

IN THE FAMILY HEALTH SERVICES APPEAL AUTHORITY

Case No: FHS/13238

BETWEEN

TENDRING PRIMARY CARE TRUST

Applicant

and

DR NANALAL RATILAL SHAH

Respondent

This is an application by the Tendring Primary Care Trust (the PCT) for a national disqualification of Dr Shah.

The PCT made a decision to contingently remove Dr Shah from the performer's list on 8 July 2005. He appealed to the FHSAA against this decision on 25 July 2005. At his request the hearing of the appeal was postponed from a date in October 2005 to a date in March 2006. This was on the basis, as Dr Shah wrote in a letter which was copied to the FHSAA on 11 August 2005:

I wish to return to India as soon as I am able to help stabilise the charity's work and return to the UK around the first week of March 2006. In the circumstances I wish to request a postponement of the appeal's hearing until March 2006 so order that I can return to my charitable work.

The FHSAA therefore postponed the hearing and made directions. Dr Shah failed to comply with these directions and as a consequence his appeal was dismissed.

On 30 September 2005 the PCT became aware that Dr Shah had either returned to the UK, or had never left the country. It appears he had been working as a locum in various GP practices on various dates from August through to November 2005. The PCT also became aware that Dr Shah attended a hearing before the GMC in December 2005. The GMC informed the PCT that Dr Shah had attended before the GMC on 14 December 2005 and conditions were imposed on his registration for a period of 18 months.

The PCT then asked the Essex Performance Advisory Group (Essex PAG) to investigate Dr Shah's practice and provide a report to them. A 200 page report with 148 appendices was submitted to the PCT on 31 March 2006.

In January 2006 Dr Shah was suspended from the Performer's List for a period of 6 months. On the 13 June 2006 the PCT decided that Dr Shah should be removed from the Performer's List forthwith and also sought a national disqualification.

Solicitors instructed by the PCT submitted an application for national disqualification of Dr Shah on 24 July 2006. All documents were submitted to Dr Shah in accordance with the FHSAA rules. He did not respond to the notice of appeal and did not attend the hearing on the 23 October 2006.

The minutes of a meeting at the PCT on 13 June 2006 where it was decided to remove Dr Shah from the Performers List and seek a national disqualification recorded (inter alia) the following:

Dr Kaiser (PCT) said that the PAG report demonstrated that Dr Shah's practice showed a range of significant and minor weaknesses. He has poor professional and clinical skills and he quoted

examples such as poor communication, lack of currency and the missing appraisal. The clinical issues were the most worrying and, although he considered some of these were minor, there were some serious incidents identified which, he felt, meant that Dr Shah was a substantial threat to patient safety. He cited a number of examples, including the death of Mrs Woolward and failure to diagnose urine retention in another patient.

The minutes also summarised the views of Paul Unsworth, the CEO of the PCT.

The Chief Executive endorsed the views and concerns of the other Panel members. He added that Dr Shah displayed a lack of honesty and was unresponsive to the PCT's approaches to work with him. The CEO said he was not confident that Dr Shah would abide by conditions applied, should contingent removal be decided and come into effect. This lack of probity was demonstrated by the fact that in 2006 the PCT had agreed to the postponement of Dr Shah's appeal against contingent removal on the premise that he was out of the country but he actually remained in the UK and continued to practise. The Chief Executive felt the case for removal was strong.

The principle reasons for the 23 January 2006 suspension were then summarised in a letter to Dr Shah from Paul Unsworth:

1. *The cumulative history of complaints made against you, as forwarded to you in my letter of 9 January 2006, including the complaint received from Selby and Yorks PCT.*
2. *The seriousness of the Thurrock incident, involving the death of a patient in July 2003.*
3. *Your unpredictable behaviour with regards to your whereabouts and working habits, which means that it is very difficult to be satisfied that any conditions and supervisory framework would be effective.*
4. *The fact that you did not inform the PCT that the GMC were investigating your practice. This is a requirement under Regulations 4.3b, 4.4, 4.4h and 4.4i of the aforementioned Regulations.*
5. *Apparent lack of honesty and trust as, at your request, the PCT agreed to defer the FHSAA hearing from 7 November 2005 to March 2006 on the basis that you claimed he would be in India for an extended period. This was subsequently found not to be true.*

The panel adopt these quotations as accurately summarising part of the case against Dr Shah for national disqualification. The panel have also had the benefit of reading the comprehensive report from the Essex PAG referred to above. The panel particularly highlight the following:

a. Numerous examples of the shortcomings of Dr Shah's clinical performance are evidenced in a significant number of complaints made over a short period of time. These complaints encompass a range of problems including poor communication, superficial diagnosis and potentially negligent practice.

b. In relation to Dr Shah's conduct a particular serious complaint is documented (Essex PAG report paras 974 - 986) where Dr Shah acted in an inappropriate and abusive way towards a female patient. This incident occurred on 18 November 2005.

c. The seriousness of the 'Thurrock' incident in 2004 which was subsequently reviewed by the Essex Consumer Services Team, the GMC as well as the Essex PAG.

The grounds of application prepared by the PCT's solicitors sets down in detail the clinical and other matters relied on in support of the application to disqualify. In the absence of any representations from Dr Shah to the contrary the panel rely on this document, and the Essex PAG report, as providing overwhelming evidence of the need to nationally disqualify Dr Shah. Where relevant the panel also rely on the other material referred to by the PCT.

The panel were particularly concerned about Dr Shah's honesty as evidenced by his dealings with the FHSAA. He obtained the agreement of the PCT and the FHSAA to agree to an adjournment of his 2005 appeal on the basis of the fact that he was going to India for 6 months. In reality if he

did go to India he was only there for a short period of time. He then failed to engage with the FHSAA process further. He was involved with the GMC in December where he attended a meeting of the Interim Orders Panel and was legally represented. It was a condition of the GMC's Interim Orders Panel when making a conditional order that he notify all employers and contractors and all prospective employers or contractors of the matters under consideration by the GMC. He failed to notify the PCT.

In summary the panel are satisfied the grounds are met for national disqualification and thereby disqualify Dr Shah.

The panel note that when Dr Shah applied for inclusion in the Supplementary Medical List on the 29 July 2002 his application was entirely inadequate and the references he provided were quite unacceptable. If the North East Essex Health Authority (who at that time were charged with scrutinising applications to join the performers list) had scrutinised this application with any rigour whatsoever then Dr Shah should never have been placed on the Supplementary Medical List in the first place.

Finally, in accordance with Rule 42 (5) of the Rules we hereby notify that a party to these proceedings can appeal this decision under Sec 11 Tribunals & Inquiries Act 1992 by lodging notice of appeal in the Royal Courts of Justice, The Strand, London WC2A 2LL within 28 days from receipt of this decision.

Dated this 30th day of October 2006

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AGW Harbour – chair

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Dr H Freeman – professional

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Professor D Croisdale-Appleby - member