

**IN THE FAMILY HEALTH SERVICES APPEAL  
AUTHORITY**

**CASE 14955**

**Professor M Mildred-            Chairman  
Dr M Sheldon                    -    Professional Member  
Mrs VK Lee                      -    Member**

**BETWEEN**

**DR SAROJ ADLAKHA  
(Registration Number 2215282)**

**Appellant**

**and**

**SOUTH BIRMINGHAM PRIMARY CARE TRUST**

**Respondent**

**DECISION WITH REASONS**

**Background**

**1. The Appellant (“Dr Adlakha”) is a single-handed general medical practitioner who qualified in India in 1969 and completed her medical training in the UK. She joined her present practice with her late husband in 1973. She bought and developed land to rehouse her practice and moved into the Shilpa Medical Centre in Birmingham in June 1985.**

**2. In November 2004 an article in the Sunday Telegraph newspaper alleged that Dr Adlakha had been involved in procuring an illegal abortion at the Ginemedex Clinic in Barcelona. She was suspended by the Respondent (“the PCT”) on 2 December 2004 and by the General Medical Council (“GMC”) on 8 February 2005. The practice has continued under Dr Adlakha’s GMS contract with services provided by locums.**

**3. A police investigation began in January 2005; Dr Adlakha was charged with conspiracy to solicit child destruction but the prosecution was discontinued in October 2007. Thereafter the PCT investigated a case for removal of Dr Adlakha from its Performers List. This was put before the PCT’s Primary Care Performance Committee (“the Committee”), the hearing being adjourned from 29 August 2008 to 16 October 2008 in order to allow her more time to prepare for the hearing.**

**4. The PCT made eight allegations against Dr Adlakha as follows:**

- (i) she procured an abortion on behalf of her daughter which she believed to be illegal and/or knowingly contrary to the terms of her medical registration;
- (ii) she advocated and assisted in the potential procurement of an abortion which she believed to be illegal and/or knowingly contrary to the terms of her medical registration;
- (iii) she attempted to falsify evidence in connection with criminal charges laid against her and pervert the course of justice;
- (iv) she failed to adhere to the terms of her suspension from the Performers List and/or the Medical Register, taking deliberate actions which she knew, or ought reasonably to have known, to be in breach of those terms;
- (v) in 2003 she attempted to make a fraudulent claim against her travel insurance policy in circumstances where she knew, or ought reasonably to have known, that she was not entitled to make a claim;
- (vi) on 25 May 2004 she falsely completed a visa form stating that she had administered meningitis vaccinations to four patients (all members of the same family), when in fact she had arranged for them to return on 2 and 3 June 2004 for administration of the vaccinations;
- (vii) in 2006 she had attempted fraudulently to obtain a disability “Blue Badge” form the local authority;
- (viii) in 2007 she had breached clauses 40 and 74 of her GMS Contract which placed patients and the public at real risk of significant harm.

5. The Committee found allegations (i) to (vii) proven and made no determination on allegation (viii). By a letter dated 23 October 2008 from the Chief Executive of the PCT Dr Adlakha was informed that she had been removed from the PCT’s Performers List on the ground of unsuitability under Regulation 10(4)(c) of the National Health Service (Performers Lists) Regulations 2004 (“the Regulations”) and that the PCT intended to ask the FHSAA to impose a National Disqualification upon her.

6. Dr Adlakha appealed against her removal on various grounds relating to the fairness of the Committee’s procedure and the quality of the evidence before it. The PCT filed a written response defending the fairness of the Committee’s constitution and its procedures, submitting that the proper standard of proof was the balance of probabilities and that Dr Adlakha’s procedural complaints were irrelevant to the rehearing to be conducted by this Panel.

7. The hearing was originally directed to be held on nine days beginning on 16 February 2009 but, after a Directions hearing on that date, was adjourned to 18 May 2009 in order to allow sufficient time to trace witnesses and prepare and exchange evidence. In the event we were unable to start on 18 May owing to the indisposition of the PCT’s Counsel. Telephone directions hearings were held on Sunday 17 and Tuesday 19 May when the decision was taken to adjourn proceedings to 26 May.

