

**IN THE FAMILY HEALTH SERVICES APPEAL
AUTHORITY**

CASE 14931

Professor M Mildred - Chairman
Dr D Kooner - Professional Member
Mr W Nelson - Member

BETWEEN

DR ALEXANDRU VARGA
(Registration Number 112657)
Appellant

and

HAMPSHIRE PRIMARY CARE TRUST
Respondent

DECISION WITH REASONS

The appeal

1. By a letter dated 10 October 2008 the Respondent (“the PCT”) removed the Appellant (“Dr. Varga”) from its Dental Performers List on the ground of efficiency under regulations 10(3) and 10(4)(a) of the National Health Service (Performers Lists) Regulations 2004 (“the Regulations”) after a Contractor Performance Panel (“CPP”) of the PCT had reviewed the case on 7 October.

Background

2. Dr Varga is a Romanian national who in June 2008 was working for ADP in Tadley. A dental nurse at the practice by an undated letter to the General Dental Council (“GDC”) drew attention to some 14 concerns about Dr Varga’s clinical practice. This was notified to the PCT who met with the Clinical and Regional Managers of ADP on 7 July 2008 who confirmed that they had given him three months notice of termination of his contract expiring at the end of September because of clinical issues and operational issues including his communication with patients. After this meeting Dr Varga’s contract with ADP was terminated with immediate effect on 8 July 2008.

3. After an oral hearing of the CPP (which Dr Varga attended with Dr Ingham of his Defence Union) on 10 July the PCT suspended Dr Varga for a maximum of six months to permit a full investigation of the allegations of clinical malpractice.

4. The CPP met again on 5 August 2008 in Dr Varga’s absence and decided to “propose Dr Varga’s removal from the List”. By a letter dated 7 August 2008 the PCT informed Dr Varga that the CPP had “determined that his continued inclusion on the List would be prejudicial to the efficiency of the services which those included in the List perform” and “concluded that he should be removed from the PCT’s Dental Performers List under Regulation 10(3) and 10(4)(a)”.

5. Dr Varga was invited to make written representations against this decision or to put his case at an oral hearing by 4 September 2008 failing which the CPP would “consider whether or not to remove him for the List”. After a request from Messrs RadcliffesLeBrasseur on behalf of Dr Varga the PCT extended time for representations to 22 September 2008 because Dr Varga was out of the country until 15 September.

6. On 18 September 2008 the Interim Orders Committee of the GDC imposed 10 conditions on Dr Varga’s registration, effectively requiring him to undergo an assessment by the Deanery and only to practise under supervision. The CPP met again on 7 October and agreed in the absence of any representations from Dr Varga to remove him under Regulation 10(4)(a) and notice of the decision was given to him by letter dated 10 October 2008.

7. It became clear that Messrs RadcliffesLeBrasseur had in fact made representations to the PCT in a letter dated 18 September 2008 that had not been received by the PCT. The representations were that Dr Varga intended to comply with the interim conditions imposed by the GDC and return to general practice posts under a supervisor following a performance assessment by the Postgraduate Dental Dean.

The appeal

8. Dr Varga appealed against the PCT's decision by letter from Messrs RadcliffesLeBrasseur dated 3 November 2008 on the grounds contained in their letter of 18 September 2008. A hearing was fixed for 3 February 2009 but it transpired that Dr Varga was in Romania and asked for the appeal to be dealt with on the papers alone. As the PCT had no objection to this we considered the appeal on the papers on the same date.

9. The Panel members confirmed that they had no conflicts of interest in hearing the appeal.

10. Messrs RadcliffesLeBrasseurs reported by letter that Dr Vargas had attended a meeting with the Deanery and was still considering his options in relation to working in NHS dentistry and therefore wished to proceed with his appeal. By a letter dated 30 January 2009 the PCT told us that, to the best of its knowledge, Dr Varga had no contract to provide dental services in Hampshire and that they had no further information about his intention so to do.

Discussion

11. At the 10 July CPP meeting all the allegations made against Dr Varga by the dental nurse were put fairly to him and his representative. The PCT was rightly concerned that Dr Varga had accepted serious shortcomings in his clinical practice including failure to obtain appropriate consents, using an air rotor and ultrasonic scaler without water, failure routinely to use local anaesthetic, abnormal prescribing practices, poor note-keeping, not attempting to save teeth but going straight to extraction and using neat Milton fluid on soft tissue.

12. In addition ADP had given Dr Varga three months notice on clinical grounds before these complaints came to the surface. In these circumstances we have no difficulty in finding that Dr Varga's continued presence on the List would prejudice the efficiency of the PCT's dental services.

13. We considered the submission that the conditions imposed by the GDC strongly suggested that Dr Varga's practice is remediable by compliance with the conditions imposed. This would support a contingent removal. There are two answers to this: the GDC's position has changed in that Dr Varga has been summoned by the GDC to appear before its Conduct Committee for the investigation of six major clinical failings and a lack of insight into his shortcomings (as evidenced by his comments at the CPP hearing). This hearing is expected to take place in May or June this year. Thus the comfort we are asked to derive from the decision of the IOP as to Dr Varga's remediability may be illusory.

14. Further, the conditions imposed by the IOP only permit supervised practice. We interpret this as an extremely restrictive condition in NHS dentistry such that it is highly unlikely that Dr Varga could re-enter practice, if he could find a new contract. Indeed, even that condition is pre-empted by the necessity of arranging an assessment by the Deanery. Although we are told that Dr Varga met the Deanery on 6 November there is no evidence that an assessment has been arranged, let alone made or that the assessment had a satisfactory outcome.

15. All we are told for certain is that Dr Varga is "still considering his options in relation to working in dentistry in the UK within the auspices of the NHS". That is not compelling (and is certainly far less compelling than the submission contained in the letter of 18 September 2008 on which the appeal is said to be based) and Dr Varga's absence from the hearing (thus limiting the information upon which we must make our decision) has been unhelpful.

16. It appears to us that Dr Varga should be removed from the PCT's List. If he still wishes to practise in the NHS and can satisfy the Conduct Committee of the GDC of his suitability to practise, he can then undertake whatever assessment and retraining is required, seek an appointment and apply to go on the List of the appropriate PCT. A contingent removal at this stage would leave him subject to exacting conditions and awaiting the Conduct Committee hearing without work in Hampshire, whilst imposing a burden upon the PCT without any corresponding benefit. Put like that, we are satisfied that Dr Varga's continued presence on the List would prejudice the efficiency of the PCT's dental services.

Decision

17. Accordingly we dismiss the appeal and order that Dr Varga be removed from the PCT's Dental Performers List.

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

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Mark Mildred
Panel Chair
4 February 2009