

IN THE FAMILY HEALTH SERVICES APPEALS AUTHORITY

Case No: 13838

Ms M. Lewis Chairman
Dr H Freeman Professional Member
Miss J .Neylon Lay Member

Between

ENFIELD PRIMARY CARE TRUST

Applicant

AND

DR SHANTA DHAR
(GMC NO. 1465969)

Respondent

Hearing

29 November 2007-
Care Standards Tribunal, Pocock Street, London SE1 0BW.

Attendance:

Applicant:

Ms. Trish Galloway, Head of Primary Care Practitioner Performance
Dr. Peter Savege, Medical Adviser

Respondent

Dr. Dhar did not attend nor was she represented.

DECISION

1. This was the adjourned oral hearing of the application by the PCT, dated 12 June 2007, to extend the suspension of Dr Dhar, to vary the suspension from one under Regulation 13 (1) (a) of the National Health Service (Performers' List) Regulations 2004 pending its decision whether or not to contingently remove Dr Dhar to one under Regulation 13 (1) (b), while it waited for the decision of the Coroner.

Background to the Application

2. The PCT first became aware of this case on 13 January 2006 when they were contacted by the police to advise that Dr Shanta Dhar had been arrested, initially on 2 counts (1) manslaughter, and (2) perverting the course of justice, which related to allegations about medical records. A third count was later added of malfeasance. The arrest followed the opening of a Coroner's inquest on 11 January 2006 into the death of one of Dr Dhar's former patients, Mrs Joan Board. The death had taken place in December 2005. There was a conflict in evidence between Dr Dhar on the one hand and the London Ambulance Service and the

deceased's daughter on the other. The issue was whether Dr Dhar had attempted Cardio Pulmonary Resuscitation (CPR) or not.

3. This decision should be read in conjunction with the decisions of the Panel chaired by Ms S Goodrich dated 29 August 2006 granting the first extension to the suspension until 23 January 2007 and the decision of the Panel chaired by Mr R Chaudhuri dated 21 March 2007 granting a further extension until 8 June 2007. By our decision 17 July 2007 we agreed to adjourn the case so that Dr Dhar's solicitors RadcliffesLeBrasseur could take instructions and to await the outcome of the Coroner's inquest, which was to be held on 12 and 13 March 2007.

4. The Hornsey Coroner adjourned the matter on 12 September 2007, as the Senior Investigating Officer wished to refer the matter back to the Crown Prosecution Service for further advice as to whether criminal charges should be preferred. In our decision dated 1 October 2007 we declined to deal with the matter on the papers as the parties requested. We were not satisfied that we had the full facts and were concerned that drift had set in. We were particularly concerned that Dr Dhar who is aged 74, which of itself might suggest she was very close to retirement, had been suspended for 21 months and the matter showed no signs of reaching any conclusion.

5. We are satisfied that we now have a full set of case papers, albeit they only run to 29 pages..

6. We are satisfied that the Respondent had due notice of the hearing but has chosen not to attend or be represented. This was further confirmed in a fax from the Respondent's solicitors RadcliffesLeBrasseur, received only at 8.55 am on the morning of the hearing.

Action Taken by the PCT to Date

7. Ms Galloway took us through the history of the case and the actions taken by the PCT. An oral hearing under the Performers' List Regulations was held on 20 January 2006 and it was agreed that Dr Dhar would be suspended under paragraph 13 (1) (a) as it was believed at that time, that the PCT could reasonably plan to obtain the necessary evidence with which it could investigate the matter. The oral hearing Panel did consider whether any other action short of suspension would be suitable in this case but were concerned firstly, by the nature and seriousness of the allegations made and secondly by the difficulty in establishing robust restrictions. They also noted that the allegations called into question Dr Dhar's honesty and trustworthiness.

8. The General Medical Council held a meeting of its Interim Orders Panel (IOP) on 1 February 2006 and agreed that conditions should be imposed upon Dr Dhar's registration. These have been noted by previous FHSAA Panels but we learnt that these were not practical with Dr Dhar's working environment, as she is a partner in a two-handed practice. The 2 doctors work at different times so the conditions about working only with another full registered medical practitioner trained in CPR could not be fulfilled. Dr Dhar's partner was not prepared to alter his working practises to accommodate the GMC conditions. Those conditions were to last for 18 months, until October 2007. We were not told that they had been listed for review.

9. Ms. Galloway set out the meetings between Dr Dhar and her LMC representative. The discussions centred on whether there would be some kind of Performance Assessment or whether Dr Dhar would pursue her expressed wish to retire. She confirmed that save for this matter the PCT had had no other concerns about Dr. Dhar's clinical practice. Concerns had related to the performance of the practice.

10. Matters then became stuck as the PCT made regular calls to both the Coroner's officer and the police to identify when the inquest would re-commence and when evidence could be provided to the PCT. The PCT understood and had been advised by their solicitors that they could not make their own investigations. It was in those circumstances and with no

date for an inquest and Dr Dhar not agreeing to undergo a performance assessment that a third request for an extension of suspension was made in May 2007.

