

**IIN THE FIRST TIER TRIBUNAL PHL/15284
HEALTH EDUCATION AND SOCIAL CARE CHAMBER
PRIMARY HEALTH LISTS**

Heard at Holborn Gate London WC1V 7QT.

14 October 2010.

Paper Hearing.

MS. M LEWIS - Tribunal Judge.
Dr D. KOONER -Professional Member
Ms. K. WORTHAM-Lay Member

Between

Dr TOMASZ JANUSZ ZIACH
(GDC REGISTRATION 100369)

Appellant

AND

SHROPSHIRE PCT

Respondent

DECISION WITH REASONS

The Appeal

1. This is an appeal against the Respondent's decision dated 24 May 2010 refusing the application for inclusion in the Respondent's Medical Performers' List under Regulation 6 (1) (b) of the National Health Service (Performers' Lists) Regulations 2004, on the grounds of, that having contacted the referees provided by him under regulation 4 (2)(f), it was not satisfied with the references.

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

3. The Panel considered the appeal on the papers in accordance with the parties' joint request. The case papers from the appellant ran from A1 to A25 and from the respondent from R1 to R18. The appellant initially indicated that he wanted an oral hearing and that Asha and Rajvinder Ram would attend as witnesses. Both had been named as referees on his application form but in the event Asha Ram wrote the reference. The other was written by Monika Zurawske, a Dental Assistant at the same Regency House Dental Practice.

The Decision:

4. The Respondent's decision was made following a Performers Management Committee Meeting on 19 May 2010 when the Dental Advisor stated that the references raised cause for concern.

5. In coming to this decision the tribunal reminds itself that it proceeds by way of redetermination; that is to say that it must determine matters afresh on its own merits and is not limited to a mere review of the respondent's decision.

Discussion of Evidence :

6. The references were on a standard form provided by the respondent. We do not know if they were accompanied by explanatory notes but the headings do ask for precise details. Under 'Examination & Diagnosis' Dr. Ram marked the appellant as average and stated that her main concern was the failure to diagnose dental problems on radiographs. She does not say how often this happened in the four years the appellant was employed by the practice. She also refers to the medical history not being updated but no more detail is given. We do not know where the appellant's standards departed from that which were expected, when they were picked up and what if any steps were taken to address these issues. His treatment planning was marked as 'below average'. We noted the comment that : *"had the form been filled in 6 months ago the responses would have been different but they had now seen most of his patients and problems had arisen"*

7. Under 'Judgement and patient management' she again marked him as average and commented that the appellant preferred 'extensive restoration especially where others would question long term viability'. This could be a matter of opinion. No specific examples are given.

8. The appellant's relationship with colleagues and staff were also marked as 'average'. It seems there were 'problems' with staff and insufficient explanations were given to patients. No further detail was given.

9. On the same standard form Monika Zurawske's comments on 'Examination & Diagnosis' echoed Dr. Ram's concerns re the use of radiographs. She described his surgical procedures as 'average' but marked

him as 'excellent' on relationships with colleagues and staff as he was helpful in difficult extractions.

10. On receipt of the grounds of appeal and correspondence from Dental Protection it was expected that the appellant would produce further references. In the event there was only a short handwritten letter from Monika Zurawske dated 19 August 2010, admitted by Order dated 23 September 2010 extending time. She again refers to him having good skills in some surgical procedures and again states that he was very willing to help colleagues with difficult extractions. She states: "*I think that Mr. Ziach would be much more careful with diagnosing and planning of treatment after all his problems*". On the limited evidence before us it is not clear which problems she is referring to.

The Grounds of Appeal:

11. The grounds dated 22 June 2010 stated that the appellant had been employed in the United Kingdom for 4 years, having qualified in Poland. During that time he had been included on the Performers' List of Staffordshire PCT. He states that his referee, without saying which one, did not intend to be negative just thorough and that her remarks had been taken out of context. He also made the point that she was only expressing an opinion about his prescribing profile based on the current guidelines, which were advisory only. There was no question of patient safety being compromised and he was at a loss to understand the decision.

Conclusion and reasons:

12. The Panel considered the evidence with care. The documents we considered show that the appellant was granted extensions to file his grounds of appeal late, file late evidence and to have an oral hearing if he wished. Additionally he had the benefit of advice from Dental Protection. We are satisfied that he had a full opportunity to put his case.

13. Regulation 4 of the 2004 regulations are detailed and require the appellant to set out his history in some detail. His references are clearly an important part of that process as they must relate to his two most recent posts which must have lasted at least three months. In this case he was at the Regency House Dental Practice for 4 years and 1 month, so his referees had considerable experience of his work.

14. The two references relied on by the appellant both raise concerns principally around his treatment plans and use of radiographs. Those concerns cannot be ignored as inconsequential, even in the light of what appears to otherwise a positive history.

15. We determine this appeal by way of rehearing. It was open to the appellant to address the concerns by calling witnesses or submitting further evidence. He has not done so. The statement from Monika Zurawske, provides no additional information

16. Having independently reviewed the evidence we are satisfied that the decision of the PCT was justified.

The appeal is dismissed.

**Ms M E Lewis
First Tier Tribunal Judge
PHL List.**