

**IN THE FIRST TIER TRIBUNAL OF THE TRIBUNALS SERVICE  
HEALTH EDUCATION AND SOCIAL CARE CHAMBER  
PRIMARY HEATH LISTS**

**CASE 15161**

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

**BETWEEN**

**HAMPSHIRE PRIMARY CARE TRUST**

**Applicant**

**and**

**DR ALEXANDRU VARGA  
(Registration Number 112657)**

**Respondent**

**DECISION WITH REASONS**

**The application**

**1. By a letter dated 28 April 2009 the Applicant (“the PCT”) applied to the Family Health Services Appeal Authority (“the FHSAA”) for an order of National Disqualification against the Respondent (“Dr. Varga”).**

**Background**

**2. On 18 September 2008 the Interim Orders Committee (“IOC”) of the General Dental Council (“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 thereafter.**

**3. On 7 October 2008 the PCT removed 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 2008.**

**4. Dr Varga, who is a Romanian national, appealed against his removal. We heard his appeal on 3 February 2009 in his absence since he was in Romania and had asked for the appeal to be dealt with on the papers alone. For the reasons set out in detail in our reasoned decision dated 4 February 2009 in FHSAA appeal number 14932 we dismissed his appeal.**

**5. In that decision we said at paragraph 11: “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.”**

**6. We continued: “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 Performers 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."

**The PCT's grounds on this application**

7. In her letter of 29 April 2009 to the FHSAA Ms Copage, the Head of Primary Care Performance & Improvement at the PCT told us that "the PCT considers it would be appropriate to apply for national disqualification given the serious concerns raised in the evidence attached". Of the 45 pages of evidence submitted the only material that had not been before us at the hearing of the appeal was a 3-page extract from a witness statement provided by Ms Copage to the GDC. This, however, only summarised the evidence against Dr Varga relied upon by the PCT and there was thus no new evidence before us on this application and the PCT's submission is confined to the first sentence of this paragraph.

**The first hearing**

8. The application was fixed to be heard at the Care Standards Tribunal on 30 July 2009. By a letter dated 27 July 2009 we were informed that Dr Varga would not be attending but would be represented by Mr Ralph Shipway of Messrs RadcliffesLeBrasseur.

9. The letter also informed us that Dr Varga's case had again been considered by the IOC of the GDC on 20 July 2008 and that his practice remained subject to the 10 conditions referred to in paragraph 2 above until 18 March 2010 (but with a further review after 6 months). The only change was in condition 3 so that Dr Varga was obliged to continue to make all attempts to arrange for a performance assessment with a Deanery. This reflected the fact that South Central Deanery was unable to carry out assessments and had not been able to make arrangements through another Deanery.

10. The PCT was represented by Ms Manda Copage. The Panel members again confirmed that they had no conflicts of interest in hearing the appeal.

11. Ms Copage told us that the application had been issued in order to comply with the statutory time limit of three months from the decision to remove and in accordance with the PCT's policy (and the advice of NCAS) in cases of serious misconduct, even when they gave rise to a finding on the efficiency ground rather than one of unsuitability. She accepted the possibility that the application might have been premature in this case, given the involvement of the GDC.

12. Mr Shipway produced a letter dated 24 July 2009 from Messrs Capsticks on behalf of the GDC inviting Dr Varga to a hearing of the Professional Conduct Committee of the GDC ("the PCC") on 21 September 2009 to respond to a charge impairment of fitness to practice. The charge related to the incidents involving six patients that had formed the basis for the initial referral to the GDC, the PCT proceedings and the appeal to us.

13. He told us that after the September 2008 hearing of the IOC Dr Varga returned to England and met with the Oxford Deanery on 6 November 2008 where he was told that there was no teaching hospital in the area of the Deanery that could conduct the assessment required by the GDC. He returned to Romania but after the review of the case by the IOC on 10 February 2009 decided he wanted to pursue retraining.

14. Dr Varga was unable to find an assessment in the South West (including Bristol) or in London; Dental Protection was making enquiries on his behalf all over the UK. Mr Shipway submitted that every avenue had not yet been exhausted (although he conceded that finding an assessment would be an uphill struggle) and thus the remedy sought by the PCT was premature. Dr Varga wanted to submit himself to an assessment whose findings could be before the PCC on 21 September 2009. If he managed that, the PCC might allow him to practice subject to conditions; if not, he might have to accept that dental practice in the UK was no longer open to him. Even if the prospects were slim, the public was protected by the GDC conditions in the interim and the application should be adjourned until after the hearing on 21 September.

15. On behalf of the PCT Ms Copage accepted the good sense of these submissions and, in particular, that the PCT would not be prejudiced by such an approach.

