

**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 NORTHAMPTONSHIRE

Applicant

And

DR WHITBY

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 Northamptonshire (the PCT) for a National Disqualification to be imposed on Dr Roger Whitby (GMC Number 2230470) pursuant to Regulation 18 A (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) tribunal 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 The PCT commenced an investigation into Dr Whitby's clinical performance in March 2010 when it came to its attention that there were concerns regarding the care of some of his previous patients. The concerns included misprescribing of Clobazam, the confusion of drug names, in particular the confusion of Clobazam for Clonazepam and Rohypnol for Ropinirole, and a lack of documented management plans and safety netting for multiple patients. There were also concerns about over-prescribing, ignoring peer advice, and the use of dangerous practices. An example of this was the prescribing of excessive doses of doxazosin for a hypertension patient, thereby apparently inducing hypotension.

3.2 At a PCT Reference Committee hearing on 26 July 2010, Dr Whitby, who was present and represented, accepted the bulk of the allegations. The expert witnesses who reviewed Dr Whitby's practise expressed "serious concerns" about the quality of his clinical practice, and considered it negligent, unprofessional and unsafe. Dr Whitby was removed from the performers list by the Committee. That sanction has not been appealed, indeed in his submissions to the hearing he accepted that there was material on which he could be removed and he further accepted that he would not oppose an application for a national disqualification.

3.3 On 27 August 2010 the PCT applied for a national extension pursuant to Regulation 18A. By a letter dated 13 September 2010, solicitors for Dr Whitby stated he did not oppose the application. Both parties consented to a hearing on the papers. The bundle consisted of the PCT bundle along with tribunal correspondence, and Dr Whitby's letter of 13 September 2010 with enclosure. Dr Whitby was sent notice of the application on 3 September 2010, and clearly received this notification because of correspondence in response to it. The panel determined that there were no conflicts of interest in them considering the application.

4. Consideration by the Tribunal

4.1 We considered whether the reasons for Dr Whitby's removal were essentially local and concluded they related to deficiencies in clinical practise which were of general application, rather location specific. We noted he admitted the bulk of the allegations and did not oppose the making of a national disqualification. We considered the seriousness of the allegations and concluded that they were serious and had the potential of harm to patients, although there was no evidence of actual harm having been caused.

4.2 We considered the implications for NHS resources. We noted in the letter of 13 September 2010, it was said that he did not intend to ever practise medicine again. He was intending to retire from practice. We further noted the opinion of one of the expert assessors at the Reference Committee hearing on 26 July 2010 that any remedial programme would involve a very lengthy and costly exercise. Dr Whitby himself accepted that any such remedial programme would be disproportionate.

4.3 We accepted for these reasons that the imposition of a national disqualification order was proportionate and we allowed the PCTs application for a national disqualification.

4.4 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 and that no actual harm had been caused. 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 Whitby.
2. No order be made under Regulation 19 of the 2004 Regulations.

John Burrow

Judge HESC/PHL

5.11.10