

IN THE FAMILY HEALTH SERVICES APPEAL AUTHORITY

Mr D Pratt - Chair
Dr S Sharma - Professional Member
Dr D Ratzer - Member

BETWEEN:

DR MOHAMED ADEL WAHAB
(GMC number 2880552)

Appellant

-and-

MEDWAY TEACHING PRIMARY CARE TRUST

Respondent

DECISION ON NATIONAL DISQUALIFICATION WITH REASONS

1. On 18 October 2006 we dismissed the appeal of Dr Wahab against his removal from the Performers List operated by Medway Teaching Primary Care Trust ("The PCT") and directed his removal from that List, for the reasons set out in our decision. We invited the parties to make written submissions to us on the question of national disqualification, having seen the basis for our decision.
2. We have received submissions from Dr Wahab's solicitors dated 17 November, and from Counsel for the PCT dated 16 November 2006, and have considered them carefully in the light of our findings and previous decision.
3. In the course of the substantive hearing of the appeal in this case the PCT did not express a view about national disqualification but now invites us to exercise the powers we have to do so, pursuant to Section 49N (1) to (3) of the National Health Service Act 1977, as amended, which confers on us a power to impose a national disqualification where we have removed the practitioner from a local Performers List. Indeed we have an obligation to consider whether national disqualification is appropriate following our decision.
4. Our attention is drawn to the Primary Care Trust Performers List Guidance issued by the Department of Health, and in particular to [emphasis added]:
 - a. paragraph 40.2 which expresses the view 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
 - b. 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*".

5. The exercise of our discretion is not specifically constrained or guided by statutory provision. It is available whether the ground for removal is a mandatory or discretionary one, and if discretionary, whether it is on grounds of suitability, fraud, or efficiency. In our view these wide powers are conferred on us so that we can deal with the multiplicity of different factual situations which arise without the necessity to pay undue regard to the label attached to the conduct or deficiency under Regulation 10 (4) of the NHS (Performers List) Regulations 2004.
6. We agree that it is relevant and important to consider whether the grounds we have identified for removal of Dr Wahab were essentially local to the area of Medway PCT. Among other factors which we think it appropriate to take into account are:
 - a. The seriousness of the deficiencies or conduct identified;
 - b. The range of those deficiencies;
 - c. The explanations offered by the practitioner;
 - d. The likelihood of those deficiencies or conduct being remedied in the near to medium term;
 - e. Patient welfare and the efficient use of NHS resources; but balancing those against
 - f. 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).
7. It is said on behalf of the PCT that we should make an order for national disqualification because (among other things) we found that Dr Wahab's performance was seriously deficient and he was lacking in insight both as to the extent of his deficiencies and the need for remediation. Reliance is placed on paragraph 157 of our decision:

"Given the seriously deficient level of his performance before that absence from practice, and our findings about his inability to engage effectively with the process of retraining, there is in our view no realistic prospect of his achieving a sufficient level of competence, both clinically and managerially, in the reasonably near future. Indeed, unless he achieves significantly better insight into what is required, he may never do so. These patient lists cannot be left in limbo forever."
8. On behalf of Dr Wahab it is said that, given the factual basis of our decision, national disqualification would be disproportionate. It is suggested that our decision to remove him was based on his prolonged ill health, and the length of time he had been away from practice; we presume this is a reading of the passage quoted above, through rather different spectacles. We are told that Dr Wahab has no plans to apply to be included in any other Performers List and if he were to do so he would have to disclose the circumstances of his removal from this PCT's list. It is submitted that the interests of patients and the public are sufficiently protected because he remains subject to an interim order in Fitness to Practise

proceedings in the GMC which will remain in force until he completes a further assessment of his professional performance.

