

**IN THE MATTER OF AN APPLICATION FOR A NATIONAL
DISQUALIFICATION**

NHS PERFORMERS LIST REGULATIONS 2004

TRIBUNAL PROCEDURE (FIRST TIER TRIBUNAL) (HESC) RULES 2008

BETWEEN:

NHS COUNTY DURHAM AND DARLINGTON

Applicant

and

DR GERD RAEMSCH

Respondent

Before

Judge J Burrow

Dr D Kwan

Mrs J Purkis

Sitting at Lombard Venue, Lombard Street, EC3 on 2 November 2010.

1. The application

1.1 This is an application by NHS County Durham and Darlington (the PCT) for a National Disqualification to be imposed on Dr Gerd Raemsch (GMC Number 2237312) pursuant to Regulation 18A (3) of the National Health Service (Performers Lists) Regulations 2004 (as amended) (the 2004 regulations).

2. Legal framework

2.1 Regulations 18A (3) and (4) of the 2004 Regulations give a PCT the power to apply to the Primary Health Lists (PHL) within three months of the date of the removal of the practitioner from the Performers List, for a national disqualification to be imposed on the practitioner.

2.2 Regulation 18A(5) provides that if the PHL tribunal imposes a national disqualification on a person, no PCT may include him in any performers list from which he has been so disqualified and if he is included in any such list from which he has been so disqualified, a PCT shall remove him from that list forthwith.

2.3 Regulations 18A (6) and (7) provide that the PHL tribunal may at the request of a person upon whom it has imposed a national disqualification, review that disqualification and confirm or revoke that disqualification.

2.4 Regulation 18A (8) provides that subject to regulation 19, a request referred to in Regulation 18A (6) may not be made before the end of the period of

(a) Two years beginning with the date on which the national disqualification was imposed or

(b) One year beginning with the date of the PHL's decision on the last such review.

2.5 Regulation 19(a) provides that the period for review shall be five years instead of two, if on making a decision to impose national disqualification, the PHL tribunal states that it is of the opinion that the criminal or professional conduct of the practitioner is such that there is no realistic prospect of a further review being successful if held within the period specified in Regulation 18A(8).

2.6 The Department of Health's guidance for PCTs entitled "Primary Medical Performers Lists - Delivering Quality in Primary Care" sets out some of the issues to be taken into account in considering an application for a National Disqualification. We had regard to the statement in the document that we "should recognise the benefits of a national disqualification both for protecting the interests of the patients and for saving NHS resources". We further had regard to whether the reasons for the removal were "essentially local".

2.7 We further had regard to the proportionality of making an order for national disqualification, taking into account the seriousness of the reasons for removal, including any risks to patients, the explanations and any mitigation submitted by the practitioner, the extent to which the allegations have or can be remedied and any insight shown by the practitioner. We also took into account the interests of the practitioner in being able to pursue his profession.

3. Evidence

3.1 Dr Raemsch worked as a salaried GP in the Urgent Care Centre (UCC) at Bishop Auckland from January 2007 to September 2008. On 20 September 2008, patient DF attended the UCC with breathing difficulties, and was treated by a GP who was not Dr Raemsch. The patient was sent home and re-attended the UCC where on this occasion he was treated by Dr Raemsch. Later that day patient DF attended hospital via ambulance where he was hyperventilating and having difficulty breathing. Shortly after arrival he sustained a respiratory arrest and while being treated for the problem he sustained a cardiac arrest. He was transferred to the ICU where he died on 26 September 2010.

3.2 A review was carried out and a number of concerns were identified. A Professional Performance Case Panel was convened for 4 February 2009, which was attended by Dr Raemsch. He was suspended for 6 months by the panel and an extensive inquiry into his practice was initiated. The inquiry included a review of 50 consecutive patients' clinical records, a review of asthmatic patients over 12 months, a review of complaints, interviews of induction processes, simulated surgery and written papers.

3.3 There were serious concerns in respect of 3 of the 50 patient consultations, indicating that some prescribed medication appeared to be outside of normal clinical practice. In respect of a further 5 of the 50 patients, they required a more comprehensive history and physical examination than had been provided. In respect of a further 4 of the 50 the medical notes did not clearly identify diagnosis or treatment, and in respect of a further 2 patients, levels of prescription of antibiotics were not appropriate for young patients. In a further 2 patients there were unusual prescribing patterns for antibiotics.

