BEFORE THE FAMILY HEALTH SERVICES APPEAL AUTHORITY
IN THE MATTER OF DR MAHESH CHANDRA

CASE REF: FHS/14164

AN APPEAL FROM A DECISION OF THE BOLTON PRIMARY CARE TRUST

BETWEEN:

DR MAHESH CHANDRA
GMC registration No. 0903725

Appellant

And

BOLTON PRIMARY CARE TRUST

Respondent

DECISION AND REASONS

Appeal

This is an Appeal by Dr Mahesh Chandra (Dr C) against the decision of Bolton Primary Care Trust (the PCT) communicated to him by letter of the 5th November 2007 not to include Dr C in the Medical Performers' List on the basis that the two clinical references which were supplied by Dr C were not found to be acceptable and the references did not meet the criteria set out in the NHS (Performers' List) Regulation 2004. Dr C was advised that the PCT had rejected the application for inclusion under Regulation 6(1)(b) of the said regulations on the ground that having contacted the referees provided by Dr C under Regulation 4(2)(f) the PCT was not satisfied with the references. The Appeal was heard initially on 22nd May 2008 when a further reference was provided by Dr Prasad in support of Dr C's application to be included in the PCT medical Performers' List. Directions were given at that Hearing for the PCT to formally interview Dr Prasad and then advise Dr C whether the references were satisfactory. On the basis that the references were still deemed by the PCT not to be satisfactory, Dr C was then required to confirm whether he wished to proceed with his Appeal.

The PCT duly advised Dr C that the reference from Dr Prasad was not satisfactory. Dr C confirmed that he wished the matter to proceed by way of an Appeal.

The Appeal was heard on 4th July 2008 at the FHSAA headquarters in Harrogate. Dr C was in person assisted by his daughter and Dr Naqvi, the PCT were represented by Mr Peacock of Counsel instructed by Hempsons Solicitors.

DECISION

Our unanimous decision is to dismiss the Appeal.

REASONS

The PCT decision under Appeal

On 17th March 2003 Dr C gave written notice to the PCT to retire as at 30th June 2003.

The PCT gave notice not to approve Dr C's return to work as a G.P. or as a PCT employed G.P. in a PMS Practice and he was subsequently removed from the Performers' List on 30th June 2003.

In July 2003 Dr C applied to join Bolton PCT's supplementary list.

Due to concerns which were raised from enquiries made in respect of an audit carried out by the PCT at Dr C's surgery in December 2003. Those concerns were that Dr C's record keeping was inadequate. In June 2004 the PCT referred Dr C to the GMC under the GMC's fitness to practice procedure. His application to join the list was deferred pending that investigation.

The concerns were referred to the GMC Fitness to Practice Panel.

In February 2005 the GMC Interim Orders Committee suspended Dr C for 18 months pending their investigation. Subsequently the GMC IOC issued a warning in respect of Dr C's registration for 5-years on 17th March 2006 as follows:

1. In an emergency, wherever it may arise, you must offer anyone at risk the assistance you could reasonably be expected to provide;
2. The investigations or treatment you provide or arrange must be based on your clinical judgement of patients' needs and the likely effectiveness of the treatment.
3. You must not allow your views about patients' lifestyle, culture, beliefs, race, colour, gender, sexuality, disability, age or social or economic status to prejudice the treatment you provide or arrange.

In April 2006 following a further Hearing those conditions were revoked.

Dr C made an application to join the Performers' List in May 2006. On the application form two referees names were provided; namely Dr Kolipari and Dr Altrey. The reference from Dr Altrey stated that no comment could be made on performance as Dr Altrey had not worked with Dr C. Dr Kolipari had not worked with Dr C in a recent post. The PCT advised Dr C that the references were not sufficient or adequate and they asked for a further two alternative referees.

In September 2007 Dr Evans' name was supplied as a referee. Dr Evans had worked with Dr C as a Forensic Physician. Dr Evans said that there were no complaints. Dr Salvi also provided a reference

and stated that there was no reason to doubt Dr C's ability, however he had not worked with Dr C as a G.P. or Forensic Physician.

At the PCT meeting which considered the application by Dr C, the meeting confirmed that they were not satisfied with the references and therefore refused the application for inclusion on those grounds.

During the course of the Appeal pursuant to Directions, the PCT followed up a further reference from Dr Prasad and concluded, (i) the PCT were not satisfied with the references provided and (ii) that Dr C's inclusion in the List would be prejudicial to the efficiency of its services.