9. We have carefully considered these further submissions in the light of all our findings. In particular, we consider the following to be relevant:
 - a. Clinical deficiencies: “Dr Wahab’s competence and efficiency, measured by the Performance Assessment in mid-2003, was seriously deficient to the extent that, in the absence of being remedied by real, verified and sustained improvement to an acceptable level, would lead to the conclusion that [his] continued presence on the Performers List was likely to prejudice the efficiency of the services” [para 147];
 - b. Remedial steps: “He did not grasp, and continues not to grasp, the extent to which he was deficient” [para 147]... “or the profound changes (and effort) he has to make to remedy them” [para 147]; “Dr Wahab did not give these remedial steps [set out in the Statement of Requirements] the urgency and importance they demanded” [para 149]; “Dr Wahab’s underlying reluctance, or inability, to engage effectively with the training process.” [para 149]
 - c. Insight : “He has shown little, or insufficient insight into his shortcomings and the steps he must take to remedy them” [para 148];
 - d. Practice management: “Nor can Dr Bannar-Martin remedy the poor practice management which the Performance Assessment had identified, and which Dr Wahab has continued to demonstrate in more recent times.” [para 150]; “Dr Wahab has struggled to service a large patient list..” [para 150], and “Dr Wahab has resolutely resisted all attempts by the PCT to get him to reduce his patient list size...” [para 152]; “Not only did Dr Wahab fail to recruit, as stipulated, but he failed to provide adequate training of his staff” [para 151];
 - e. Likelihood of timely future remedial steps: “We would need to be persuaded that his progress from September 2003 until September 2004 had been sufficient to enable us to be reasonably confident that after he became fit, he would be able to remedy his deficiencies and pass a Performance Assessment. We are not so satisfied.” [para 154]; “Dr Wahab has agreed in evidence that he could have been complying with some parts of the Statement of Requirements ... After considering his evidence we are satisfied that he has not done so.” [para 154]; “Dr Wahab complies with something when it suits and is inclined to ignore it when it does not.” [para 156]
 - f. “We have no confidence that Dr Wahab is capable of insight into his deficiencies or is capable of remedying them. Nor do we think we can rely on him to comply fully with undertakings.” [para 156]
10. None of the explanations offered by Dr Wahab for these serious shortcomings over a wide range of important skills gave us any reassurance. Indeed the contrary was the case.

11. With the arguable exception of the loss of trust and confidence between Dr Wahab and the officers of the Medway PCT, none of the matters which we found proved and took into account in deciding that his removal from the list was justified, is essentially local to Medway PCT.
12. Some, but by no means all of the shortcomings identified, were exacerbated by Dr Wahab's depressive illness, and were incapable of being addressed so long as he continued to suffer that illness.
13. We find it difficult to envisage any circumstances in which it would be safe for Dr Wahab to deal with patients anywhere within the NHS unless (a) he demonstrated significantly more insight into his deficiencies than is currently the case, (b) he had engaged effectively with remedial training and demonstrated significant improvement, and (c) he were subject to supervision of a degree which we found to be impractical and unrealistic.
14. The efficiency of the service and the welfare of patients would be no less prejudiced if Dr Wahab were to be practising in a different area of the country.
15. We are not disposed to attach great weight to the suggestion that because Dr Wahab would have to disclose the circumstances of his removal from the Medway PCT Performers List, it was not necessary to impose national disqualification. The very purpose of national disqualification is to provide a protection for patients and the resources of the NHS even if the practitioner fails to make full and proper disclosure. We are conscious that the evidence we have heard suggests that Dr Wahab has in the past been selective with his account of what had been happening in his GMC assessments when speaking to examining medical advisers. We also bear in mind our finding referred to at paragraph 9 (f) above.
16. Nor, having regard to Dr Wahab's persistent failure to comply with the GMC's Statement of Requirements to date, are we reassured by the fact that he is currently the subject of an interim order by the GMC, as the written submissions on behalf of Dr Wahab suggest should be the case.
17. While our decision that Dr Wahab should be removed from the Medway PCT Performers List was on the ground of efficiency, the context is one of profound and long-established clinical and managerial deficiencies which would place patients at risk and prejudice the efficiency of the services wherever Dr Wahab practised within the NHS.
18. Unless nationally disqualified Dr Wahab would be at liberty to apply to be included in any other Performers List outside Medway. We have taken due account of the submissions made on his behalf and of his proper interest in avoiding national disqualification. However, it is in our view necessary and proportionate to impose national disqualification. Dr Wahab will be able to apply for a review of this disqualification when two years have elapsed, and if matters proceed as he has told us he hopes and intends, no doubt he will consider doing so.

19. Taking all material factors into account the Panel determines that Dr Wahab (GMC number 2880552) be disqualified from inclusion in all lists prepared by all Health Authorities/ Primary Care Trusts, referred to under Section 49 F (1) of the National Health Services Act 1977 as amended, all supplementary lists, and all lists deemed to succeed or replace such lists by virtue of regulations made thereunder.
20. We direct that a copy of this decision be sent to the persons and bodies referred to in Rule 47(1) of the Family Health Service Appeals Authority (Procedure) Rules 2001. In the case of sub-rule 47 (1) (e) the relevant professional body is the General Medical Council.
21. A party to these proceedings can appeal this decision under Sec 11 Tribunals and Inquiries Act 1992 by lodging notice of appeal in the Royal Courts of Justice, The Strand, London WC2A 2LL within 28 days from the receipt of this decision.
22. Under Rule 43 of the 2001 Rules a party may also apply for review or variation of this decision no later than 14 days after the date on which this decision is sent.

Duncan Pratt
Chair of the Panel

27 November 2006

CASE NO. 12243

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