11. In a letter to the FHSAA dated 28 September 2007, (their ref:IXS/PB/900100.9049) RadcliffesLeBrasseur set out the Respondent's view on the case to date. They expressed surprise at the position adopted by the Investigating Officer at the adjourned inquest on 12 September 2007, as there was no further clinical/expert evidence placed before the Coroner, beyond that which had been in the possession of both the Coroner and the police for a considerable period of time. There were only 2 areas in which new information was presented to the Coroner. The first was by the PCT's own officer, Dr Barnes who gave evidence to the effect that the allegations against Dr Dhar, if substantiated, would be at the serious end of the scale from the point of view of negligent treatment. The second area of new information related to the question of whether alternative treatment could have been provided which might have saved Mrs Board's life. In this respect the evidence was even clearer in court than it had been on paper to the effect that, sadly, nothing, which Dr Dhar did or did not do, would have affected the outcome. Ms Galloway confirmed that that remains the PCT position. The letter concludes:

"On the basis that the only reason for Dr Dhar's suspension is the case of Mrs Board, and the fact that this relates to a very narrow area of general practice, then there can be no justification in our view for such a wide-ranging and detailed assessment of the practitioner's clinical abilities and knowledge. Dr Dhar has readily accepted that given her regrettable absence from practice for such a long period of time, she will need to be able to demonstrate that her skills have not become so dulled by the passage of time that she might present a risk to patients or indeed herself. We do suggest that this can be comfortably achieved without the sort of unnecessarily wide-ranging Performance Assessment that the PCT appear to have in mind"

Conclusions

12. We do not conclude on the limited evidence before us that it is necessary for the protection of members of the public, or is otherwise in the public interest for Dr Dhar to remain suspended either whilst the PCT considers whether to exercise its powers to remove her contingently her or await the decision of the Coroner.

13. Nearly 2 years has now passed since the death of Mrs Board on 2 December 2005. There is no evidence put before us to substantiate the very serious charges made against Dr Dhar at that time.

14. These were serious allegations. We accept that it was an appropriate step by the PCT to suspend Dr Dhar until all the facts were known. The PCT had been advised by the police and their own legal advisors to take no steps as they might otherwise hamper the investigation.

15. The PCT has left this matter to be investigated by the police and resolved through the Coroner's inquest. The only evidence before us related to concerns not made out by any hard evidence. Ms Galloway offered to show us medical records but we didn't think it appropriate to examine them, as the Respondent had not been put on notice that we would do so. In any event such evidence would have to be examined in the context of all the evidence relating to the events surrounding Mrs Board's death. We were also told about a 999 call made by Dr Dhar on the evening that Mrs Board died, where it was said she lost control. We place very limited weight on that. It is hearsay evidence reported by a senior medical practitioner from the PCT who attended the Coroner's inquest. It could simply be a matter of human emotion when she was faced with an unexpected death. This is a single episode in a long career.

16. Whilst the PCT's position was a reasonable initial response, delay has set in which is beyond the control of the parties but it calls for a different response. It is our unanimous view that a more robust approach is needed. The PCT was concerned that they would be criticised if the suspension was not extended, whilst the inquest and police investigation was not concluded.

17. We conclude that there is no evidence save for these substantiated allegations in relation to Mrs. Board's death that would otherwise lead us to conclude that it was necessary for the protection of members of the public or otherwise in the public interest to continue Dr Dhar's suspension. We confirmed that Dr. Dhar has been known to this PCT for over 20 years. She has qualified in 1959 so whilst we do not know the details, assume has been in practice for over 45 years.

18. We have construed the public interest widely, to include the public purse, certainty about the position of a doctor and their practice, and a practitioner keeping their skills up to date. We conclude on the facts of this case that it is not in the public interest that a practitioner can remain suspended for nearly 2 years on full pay with a locum having to be paid, again at public expense, to cover her post. It does not appear that Dr Dhar has taken any steps to continue her professional development. If she wishes to return to work she will have to negotiate that with her Deanery.

19. We acknowledge the distress that these allegations have caused Dr. Dhar, coming at the end of a long career but that cannot inform our decision, which does not prevent her continuing to seek to clear her name.

20. If the results of the Coroner's inquest or police investigation should direct otherwise, then it is always open to the PCT to apply for a further suspension supported by that evidence.

The Panel's Decision

21. The Respondent's application for a further extension to the suspension of Dr. Dhar pursuant to either Regulation 13 (1) (a) or 13 (1) (b) of the National Health Service (Performers' List) Regulations 2004 is refused.

**Ms M E Lewis
Chair**

Either party to these proceedings has the right to appeal this decision under and by virtue of Section 11 Tribunals and Inquiries Act 1992. Any appeal should be made by lodging a notice of appeal in the Royal Courts of Justice , The Strand , London WC2A 2LL within 28 days from the receipt of this decision.