THE GROUNDS OF APPEAL

By letter dated 26th November 2007, Dr C set out the grounds of Appeal.

1) That he decided in 2003 to take 28 days retirement before returning to Practice. He had discussed his plans with Mike Torvell at the PCT. The application was turned down and this was a strange decision by the PCT who had already offered Dr C a salaried position.
2) The PCT made allegations against Dr C and referred his case to the GMC. Dr C was subject to an interim suspension while the complaints were fully investigated. When the Fitness to Practice Panel met to consider his case he was cleared on most of the allegations and given a warning which would be attached to his registration for a period of 5-years from 17th March 2006.
3) This was revoked by the GMC in April 2006.
4) Dr C said that he had not had an opportunity to work as a performer of primary medical services in general practice because of the proceedings taken by the GMC. He was not able to provide two references from two recent posts given the circumstances and he had attended all of the seminars (Clinical/Administrative) run by Bolton Medical Institute and the Police Training College. He had provided two references from his current place of work as the criteria detailed that they had to be from two recent posts.

THE RELEVANT LAW

1. This Appeal proceeds by way of a redetermination of the PCT's decision Section 49M(3) and Regulation 15(1) of the 2004 Regulations.
2. This Panel can make any decision which the PCT could have made Section 49M(4) National Health Services Act 1977 and Regulation 15(3) of the 2004 Regulations
3. By Regulation 4 of the NHS (Performers' List) Regulations 2004 any application by a performer for the inclusion of his name in the Performers' List shall be made by sending the Primary Care Trust an application in writing which shall include the information mentioned in paragraph 2.

   (2) The Performer shall provide the following information……

   (f) names and addresses of two referees who are willing to provide clinical references relating to two recent posts (which may include any current post) as a

performer which lasted at least 3-months without a significant break, and, where this is not possible, a full explanation and the names and addresses of alternative referees.

4. Under Regulation 6 of the said Regulations the grounds on which a Primary Care Trust may refuse to include the performer in its lists are, in addition to any prescribed in the relevant part that:

(b) having contacted the referees provided by him under Regulation 4(2)(f) it is not satisfied with the references, or

(e) there are any grounds for considering that admitting him to its Performers' List would be prejudicial to the efficiency of the services, which those included in that list perform.

DOCUMENTARY EVIDENCE AVAILABLE

The Panel had the opportunity of considering two bundles of documents which had been provided by the PCT and the Appellant. Those papers included correspondence between the Parties, references and the application for inclusion in the medical list.

Subsequent to Directions the Panel also had the benefit of supplemental witness statements which were filed together with copy applications that Dr C had made to Blackpool PCT. The Panel also had the opportunity of considering the Skeleton Argument on behalf of the PCT.

ORAL EVIDENCE

Helen McKnight gave evidence on behalf of the PCT. Miss McKnight is the Director of Clinical Governance of the Bolton PCT. Miss McKnight confirmed that there had been an independent review panel on 3rd February 1997 which had been conducted by Wigan and Bolton Health Authority which raised concerns in respect of Dr C's record keeping which was stated to be of unacceptable standards. There were no clinical signs, no clinical findings or diagnosis mentioned. The medical contents of the notes were grossly inadequate with no signs or symptoms recorded, no diagnosis, no action plan and (on one occasion) the name of the antibiotic was omitted.

In January 2000 Dr Queenborough had conducted an audit of Dr C's patient records. Dr Queenborough wrote and advised Dr C that there was a major concern in respect of the legibility of his records. There was insufficient information regarding the prescribing complaint, history and examination.

In January 2001 a further follow up audit of records was conducted by Dr Queenborough and 30 notes were chosen at random from April through to 2nd October 2000. Four notes were unavailable, the rest were reviewed by Dr Queenborough. Of those 26, 3 were legible and 1 partially legible. Details in the records relating to the attendance under review were scant to non-existent.

On 9th December 2003 Dr Edney, who is a G.P. practicing in Sheffield, also reviewed 20 sets of notes of Dr C. The summary of her findings were that the majority of the notes and continuation cards were not in date order, none of the notes had any summary, none of the notes had a list of

repeat medication with dosage and strengths or any indication of addition to the repeat medications or even deletion from the routine medications, the entries written by Dr C were on the whole illegible and brief. In all of the notes which Dr Edney reviewed, two entries where Dr C had recorded blood pressure there were no entries at all of any examination findings nor was there any record of a history being taken. Dr C's entries were few and far between in many of the patients, some of whom were on numerous complicated medication regimes as had been ascertained from the list of repeats entered by the receptionist. Eleven patients had given Dr Edney cause for concern and those patients were set out fully in reports supplied to the PCT.

