

IN THE FAMILY HEALTH SERVICES APPEAL AUTHORITY

Case No: FHS/14020

BETWEEN

**Dr V Edema-Rose
(GMC no. 4780434)**

Appellant

and

Tower Hamlets Primary Care Trust

Respondent

Introduction

1. Dr Edema-Rose appealed against the decision by the Tower Hamlets Primary Care Trust (the PCT) to remove her from their performers list. The removal was on the grounds of both unsuitability and efficiency under regulations 10(3) and 10(4)(a) and (c) of the NHS Performers List Regulations 2004. Dr Edema-Rose was notified of the decision by letter dated 13 March 2007 and she submitted her appeal on 3 April 2007.
2. Her appeal was heard on 20, 21 and 22 August 2007. The appeal was dismissed and the panel ordered that Dr Edema-Rose be removed from the PCT's list. The panel reconvened on 20th September 2007 to deal with the issue of whether Dr Edema-Rose should be made subject to a national disqualification.

Representation

3. At the 20th September 2007 hearing Dr Edema-Rose was represented by Neil Maloney. (He was not involved in the August hearing at which Dr Edema-Rose was unrepresented.) Huw Lloyd represented the PCT.

The law

4. Regulation 18A NHS (Performers Lists) Regulations 2004 provides that where a performer has appealed to the FHSAA under regulation 15 and the FHSAA removes the appellant from the list the FHSAA may impose a national disqualification on the performer. (The appeal to the FHSAA is by way of redetermination and on appeal the FHSAA may make any decision which the PCT could have made.)
5. Regulation 18A(6) provides that the FHSAA may, at the request of a person upon whom it has imposed a national disqualification, review that disqualification. Such a request may not be made before the end of a period of two years beginning with the date on which the national disqualification was made. (Regulation 18A(8)(a))
6. Regulation 19(a) provides that the period of review of two years specified in regulation 18A(6) can be treated as period of five years if 'the FHSAA states that it is of the opinion that the criminal or professional conduct of the performer is such that there is no realistic prospect of a further review being successful.'

Submissions

7. Huw Lloyd on behalf of the PCT made written and oral submissions that the panel's findings in relation Dr Edema-Rose were so serious that the imposition of a national disqualification was justified. Furthermore a finding under regulation 19(a) was justified on the basis of Dr Edema-Rose's professional conduct.
8. Neil Maloney argued that because Dr Edema-Rose had some insight into the shortcomings of her clinical practice and because she had been unwell (clinically depressed) when she misled the PCT about her personal circumstances it would not be a proportionate response by the panel to impose a national disqualification. He also argued that a national disqualification was not necessary as there were already in place sufficient organisational safeguards to allow PCTs not to place Dr Edema-Rose on their practice lists if that was their choice.

The decision of the panel

9. The panel were not able to accept the argument put forward on Dr Edema-Rose's behalf that the system operated by the PCTs to prevent practitioners disqualified by one PCT working for another PCT was robust enough, in the absence of a system of national disqualification, to prevent Dr Edema-Rose working elsewhere.
10. The panel regarded this as a serious case and in particular given the findings made in relation to Dr Edema-Rose misleading the PCT, concluded that there was a risk that she might go on to offer her services to another PCT if she were not nationally disqualified. The purpose of a scheme for national disqualification is aimed precisely at this type of case.
11. The time limit for any review should be two years. The panel regarded the mitigation advanced on Dr Edema-Rose's behalf as indicating that she might, in future, be able to demonstrate sufficient insight into her professional and personal circumstances to make it possible that a further review of her disqualification could succeed. It is not possible to identify when this might occur and therefore limiting her right to apply for review for longer than the minimum period would not be justified.

Communication of the decision

12. The decision was communicated by the panel to Dr Edema-Rose and the PCT at the end of the hearing. This means that the decision was effective as of that time, the 20th September 2007.

Appeal

13. In accordance with Rule 42(5) of the Family Health Services Appeal Authority (Procedure) Rules 2001s we hereby notify any party to these proceedings that they can appeal this decision under section 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 20th day of September 2007

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A Harbour

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V Lee

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G Sharma