

**TRIBUNAL SERVICE**  
**PRIMARY HEALTH LIST**

**Case Ref: PHL/15290**

Christopher Limb – Judge  
Dr Philip Wray – Professional Member  
Valerie Barducci - Lay Member

BETWEEN:

MERCIER MONTREX  
(GDC Reg No: 77550)

Applicant

and

BEDFORDSHIRE PRIMARY CARE TRUST

Respondent

**DECISION**

**Introduction**

1. We sat to hear this case in London on 25<sup>th</sup> October 2010. In addition to the documents filed by each party we heard oral evidence from Mr Montrex. Mr Montrex was represented by Mr Goldman, barrister employed by the British Dental Association, and the PCT was represented by Ms Feema Francis, a dental public health consultant in their employ.
2. Mr Montrex applied to join the Dental Performers List of Bedfordshire PCT on 29<sup>th</sup> August 2009. There was some notable exchange of correspondence. The PCT Decision was notified by letter of 6<sup>th</sup> May 2010. The Decision was to allow the application but on the basis of conditions, namely conditional inclusion by reference to Regulation 8 of the National Health Service (Performers List) Regulations 2004 (“the Regulations”). The conditions imposed were:
  - (i) You will notify the PCT of each new post you take up within 7 days of the start date;
  - (ii) You will cooperate fully with the PCT and will make available to them such information as they request to enable them to audit prescriptions randomly from time to time in respect to NHS work carried out by yourself;

- (iii) The PCT will require information from someone other than yourself that any practice in which you work has an updated Infection Control Policy in force;
  - (iv) To address any concerns about patient management you should not work in a single handed practice, should provide monthly reports from an agreed dentist at the practice and be supervised by someone who the PCT approves;
  - (v) You should restrict yourself to performer status;
  - (vi) Each month you should send to the PCT documentary evidence of compliance with the GDC's CPD requirements and the requirement that you develop close links with a range of professional colleagues and professional organisations.
3. An appeal was notified on an appeal application form on 21<sup>st</sup> July 2010 and a request made for extension of time for appeal. Such extension of time has been previously granted by Judge Burrow on 30<sup>th</sup> July 2010.
  4. Mr Montrex appeals against the imposition of conditions and in the alternative contends that the wording and the duration of the conditions (which were imposed without limit of time) should be revised. In reality, both the written material and the hearing were primarily directed towards the contention that the conditions should be notably revised and that the period of any conditions in fact imposed which should be no more than one year.
  5. Mr Montrex applied for a private hearing and an Order prohibiting disclosure or publication of documents and information. We refused such applications after hearing submissions at the beginning of the hearing. We concluded that there were no grounds to depart from the general rule that proceedings should be heard in public and there was no basis upon which to restrict disclosure of documents or information to the extent that such matters were or are referred to in the course of hearing or in this Decision.

### **History/evidence**

6. The majority of the hearing involved the submissions on the part of each party. There was very little dispute of fact. We shall refer in the course of our Decision to those aspects of the factual history which appear to be relevant to the Decision, but we have read all the written material placed before us as well as listening to the oral evidence of Mr Montrex and cross-examination of him.
7. Mr Montrex is Iranian by birth but Swedish by nationality. He qualified as a dentist in Sweden in May 2000. He was first registered in the United Kingdom as a dentist in June 2000. Until 2003 he worked in Manchester and in 2003 he purchased a (different) practice in the Manchester area. The practice was sold at a loss at the end of 2004. Various matters of professional concern arose which both led to the

local PCT becoming involved and a complaint being heard by the General Dental Council.

8. We have more detailed information in relation to the General Dental Council investigation and in particular have available the full terms of its Decisions. There was a finding of serious professional misconduct following a hearing in July 2005. The adverse findings made are broadly summarised as follows:
  - (a) Mr Montrex completed prescriptions for drugs other than for the bona fide dental treatment of the patients in whose names the prescriptions were written. The names were false. There was wrongful claim for exemption from prescription charges. The Practice Manageress was asked to make a false entry in respect of one fictitious patient in the appointments book. The drugs were in fact for Mr Montrex's own use : they were for painkillers. GDC Ethical Guidance indicated that dentists should not self-prescribe. The Professional Conduct Committee summarised its conclusions : "The right to prescribe is a privilege conferred on a registered dentist by legislation and should be regarded in that light. The Committee views any abuse of that right, therefore, as a serious breach of the standards of behaviour which both the public and the profession expect of a dentist. In this respect you acted in a manner that was inappropriate, irresponsible, intended to mislead, and an abuse of your professional position". The second aspect of the case concerned a failure to ensure appropriate steps in relation to the risk of cross-infection. An adverse finding was made in respect of a specific incident involving cleaning and sterilisation of a scaler hand piece and tip between patients, together with a more general overall concern as to the standard of infection control. In addition to the two primary aspects already summarised there were findings in relation to inappropriate clinical care in respect of a small number of patients and a finding of (in broad terms) brusque or inappropriate conduct towards associates. It is the findings in relation to prescriptions and cross-infection which principally concerned the GDC.
  - (b) The GDC initially postponed its judgment to allow the chance for reformation/improvement. Subsequently in February 2007, following a period when Mr Montrex had worked outside of the United Kingdom, the GDC heard evidence including evidence from a Swedish dentist with whom he had worked and concluded that real progress had been made to take advantage of the opportunity of rehabilitation. The case was concluded without further sanction but it was noted "It is the Committee's advice that when you re-enter practice in the United Kingdom you should seek to do so in some form of supported environment. The Committee wishes to emphasise that once back in practice it will be in your own best interests, and in the interests of patients, for you to keep in touch with other dental professionals in your locality". It was accepted that Mr Montrex had shown both insight and contrition.

