

IN THE FAMILY HEALTH SERVICES APPEAL AUTHORITY

Ref: FHS/14738

APPEAL HEARD ON 23RD APRIL 2009

BETWEEN

**CHINATU AKANO
Reg No. 6061365**

Appellant

and

BRISTOL PRIMARY CARE TRUST

Respondent

DECISIONS AND REASONS

HEARING

Before:-

Mrs J R Crisp – Chair
Dr S Ariyanayagam – Professional
Mrs G Alderwick - Member

REPRESENTATION

For the Appellant

The Appellant was not represented and did not attend.

For the Respondent

The Respondents were not represented.

DECISIONS AND REASONS

The Appeal

1. This is an appeal against the Respondent's decision to refuse the application for inclusion in the Respondent's Medical Performer's List under regulation 4 of the National Health Service (Performers' Lists) Regulations 2004.

Preliminary Matters

1. The hearing took place on the 23rd April 2009. The matter having previously been adjourned on the 6th November 2008 to allow the Appellant to attend the hearing. Directions were given by the panel to confirm which witnesses would be called, whether the parties intended to be present at the hearing and whether the parties were legally represented. Both parties confirmed there would be no witnesses, neither would be legally represented and that both would be present at the hearing.
2. The panel made enquiries at the outset of the hearing to ascertain whether the Appellant would be attending. No telephone message had been left either at the location of the hearing or with the FHSAA by the Appellant. He had been advised of the hearing by letter on the 18th February and a reminder had been forwarded to him dated the 16th April 2009.
3. In accordance with regulation 40 of the FHSAA (Procedure) Rules 2001 the panel proceeded to hear the case in the Appellant's absence.
4. All parties confirmed that there were no conflicts of interest which would prevent them hearing the appeal.

5. The panel considered all of the written evidence and heard oral evidence from Mr. Liam Williams, associate director of the Respondent PCT.

Background

1. The Appellant applied for inclusion in the Respondent PCT's Medical Performers List by way of application and declaration dated the 24th January 2008
2. As part of the application process the Respondent received notification from Gwent Healthcare Trust that the Appellant had been summarily dismissed from the Trust.
3. During the application process the Respondent contacted Dr. Brendan Lloyd, Medical Director of the Cardiff Local Health Board for further information concerning the Appellant. On the 3rd June the Respondent was advised that that Appellant had been under investigation by the Gwent Out of Hours Service for the following reasons:-
 - (a) Attitude towards patients.
 - (b) Inappropriate use of the telephone.
4. The Respondent advised that the Appellant had not declared this information on his application form.
5. The Respondent raised the concerns with the Appellant and the Appellant provided information in respect of the investigation which did not match the information supplied by the Gwent Healthcare Trust.
6. The Appellant informed the Respondent that he was dismissed from the OOHS due to working excessive hours and coming in late. The Appellant did not mention anything about any concerns in respect of his attitude towards patients or the alleged inappropriate use of the telephone. As a result of these exchanges the Respondent concluded that the Appellant did not declare full details of the investigation even when prompted by the Respondent.
7. As a result of the discrepancies in the application form and declarations and the information obtained by the Respondent, the Respondent concluded that the Appellant had not been truthful in his application because he had failed to declare that he had been the subject of an investigation into his conduct as a professional that had resulted in an adverse outcome. Consequently the Respondent refused the Appellant's application under Regulation 6 (1) (a) and 6 (1) (e) of the 2004 Regulations in writing on the 28th July 2008.
8. Dr. Brendan Lloyd reported the matter to the GMC for further investigation.
9. On the 19th August 2008 the GMC Interim Orders Panel took the decision to suspend the Appellant for a period of 18 months from the 19th August 2008 to the 18th February 2010.

10. The Appellant appealed to the FHSAA by letter dated 18th August 2008 against the decision of the Respondent not to include the Appellant in their Medical Performers List.

Evidence

1. Mr. Liam Williams gave evidence before the panel. He is the associate director of the Respondent PCT.
2. He confirmed that the Respondent PCT worked vigorously towards the process of inclusion. Given the concerns which were raised by the Appellant's previous employer he would have expected them to have been declared on his application form.
3. There had been a debate with regard to personal and professional concerns; The Respondent took the view that behaviour should be no different when dealing with patients.
4. He answered questions from the panel.

