

**IN THE FAMILY HEALTH SERVICES APPEAL
AUTHORITY**

CASE 14087

**Professor M Mildred - Chairman
Dr P Garcha - Professional Member
Mrs M Frankel - Member**

BETWEEN

**DR PREM PAUL SOOD
(Registration Number 1739325)
Appellant**

and

**NEWHAM PRIMARY CARE TRUST
Respondent**

DECISION WITH REASONS

Background

1. The appellant (“Dr Sood”) is a general medical practitioner who, until his suspension by the Respondent PCT (“the PCT”) was practising in the PCT’s area as a GP, formerly single handed but from 1 December 2005 in partnership. The suspension occurred as a result of poor clinical practice and prescribing and health and safety concerns (in respect of which the PCT commissioned an investigation by South East London SHA), complaints by the Practice Nurse, a records review by the Clinical Governance Lead for the PCT and a report on the Practice by the PCT’s Practice Support Manager.

2. The terms of the suspension required Dr Sood to undergo supervised practice and re-training. As a precursor to this Dr Sood was obliged to pass a multiple choice examination (“MCQ”) and a session of simulated surgery. Dr Sood did not take the MCQ set up by the Deanery for October 2006 on the ground of ill-health. Occupational health reviews in November 2005 April 2007 reported that he was fit to work. The examination was taken by Dr Sood on 9 January 2007 but he failed it by 16%, obtaining 44% against a pass mark of 60%. He failed to respond to an offer of 9 dates on which to re-take the examination and was notified by letter of 1 May 2007 that, unless he had passed the examination to allow him to begin re-training by 30 September 2007, the PCT would reconsider his position on the List.

Procedural history

3. The suspension was extended by a FHSAA Panel to 7 February and again to 2 July 2007. On 19 September 2007 a Panel appointed by the PCT heard an application to remove Dr Sood from its Performers List. Dr Sood did not attend through illness and written submissions (including an application to postpone the hearing) were received on his behalf from Mr Richard Privett of Messrs RadliffesLeBrasseur. The Panel decided to proceed with the hearing and, having considered and rejected contingent removal, decided to remove him from its Performers List on the ground that his continued inclusion on the List would be prejudicial to the efficiency of the services provided.

4. This was communicated to Dr Sood by letter dated 20 September 2007 and Dr Sood began an appeal to the FHSAA by a letter from his solicitors dated 17 October 2007 and the PCT in a response dated 12 November 2007 stated that it would contest the appeal and invited us to uphold the PCT’s decision and/or to re-determine the case and order removal of Dr Sood from the List.

The first hearing

5. Dr Sood was originally represented by Messrs RadcliffesLeBrasseur but they were not instructed on the appeal. On the day before the hearing fixed for 15 January 2008 the FHSAA received a letter from Dr Sood saying that he had instructed Messrs Huggins & Lewis Foskett who would not be ready to represent him on 15 January. The letter also said that Dr Sood was suffering with lumbar stiffness and had been advised to have a complete rest and to undergo a MRI scan that had been booked for him at the BUPA Hospital in Redbridge. The FHSAA subsequently received a letter by fax at 1300 on 14 January asking for an adjournment of 5 weeks in order to prepare the case properly.

6. The hearing was thus confined to the application for an adjournment. The PCT was represented by Messrs Bevan Brittan. Dr Sood did not appear and was not represented. All members of the Panel confirmed that they had no conflicts of interest in hearing the appeal. The hearing was adjourned until 11 March 2008 in order for Dr Sood and his solicitors to prepare his case. The adjourned date was inconvenient for the original professional Member of the Panel, Dr Michael Sheldon and Dr Garcha took his place.

The substantive hearing

7. At the adjourned hearing the PCT was represented by Ms Persaud of Bevan Brittan. Dr Sood represented himself with the help of Mr Paul Sokhey, his former practice manager.

8. It was agreed that the PCT would present its case first and that, in relation to performance allegations, the standard of proof for it to meet was the balance of probabilities.

The PCT's case

9. Dr Kate Corlett, the PCT's Medical Director gave evidence. She described the concerns expressed in the PCT over Dr Sood's practice dating back to 1999, 15 complaints being made between 2000 and 2002 and Health and Safety concerns from 2002 leading to a report by South East London SHA in March 2005.

