

IN THE FAMILY HEALTH SERVICES APPEAL AUTHORITY

Case Number: 13438

Listed at: Harrogate
On: 9th January 2007

Mr T Jones Chairman
Dr I Lone Professional Member
Mr C Barnes Member

BETWEEN

CAMBRIDGESHIRE PRIMARY CARE TRUST (“The PCT”)

Applicant

and

DR FRANCIS OBENG
(Professional Registration Number: 4274113)

Respondent

DECISION WITH REASONS

The Application

1. On the 11th August 2007 the Applicant PCT (“The PCT”) removed the Respondents (“Dr Obeng”) name from its Medical Performers List having given him an earlier opportunity to make representations. He was notified of the removal and of his right of appeal therein. He did not appeal. Subsequently, the PCT made an application to the FHSAA requesting the National Disqualification of the Respondent pursuant to Regulation 10 of the NHS (Performers List) Regulations 2004, as the Respondent inclusion in any Medical Performers List would be prejudicial to the efficiency of a performers list.

Background

2. The PCT had been investigating information relating to possible poor clinical performance on the part of the Respondent. A General Medical Council (GMC) report as to an assessment of the Respondents professional performance identified serious concerns.

3. Accordingly, the PCT obtained a copy of this assessment. The report after a fulsome assessment concludes that the performance of the Respondent was "seriously deficient". The GMC suspended the Respondent's registration for 18 months from the 16th May 2006 for a period of eighteen months for the protection of members of the public.
4. Dr Obeng, having been given timely notice of this hearing did not appear or make any representations herein.

Our Conclusions

5. 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.
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) 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 PCT herein, we find that the Grounds of Application are well made out. We find that the PCT was empowered and quite right to remove Dr Obeng from their Medical 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 PCT's action we find was entirely proper and the current application proportionate. We say this because; there can be no doubt on any reading of the assessment Dr Obeng's performance therein was "seriously deficient". The GMC and PCT were and are rightly concerned as to the protection of the public.

Decision

8. 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 Respondent Dr Francis Obeng 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.
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
Harrogate, 9th January 2007.