3.4 In respect of the other investigations, further deficiencies in record keeping were apparent. It was also apparent that no formal induction programme had been provided to Dr Raemsch, and that he had a significant lack of understanding of commonly used terminology, abbreviations and medications in the UK. There were significant gaps in his understanding of work in the NHS, such as how GP surgeries work and associated care pathways. The investigation found that there were deficiencies in clinical records, treatment and prescribing in respect of asthmatic patients.

3.5 On 28 May 2010 the Professional Performance Case Panel met and considered the findings of the inquiry. Dr Raemsch was present and made oral representations and answered questions. The panel decided to contingently remove him with conditions including

- A period of training on working in the NHS, record keeping, and medicines management.
- Completing a Deanery assessment after 6 months practice.
- Adhering to the British Thoracic Society guidelines relating to the management of asthma
- Refrain from administering intravenous drugs except in life threatening situations.

The panel specified that there would be a review of compliance with the conditions after 6 months.

3.7 Thereafter attempts were made by the PCT to contact Dr Raemsch in Germany about his progress in complying with the conditions. It was apparent he or his wife were reading the correspondence but were not responding. Eventually his wife responded to say he had resigned from Bishop Auckland UCC and he had not worked in the UK since being suspended in February 2009. His wife said he could not afford to undertake retraining to meet the conditions.

3.8 On 12 February 2010 he responded to contact by the GMC. Although we have not seen this correspondence it apparently indicated a lack of insight on the doctor's part. He said he would be unable to comply with the PCT's proposed conditions and he had "renounced" working in the UK, although he has not sought erasure with the GMC.

3.9 On 28 May 2010 a hearing was held by the PCT and he was removed from the list, because of a failure to comply with the conditions imposed on his contingent removal.

3.10 On 9 August 2010 the PCT applied to the PHL for a national disqualification. Notification of the application was sent by post and email to Dr Raemsch on 10 August 2010 and by registered post on 11 August 2010. There was no response, and the application form was sent again on 7 September 2010 by email, and again there was no response. The email was sent again on 8 September 2010, and a record of it being opened was received. On 13 September 2010 and 24 September 2010 directions were made ordering Dr Raemsch to serve his Response, which were not complied with, and he was barred from taking further part in the proceedings. Dr Raemsch did not appear at the hearing on 2 November 2010, but we accepted under rule 27 of the 2008 Rules that there had been reasonable steps to notify him of the hearing and he had in any event been barred from participating.

3.11 On convening on 2 November 2010, the panel confirmed that no member had any conflict of interest in hearing the appeal. We proceeded to consider the case on the papers. The documents submitted were those of the PCT's bundle and correspondence with the tribunal.

4. Consideration by the Tribunal

4.1 We considered whether the reasons for Dr Raemsch's removal were essentially local. We accepted that a failure by the Centre to provide a proper induction course was a local element, but we concluded that the many deficiencies in his clinical practise revealed by the investigation were of general application, rather than specific to this location. These included a failure to recognise crucial terms used in the UK NHS. We considered the seriousness of the allegations and noted the death of a patient and the deficiencies of his clinical practice, which had the potential of further harm to patients. We accepted the impairments were serious.

4.2 We considered the implications for NHS resources. We noted in 2008 he was aged 61 and he has retired from his practice in Germany, and he had said he had renounced working in the UK. We noted also he was unwilling or unable to meet the conditions imposed on him in the contingent removal. In those circumstances we accepted that it would not be a

reasonable use of NHS resources to seek to retrain Dr Raemsch. For the same reasons it was unlikely Dr Raemsch could or would remedy the impairments to his fitness to practise in any reasonable time. We accepted that in view of the risks to patients the imposition of a national disqualification was proportionate.

4.3 We considered whether to make an order under Regulation 19 extending the period during which an application to review the national disqualification cannot be made. We took into account that the impairments to practice, while serious, were capable of remedy, if he decided to do so. In these circumstances we decided not to make an order under Regulation 19.

We ordered

1. That an order for national disqualification from any of the lists set out in Regulation 18(1) of the 2004 Regulations be made in respect of Dr Raemsch.
2. No order to be made under Regulation 19 of the 2004 Regulations.

John Burrow

Judge HESC/PHL

5 November 2010