Miss McKnight said that former members of staff belonging to Dr C's surgery had shared concerns with her. She had advised those members of staff to keep a diary of their concerns. Nobody from the PCT had actually spoken to Dr C at this stage.

The GMC outcome did not address the totality of the concerns of the PCT. She did not believe that GMC had dealt with all of the concerns.

The documentation which she had received from Dr C did not allay any of her concerns. Miss McKnight said she would not be happy if Dr C returned to work as a locum and said that she believed that Dr C should undertake a return to work course before she would approve any conditions which may be placed upon Dr C's inclusion in the PCT list. Under cross-examination Miss McKnight advised that when they received the retirement letter Dr C was PMS. She accepted under cross-examination that Dr C was actually GMS. Miss McKnight confirmed that she was not part of the contractor services and would not have known that, having only started in July 2003. She confirmed that some of the concerns were in respect of correspondence from secondary care not being acted upon, poor record keeping, the discrimination between non-white and white patients and charging for medical services. Miss McKnight had valued the comments of three separate locums who had worked with Dr C in his surgery after he retired. They would not come forward and make formal statements due to their position but all three had raised concerns. Dr Edney was not the only doctor who had expressed concerns in respect of Dr C.

Dr Stephen Liversedge gave evidence. He is the chair of the Professional Executive Committee. He confirmed that he had had a face to face interview with Dr Prasad for about one hour. He maintained that Dr C returning to work as a locum would be especially difficult. It was unfamiliar, there was no knowledge of the patients and he would have to deal with matters on an emergency basis. It was certainly not easier to do locum work as opposed to being a general practitioner in a Practice.

He had seen all of the correspondence which the Appellant had submitted which included correspondence from doctors who supported his inclusion on the list, none of that caused him to change his opinion.

The audit of the cases which were supplied by the Appellant did not provide evidence of patients that you would see in general practice.

It was Dr Liversedge's opinion that the audit of cases at the Greater Manchester Police did not give a range of cases nor a range of patients. It was not representative of an age range or type of problems that you would deal with in general practice.

Dr Liversedge was asked about the various references which were before the panel. Dr Liversedge stated that none of the references which had been provided gave him any reassurance whatsoever. He did not place any reliance on the references and it was Dr Liversedge's opinion that all of the references which had been provided would not suffice to provide a clinical reference.

With regard to the letter from Dr Prasad, Dr Liversedge confirmed that he had met with him on the 6th June. He was advised by Dr Prasad, that Dr C had not used a computer he had only had an indication of how the computers operated.

Dr Liversedge confirmed that the only way he would be prepared to consider Dr C returning to practice would be following a formal assessment. He maintained that there were a list of concerns to be addressed and once those were addressed and an agreed way to deal with them this may provide some sort of conclusion that Dr C could return to practice. In respect of the questions put to Dr Liversedge from the Panel it was still Dr Liversedge's position that the reference provided from the police surgeon did not provide him with reassurances as it had some relevance in respect of clinical qualities of a doctor but not with regard to working as a GP.

His concerns were one to one contact, computers and record keeping. Dr Liversedge accepted that the record keeping may have been sufficient for a forensic physician but not for a GP.

The whole canopy of skills required would be covered by training institutions and if Dr C was to return to practice he would need a formal assessment before he would consider it.

Under re-examination Dr Liversedge stated that nothing he had heard during the course of this hearing allayed any of his concerns. It was still his position that Dr C should not be included on the Performers' List both in respect of lack of clinical references and also in respect of the efficiency of service.

Dr C gave evidence. He stated that he believed that he was forced to take early retirement. He had worked as a single handed practitioner for 30 years. His list included professional medical people who were not living in the area. He had been working as a forensic physician as well for 20 years. He had had no complaints from 2002 to 2003.

When he gave his notice he received a letter fourteen days later from the PCT who advised that they would not let Dr C return to work. It was Dr C's assumption that he would be allowed to return following his retirement. He maintained that the PCT had removed the option of conditional retirement.

With regard to the report of Dr Edney which had been seen by the GMC Panel it was Dr C's opinion that as the GMC said that this was of limited weight or no weight that this should be disregarded. He

had kept himself up to date by attending seminars and had continued patient care by observing in Dr Prasad's surgery for a period of some three months.

