

**IN THE FAMILY HEALTH SERVICES APPEAL
AUTHORITY**

CASE 15057

**Professor M Mildred - Chairman
Dr M Sheldon - Professional Member
Mr M Cann - Member**

BETWEEN

NEWHAM PRIMARY CARE TRUST

Applicant

and

**DR STUART GARY GREEN
(GMC Registration Number 3312867)**

Respondent

DECISION WITH REASONS

Background

1. On 11 June 2008 a Performance Panel of the respondent Newham Primary Care Trust ("the PCT") decided to remove the general practitioner appellant ("Dr Green") from its Performers List on the ground that Dr Green had failed to comply with conditions attached to his membership of that List by failing to disclose criminal convictions to an employer.

2. Dr Green appealed against his removal by letter dated 7 July 2008 and by a decision dated 17 October 2008 we dismissed his appeal and ordered that he be removed from the List.

The application

3. By a letter dated 14 January 2009 the PCT asked the Authority to make an order for National Disqualification against Dr Green, relying solely on the documents before the Panel at the appeal hearing. The PCT asked for the application to be dealt with on the papers and, if an oral hearing were necessary, in its absence. The same Panel was appointed to hear the application as had heard Dr Green's appeal..

The hearing

4. The Panel met at the General Chiropractic Council on 19 March 2009 and confirmed that none of its members had any conflict of interest in hearing the appeal. We waited 30 minutes from the intended start time but Dr Green did not attend.

5. Since there had been no written response to the application by him by 1500 on the day before the hearing we asked the Authority to set out in an e-mail the communications with Dr Green in relation to this application.

6. We are informed that Ms Jill Jackson of the Authority wrote to Dr Green on 20 January 2009 advising him of the PCT's intention to apply for National Disqualification. This letter was sent to the address that was used in the previous appeal, which was on the letterhead that he used when writing to the Authority on 7 July 2008, 126 Osbaldeston Road, London, N16 6NJ. Ms Jackson wrote to Dr Green again on 17 February 2009 advising him of the date of the hearing and case papers were sent to him on 19 February 2009. On 24 February 2009 Ms Jackson wrote to him asking whether or not he would like an oral hearing. On 13 March 2009 Dr Green was sent the attendance list and timetable for the hearing. We are informed by Ms Jackson that none of the letters sent to Dr Green have been returned to the Authority by the Post Office or by anyone else. He has not responded orally or in writing to any of them.

7. In addition Ms Jackson attempted to speak to Dr Green on 17 March 2009 by ringing his mobile phone by which he had communicated with the Authority in relation to his appeal last year. She received a recorded message and asked Dr Green to contact her immediately on receipt but she informed us that the Authority had not heard from Dr Green by close of business on 18 March 2009.

8. In the light of the above we find for the purpose of Rule 40 of The Family Health Services Appeal Authority (Procedure) Rules 2001 that Dr Green has been duly notified of the application and that there was no reasonable excuse for his absence so that we went on to consider the application in his absence.

National Disqualification: the legal framework

9. By Regulation 18A of the National Health Service (Performers Lists) Regulations 2004 as amended ("the Regulations") the Panel has power to impose a national disqualification if (as here) it removes a practitioner's name from a performers list. The powers were 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.

10. We have considered the Department of Health's guidance for PCTs entitled "Primary Care Trust Performers List Guidance", 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".

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

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

Discussion

13. The complaints that resulted in Dr Green's removal were not confined to his activities in the Newham PCT area: Newham PCT was notified by City and Hackney PCT by a letter dated 7 April 2008 that Dr Green had recently been working as a locum in its area in different practices but that he had now been removed from the Locum List although he had been suspended from practice by Interim Orders Panel of the GMC on 30 January 2008.

14. We now turn to the matters set out at (a) to (d) in paragraph 12 above. In giving reasons for our decision of 16 October 2008 we said "23. We further find that he has practised for approximately two months from January to March 2008 whilst suspended by the GMC. These are very serious failures showing a blatant and serial disregard for conditions properly imposed for the protection of the public".

"His conduct of the appeal shows a total lack of insight into the seriousness of his conduct: to give one further example, Dr Green has told us that he has only been before the GMC for matters connected with his own health whereas it is a matter of record that he has been referred to the Fitness to Practice Panel for decisions on allegations almost identical to the complaints made by the PCT with which we have been dealing."

"24. For the sake of completeness we have considered whether a contingent removal (for which Dr Green effectively contends) would be sufficient. We regard this as wholly inappropriate given his history of serial breaches of disclosure obligations and conditions on his practice, his working while suspended, the length of time he has been and will be suspended from practice (requiring major retraining, if ever allowed to return), his forthcoming appearance before the GMC Fitness to Practice Panel and his entire lack of insight."

15. There is simply no evidence (because Dr Green has not given us any) of the likelihood of Dr Green's deficiencies or conduct being remedied in the near to medium term. We only know that he remains suspended by the GMC but he has chosen not to tell us anything that might persuade us that he is taking steps to remedy the deficiencies we (and the GMC) have already identified.

16. In these circumstances patient welfare and the efficient use of NHS resources are best protected by barring Dr Green from general medical practice until he can put forward some cogent evidence that he can and will change his ways. We think it in the interests of the public and the NHS generally that there should be no opportunity for piecemeal attempts to join a performers list of a PCT where he is unknown before he has taken full steps to remediate his practice and developed some insight into the problems created by his conduct hitherto.

17. Dr Green has had the opportunity to explain his interests in continuing his career and how they can be fairly balanced against the risks created by his conduct but has chosen not to take it. In those circumstances we have no evidence favourable to him to put into the balance between the competing interests set out at paragraph 12(c) and (d) above .

Decision

18. For all the reasons set out above the decision of the Panel is that Dr Green 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.

19. 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.

20. 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
Chair of Appeal Panel
20 March 2009