

IN THE FAMILY HEALTH SERVICES APPEAL AUTHORITY

Case Number: 15101

Listed at: Nottingham
On: 22nd May 2009

Mr T Jones Chairman
Dr Sharma Professional Member
Ms Everitt Member

BETWEEN

DERBYSHIRE COUNTY PRIMARY CARE TRUST (“The PCT”)

Applicant

and

DR ROBERT MANLEY
(Professional Registration Number: 3122136)

Respondent

DECISION WITH REASONS

The Application

1. On the 19th February 2009 the Applicant PCT (“The PCT”) removed the Respondents (“Dr Manley’s”) name from its Medical Performers List following a brief period of suspension. This was because Dr Manley had pleaded guilty to 5 offences of making indecent images of children. He was notified of the removal and of his right of appeal therein. He did not appeal. Subsequently, the PCT made an application to the FHSAA requesting the National Disqualification of the Respondent pursuant to Regulation 18A (3) (a) of the NHS (Performers List) Regulations 2004, as the Respondent inclusion in any Medical Performers List.

Appearances

2. Dr Manley did not appear. He had instructed Solicitors in advance of the hearing to make representations on his behalf. They made it clear they would not be attending the hearing, did not oppose the application and asked that a letter of mitigation forwarded to the Panel be taken account of. For the PCT Ms Stringfellow, Clinical Director and Dr Meakin, Medical Director appeared. In light of the same and the Panel being aware of no conflict of interest in respect of any Panel members, the Panel proceeded with the hearing.

Background

3. The PCT was contacted by Derbyshire Constabulary ("the police") and were informed that Dr Manley was about to be arrested regarding the possession of indecent images of children. He was arrested at his home on 11th February 2009 and officers of the PCT assisted the police with the removal of any suspect materials from the surgery where Dr Manley practised and ensured the continuity of service to patients.
4. Dr Manley assisted the police in their initial examination of computers and computer hard drives the police recovered from his home and the surgery. He made full and frank admissions and appeared before Magistrates the next day, pleaded guilty to 5 offences and was committed to the Crown Court for sentencing.
5. The police carried out further examination in detail of the materials seized and Dr Manley appeared at Derby Crown Court on the 17th April 2009 for sentence. A certificate of conviction states that he then stood convicted of 15 offences of making indecent photographs or pseudo photographs of a child, 10 offences of having indecent photograph or pseudo photograph of child and possessing indecent photograph or pseudo photograph of child for distribution.
6. He was sentenced to three years imprisonment, disqualified from working with children, made the subject of a sexual offences prevention order until further order and placed on the sex offenders register for life.
7. At the hearing, Ms Stringfellow wished to make it clear, in fairness to Dr Manley, despite what might be a suggestion that indecent materials had been viewed by Dr Manley at the surgery premises, this was not so. Information from the Crown Prosecution Service (CPS) Case Summary made it clear there were many thousands (60,000 plus) indecent images and a sizeable proportion of them were of the highest grade (Grade 5) in relation to their seriousness, including indecent images of young children, including babies.
8. Solicitors acting for Mr Manley wrote to the FHSAA on behalf of their Client. They wished it to be noted on his behalf that he is profoundly remorseful and fully

regretted his actions, that he had pleaded guilty immediately and fully accepted he should not have done this. He regrets the impact his offending may have had on his former Partners at the surgery and how he has let his family and former Patients down. The letter goes on to say, “..He now has his remaining years to reflect upon his errors”.

Our Conclusions

9. The power to make a national disqualification is contained in Section 49N of the Health and Social Care Act 2001. In August 2004 the Department of Health provided guidance on national disqualifications and delivering quality primary care: PCT Management of Primary Care Practitioners Lists.
10. The guidance contains two relevant propositions: “where the facts of the case are serious it would wrong to allow the doctor to offer his services to every (PCT) in turn in the hope that he will find one willing to accept him”. Further, “unless the grounds for their decision were essentially local it would be normal to give serious consideration ... to an application for national disqualification”. Therein, we refer to paragraphs 8.1.2 and 8.1.5 of the guidance notes referred to above.
11. In determining the application made by the PCT herein, we find that the Grounds of Application are well made out. We find that the PCT was empowered and quite right to remove Dr Manley from their Medical Performer’s List (they would have been obliged to do subsequently in any event given the length of the custodial sentence imposed upon Dr Manley); and, in light of the Department of Health guidance as noted above have quite properly, and we find quite rightly, made an application for national disqualification. The PCT’s action we find is entirely proper and the current application proportionate. We say this because; there can be no doubt on these matters are most serious, the sentence of the criminal court reflects that. The nature and seriousness of the materials, the depraved nature of the materials seized, at the highest end of the scale, makes this so.

Decision

12. Our order is that pursuant to Section 49N(3) of the National Health Service Act as amended by the Health and Social Care Act 2001, the Respondent Dr Robert Manley be disqualified from inclusion in all Performer’s Lists prepared by all Primary Care Trusts, all lists deemed to succeed or replace such lists by virtue of Regulations made there under. In so doing, and acting proportionately, we have taken into account all that is put forward on Dr Manley’s behalf; we have weighed the effects of this Order upon the Appellant, against the risk to patients if a national disqualification is not made.
13. We further state, in light of all the circumstances of this case, that pursuant to Regulation 19 (a) of the 2004 Performers List Regulations as referred to above, that we are of the opinion that that the criminal conduct of the performer is such that there is no realistic prospect of a further review of this national

disqualification being successful within a period of five years. Accordingly, we make an order precluding any application, pursuant to Regulation 18A (8) (a), by Dr Manley for a review of this order of national disqualification for five years.

14. We direct that a copy of this decision be sent to the bodies referred to in Regulation 47 of the Family Health Services Appeal Authority (Procedure) Rules 2001. Finally, either party to this appeal may exercise a right of appeal against this decision by virtue of section 11 of the Tribunal and Inquiries Act 1992, by lodging an appeal with the Royal Courts of Justice, The Strand, London, WC2A 2LL, within 28 days of receipt of this decision.

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Mr T Jones, Chairman
Nottingham, 22nd May 2009.