

IN THE FAMILY HEALTH SERVICES APPEALS AUTHORITY

Case No: FHS/15192
On: 23 October 2009

MS M LEWIS- CHAIRMAN
Dr. I . LONE - PROFESSIONAL MEMBER
Mr. T. BENNETT - LAY MEMBER

WESTMINSTER PRIMARY CARE TRUST

Applicant

AND

DR PETER TLUSTY

(GMC Registration Number 2654896)

Respondent

DECISION WITH REASONS

The Application

1. This is an application by Westminster Primary Care Trust ('PCT') for the National Disqualification of Dr Tlusty following his removal from the PCT's Medical Performers' List on 13 July 2009. It is not opposed by Dr. Tlusty.

The Background and Proceedings

2. Dr Tlusty is a General Practitioner who qualified as a doctor in 1980.

3. On 10 April 2008 Dr Tlusty's partner contacted the PCT's Medical Director and made a number of allegations against him. It was alleged that Dr Tlusty had:-

- (i) Downloaded pornography from the Internet;
- (ii) Edited and downloaded pictures/images by superimposing onto these pictures/images of the heads of members of staff, and at least one patient, taken from other photographs (i.e. 'photoshopping' the images);

- (iii) Inappropriately taken photographs of patients without their informed consent and used these images for purposes other than medical care;
- (iv) Prescribed Zopiclone, a hypnotic, to a member of staff at twice the maximum monthly dose for a period of four years;
- (v) Issued a death certificate for a patient he had not medically examined; and
- (vi) Defrauded the NHS, patients and the practice.

4. Dr Tulsty's partner referred the case to the GMC and on 12 May 2008 they suspended him from the Medical Register for a period of eighteen months pending further investigations.

5. On 10 April 2008 the police examined images on Dr Tlusty's computer and confirmed that photographs had been superimposed onto pornographic images using editing software.

6. Following an oral hearing on 18 March 2009, when Dr Tlusty was represented, the PCT removed Dr Tlusty from its Medical Performers' List. The detailed reasons were set out in a letter dated 26 March 2009 informing Dr. Tlusty that he was being removed from Westminster PCT's Medical List in accordance with Regulations 10 (3) and (4) (c) (Unsuitability) and 10 (4) (a) (Efficiency) of the NHS (Performers' List) Regulations 2004.

7. In relation to the 'suitability' issues Dr Tlusty admitted that he had collected pornographic images since medical school days. He had collected approximately 15,000 female Internet images in the period 2003 – 2008. The Panel found this activity of itself did not create a risk to patients as the collection was kept private, although it was highly inappropriate. Dr Tlusty created diaries which included patients' names and sexually derogatory descriptions. Dr Tlusty agreed that he had created pornographic images of patients and at least one colleague. The Panel determined that there was convincing evidence that photographs had been taken without documented consent and had been used for purposes other than that for which a patient might have expressed such consent. The Panel determined that there was abuse by Dr Tlusty of his position as a GP over an extended number of years for the purposes of sexual gratification which had put patients at risk.

8. The Panel considered nine matters under the 'Efficiency' heading. The Panel found that Dr Tlusty had :-

- (i) Downloaded pornography during surgery times.
- (ii) Inappropriately used practice computers leading to 'malware' and viruses on the surgery computers.
- (iii) As he admitted, stored controlled drugs in his desk.
- (iv) Treated a practice colleague as a patient.
- (v) Poor practice in relation to the use of chaperones.
- (vi) Poor practice in relation to minor surgery and use of disposable instruments.

(vii) Inconsistent adherence to good practice policies and procedures, evidence of poor clinical practice particularly in relation to record keeping and the management of chronic diseases and the prescribing practices.

(viii) The Panel accepted Dr Tlusty's explanation as to the issue of the death certificate.

9. The Panel took into account representations made by Dr Tlusty's Counsel and two psychiatric reports. The Panel were not persuaded by Dr Tlusty's commitment to receiving care for his condition except as part of a Contingent removal finding.

10. In a letter dated 7 October 2009 Dr. Tlusty's representatives confirmed that he was not challenging the application for National Disqualification. It was Dr Tlusty's position that he had acted as alleged as a result of his addiction which was recognised as a mental illness. Dr Tlusty's view was that the PCT's decision to remove him from the Performers' List therefore related to his ill health, albeit he was not satisfied that sufficient regard had been had to the mitigating circumstances relating to his ill health.

Decision

For all the reasons set out above the decision of the Panel is that Dr Tlusty shall be nationally disqualified from inclusion in any list as is specified at (a) to (c) of Regulation 18A (1) of the NHS (Performers Lists) Regulations 2004 as amended, for a period of two years from the date of this decision.

We direct, pursuant to Rule 47(1) of the Family Health Services Appeal Authority (Procedure) Rules 2001 that a copy of this decision is sent to the Secretary of State, The National Assembly of Wales, the Scottish Executive, The Northern Ireland Executive and the Registrar of the General Medical Council

ME Lewis
First Tier Tribunal Judge
23 October 2009

Either party to these proceedings has the right to appeal this decision under and by virtue of Section 11 Tribunals and Inquiries 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.