9. During the same period and arising out of the same matters, the local PCT (Tameside & Glossop PCT) did (through a process of negotiation and agreement) impose a contingent removal which involved the imposition of conditions which have been (in effect) replicated by Bedfordshire PCT.
10. Mr Montrex gave evidence, which we accept, that he could not find work in the UK but did work as a dentist in Sweden. In 2007 (and in the context of his wife's move of employment) he then moved to Ireland where he obtained work as a general dental practitioner until 2009. He then returned to England in the context of his mother in law becoming ill and the family therefore wanting to move back near to her. It was in such context he then applied to Bedfordshire PCT. He tells us, and we accept, that he has applied for various jobs in NHS dental practices subsequently but has been unable to secure a job.
11. Mr Montrex believes that the necessity to declare the conditions upon his inclusion in the Performers List is a major factor in the difficulty in obtaining a job. The process of applying for jobs does not tend to produce a clear statement that a job was not offered because of the conditions, but we accept the concern is genuine. Whether or not it is the sole factor we accept that the conditions may well be one factor in the difficulty in obtaining jobs.
12. We accept that Mr Montrex has attended a very large number of courses with a view to improving his clinical practice including various courses relating to infection control.
13. Mr Montrex, both in his written and his oral evidence, accepted that his conduct which is the subject of the GDC investigation in 2005 was serious. He, in effect, says he has done everything in his power to improve his practice and to ensure that no similar mistakes are made in the future.

### **Law/Regulations**

14. The broad structure of the Regulations relating to an application for inclusion on a Performers List is that there may be unconditional inclusion on the list, refusal of inclusion on the list, or conditional inclusion on the list. By reference to Regulations 6 and 8 an Applicant may either be refused inclusion or alternatively have conditions imposed upon his inclusion because (inter alia) admission to the list would be prejudicial to the efficiency of the services which those included in that list perform, otherwise referred to as "prejudice to the efficiency of the service".

15. There is no dispute that the facts which the GDC and the Tameside & Glossop PCT considered in and around 2005 would at the time have been sufficient to justify a finding of prejudice to the efficiency of the service.
16. Our view as to the principles to be applied at the present time is that we must judge whether the facts considered in 2005 when taken together with subsequent events make it appropriate and proportionate to impose conditions upon inclusion on the list (it not being contended that refusal of inclusion would be appropriate).
17. If conditions are to be imposed it is important that they are clear in their terms and objectively measurable. Both their terms and their duration should be reasonable and proportionate. Any condition must bear in mind the practical purpose of ensuring or assisting in the provision of efficient services.

### **Decision**

18. The actions of Mr Montrex which have been previously referred to and which became the subject of GDC proceedings were serious. In such regard we in particular have regard to his actions in relation to self prescription and related misleading/false statements, and the issue of infection and control of cross-infection. We are keenly aware that the issue of cross-infection is paramount in dental practice. The actions in relation to the prescription are of general concern as impacting upon the required standard of professional behaviour. Such matters do in principle justify consideration of refusal of inclusion or of imposition of conditions.
19. We note the subsequent history and Mr Montrex's attempts to obtain work subject to the conditions imposed. We also note his extensive history of continuing professional development and education. We note and respect the findings of the General Dental Council. It was not overtly argued that it is inappropriate to impose any conditions because the General Dental Council did not impose conditions, and it would be incorrect to suggest that this Tribunal is bound by the conclusion of the General Dental Council albeit giving it respect. We note the "advice" of the Professional Conduct Committee of the General Dental Council that when Mr Montrex re-entered practice in the United Kingdom he should seek to do so in some form of supported environment. We are of the view that there should be a period during which his return to practice in the NHS should be the subject both of oversight to ensure appropriate standards and of support to assist in achieving those standards. We do not think it is appropriate that there should be open ended imposition of conditions : if after a period the PCT were of the view that Mr Montrex's standards were not sufficient it would be appropriate for them to take steps to consider removal. It is not in our view appropriate to have profession-long conditions imposed in the context of this case.