### The hearing

8. The hearing began at the Crowne Plaza Hotel Birmingham on 26 May 2009. Dr Adlakha was represented, as she had been before the Committee and the Directions hearing, by Mr Martin Forde QC instructed by Messrs RadcliffesLeBrasseur and the PCT by Ms Nicola Davies QC instructed by Messrs Bevan Brittan. The Panel confirmed that none of its members had any conflict of interest in hearing the appeal.

9. Pursuant to our Directions Dr Adlakha requested that the following attend to give evidence on behalf of the PCT: Daniel Foggo, Charlotte Edwards, Loretta McIntosh, Shamin Akhtar, Winifred Gayle, James Hawkins, Catherine Thompson, Mary Spooner, Brenda Powers and Margaret Withington. It was one of her complaints that the Committee had conducted its proceedings without calling oral evidence, rather relying on the statements given to the police during the investigation of the criminal charge untested by cross-examination.

10. When the hearing finally began two preliminary applications were made on behalf of Dr Adlakha.

### The standard of proof

11. Dr Adlakha asked us to use a criminal standard of proof in the absence of any standard imposed upon us by statute or regulations and thus in our unfettered discretion. Mr Forde relied upon *R (on the application of Doshi) v Southend-on-Sea PCT* [2007] EWHC 1361 in which Holman J had observed that the FHSAA Panel had been unwise not to adopt the criminal standard and on the observation by Baroness Hale in *Re B* [2008] UKHL 35 at paragraph 69 that in civil proceedings the criminal standard may be appropriate where quasi-criminal allegations were made: “There are some proceedings, though civil in form, whose nature is such that it is appropriate to apply the criminal standard of proof”.

12. On behalf of the PCT Ms Davies QC replied that the leading authority was now that of *In re D* [2008] UKHL 33. The law was most neatly summarised by the reference by Lord Carswell (in paragraph 27) to the words of Richards LJ in *R (N) v Mental Health Review Tribunal (Northern Region)* [2006] QB 468, paragraph 62: “Although there is a single civil *standard* of proof on the balance of probabilities, it is flexible in its *application*. In particular, the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability) but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities”.

### Decision on the standard of proof

13. We are bound by *In re D* and adopt the approach described by Richards LJ in the last paragraph above to the exclusion of any other authority or approach.

**Public or private hearing?**

14. Mr Forde QC asked us to hear the appeal in private pursuant to Rule 39 of the Family Health Service Appeal Authority (Procedure) Rules 2001. This reads: “All hearings by a panel shall be in public except where a practitioner...has asked for the hearing to be in private and the panel considers that it is reasonable in all the circumstances for that hearing to be held in private”.

15. Mr Forde based his submission on the fact that Dr Adlakha’s daughter was an university student and that it would be unfortunate and unfair for her identity to be publicly known and identifiable: it would be a breach of her privacy. He accepted that parts of the material evidence were already in the public domain and that there had been reference in the local press to the case earlier this month. In the alternative to a private hearing Mr Forde asked us to refer and request witnesses to refer to Dr Adlakha’s daughter only as “Ms A”.

16. Ms Davies QC submitted that this request came too late in the day: the details of the first allegation against Dr Adlakha were fully in the public domain. Rule 39 was in imperative terms: the strong presumption was in favour of a public hearing and there were no grounds for displacing that presumption in this case. She would agree to references to “Ms A” but it was an integral part of the case that the person concerned was Dr Adlakha’s daughter and it should be permissible for that to be made plain in the hearing.

**Decision on private or public hearing**

17. Dr Adlakha’s Notice of Appeal was dated 18 November 2008. There was, as set out above, a Directions hearing on 16 February 2009. The first indication we had that privacy was in issue was contained in an e-mail to the Panel Chair from Dr Adlakha’s solicitors dated 15 May 2009. This e-mail referred to delays in providing evidence from or on behalf Dr Adlakha, explained the position regarding a skeleton argument and dealt with recording of the hearing for the purposes of the GMC. It ended “..and we anticipate there may be an issue as to the preservation of her daughter’s anonymity...”.

18. It is clear that this application was made very late in the day. There had been considerable publicity in the national media in 2004 and we were told that at least the local media retained an interest in the story. The two journalists who had written the original story in a national newspaper were required by Dr Adlakha to attend to give oral evidence before us.

