IN THE FAMILY HEALTH SERVICES APPEAL AUTHORITY

Case Number: 14747

Listed at: **Birmingham**
On: **4th November 2008**

Mr T Jones **Chairman**
Dr G Sharma **Professional Member**
Mrs V Lee **Member**

BETWEEN

DR J GRANDHI
(Professional Registration Number: 3160785)

Applicant

and

WOLVERHAMPTON TEACHING PRIMARY CARE TRUST ("The PCT")

Respondent

DECISION WITH REASONS

The Appeal

1. On the 21st July 2008 the Respondent PCT ("The Respondent") removed the Dr Grandhi's name (the Appellant) from its Medical Performers List having heard from Counsel instructed by the PCT, and Mr Fortune of Counsel instructed by Messrs RadcliffesLeBrasseur Solicitors who were, at that time, acting for the Appellant. Removal was on the grounds of Efficiency and Suitability under Regulations 10 (4) (a) and (c) of the National Health Service (Performers List) Regulations 2004 ("The Regulations"). The decision given orally on 21st July 2008 was confirmed in writing by letter of 28th July 2008 addressed to the Appellant at his home address. The Appellant was notified of the removal and of his right of appeal therein. In a letter of 12th August 2008 the Appellant made an appeal against this decision to the Family Health Services Appeals Authority (FHSAA). The PCT resists this appeal and requests the National Disqualification of the

Appellant pursuant to Regulation 10 of the NHS (Performers List) Regulations 2004.

Background and the Appeal

2. At the hearing, Miss Berry from Messrs Mills and Reeves Solicitors appeared for the Respondent. The Appellant appeared with a member of the Local Medical Committee offering him advice and support; the Appellant stated he was ready to proceed. He made it clear he did not dispute the allegations set out in the Respondents statement of case, which he had seen before the hearing, and we marked “R1”.

3. We noted the Appellant had already admitted them, when he had the benefit of legal representation from Solicitor and Counsel when appearing at the meeting with the PCT concerning his remaining on the Performers List on 21st July 2008. Nonetheless, we specifically asked the Appellant if there was any need for the Respondent to call witness, or make further submissions, if any aspect thereof was to be denied. He said this was not necessary because the matters therein were admitted. We were satisfied this statement made before us was unequivocal.

4. He then drew our attention to his undated letter in the bundle, date stamped received by the FHSAA on 6th October 2008. He maintains the Respondents decision to remove him, as opposed to contingently removing him, was disproportionate and Wednesbury unreasonable. He reminded us, on more than one occasion, that the Interim Orders Panel of the General Medical Council, which he submitted was an objective comparator, had made an interim order of conditions upon his registration that might yet allow him to re train. Accordingly, he should not be removed or nationally disqualified. Miss Berry addressed us in terms that this issue had been explored fully before the PCT hearing; at that time with the benefit of an experienced legal team, seized of all matters including those matters before the General Medical Council, it was conceded that in line with his admissions the out come of the PCT’s deliberations that day must be removal. The Regulations, at paragraph 10 (4) (a) (an efficiency case) and 10 (4) (c) (an unsuitability case) apply, and it is clear that Regulation 12 (dealing with contingent removal) does not allow for contingent removal in an unsuitability case. She also requested an order of national disqualification; reminding us that the matters herein were not of a local nature.

5. A note was taken in the form of a record of proceedings by the Panel members. We asked the parties to remain for a short while after the hearing, whilst in camera we established if there any conflict as between our notes with which the parties could assist us. There were none. We released the parties before then carrying on with our in camera determination of the appeal.

Our Conclusions

6. The allegations and concerns as to the Appellants efficiency and suitability are admitted. This is clear in the Appellants notice of appeal, statements made before us, his evidence and closing submission, where the Appellant has consistently admitted these matters. He did so earlier before the PCT with the benefit of experienced Solicitors and Counsel. The PCT Performers List hearing explored at that time the issue that is, essentially pleaded before us by the Appellant now; whether despite the finding of unsuitability, which itself is not disputed by the Appellant, the Respondent could nonetheless allow him to be contingently removed from the PCT list.

7. The Appellant has submitted that we have discretion and should contingently remove him. He told us he had not murdered anyone or committed any crimes requiring removal from the list. We have fully noted the many testimonials letters placed before us and forwarded to the Panel by the Appellant. We find there is no doubt the serious concerns as to the Appellants efficiency and suitability are made out; and they were admitted. They include generic deficiencies, identified and admitted, as to clinical record keeping, infection control/hygiene, assessment and treatment of young children, general standard of medical care, prescribing, communication with patients, serious patient complaints, and working with colleagues. They were outlined fully in the document R1, referring as it does to a NCAS assessment. The Appellant has also advised us that these issues have also been addressed in some measure by the General Medical Council in a performance assessment; Dr Grandhi told us quite openly, that this information from April 2008 or thereabouts, stated that almost all areas assessed his deficiencies were not remediable; the only one capable of remediation being respect for colleagues.

8. We find that in line with submissions made before us by Miss Berry that the situation has not, in essence, changed from that before the PCT Performance List hearing in July 2008. Whilst Dr Grandhi prays in aid the imposition of conditions by the General Medical Council, we note that this is before the Interim Orders Panel which does not determine issues of fact or the outcome of any Fitness to Practice hearing that may then follow. We have no doubt the matters before us relating to Dr Grandhi’s efficiency and suitability are serious, and the findings as to efficiency and suitability made by the Respondent are well made out; we find this to be so for like reasons ourselves. They are all such that we find, in light of all the circumstances of this appeal, the Appellants removal from the Performers List is warranted; moreover, we further find that we are in light of the same, pursuant to The Regulations, required to make such an order in respect of the Appellant.

9. We then addressed the issue of national disqualification. The power to make a national disqualification is contained in Section 49N of the Health and Social Care Act 2001. In August 2004 the Department of Health provided guidance on

national disqualifications and delivering quality primary care: PCT Management of Primary Care Practitioners Lists.

10. 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) 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.

11. In determining the application made by the Respondent herein, we find that the Grounds of Application are well made out. We find that the Respondent was empowered, and quite right, to remove the Appellant from their Medical Performer's List. The Respondent's actions therein have been entirely proper and proportionate. In light of the Department of Health guidance as noted above the Respondent has quite properly, and we find quite rightly, made an application for national disqualification. The application for national disqualification made within the context of these proceedings is also, we find, proportionate and we make such an order.

Decision

12. A) The Appellants appeal against removal from the Respondents Performers List is dismissed.

 B) Our order is that pursuant to Section 49N(3) of the National Health Service Act as amended by the Health and Social Care Act 2001, the Appellant be disqualified from inclusion in all Performer's Lists prepared by all 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 risk to patients if a national disqualification is not made.

13. 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.

……………………
Mr T Jones, Chairman