He still had been working as a forensic physician.

It was Dr C stated that he could enter data unassisted on computer systems, he did not accept that the concerns of the staff were valid. In respect of the statement of Wendy Payg and Anne Allwood he did not accept that he wiped down chairs and door handles because they were dirty or carried diseases. He maintained that that was a precaution for infection control. In respect of the staff turnover he said that he had to work with limited staff.

He accepted that patients were given medication which was returned and given to other patients but that had stopped.

In respect of charging for circumcisions he said that it was not a health service operation it was a religious operation therefore you could charge for it.

Under cross-examination Dr C maintained that insofar as his record keeping was concerned that he did have two separate cabinets. He said that he had 60% immigrant on his list. He differentiated between the patients by way of caucasian which he identified as being the northern band of Europe and North Indian subcontinent and immigrants which he identified as South Indians and Gujarati. He maintained that the medical records were kept separately for the convenience of the Practice and not for any racial issues. It was his evidence that people were happy to be called immigrants. The reason for the two separate cabinets was that the English receptionists could not understand the names of the parties and therefore it was easier to operate. With regard to the report filed by Wendy Payg and Anne Allwood he maintained that they were lying. He did not accept that his record keeping was inadequate. He said that there had never been any trouble with his record keeping. He accepted that part of his records were ineligible but that was all in the past and not in the present, it was in 2000.

He did not accept that he had not provided insufficient information regarding presenting complaints, history or examination.

With regard to the further review of records he was not present in 2001 so the comments about attendance and reviews being scant to non-existent did not relate to him. In respect of Dr Edney's report he said that the entirety of that report can be challenged. There was nothing in the report whatsoever. Whatever Dr Edney had written was all fabricated.

In the GMC hearing the report proved no weight or little weight. He did not accept at all that Dr Edney's report had any justification.

With regard to the GMC hearing he was asked about the insufficient information which was recorded on that transcript. Dr C said that he did not accept any of those things because he had been cleared

by the GMC. The whole matter before the Panel was due to the fact that the PCT had reported him to the GMC. The GMC had cleared him but the PCT had not accepted that.

He confirmed that he was present in the Practice from April to October 2000 which was the period over which the second audit of records took place.

He maintained that Wendy Payg was lying and he did not agree that any of the doctors were right about his illigible handwriting.

Dr C then advised that he had given general field anaesthetic as recently as some four months ago. He maintained that he is entitled to do so and he has not been prohibited by the General Dental Council. It was his right to provide that.

He accepted that he was not on a specialist list of the GMC to provide those services but nevertheless it was his opinion that he was entitled to do it.

Dr C's opinion was that he was competent to step back into general practice he did not need an assessment and he did not need any remedial work to be undertaken with him.

In respect of the questions from the Panel he maintained that he did not have any weaknesses in respect of cervical cytology, he did meet all of the targets and he did not accept any of the criticisms which had been made throughout the course of this hearing or previous hearings.

He could not explain why he kept medical records in two separate cabinets. He did not accept that any of his notes were inadequate nor did he accept that his handwriting was ineligible.

BURDEN OF PROOF

The burden of proof lies with the PCT, the standard of proof is that of the civil standard i.e. the balance of probabilities.

FINDINGS

References

Dr Altrey's reference, undated but received on the 19th September 2007 would not constitute a clinical reference as the reference confirms "unfortunately I have not worked with him and am not in a position to comment on his performance as a primary care doctor, but have no reason to believe that it is unsatisfactory". Dr Korlipara provided a reference of the 13th September 2007. This does not constitute a clinical reference under the terms of the legislation as it states "I have not personally worked with Dr Chandra in a recent post". Dr Evans provided a reference on the 1st October 2007. This would be sufficient with regard to providing a clinical reference as Dr Evans confirms that she has never had any reason to question his clinical competence. He has been appraised on annual basis. The reference however can only constitute a reference working as a forensic physician and not as a GP. Dr Salvi provided a reference undated but received on the 4th October 2007. This does not constitute a clinical reference as the reference states "have not worked with Dr Chandra in close

proximity in either role". Two subsequent references were provided, Dr Parikh dated 4th April 2008 and Dr Kumar dated 24 June 2008, neither of these constitute clinical references.

Dr Prasad provided a reference on the 19th May 2008. This would constitute a clinical reference it clearly provides details of knowledge of Dr C and confirms that he has worked with him in a recent post.