19. The presumption in Rule 39 is clearly in favour of a public hearing. Dr Adlakha allowed the PCT to produce a bundle amounting to five densely filled ring binders, produce statements from twenty witnesses (and call them to give evidence, if requested) and persuaded us to appoint and book facilities for a ten-day hearing

before informing us that the public nature of the hearing was in issue. Had the application for a hearing in private been made at the February hearing, we could have ruled upon it and a very great deal of public money would have been saved.

20. In all these circumstances we do not consider that it is reasonable in all the circumstances for the hearing to be held in private. There remains the question of references to Dr Adlakha's daughter. We have sympathy with any appropriate attempt to spare her embarrassment and Ms Davies does not resist the application that she be referred to as "Ms A". We consider this is an acceptable balance of the interests of the parties and the public interest of open justice and to fall squarely within Rule 41(4)(a) which gives us power to direct that the identity of a witness who is not a party may not be disclosed to the public, if the interests of justice require it.

21. We accept Ms Davies' submission that the fact that Ms A is Dr Adlakha's daughter is an integral part of the factual matrix of the case and should be capable of being referred to in evidence. We note that Dr Adlakha's solicitors, when making admissions of fact as directed (in their letter to the PCT's solicitors dated 25 February 2009) included the following: "the Appellant travelled to Barcelona on 13 November 2003 for the purposes of accompanying her daughter [whom they named] to undergo the termination of her pregnancy".

22. In the light of that admission and all the evidence before us and on the (perhaps generous) assumption that the fact that Ms A is Dr Adlakha's daughter is part of her identity, we consider that the interests of justice do not require a direction that that fact is not disclosed to the public.

#### Application for leave to withdraw the appeal

23. In the light of our decision in relation to privacy set out above Mr Forde applied under Rule 9(b) for leave to withdraw Dr Adlakha's appeal. He told us that Dr Adlakha considered that our decision did not afford her and her daughter the degree of protection that she wished. A successful outcome before us would not in any event have allowed her to return to practice since she remains suspended until 2010 by the Interim Orders Panel of the GMC. She had accordingly taken a pragmatic decision to end her relationship with the PCT.

24. The application was not opposed by the PCT and, having no reason to deny it, we granted it.

#### Application for National Disqualification

25. The PCT notified Dr Adlakha in its decision letter of 23 October 2008 and in its response to Dr Adlakha's appeal that it intended to apply for an order for National Disqualification. On Dr Adlakha withdrawing her appeal, the PCT's decision to remove her became effective again and the application was made on its behalf by Ms Davies.

26. She based her application on grounds (i) to (vii) set out in paragraph 4 above that the PCT's Committee had found to be proved. She submitted that these disclosed two strands, the first of dishonesty (inside and outside the work context) and the second of failure to abide by professional rules and standards and that these both went to the core of her character. Dr Adlakha had failed to observe the terms of her suspension in 2005 and again, despite a warning and reminder, in 2007; she failed in her duties of honesty and observation of professional rules and boundaries and acted as if she was accountable to no-one. Her failings were very serious and not essentially local in nature.

27. Mr Forde told us that Dr Adlakha did not accept the truth of the allegations but did accept that we had to deal with the application on the facts found by the PCT Panel.

### Discussion

28. By Regulation 18A(3) of the Regulations the Panel has power to impose a national disqualification on the application of a PCT after it has removed a practitioner's name from a performers list. The power is 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.

29. We have considered the Department of Health's guidance for PCTs entitled "Primary Care Trust Performers List Guidance", and in particular paragraph 40.2 which provides that the FHSAA 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".

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

31. Among other factors we consider relevant are (a) the seriousness and range of the deficiencies or conduct identified and the explanations offered by the practitioner and the insight demonstrated into her 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 her professional interests and earning money).

32. Having considered all these factors we find that the failings found by the PCT were extremely serious and not essentially local.

**Decision**

**33. For all the reasons set out above the decision of the Panel is that Dr Adlakha shall be nationally disqualified from inclusion in any list as is specified at (a) to (c) of Regulation 18A (1) of the NHS (Performers Lists) Regulations 2004 as amended, for a period of two years from the date of this decision.**

**34. We direct, pursuant to Rule 47(1) of the Family Health Services Appeal Authority (Procedure) Rules 2001 that a copy of this decision is sent to the Secretary of State, The National Assembly of Wales, the Scottish Executive, The Northern Ireland Executive and the Registrar of the General Medical Council.**

**35. 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**  
**28 May 2009**