20. We are persuaded that it is appropriate that there is a period of practice in the NHS during which there are conditions requiring and enabling both supervision and support. The duration of the conditions which we consider appropriate will be eighteen months of practice within an NHS dental practice. Adopting the same numbering as in paragraph 2 of this Decision, the terms of the conditions will otherwise be:

- (i) Mr Montrex will notify the PCT of each new post he takes up within 7 days of its start date;
- (ii) Mr Montrex will cooperate with the PCT Clinical Governance Team who shall give due notice of any visit. He shall maintain and make available a separate log book of all drugs prescribed by him including the details of drug and directed use, the patient name, and the unique prescription reference number. The log book must include any prescriptions which have been destroyed and clear reasons for destruction;
- (iii) Mr Montrex will provide to the PCT a copy of the current Infection Control Policy of the dental practice in which he is working, with his dated signature confirming that he has read the policy and applies it;
- (iv) Mr Montrex:
  - (a) will not work in a single-handed practice;
  - (b) will work under the supervision/monitoring of a senior dentist whose identity is notified to the PCT within a week of commencement of work and whom Mr Montrex agrees will be at liberty to communicate with the PCT Dental Health Consultant.
- (v) Mr Montrex will be restricted to performer status;
- (vi) Every three months Mr Montrex will:
  - (a) provide to a person nominated by the PCT documentary evidence of continuing professional development undertaken;
  - (b) seek the advice of the Deanery Dental Workforce Support Advisor as to his current personal development plan;
  - (c) provide a copy of his current personal development plan to a person nominated by the PCT.

21. The reasoning behind the wording of the conditions imposed is as follows:

- (i) This wording was agreed by the parties;
- (ii) We are of the opinion that the revision of wording and clearer specification of the condition renders the condition more comprehensible and objectively measurable;
- (iii) We accept that obligations should not, in effect, be imposed upon anyone other than Mr Montrex unless such is unavoidable and we believe our own wording is appropriate and achieves the same practical end as the current condition but without involving a third party;

- (iv) The previous condition, in effect, covered three separate matters. We agree (and Mr Montrex agreed if any condition were to be imposed) that it is appropriate that he should not work in a single-handed practice. We are of the opinion that the provision of monthly reports from another dentist at the practice is objectively likely to be considered an unwanted burden by such dentist. We consider that in the context of the second part of the condition, the benefit to be obtained does not justify the potential for such condition harming the prospects of Mr Montrex obtaining work. For the period for which conditions are imposed we consider that it is appropriate there be supervision by a named/identified senior dentist;
- (v) The wording is agreed by the parties if the principle of restriction for a period is considered appropriate by us;
- (vi) We consider that the PCT on behalf of the public has a legitimate interest in seeing evidence of continuing professional education and some form of broad supervision/advice in such regard. In our opinion our wording is more practical and objectively measurable than the current condition but achieves its legitimate aims without imposing a disproportional burden.

### **Summary**

22. The appeal is allowed to the extent set out in previous paragraphs. During the first eighteen months of practice within an NHS dental practice in England or Wales (whenever such period begins or ends and whether in one part or more than one part) :

- (i) Mr Montrex will notify the PCT of each new post he takes up within 7 days of its start date;
- (ii) Mr Montrex will cooperate with the PCT Clinical Governance Team who shall give due notice of any visit. He shall maintain and make available a separate log book of all drugs prescribed by him including the details of drug and directed use, the patient name, and the unique prescription reference number. The log book must include any prescriptions which have been destroyed and clear reasons for destruction;
- (iii) Mr Montrex will provide to the PCT a copy of the current Infection Control Policy of the dental practice in which he is working, with his dated signature confirming that he has read the policy and applies it;
- (iv) Mr Montrex:
  - (a) will not work in a single-handed practice;
  - (b) will work under the supervision/monitoring of a senior dentist whose identity is notified to the PCT within a week of commencement of work and whom Mr Montrex agrees will be at liberty to communicate with the PCT Dental Health Consultant.
- (v) Mr Montrex will be restricted to performer status;

- (vi) Every three months Mr Montrex will:
- (a) provide to a person nominated by the PCT documentary evidence of continuing professional development undertaken;
  - (b) seek the advice of the Deanery Dental Workforce Support Advisor as to his current personal development plan;
  - (c) provide a copy of his current personal development plan to a person nominated by the PCT.

**Christopher Limb  
Tribunal Judge**

19 November 2010.