

**IN THE FAMILY HEALTH SERVICES APPEAL
AUTHORITY**

CASE 13650

Professor M Mildred - Chairman
Dr D Kooner - Professional Member
Ms J Alderwick - Member

BETWEEN

JAYNE OWEN
(Registration Number 53820)

Appellant

and

SOUTHAMPTON CITY PRIMARY CARE TRUST
Respondent

DECISION WITH REASONS

Background

1. Ms Jayne Owen ("Ms Owen"), is a registered dentist and was until early 2007 a member of the Performers List ("the List") of Southampton City Primary Care Trust ("the PCT"). The Performers List Panel of the PCT met to consider Ms Owen's case on 3 January 2007 and was minded to remove Ms Owen from the List. Ms Owen was then offered an opportunity to make written or oral representations to the Panel within 28 days of notification by letter of 5 January 2007 but declined to do so. She was removed from the List under Regulation 10(4)(c) of the National Health Services (Performers Lists) Regulations 2004 by a letter dated 5 February 2007 signed by Maureen Coxon, the Head of Primary Care at the PCT. The ground for removal was unsuitability. The PCT added that Ms Owen's conduct put staff and patients at risk and that she was in breach of the PCT Alcohol and Drugs policy.

2. Ms Owen was notified in that letter of her right of appeal to the FHSAA but did not invoke it. By a letter dated 12 March 2007 also signed by Maureen Coxon on behalf of the PCT an application was made to the FHSAA for National Disqualification of Ms Owen. By her letter dated 27 March 2007 Ms Owen confirmed that she wished the application to be dealt with by consideration of the papers and did not wish to attend an oral hearing.

Grounds of application for National Disqualification

3. The PCT again relied on unsuitability and added that Ms Owen's conduct put staff and patients at risk and that she was in breach of the PCT Alcohol and Drugs policy. In particular it alleged that concerns were expressed by colleagues that Ms Owen had been drinking on 8 December 2006, and breath and blood tests had been positive on 11 December 2006.

4. Evidence was provided from a dental nurse, Vivienne Hoare, that (a) Ms Owen's breath had smelt of alcohol at a staff meeting on 16 November 2006 and that she had carried on drinking during the working day and (b) Ms Owen's breath again smelled of alcohol on 7 November 2006 and that her condition by the end of the working day was such that colleagues worried about her driving home.

5. Further evidence was provided from June Brodison, a Dental Officer of the PCT. She reported that on 7 December 2006 Ms Owen had glazed eyes and slurred speech and by the end of the working day this had become worse and her breath smelt of alcohol. Ms Brodison again smelled alcohol on Ms Owen's breath on 11 December 2006.

6. In a letter to the FHSAA dated 16 April 2007 the PCT asked that this application be dealt with on paper only and included a chronology of events concerning Ms Owen's career from 31 January 1998 and 12 December 2006.

7. This chronology demonstrated a long history of problems with alcohol: this cost Ms Owen her position at a practice in Petersfield in January 1998, she underwent counselling for alcohol dependency in late 2000, she lost another position for alcohol abuse in November 2003 and another in April 2005.

8. Thereafter Ms Owen had 5 weeks residential treatment and was offered a supported return to work but after two months work at a practice in Eastleigh began drinking heavily during working hours and was removed from the Eastleigh and Test Valley South PCT List for breach of conditions and lost her job.

9. The help of the NCAS was then enlisted in September 2005 but Ms Owen had two further relapses and the involvement of NCAS ended in April 2006. A referral to the General Dental Council on health grounds was discussed but, since Ms Owen's clinical work was not thought by her latest employer to be subject to criticism and there were said to be no concerns for patient safety, this was deferred pending a further relapse.

10. On July 24 2006 Ms Owen was conditionally included on the PCT's List but, as set out above, relapsed into drinking at work by early November. On 13 December 2006 Ms Owen tendered her resignation to the PCT.

Discussion

11. Our power to make a National Disqualification is derived from section 49N(4)(a) of the National Health Service Act 1977. That section contains no criteria for making or refusing such an order. Since the introduction of the current Lists regime the Department of Health has issued guidance to PCTs and practitioners as the various personal healthcare providers have come under that regime.

12. A common thread is that National Disqualification should be seriously considered when a practitioner is refused entry onto or removed from a Performers List on the ground of unsuitability and where the facts giving rise to the PCT's decision are (a) serious and (b) not essentially local to the particular PCT.

13. In this case the facts demonstrate a long history of problems with alcohol including driving after drinking. There are references in the papers to the stress of dental practice causing Ms Owen to drink alcohol during working hours. No criticism of her clinical work appears to have been made and indeed there is evidence that Ms Owen was a popular colleague. We believe that absence of criticism must be understood to mean that Ms Owen is a technically competent dentist but we cannot accept that she can safely conduct dental consultations and treatment after she has been drinking alcohol. Indeed the PCT's emphasis in referring Ms Owen to NCAS on providing support to enable Ms Owen to continue her career appears to us to be the most favourable balance imaginable between the concern to help her and considerations of patient safety.

14. The NCAS referral did, however, (and rightly in our view) have as an aim assessment of Ms Owen's fitness to practice. This was deferred by the PCT in May 2006 as an incentive or threat to Ms Owen and again in the absence of any evidence of a risk to patient safety. In the light of all these matters we conclude that Ms Owen has had every conceivable chance to overcome her problems but has as yet wholly failed so to do. We regard the inability to work as a dentist without resisting the temptation to drink alcohol in working hours as indeed a very serious matter.

15. It is clear from the history that this is not a local problem as witnessed by Ms Owen's previous removal from the List of another PCT. Ms Owen has realistically not contested the PCT's application and we do not find that her undoubted health problem is morally reprehensible. It is, however, clear to us that it makes her unsuitable to work in any PCT. We hope that she will use the period of enforced retirement from dental practice to overcome the difficulties she faces.

Decision

16. For the reasons set out above we are of the view that Ms Owen's undoubted unsuitability to practice is not confined to the area of the PCT and accordingly order National Disqualification.

Order

17. We order pursuant to section 49N of the National Health Service Act 1977 that Ms Jayne Owen (Registration Number 53820) be disqualified from inclusion in all Performers Lists prepared by all Primary Care Trusts and all lists deemed to succeed or replace such Lists by virtue of any Regulations made thereunder.

18. 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 Dental Council.

19. 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. Under Rule 43 of The Family Health Services Appeal Authority (Procedure) Rules 2001 a party may also apply for a review of this decision no later than 14 days after the date on which this decision is sent.

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Mark Mildred
Chair of Appeal Panel
1 June 2007