

DR EVA BRINDZOKOVA

APPELLANT

AND

NEWCASTLE PRIMARY TRUST

RESPONDENT

**APPEAL HEARD ON THE 22ND MAY 2008
DECISIONS & REASONS**

Appeal by the Appellant pursuant to para 15(i) of the National Health Services (Performers List) Regulations 2004 against a decision made by Newcastle PCT to conditionally include the Appellant on the Performers List.

Appeal dismissed

Decisions & Reasons – Preliminary Matters

1. The Appeal was heard by Mrs J Crisp (Chairman), Dr I Lone (Professional) and Mr C Barnes (General Member).
2. Prior to the Hearing all three Panel Members confirmed that they had no prior involvement or knowledge of the case.
3. The matter proceeded on papers only pursuant to Section 38(i) of the Family Health Services Appeals Authority (Procedure) Rules 2001.

History

1. The Appellant has applied to join the Newcastle PCT Performers List. The date of the Application is not known to the Panel.

2. On the 11th February 2008 the Appellant received a letter from the Respondent having considered the following documents:
 - i. The Application Form.
 - ii. Three clinical references.
 - iii. England Language Test Certificate.
 - iv. Advice obtained from the Northern Deanery.

The Respondent advised the Appellant that she could be admitted to the Medical Performers List if she accepted certain conditions which were:

- i. That you agree to participate in the GP Return and EU Induction Scheme run by the Northern Deanery.
 - ii. Upon completion of the GP Return and EU Induction Scheme, the Primary Care Trust will review your inclusion in its Medical Performers List with a view to full inclusion pending successful completion of training.
3. The Appellant provided correspondence from the GMC dated the 20th February 2008 which confirmed that she was exempt from UK vocational training requirements for general practice under Regulation 5(i)(g) of the National Health Service (Vocational Training for General Practice) Regulations 1997 by virtue of her Slovakian Certificate of Specific Training for General Practice which was awarded to her on the 14th December 2001.
4. The Appellant also confirmed that according to European Union Regulations that the GP training which she had undertaken met the standard laid down in the Directive 2005/36/EC and thus she was allowed to practice in EU countries without restrictions in the field of general practice.
5. The Respondent submitted that the EU Regulations and Directive would enable the Appellant to practice medicine anywhere within the EEA/EU but only in a private capacity.
6. The Respondent further submitted that the NHS (Performers List) Regulations 2004 required Practitioners to demonstrate their qualifications, ability and experience to warrant inclusion in a Medical Performers List for the provision of NHS Services. Furthermore, the Regulations placed an obligation on PCT's to satisfy themselves that any Applicant meets the criteria and, where there is deemed to be good cause, to either reject an Application or, in accordance with Regulation 8, offer conditional inclusion.

7. The Panel considered the Report from Dr J H Harrison who is the Deputy GP Director of the Northern Deanery.
8. The assessment provided an assessment under the following areas:
 - i. Simulated surgery direct observation.
 - ii. Written tasks.
 - iii. The patient response to the consultation.
9. The conclusion of the Report was that the main consultation concern relating to the Appellant was her limited response in psycho-social terms to patients in the consultation. In addition it was clear that the Appellant posed a number of significant issues in relation to her written work. The concern was that the Appellant had a limited understanding of the UK system of general practice, particularly as she had only ever worked in Primary Care settings otherwise in Slovakia and in a Walk-in Centre only. There was also concern over her comprehension of written English in a clinical setting.
10. The Deanery produced an offer of a six month returner package in the fully organised and supported way including the payment of a full salary to a Doctor.
11. The Panel considered the various patients and assessments and would respond as follows in so far as it rejects the points raised by the assessment:
 - i. Patient 5 where criticism is levelled by the Respondent. The Panel believed that this was a difficult consultation and criticism was unwarranted.
 - ii. Patient 6 – the Panel believed that many Clinicians would not discuss the diagnosis of multiple sclerosis as the patient was aware of the diagnosis. This is not a valid criticism. The Panel felt that the failure to arrange a follow up appointment was not a significant omission but it would be good practice.
 - iii. Patient 7 – the Panel felt that the full obstetric history should have been taken. The Panel further believed that it was important to enquire the dates when the miscarriages occurred.

Law

Under Section 8 of the National Health (Performers List) Regulations 2004 Sub Section 8(i) a Primary Care Trust may determine that, if a Performer is to be included in its Performers List,

he is to be subject, while he remains included in that Performers List, to the imposition of conditions, having regard to the requirements of 28(x)(6) (Preventing Fraud or Prejudice to the Efficiency of the Service).

Findings

12. In respect of the Patient response the Panel found that simulated patients can be more difficult to deal with due to the fact that they are working from “a script”. The Panel also believe that these were complex problems which the Appellant was asked to deal with.
13. Written tasks – The Panel believed that the Appellant had misunderstood the task which raised the query as to the Appellant’s understanding of written information provided. The ECG reading was incorrect.
14. The Panel also found that the failure to diagnose a a suspected myocardial infarction was significant. The presenting symptoms should have led to the Appellant thinking of heart problems.
15. The Panel believe that on the basis that the Appellant is conducting out of hours surgery this type of complaint would have been more frequently observed and therefore should have been picked up by the Appellant.
16. The Panel again confirm that queries are raised as to the Appellant’s understanding of written English. The Panel believe it is difficult to ascertain whether the ectopic pregnancy should have been picked up because they were not aware of the clinical information provided to her for this scenario.
17. In all of the circumstances the Panel believe that the offer which has been proposed is reasonable especially when the Appellant is considering working out of hours.
18. The Panel therefore uphold the decision for conditional inclusion.
19. Finally, in accordance with Rule 42 (5) of the Rules we hereby notify that a party to these proceedings can appeal this decision under Sec 11 Tribunals & Inquiries Act 1992 by lodging notice of appeal in the Royal Courts of Justice, The Strand, London WC2A 2LL within 28 days from receipt of this decision

