

IN THE FAMILY HEALTH SERVICES APPEALS AUTHORITY

Case No: FHS/15185
On: 8 October 2009
Nottingham Magistrates Court

MS M LEWIS -Chairman
Dr J CHOPE-Professional Member
MR M RAYNER-Lay Member

Between

Dr GEORGIOS APOSTOLOPOULOS
(GDC REGISTRATION 82618)

Appellant

AND

SOUTH STAFFORDSHIRE PRIMARY CARE TRUST

Respondent

Representation

For the Appellant: The Appellant appeared in person.

For the Respondent: The Respondent was not represented.

DECISION WITH REASONS

The Appeal

1. This is an appeal against the Respondent's decision dated 9 June 2009 refusing the application for inclusion in the Respondent's Medical Performers' List under Regulation 4 of the National Health Service (Performers' Lists) Regulations 2004, on the grounds of 'suitability'. The reason given was that the Appellant had failed to disclose a police caution on 13 December 2005 that he had pursued a course of conduct that amounted to harassment on 13 and 14 November 2005 contrary to Section 2 (1) and

Section 2 (2) of the Protection from Harassment Act 1997. The failure to disclose was contrary to Regulation 4 (4) (c): that he had accepted a police caution in the United Kingdom.

2. The Panel had no conflicts of interest which would prevent them hearing the appeal.

3. The panel considered the written evidence which ran to only 18 pages in total. We heard the oral evidence of the appellant who produced some additional documents from Leicestershire Constabulary. .

The Evidence

4. The Respondent reconfirmed by letter dated 12 August 2009 that South Staffordshire PCT did not intend to have a representative at the hearing or to call any witnesses. The PCT did not wish to submit any additional written representation and wished the FHSAA to rely solely on the information sent to the PCT. This consisted of a letter sent on 27 July 2008, which set out that the caution came to light through an enhanced CRB check, which is undertaken in every case. The case was referred to the Decision Making Group on 5 June 2009. The Group considered that in view of Dr Apostolopoulos' failure to disclose the caution on a number of occasions as required by the Regulations i.e. in his disclosure to this PCT, to Leicestershire & Rutland PCT, to his new employer, nor to the General Dental Council his name should not be included on the Respondent's Dental Performers' List on the grounds of 'suitability'. It was agreed to inform Leicestershire & Rutland PCT and the GDC of the PCT's decision but not share the CRB disclosure. Also enclosed was a copy of the application form, a copy of the CRB disclosure and a copy of correspondence from Leicestershire & Rutland PCT dated 17 March 2009 saying that the Appellant was not currently the subject of any investigation, nor had he ever been refused admission to or conditionally included in, removed or conditionally removed from that PCT's List.

5. The Appellant was not represented. We noted a letter from his criminal solicitors dated 14 July 2009 stating that they were seeking deletion of the caution on the grounds that there was no evidence of any criminal offence. It further suggested that the Appellant had been so embarrassed by the caution that he had failed to disclose it as he wished to put it from his mind. Since the Caution on 13 December 2005 the Appellant had not been convicted, cautioned or investigated in relation to any criminal matter. By October 2009 he would have been resident in the United Kingdom for six years during which time he had practised as a dentist with an exemplary record. The panel was not presented with evidence of any other concerns.

6. The Appellant directed his evidence and oral presentation to the fact of the caution. In particular, he complained that he had been deemed to be unsuitable to be included on the Respondent PCT's List without being given the opportunity to go before a Panel and fully explain the circumstances of the caution. He had spoken personally to Ms. Pidd the 'Primary Care

Administrator' who signed the Decision letter on three occasions, twice by appointment.

7. The Appellant focussed his evidence on the circumstances of the caution but due to a change in recording systems, it was not possible to access charge sheets generated prior to 2007. A letter from Leicestershire Constabulary dated 10 June 2009 confirmed that he had attended at the Front Enquiry Office on 9 June 2009 and on two occasions on 10 June 2009. .

8. The Appellant said that the caution had arisen because he had wanted to ask a patient to go out for dinner with him. He thought that she had consulted him professionally on only one or possibly two occasions. He sent her a text asking how she was, but not identifying himself. She had responded by asking who he was. He then sent a further text saying it was somebody she had met three or four days ago. He emphasised it was a very polite text. However, she responded by demanding he identify himself or she would go to the police. He realised that he had scared her and the following morning he identified himself. She did not respond. The Appellant was therefore very surprised when the police came to the dental practice, that he was then working at.