10. This report made thoroughgoing criticisms of Dr Sood's acute and chronic disease management, emergency treatment, immunisation, prescribing, infection control, record keeping, access, resources and keeping up to date with no evidence of clinical audit. His premises were downright inadequate. The report recommended supervised practice and retraining with assessment by the Deanery. This report was communicated to Dr Sood and a meeting with Dr Sood took place on 11 October 2005 at which a move to 717 Barking Road was mentioned.

11. Dr Corlett, as Investigating Officer, prepared a report for a hearing on 8 February at which the PCT Panel suspended Dr Sood on the grounds that the concerns identified by the SHA report had not been adequately addressed, particularly in relation to prescribing, CDM, practice systems and policies, keeping up to date and health and safety issues. It stopped Dr Sood practising unsupervised, imposed 6 months supervised practice with training and educational input from the Deanery and stopped the collection of repeat prescriptions direct from the pharmacy but allowed Dr Sood to oversee the practice in a non-clinical capacity.

12. The PCT followed up with the Deanery. Dr Sood did not take the MCQ examination on 20 October 2005 owing to ill-health but took and failed it on 9 January 2007. The Deanery offered nine more dates in April-June but Dr Sood did not retake the test. The suspension (extended by the FHSAA) was to run out on 28 September 2007 and the PCT had decided that Dr Sood must begin his retraining by 30 September 2007 so on 17 August 2007 gave him notice by courier of a hearing on 19 September 2007 to consider his removal from the Performers' List ("the List").

13. By 21 August Dr Sood had not booked a MCQ test but his then solicitors told the PCT on 18 September that he had arranged an MCQ test for 19 September and asked for the hearing that day to be adjourned. The PCT went ahead with the hearing at which Dr Corlett again presented a report and removed Dr Sood from the List by letter dated 20 September. Thereafter the Interim Orders Panel of the GMC suspended Dr Sood for 18 months from 14 September 2007.

14. During some of this period Dr Sood was off sick but an occupational health report commissioned by the PCT reported that he was fit to work on examination on 30 April 2007. Dr Corlett complained that Dr Sood had not kept them or the Deanery up to date with his position and had only arranged the MCQ for 19 September after receiving notice of the PCT hearing on the same date. He had still not retaken the MCQ or undertaken the simulated surgery exercise.

15. In cross-examination by Mr Sokhey Dr Corlett accepted that Dr Sood's practice had attained a level 1 payment of £2,000 under the Prescribing Incentive Scheme in August 2006. She did not know how many complaints there had been before 2000 or whether the complaints in 2000-2002 had been put to Dr Sood.

Dr Sood's evidence

16. Dr Sood told us that he had been approached informally by a friend, Dr Bhowmik in 2004 who had suggested he might consider retirement; Dr Sood chose to keep on working but now regretted it. He said that he had not had much support from the PCT since then. He told us about his professional history over 30 years and that 500 of his patients had signed a petition in his favour. He accused the PCT of persuading his patients to complain about him.

17. Mostly he blamed the condition of his old premises and four burglaries (including the loss of the practice computer system) and non-payment by the PCT as the cause of things going wrong. The new premises at 717 Barking Road would have been ready only 2 weeks after he was made to stop work; the Appleby Centre into which his practice had been moved was inadequate since they were not given consistent or sufficient space or resources. He complained that he had done his best to rectify shortcomings by doing what the PCT had asked him (including taking on a partner) and then had been let down by the PCT.

18. He said he had not retaken the MCQ because he was under great stress with practice problems and financial problems and that it was inappropriate to send a doctor of such long standing back, in effect, to medical school. In addition he had suffered for years from poor health, now having had prolapsed discs diagnosed by his orthopaedic specialist.

19. Cross-examined by Ms Persaud, Dr Sood admitted to some shortcomings and some help, on and off from the PCT. He blamed the criticisms of his practice on the premises, the burglaries and other external factors. He also said, however, that the MCQ required huge amounts of study and was very difficult to pass.

20. He was unable to remember when he had arranged to take the MCQ on 19 September 2007. He regretted not having retired and let his partner take over but said that he had arranged new premises and would have liked to carry on for a few sessions and then hand the practice over.

