directions to know that he needed to engage with the process and respond to directions if he wished to oppose the application. Accordingly, the appeal panel considered it was appropriate to proceed to consider the application.

Consideration of the Evidence

24. The appeal panel carefully considered the evidence submitted by the PCT with this application. They considered the issue of national disqualification by reference to that evidence and by reference to the findings of the FHSAA Appeal Panel as recorded within its written decision dated 8th July 2009.

25. They were guided by the Primary Medical Performers List Guidance issued by the Department of Health in 2004 and in particular to *[emphasis added]*:

(i) paragraph 40.2 which expresses the view that the FHSAA can itself decide to impose a national disqualification if, having rejected an appeal, it considers that the facts that gave rise to the removal decision are *so serious that they warrant disqualification*; and

(ii) paragraph 40.4 which suggests PCTs should *recognise the benefits of a national disqualification both for protecting the interests of patients and for saving the NHS resources*.

It says further that *"unless the grounds for removal ... were essentially local, it would be normal to give serious consideration to such an application"*.

26. Accordingly, although there is no statutory guidance as to the principles to be applied in such context, the appeal panel considered it was appropriate to consider national disqualification in those cases where the findings against the practitioner are serious, and not by their nature essentially local, in the sense of being objectively unlikely to have arisen had the practitioner been practising in a different area of the country.

27. The appeal panel considered the deficiencies in the Respondent's conduct as summarized in paragraphs 9 and 10 above were wide-ranging and serious. They noted that there was a substantial amount of evidence against him which was tested by the PCT, leading it to conclude that he should be removed from its Performers List. Taking all of this into account, they considered the seriousness of the breaches giving rise to the PCT's original decision, coupled with the fact that they were not essentially local to this PCT and were equally relevant to any other List, rendered it reasonable, necessary and proportionate to impose national disqualification upon the Respondent.

28. They also considered that there was no realistic prospect of a review being successful if held within two years because the Respondent's conduct demonstrated repeated dishonesty over a number of years and was fundamentally incompatible with the performance of dental services. Accordingly, they considered it appropriate to impose a national disqualification for five years pursuant to section 19(a) of the Regulations.
29. The appeal panel were aware of the likely effect of such an Order upon the Respondent and the practical effect of preventing him from pursuing his career as a dental practitioner within the NHS. They weighed such considerations against the risk to patient safety and the prejudice to the efficiency of services, thereby also presenting a risk to NHS resources if such an Order was not made.
30. Accordingly, they ordered national disqualification from inclusion in all lists referred to in section 159(1) of the National Health Service Act 2006 and directed that a copy of this decision be sent to the persons and bodies referred to in Rule 47(1) of the FHSAA (Procedure) Rules 2001. In the case of sub-rule 47(1)(e) the relevant professional body is the General Dental Council.

Supplementary matters

31. In accordance with Rule 42(5) of the FHSAA (Procedure) Rules 2001 the appeal panel hereby notifies the parties that they have the right to appeal this decision under section 11 of the Tribunals and Inquiries Act 1992 by lodging notice of appeal in the Royal Courts of Justice, The Strand, London WC2A 2LL within 28 days from the date of this decision.

32. Under Rule 43 of the FHSAA (Procedure) Rules 2001 a party may also apply for review or variation of this decision no later than 14 days after the date on which this decision is sent.

Dated the 8th day of December 2009

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Debra R Shaw
Chairman of the Panel