

IN THE FAMILY HEALTH SERVICES APPEAL AUTHORITY

Case Number: 15191

Listed at: Wrexham
On: 29th October 2009

Mr T Jones Chairman
Dr Wray Professional Member
Mr Lloyd Member

BETWEEN

GWYNEDD LOCAL HEALTH BOARD (“LHB”)

Applicant

and

DR P LICHTORWICZ
(Professional Registration Number: 84980) (“The Respondent”)

Respondent

DECISION WITH REASONS

The Application

1. On the 20th August 2009 the Applicant LHB pursuant to Regulation 18A of the National Health Service (Performers List) Regulations 2004 (“The Regulations”) made an application for the national disqualification of the Respondent following his removal from the LHB’s Performers List on 16th July 2009 in accordance with Regulations 10 (3) and 10 (4) (a) (“an efficiency case”) of the Regulations. The LHB had, earlier in a timely manner, informed the Respondent of the removal and

of his right of appeal therein and of the LHB's decision to seek this order. He did not appeal his removal. Subsequently, as noted above, the LHB made an application to the FHSAA requesting the national disqualification of the Respondent. The Appellant was given, we find, notice of this hearing in a timely fashion. We have, on further enquiry at the behest of the Panel, been made aware by his defence union, that they have been without instructions from him for sometime now. We resolved to proceed with the hearing, relying on the written submissions of the LHB, and being mindful and careful not to reach adverse conclusions or findings, in so far as the Respondent is concerned, simply because of his failure to engage with this hearing.

Background

2. The background of the matter is that concerns arose as to the Respondents practice and performance. They arose initially when a local Consultant wrote to the LHB as to why the Respondent had seen a 37 year old patient, over many months without earlier appropriate referral. The patient was seen by the Respondent on some ten occasions between November 2007 and mid February 2008. The patient was found to have developed an intra-oral lesion identified as a carcinoma and was obliged to undergo a hemimandibulectomy.
3. There were some three other prior complaints noted and of these only one was further investigated, together with the above case, by the LHB's Initial Screening Panel. The LHB requested the Dental Reference Service to carry out an external assessment of patients treated by the Respondent. The LHB's Performance Panel met to consider this report in October 2008, which raised some issues concerning performance and record keeping; it was hoped, in consultation with the Respondent and his defence union, that the Respondent's performance might be better assessed and steps toward remedy be sought by referral to the National Clinical Assessment Service. These reports and referrals are documents of record and have been supplied to the Respondent.
4. Over the following months, efforts were made with the Respondent's contract holder to set up a suitable programme of clinical supervision, but this stalled when they withdrew their support for the Respondent, giving notice of cessation of his contract for services with them. Efforts were then made with the involvement of the LHB, Respondent and the local Deanery to find a suitable alternative practitioner to act as clinical supervisor; and, with the help of the Deanery a suitable clinical supervisor was found. These arrangements foundered in the middle of June 2009 when the Respondent informed the LHB of his decision to return permanently to his home country, Poland, and of his unwillingness to provide the costs of supporting his clinical supervision as had been agreed. In light of such developments, the LHB proposed to remove the Respondent from the Performers List at a meeting of its Performance Panel on 16th July 2009 at which, neither the Respondent, nor his defence union who has been previously instructed and had attended prior meetings, appeared. The Respondent, albeit it he was given quite short notice of this LHB Performance Panel meeting has not appealed the decision of the LHB to remove him for its

Performers List. The LHB gave notice of the same, writing to the Respondent, at his last address given by him, under cover of a letter of 21st July 2009.

Our Conclusions

5. The power to make a national disqualification is derived from Section 49N of the Health and Social Care Act 2001 and subsequent legislation. In August 2004 the Department of Health provided guidance on national disqualifications and delivering quality primary care: PCT Management of Primary Care Practitioners Lists. These principles whilst they in their wording expressly refer to medical practitioners are nonetheless, we find, equally applicable to dentists providing contractual services to the NHS.
6. The guidance contains two relevant propositions: “where the facts of the case are serious it would be wrong to allow the doctor to offer his services to every PCT (LHB) (sic) in turn in the hope that he will find one willing to accept him”. Further, “unless the grounds for their decision were essentially local it would be normal to give serious consideration ... to an application for national disqualification”. Therein, we refer to paragraphs 8.1.2 and 8.1.5 of the guidance notes referred to above.
7. In determining the application made by the LHB herein, we have considered fully the LHB bundle supplied to the Respondent. Having done so, we find that the Grounds of Application are well made out. We find that the LHB was empowered and quite right to remove the Respondent from their Dental Performer’s List; and, in light of the Department of Health guidance as noted above have quite properly, and we find quite rightly, made an application for national disqualification. The LHB’s action we find was entirely proper, and proportionate, in light of all the developments in the case, and that the current application well made out, and proportionate for the reasons expressed by the LHB summarised above. What is clear, and we find is that the concerns were made out, acknowledged by the Respondent in that and a course of action to protect patients was agreed. It is indeed unfortunate that with the matters agreed, acknowledging a need to protect patients, as between the LHB, as well as the Respondent and his defence union (who are we understand no longer instructed in this matter) foundered for the reasons as noted above. We find it would be prejudicial to the service, if these matters were not addressed, for the Respondent to be able to apply to another LHB or Primary Care Trust (PCT) for inclusion in their list, without these issues being resolved with the Applicant LHB who has put resources into the same; such costs would doubtless be replicated, and/or additional costs incurred by another LHB/PCT, if the Respondent were free to apply to such.

Decision

8. Our order is that pursuant to Section 49N(3) of the National Health Service Act 1977, as amended by the Health and Social Care Act 2001, as amended, that the Respondent be disqualified from inclusion in all Performer’s Lists prepared by all

Local Health Boards and Primary Care Trusts, all lists deemed to succeed or replace such lists by virtue of Regulations made there under. In so doing, proportionately, we have weighed the effects of this Order upon the Appellant, against the efficiency of the service and risk to patients, if a national disqualification is not made.

9. We direct that a copy of this decision be sent to the bodies referred to in Regulation 47 of the Family Health Services Appeal Authority (Procedure) Rules 2001. Finally, either party to this appeal may exercise a right of appeal against this decision by virtue of section 11 of the Tribunal and Inquiries Act 1992, by lodging an appeal with the Royal Courts of Justice, The Strand, London, WC2A 2LL, within 28 days of receipt of this decision.

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Mr T Jones, Chairman.