Closing submissions

21. The PCT referred to the serious and wide-ranging criticisms of the practice from 1999 that went unremedied; it had given Dr Sood all the help it could to put the problems right and was forced to bring matters to a head in August 2007 owing to the lapse of 18 months since the suspension and Dr Sood's apparent reluctance to co-operate with either the Deanery or the PCT.

22. Achieving 44% in the MCQ was evidence of unsatisfactory practice and the PCT had supported Dr Sood financially for 18 months after his suspension in March 2005. This was a case where the requirements of the Regulations in relation to inefficiency were amply satisfied.

23. Mr Sokhey made a closing submission on behalf of Dr Sood. After an unimpressive criticism of Jenny Gosling, the Practice Support Manager, he turned to the unsatisfactory state of affairs at the Appleby Centre. At that point he surprised us by saying that Dr Sood was not interested in carrying on in general practice and only sought to leave with his honour intact rather than in disgrace.

Discussion and findings

24. In the light of the evidence we accept that Dr Sood's practice in February 2006 fell short of the standards laid down in the GMC's Good Medical Practice. No doubt some of this was due to the condition of the practice premises but this was something for which Dr Sood himself was personally responsible. We accept the conclusions of the independent SHA report of March 2005 and note that the shortcomings reported (and to some extent accepted by Dr Sood) go far wider than mere criticisms of the premises.

25. Although Dr Sood resisted the wide-ranging criticisms of his practice there was no attempt systematically to rebut it. There was no evidential foundation for saying that the PCT had persuaded patients to complain about him; nor do we accept that the PCT had failed to support him after 2005. On the contrary the PCT was at pains to try to get Dr Sood back into practice. We accept the criticisms made both by the PCT and by the SHA.

26. We were surprised that Dr Sood should have made so little effort in relation to these proceedings whose outcome was critical to his professional practice. He clearly neglected contact with both the PCT and Deanery and failed to attend the PCT and GMC hearings and the first hearing before us. We think it must be that he arranged the MCQ for 19 September 2007 after receiving the notice of the PCT hearing on that date; the notice was delivered on 17 August and on 21 August the Deanery had not heard from Dr Sood since before June: the inference is irresistible.

27. The medical evidence establishes that Dr Sood has a back problem but not such as to prevent him studying for the MCQ or co-operating with the Deanery or the PCT. His evidence regarding the MCQ was ambivalent: it was inappropriate to send such an experienced doctor back to school but it was also a task involving "massive reading" and preparation beyond his resources at a time of stress. We do not accept either version.

28. We find that the reality of this case is that mentioned by Mr Sokhey in closing: Dr Sood regrets not taking the opportunity to retire in 2004 and not subsequently being able to hand the practice on to his partner, work a few sessions and retire slowly and gracefully.

29. Dr Sood has given nearly 30 years loyal service to general practice and it is a great shame that he did not take the first option. Regrettably the second is no longer open to him: to have achieved that he would have had to put all his energy into getting back into practice, perhaps with conditions, with a view to planning his retirement. Put simply, we cannot help his passage to retirement because there is at present nothing to retire from.

30. Dr Sood's first ground of appeal was that the PCT hearing should not have gone ahead on 19 September 2007. The whole object of our redeterminative function is to hear the case afresh: both sides (and particularly Dr Sood) have had the opportunity to say all they wanted before us. That cures any procedural unfairness that may have been occasioned by his absence from the PCT hearing.

31. The second ground is that there should have been a contingent removal so that Dr Sood could have passed the MCQ. In our view he was given ample time between 8 February 2006 and 17 August 2007 so to do. In his evidence he has very honestly admitted his difficulty in achieving this and, indeed, his reluctance to engage with the process. In the light of what he has told us about his wish to retire this ground of appeal is unsustainable: he has told us he no longer wants to undertake this process so that a contingent removal on these terms would be of no use to him. Having observed Dr Sood giving evidence and heard of his achievements, we share his regret that he did not organise an orderly retirement.

32. Our overall finding is that Dr Sood's continued inclusion on the PCT's Performers List would be prejudicial to the efficiency of the services in question. Accordingly we dismiss his appeal and order his removal from the List.

33. 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.

34. 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
13 March 2008