In respect of the application form.

'Are you currently subject to any investigation into your professional conduct by any licensing, regulatory or other body?'

'Are you the subject of any investigation by another PCT or equivalent body which might lead to your removal from any of that Trust's or body's lists or equivalent lists'

'Are you or have you been where the outcome was adverse, the subject of any investigation into your professional conduct in respect of any current or previous employment'

All of those questions he believed should have been answered yes and not no

In respect of the question 'have you been dismissed from any post?'

The answer to that question should definitely have been in the affirmative

5. Dr. Akano had provided a statement in which he stated that he had completed the application form in all honesty as he had not had to details the misconduct due to the fact that it was in respect of personal misconduct and not professional misconduct. Further he raises that the investigation was carried out by Gwent Healthcare Trust and as such they were neither a Local Health Board nor a Primary Care Trust so he did not have to detail that either.
6. Dr. Akano suggests that he has a report from Stuart Fletcher who had confirmed that Dr. Akano was correct; he had not been dismissed for professional misconduct.

7. In summary the previous employers had distinguished between personal and professional misconduct and it was for the former that he had been dismissed. If there had been any question touching on his personal misconduct he would have answered differently.

Documents and Evidence Considered

1. Both parties had submitted originating documentation which was compiled in a Bundle. The Panel considered all of the documentation contained within that Bundle.

Findings

1. The Appellant was summarily dismissed from his employment on the 22nd January 2008.
2. The Appellant completed the application form for inclusion on the 24th January 2008.
3. The Appellant did not disclose or declare on his application form and details in relation to his dismissal from Gwent Healthcare Trust and specifically denied having been dismissed from any post.
4. Subsequent to the issues being investigated by the two PCTs the matter was referred to the GMC who imposed an interim order suspending the Appellant for 18 months from the 19th August 2008 to the 18th February 2010.
5. Linda Evans, the HR manager of Gwent Healthcare Trust confirmed that the Appellant's dismissal was for personal misconduct and not professional misconduct.
6. The panel finds that none of this information was disclosed on the application form. The panel further finds that it is not acceptable not to disclose the information on the basis of personal misconduct rather than professional misconduct.
7. The panel finds that a professional should be expected to be open, honest and transparent in any application of this nature. The Appellant has failed to disclose and has lied about the dismissal of his previous position.
8. The panel accepts that the Respondent PCT made the proper enquiries which led to their decision

Law

The National Health Service (Performers Lists) Regulations 2004 section 4 provides details of the requirements which must be supplied in respect of any application for inclusion in a performers list.

The declarations inter alia are as follows

(k) is the subject of any investigation by another PCT or equivalent body, which might lead to his removal from any of that Trust's or body's lists or equivalent lists.

If so details should be given, including approximate dates, of where any investigation or proceedings were or are to be brought, the nature of that investigation or proceedings, and any outcome.

The burden of proof is the civil standard of proof.

Conclusion

1. The panel has considered public protection and the expectation that professionals should be trustworthy and honest.
2. The panel believes that any member of the public has the right to expect any medical performer to maintain those standards
3. The panel considers that such omissions on the application form are sufficiently dishonest and serious to support the decision of the Respondent PCT not to include the Appellant on their performers list on the grounds of suitability
4. The panel does not accept that the Appellant should have been refused inclusion on the ground of inefficiency as there is no evidence before the panel which would substantiate that decision.
5. The panel does not accept that the Appellant should not have to disclose information as it related to personal misconduct only.
6. The panel does not accept the evidence of Stuart Fletcher as no report was provided and as such little or no weight should be attached to that evidence.
7. The Panel directs that the appeal is dismissed

In accordance with rule 42(5) of the rules the Panel hereby gives notice that a party to these proceedings can appeal the decision under s11 Tribunals and Enquiries Act 1992 by lodging a Notice of Appeal in the Law Courts of Justice, The Strand, London, WC2A 2LL within 28 days of the date of the decision.

Dated 1st June 2009

Judith R Crisp – Chairman of the Panel