17. We accepted that the proper course was for us to allow the GDC proceedings to take their course over a narrow compass of time rather than dispose of this application. If a positive professional assessment should persuade the GDC to set Dr Varga on the course towards a successful return to practice, it would be unhelpful for us to put a further obstacle in his path.

19. For all those reasons we ordered that the application be adjourned and made directions for the disposal of the application after the decision of the GDC.

#### The second hearing

20. On 4 November 2009 Mr Shipway reported to the FHSAA that Dr Varga did not attend the GDC Professional Conduct Committee hearing in September 2009 and sent a copy of the GDC decision which found the allegations in respect of Patients 1-5 inclusive proved, found Dr Varga in “numerous, repeated and wide-ranging breach of Standards for Dental professionals Section 1 Putting patients’ interests first and acting to protect them, paragraphs 1.3 and 1.4; Section 2 Respecting patients’ dignity and choices, paragraphs 2.1, 2.2 and 2.5 and Section 5 Maintaining your professional knowledge and competence, paragraphs 5.1, 5.2 and 5.3”.

21. The Committee decided Dr Varga’s fitness to practise was impaired by reason of misconduct, that a reprimand would not be adequate in the light of the numerous concerns highlighted and that steps should be taken to address the concerns. The Committee took the view that the imposition of conditions would not be sufficient in view of the absence of Dr Varga and his failure to engage with the process.

Accordingly it concluded that a suspension for 12 months (to be reviewed before the end of that period) was necessary and proportionate.

22. Dr Varga told the FHSAA by e-mail dated 14 January 2010 that he would attend the hearing on 21 January 2010 and was informed of the place and time of the hearing.

23. On 18 January 2010 by virtue of The Transfer of Tribunal Function Order 2010, S.I. 2010 No.22 (“the Order”) the FHSAA was abolished and its functions transferred to this jurisdiction. By virtue of paragraph 3(2) of Schedule 5 to the Order we, the members of the FHSAA Panel must comprise the Tribunal for the completion of the hearing begun and adjourned on 30 July 2009.

24. The adjourned hearing took place at the Aeonian Training Centre 2-10 Capper Street, London WC1E 6JA at 1430 on 21 January 2010. The hearing was attended by Dr Varga. We were notified by an e-mail from Ms England of the PCT dated 19 January 2009 that no-one would attend on its behalf, that it relied upon its written application and wished us to proceed on 21 January 2009 in its absence.

25. Dr Varga confirmed that he was content to go ahead with the hearing in the absence of the PCT.

26. Having regard to Rule 27 of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 S. I. 2008 No. 2699 we decided that the PCT had been notified of the hearing and that it was in the interests of justice to proceed with the hearing, given the complete set of papers from the PCT, its positive wish for the matter to be determined in its absence and the lapse of time.

27. We had before us a letter dated 18 January 2010 from Mr Shipway of Messrs RadcliffeLeBrasseur on Dr Varga’s behalf, telling us that Dr Varga had studied dentistry in Romania and qualified in 1999, working there without complaint or professional difficulty until he decided in summer 2007 that he wanted to live and work abroad.

28. He registered with the GDC in June 2007 and was offered a position by ADP in October 2007 to begin work as an associate in May 2008. Dr Varga expected to undergo a two week induction programme. In the event when he arrived in the UK in May 2008 he was given two days induction with the area manager of ADP and two days learning about computer software at a practice in Dorset.

29. In Romania he was used to seeing about 10 patients per day but was expected to see 20-25 patients per day in the ADP practice in Tadley, Hampshire where he began work on 12 May 2008. He found this difficult and stressful. He believes that he is a good and capable dentist who was not familiar with the system in the UK, grappling with the concept of units of dental activity and provided an inadequate

induction so that he was unable to carry out his dentistry as efficiently or effectively as he would have wished.

**30. Dr Varga told us in evidence that in August 2008 after his removal by the PCT he had returned to practise general dentistry full-time at his previous clinic in Huedin, Romania. He still wanted to work in the UK for the opportunity to learn and experience a different country and to prove that he is a good dentist as he is so regarded in Romania, having had no problems in his dental work there since 2002.**

**31. He was informed two weeks before the July 2009 GDC hearing that he had been offered an assessment of his professional work through his representative at Dental Protection, Mr Alan Cohen. The assessment would have lasted a couple of days. He thought this was too short notice so declined the assessment and had made no subsequent attempts to obtain an assessment. He was unsure what this assessment was but did not ask Dental protection. He expected them to give him names of people to contact regarding the assessment. He was unsure whether he was still a member of Dental Protection in 2009 although he also told us that he had kept in touch with them throughout 2009.**

**32. He said he had no idea what procedures would be necessary to satisfy the GDC and have his suspension lifted but had done nothing to find out. He was only in England for this hearing and had not made arrangements to speak to Dental Protection or talk to the GDC because he was only here for a short trip.**

