

IN THE FAMILY HEALTH SERVICES APPEAL AUTHORITY

Panel

Mr D Pratt (Chair)
Mr Davinderpal Kooner (Professional Member)
Mrs M Harley (Member)

25 January 2007

BETWEEN:

MAREK WOJCIECH SCHUBERT (GDC No 84586)

Appellant

-and-

MORECAMBE BAY PRIMARY CARE TRUST

Respondent

DECISION AS TO NATIONAL DISQUALIFICATION, AND REASONS

1. By a decision dated 18 December 2006 this Panel rejected the appeal of Mr Schubert against his removal from the Dental Performers' List maintained by Morecambe Bay Primary Care Trust ("the PCT") and directed that he should be removed from that List pursuant to Regulation 10 (3) of the Regulations, because his continued inclusion in the list would be prejudicial to the efficiency of the services which those included in the Performers List perform, as provided by Regulation 10 (4) (a) of the 2004 Regulations.
2. By virtue of Regulation 18A of the National Health Services (Performers Lists) Regulations 2004, as amended:
*"(2) If a performer appeals to the FHSAA under regulation 15 and the FHSAA decides—
(a) to remove the appellant from a performers list; or
(b) to refuse to admit him to a performers list,
the FHSAA may also impose a national disqualification on that performer."*
3. In our view, the conclusions we had reached about Mr Schubert's case made it necessary to consider such a National Disqualification. By paragraph 44 of our decision we adjourned consideration of that issue to enable the parties to make representations about it within 28 days of the date on which the decision was sent out, should they wish to do so. Our decision, together with a letter drawing attention to paragraph 44, was sent (in the case of Mr Schubert) to the address in Poland where he has previously indicated he resides, and from where he has previously corresponded, on 21 December 2006. It was confirmed as delivered by International Signed-for Service.

4. Mr Schubert has not submitted any representations, nor responded in any way. By a letter of 22 December 2006 the PCT invites us to make an order of National Disqualification, on the basis of the papers previously submitted and on the basis of our decision in the substantive appeal.
5. The Panel has reconvened today to consider whether Mr Schubert should be nationally disqualified. We refer to our findings and conclusions in the substantive appeal, which it is not necessary to repeat here.
6. In our view the deficiencies which we identified were serious. They compromised many crucial areas of basic dental practice: our conclusions under paragraph 40 of our earlier decision set out some of the main features of those deficiencies.
7. We asked ourselves whether the shortcomings were essentially local in character, or in some way peculiar to Mr Schubert's practice of dentistry in Cumbria. Clearly they were not. Any patient presenting for treatment would be exposed to the same risks of substandard management, wherever the consultation might take place. We reminded ourselves that Mr Schubert had raised allegations about the inadequacy of the support and supervision given to him by his employers Mr and Mrs Wilson. However, we did not and do not accept that this was the case. In any event the obligations of an employer are limited to matters such as providing safe systems. The individual dental practitioner has the primary personal responsibility to ensure he is able to practise to a competent standard. This, Mr Schubert did not do, in our judgement.
8. We asked ourselves whether it could be said that these were isolated incidents or showed a pattern of care. In view of the large number of findings of adverse incidents over a period of just over 3 months, the variety of deficiencies identified, and the fact that all relate to basic dental or orthodontic practice, we conclude that a pattern of poor practice and competence in basic essential dental practice is demonstrated.
9. These shortcomings might or might not be remediable: we have no knowledge of what retraining may be available to Mr Schubert. However, no retraining can have any prospect of success unless and until Mr Schubert shows insight into his own deficiencies. He has amply demonstrated through his conduct of the substantive appeal that he has no insight of this kind. His case was at pains to find excuses for poor results or treatment. Often this involved blaming someone else.
10. Lastly we considered the need to balance the need to protect patients and use NHS resources efficiently, against Mr Schubert's interests in preserving his access to NHS Performers Lists, NHS work and remuneration. In our view the balance comes down firmly in favour of National Disqualification. In our judgement it is necessary to do so in order to protect patients. We reminded ourselves of our conclusion at paragraph 41 of our earlier decision that patients were put at risk at the hands of Mr Schubert and it was not safe to

permit him to continue to practise on the PCT Performers List. In addition, the unnecessarily protracted treatment to which patients were subject, while in many cases they continued to suffer pain and discomfort, was also unnecessarily costly to the NHS. Furthermore we had evidence that much of Mr Schubert's work had to be re-done at further cost, or use of dental resources. Even if he were resident in the UK, the balance would favour National Disqualification. But in his case he is residing in Poland, and is not limited to, or currently seeking to make his living in the UK. He remains free to practise in Poland.

11. We are concerned about the risk to patients and the avoidable damage to the efficiency of the dental services provided by those on Performers Lists elsewhere, if Mr Schubert were to re-apply through any scheme to practise on any Performers List elsewhere in England and Wales (the area with which we are concerned).
12. We therefore direct that Mr Marek Wojciech Schubert (GDC Registration Number 84586) shall be disqualified from inclusion in the following lists mentioned in Regulation 18A of the Performers Regulations, namely a Performer's List, a list referred to in section 49(N) 1 of the 1977 Act prepared by a Primary Care Trust, and any supplementary list prepared by a Primary Care Trust. We further direct that a copy of this decision be sent to the bodies or persons listed in Rule 47 of the Family Health Services Appeal Authority (Procedure) Rules 2001, namely:
 - The Secretary of State for Health,
 - The Registrar of the General Dental Council,
 - The National Assembly for Wales,
 - The Scottish Executive,
 - The Northern Ireland Executive Committee.
13. In accordance with Rule 42 (5) of the Rules we hereby give notice that a party to these proceedings can appeal this decision under Sec 11 Tribunals & Inquiries Act 1992 by lodging notice of appeal in the Royal Courts of Justice, The Strand, London WC2A 2LL within 28 days from the receipt of this decision. Under Rule 43 of the 2001 Rules 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.

Duncan Pratt
Chair of the Panel

25 January 2007

Case Number 13331

IN THE FAMILY HEALTH SERVICES APPEAL AUTHORITY

Panel

Mr D Pratt (Chair)

Mr Davinderpal Kooner (Professional Member)

Mrs M Harley (Member)

25 January 2007

BETWEEN:

MAREK WOJCIECH SCHUBERT (GDC No 84586)

Appellant

-and-

MORECAMBE BAY PRIMARY CARE TRUST

Respondent

DECISION AS TO NATIONAL DISQUALIFICATION, AND REASONS