9. The Appellant voluntarily went to the police station. No member of the Practice came with him. It was not properly explained to him what a caution meant. He understood it to be more in the form of a warning. His English was then at a more basic level. The whole incident caused him to be very distressed for some months afterwards, but he had not understood that professionally it would have repercussions for him.

10. The 'Incident summary' which the Appellant had managed to get a copy of tended to support that version of events. It says that an assault took place at 20.30 hours on 13 November 2005 and at 9 o'clock am on Monday 14 November 2005. He had enquired but his mobile company could not let him have a record of the content of texts, only the times of them.

11. The Appellant accepted that he had failed to disclose the caution to Leicestershire & Rutland PCT. They were now aware of the caution and had issued him with a 'warning'.

Findings

12. The Appellant accepts that he made an advance and proposed a relationship with a patient. He knew it was unprofessional to seek a personal relationship with a patient but said in evidence '*Sometimes one is ruled by one's heart*'. He used the patient's personal contact details.

13. At this distance of time it is not possible to fully investigate the circumstances of the evidence of a criminal offence available to the police. The Incident summary tends to support the Appellant's version of events. The incidents complained of happened over a twenty-four hour period. However

the Appellant sent the first text and second text anonymously despite the patient's request to disclose his identity.

14. We are satisfied that the Appellant did not fully understand that a caution was an offence and would appear on his record. The Appellant confirmed that he was aware that he would be subject to an enhanced CRB check, which suggests that he may not have fully understood that the caution would appear on that. He did not have legal or other advice from a professional colleague. We take into account that he had only recently come to the United Kingdom and his English was not as fluent as it now is. We are satisfied that he did not understand that accepting a caution would have professional ramifications.

15. Overall we find that the caution of itself does not cause the Appellant to be unsuitable to be included on the Respondent's List, nor does the Respondent seek to rely upon that.

16. The letter from the Appellant's criminal solicitors suggests that he had eradicated the unpleasant memory of the time that he was cautioned from his mind. We are satisfied that is not the position. The Appellant's oral evidence clearly established that he made a deliberate choice not to disclose the caution. He said that if he had ticked the 'Yes' box to having a caution it would have caused him difficulties so he didn't do it. He gave the same reason for not reporting the caution to Leicestershire & Rutland PCT.

17. The Panel finds that it is not acceptable not to disclose the information. Clearly professionals should be expected to be open, honest and transparent in any application of this nature. We had concerns that during the Appellant's evidence he focussed on his own personal inconvenience rather than concern for the patient's feelings/upset during the offence or afterwards. In response to our questions he showed in some of his answers a flexible attitude to professional ethics and behaviour.

18. We balance against those concerns that at no time has the Appellant had legal or other advice. He went to the police station alone. No thought appears to have been given as to whether the matter could not have been settled by a letter of apology to the patient from the Appellant/ the Practice and the Appellant being subject to an Internal Disciplinary Procedure. The Appellant has recently sought advice from a Criminal solicitor but has not had the benefit of specialist advice through his Indemnity Insurance. The explanation for this appears to be that he was initially indemnified by the Dental Defence Union but is now with Dental Protection Ltd, and there was a mis-understanding as to what was the trigger for the decision.

Conclusion

19. The Panel considered public protection, and the expectation that professionals should be trustworthy and honest. The Panel believes that any member has a right to expect any dental performer to maintain those standards.

20. The Panel however considers that the omissions on the application form are not so serious as to support the decision of the Respondent PCT not to include the Appellant on the Performers' List on the ground of suitability, especially when Leicestershire & Rutland have dealt with the omission by way of a warning.

21. . There is no evidence that the Appellant could have been refused inclusion on the grounds of 'inefficiency ', which would have allowed us to attach conditions. However we recommend to the Appellant that in his future Professional Development Programme he include a course in 'Professional Ethics', so that he can satisfy himself and others that he has learnt from this matter and that there is no possibility of repetition.

The appeal is allowed.

In accordance with Rule 42 (5) of the Rules, the Panel hereby gives notice that a party to these proceedings can appeal the decision under Section 11 Tribunals and Enquiries Act 1992. Any appeal should be made by lodging a notice of appeal in the Royal Courts of Justice , The Strand , London WC2A 2LL within 28 days from the receipt of this decision.

**Ms M E Lewis
Chair
16.10.09**