

IN THE FAMILY HEALTH SERVICES APPEAL AUTHORITY

Case No: 13203

SITTING IN LONDON ON 15th JUNE 2007

Mr Christopher Limb
Dr G Sharma
Mr A Lloyd

Chairman
Professional Member
Lay Member

BETWEEN:

DR SYYED AHMED KHAN
(GMC Registration Number: 1610037)

Appellant

and

WANDSWORTH TEACHING PRIMARY CARE TRUST

Respondent

DECISION

Introduction

1. This is a Decision in relation to the imposition of conditions upon the inclusion of Dr Khan upon the Respondent's Medical Performers List. We previously heard Dr Khan's appeal against the Respondent's refusal to include him in their list. By our Decision dated 16th April 2007 we allowed such appeal but on the basis that inclusion on the List was to be subject to conditions to be discussed and hopefully agreed by the parties and thereafter approved or as necessary decided by this Panel. We refer to our Decision of 16th April 2007.
2. It had been hoped that the parties would be able to agree conditions between them. That unfortunately was not entirely the case albeit a large measure of agreement was reached.
3. Prior to the hearing before us the parties had agreed the substance of two conditions : one related to appraisal and training and the other related to Dr Khan not having responsibility for financial management. The disputed aspect of the conditions related to whether Dr Khan would have the obligation to inform those for whom he worked that his inclusion on the List was subject to such conditions.
4. In the course of the hearing it became apparent that Dr Khan has now completed all appropriate appraisal and training. The Respondent accepted that there was no longer any need for a condition in such regard and that future appraisal would be appropriately dealt with within the ordinary arrangements for all general practitioners. We were pleased to note that Dr Khan had found various aspects of training extremely helpful and intended to continue to attend certain courses and lectures in any event.
5. Subject to the issue as to disclosure the wording of the other condition was agreed between the parties as : "Dr Khan should not have responsibility for the financial management of the Practice".

6. At the hearing before us on 15th June the PCT were represented (as on the previous occasion) by Mr Middleton and Dr Khan appeared in person but with the assistance of his sons.

Legal framework

7. Pursuant to Regulation 15 of the National Health Service (Performers List) Regulations 2004 ("the Regulations") this Tribunal has the power to make any Decision on appeal which the Primary Care Trust could have made. Pursuant to Regulation 8, the Primary Care Trust has the power to impose conditions. There is no express guidance. We have regard to the general requirement of prevention of fraud or prejudice to the efficiency of the Service.

Submissions

8. On behalf of the PCT the essence of Mr Middleton's submissions was that any potential employer considering engaging Dr Khan is entitled to know of any conditions when considering Dr Khan's application. He referred to a condition of disclosure being commonly imposed by the General Medical Council and also referred us to the Decision of this Tribunal in Case No 13505 in which conditions were imposed subject to a duty of disclosure.
9. On behalf of Dr Khan it was submitted that the GMC had not imposed a condition of disclosure in this case, that such a condition would impede Dr Khan's employment, and that Dr Khan as well as the PCT will be fully aware of the condition and can be trusted to abide by it. It was also submitted (and appears to be factually correct) that the issue of disclosure was not raised by the PCT until 19th March despite Dr Khan having been in contact with the PCT in relation to conditions within a week of our previous hearing.

Decision

10. It is in our opinion self evident that if a condition is to be imposed it must be imposed in circumstances which ensure so far as possible that it will be put into practice. The principals of any General Practice who are the potential employers of Dr Khan are responsible for their practice and its running and organisation. In our opinion they are entitled to know of any restrictions upon the otherwise practice of Dr Khan when making a decision as to not only whether to employ him but also as to the circumstances and terms upon which they will employ him. Breach of the condition could have consequences not only for Dr Khan but also for the employer. It would be inappropriate to rely upon Dr Khan in such circumstances : the employer has the right to decide upon the terms of employment with full knowledge of relevant matters including the condition.
11. We accept that the imposition of a term as to disclosure may have some practical negative effect upon Dr Khan obtaining work but such is in our opinion necessary in order to achieve the more important aim of ensuring that the condition is enforced and put into practice.
12. Although such is not determinative of our own practice we note that the General Medical Council routinely imposes conditions of disclosure. There was not a condition of disclosure in relation to Dr Khan after the hearing by the General Medical Council because its Order was one of suspension and not one imposing conditions. We note the argument as to the delay in the PCT raising the issue as to disclosure : having seen the letters and e-mails we have some sympathy for Dr Khan who it appears has had to "make the running" in negotiating conditions but we do not think such matters can significantly influence our decision as to whether the imposition of a condition of disclosure is or is not correct in principle.
13. It was helpfully pointed out to us by Mr Middleton that paragraph 18(i) of our Decision of 16th April 2007 was possibly unhelpfully worded. There is no separate "section" of the Performers List for locums. It has always been Dr Khan's application that he

seeks inclusion on the List only to perform locum work. Such is and should have been more clearly expressed to be a condition.

14. In the context of Dr Khan being unrepresented and in the context of certain comments during the hearing as to potential review of the conditions in the future, we draw his attention to the provisions of Regulation 14.

Summary

15. The appeal is allowed to the extent that:

- (i) Dr Khan is to be included on the Respondent's Performers List;
- (ii) Such inclusion on the List is subject to conditions that:
 - (a) he undertakes work only as a non-principal performing locum work;
 - (b) he should not have responsibility for the financial management of a Practice;
 - (c) he must inform any organisation or person employing him or contracting with him to undertake medical work and any prospective employer at the time of application of conditions (a) and (b).

Appeal

16. The parties are reminded that they have the right to appeal this Decision pursuant to Section 11 of the Tribunals and Inquiries Act 1992 by lodging a Notice of Appeal at the Royal Courts of Justice, The Strand, London WC2A 2LL within 28 days from receipt of this Decision.

CHRISTOPHER LIMB
9th July 2007