**33. He had not attended the September 2009 GDC hearing because he had to make preparations for his wedding approximately a week later. He will approach Dental Protection to find out what he needs to do to get the GDC suspension lifted. He believes his local Romanian Dental Board has asked the GDC for details of the case but has had no answer.**

**34. Dr Varga told us that the PCT had taken action to remove him because he did not understand local procedures since he had only had a short induction and was unfamiliar with the system. The problems were caused by difficult communication with one of six dental nurses with whom he worked: any perceived clinical problems were exaggerated.**

**35. He had not told the GDC where he was currently working when he returned to Romania. He said he was not aware that the GDC suspension was likely to continue with annual reviews until he was able to persuade the Committee that he was fit to practise. In the light of being informed of this Dr Varga said he would contact Dental Protection to find out whether the assessment was still available.**

**36. In summary Dr Varga told us he did not feel he deserved to be nationally disqualified as a result of a misunderstanding with a nurse when he gave his patients good care: he did not understand why his standards had been criticised by the PCT and GDC.**

### **National Disqualification: the legal framework**

**37. By Regulation 18A of the National Health Service (Performers Lists) Regulations 2004 as amended (“the Regulations”) the Panel has power to impose a national disqualification if (as here) it removes a practitioner’s name from a performers list. The powers were derived from s 49 N (1) of the National Health Service Act 1977. The exercise of our discretion to make such an order is not specifically or further defined or constrained by statutory provision.**

**38. We have considered the Department of Health’s guidance for PCTs entitled “Primary Care Trust Performers List Guidance”, in particular paragraph 40.2 which provides that the FHSAA (now the Tribunal) can itself decide to impose a National Disqualification if, having rejected an appeal, it considers that “the facts that gave rise to the removal decision are so serious that they warrant disqualification” and paragraph 40.4 which suggests a PCT should recognise the benefits of a national disqualification both for protecting the interests of patients and for saving the NHS resources. It says further that “unless the grounds for removal ... were essentially local, it would be normal to give serious consideration to such an application”.**

**39. In our decision we have followed this general approach and in particular have considered whether the grounds upon which we removed Dr Varga from the Performers’ List were essentially local to that area.**

**40. Among other factors we consider relevant are the (a) seriousness and range of the deficiencies or conduct identified and the explanations offered by the practitioner and the insight demonstrated into his shortcomings; (b) the likelihood of those deficiencies or conduct being remedied in the near to medium term, particularly where failings of character or personality are involved and (c) patient welfare and the efficient use of NHS resources; (d) but balancing those against the proper interests of the practitioner in preserving the opportunity to work within the NHS (which includes both pursuing his professional interests and earning money).**

### **Discussion**

**41. As set out in paragraphs 5, 6, 20 and 21 above the clinical shortcomings found proved by the PCT and the GDC are multiple, serious and wide-ranging involving breaches of several professional standards. We cannot accept that they result from or are limited to misunderstandings with an individual nurse.**

**42. It is equally clear that there is nothing essentially local about the shortcomings that have been proved. It may well be that the induction offered by ADP was short, that throughput of patients is more demanding than that to which Dr Varga was accustomed and that procedures for charging and administration differed from those obtaining in Romania. That cannot, however, be construed as making Dr Varga’s shortcomings local: the standards with which he was found, after fair and rigorous investigations, unable to comply were national.**

**43. Further we were very surprised that Dr Varga had failed to attend, or at least follow up and rearrange the assessment offered to him. He appears to have contended himself with working in his previous clinic in Romania. We do not understand his failure to attend the GDC hearings of July and September 2009 or to keep in touch with Dental Protection, the Deanery or the GDC.**

**44. We cannot accept that his desire to work in England flows from a wish to show that he is a competent dentist whose only shortcoming was a failure of communication with a single nurse. Dr Varga has simply failed to confront the cogent evidence that his professional skills fall far short of what is required. A fair-minded person in his position would accept that, in order to be acceptable to work here, he would need to undergo major retraining: he has wholly failed to accept this or to take any steps to improve his standards. In so doing he has shown an entire lack of insight and intentionally failed to engage with offers of professional help. In addition he appears to have failed to notify the GDC of his current professional post contrary to the condition to this effect imposed on 20 July 2009.**

**45. For all these reasons our order is that pursuant to Section 159 of the National Health Service Act 2006, the Respondent Dr Alexandru Varga (GDC registration number 112657) be disqualified from inclusion in all Dental Performers Lists prepared by all Primary Care Trusts and all lists deemed to succeed or replace such lists by virtue of Regulations made thereunder. In coming to this conclusion we have weighed the effects of this Order upon Dr Varga against the risk to patients and prejudice to efficiency, if a national disqualification is not made.**

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**Mark Mildred  
Panel Chair  
26 January 2010**