The Panel accept that having followed up the reference the PCT were unable to accept that reference and the Panel finds that further information which was provided by discussions between Dr Liversedge and Dr Prasad would have led to concerns being raised by the Panel. Dr Kumar, Dr Rout, Dr Madan and Dr Naqvi have also written and/or provided references. None of these would constitute a clinical reference.

The Panel accept that it is difficult for clinicians to provide references especially when they are working as single handed GPs however the Panel Find that Dr C has been given adequate opportunity to provide references and that none of the references which have been provided would constitute a clinical reference in the light of the requirements under the legislation.

Efficiency

The Panel find that Dr C filed medical notes separately and those were identified as Caucasian and immigrants. The Panel do not accept that this was for the ease of staff working within the practice. The Panel do not find that this is a racist action but nevertheless are concerned with Dr C's comments that people were happy to be called immigrants and find that the filing of the medical records was by way of identification of ethnicticity.

The Panel find that staff were asked to wipe down chairs and door handles. The Panel do not accept that that was done purely for infection purposes. The Panel find that Wendy Payg and Anne Allwood would have no cause to lie as was suggested by Dr C. The Panel do not accept that Dr C's explanation. The Panel find on the balance of probabilities that the evidence of Miss Payg and Miss Allwood is to be preferred.

The Panel find that Dr C has given anaesthetic as this was accepted by Dr C in that that anaesthetic had been given as recently as 2008. The anaesthetic was given in a dental surgery not under supervision. This is a breach of GDC's guidelines. Dr C is not on the specialist register of GMC as an Anaesthetist. The Panel do not accept that Dr C is entitled to do it as he states.

The Panel find that Dr C did request the patients return medication to him. This was accepted by Dr C and that medication was then given to other patients. This is a breach of medical procedure.

The Panel also accept the GMC's findings in respect of the oral hearing which took place on the 17th March 2006 that on the balance of probabilities the committee accepted an asylum seeker had presented at Dr C's surgery with a serious medical condition. The committee found that a member of staff was not allowed to call for an ambulance for the patient from Dr C's premises. The reason for not providing such assistance was based at least partly on the fact that the presenting patient was

not a British Citizen and did not speak English. The Panel accept that the conditions were revoked on a subsequent hearing in April.

The Panel accept that Dr C's records were illegible. There is clear evidence before the Panel that in January 2000 Dr Queenborough conducted an audit and found concerns in respect of legibility also insufficient information regarding prescribing complaint history and examination.

In January 2001 a further audit was conducted by Dr Queenborough and thirty of the notes were chosen at random from April to October 2000. Of the twenty-six notes which were available only three were legible. Details in the records relating to the attendance under review were scant to non-existent. The Panel accept the evidence of Dr Queenborough. It is not contradicted.

In December 2003 Dr Edney reviewed twenty sets of notes, the summary of her findings were that the majority of the notes and continuation cards were not in date order, none of the notes had any summary, none of the notes had a list of repeat medication with dosage and strengths or any indication of addition to the repeat medications. The entries written by Dr C were on the whole ineligible and brief. Eleven patients had given Dr Edney cause for concern. The Panel do not accept Dr C's position that as the GMC attach little or no weight to that report the report should be disregarded. The Panel accept the report as being an accurate indication of the findings in respect of those notes, however it is accepted that Dr Edney did not have all available records.

The Panel note that an independent review which took place on the 3rd February 1997 had also raised concerns in respect of the Dr C's record keeping which was stated to be of unacceptable standards. There were no clinical signs, no clinical findings and the medical contents were grossly inadequate.

The Panel find that in light of that evidence it is likely that Dr C's record keeping is unacceptable and has been so for a considerable period of time.

The Panel accept the findings of the GMC Final Hearing when the GMC found that there was information before it which raises concerns in relation to record keeping and which may pose a real risk to patients in general practice.

The Panel accept that Dr C has provided services for over 30 years and is well respected by both colleagues and peers.

The Panel also find that the length of time the PCT took to process his application for inclusion is wholly unsatisfactory and this in part led to Dr C's inability to return to work having been out of practice for over 5 years.

The Panel find that Dr C has very limited insight which was indicated by Dr C when he maintained that he did not accept any of the criticisms which had been levelled towards him. He saw no need for any assessment nor did Dr C see the need for any remedial work. The Panel are concerned that Dr

C's lack of insight in accepting faults lie in respect of his practice and procedure would give rise to concern.

The Panel accept there will be significant costs in funding an assessment and possible return to work in respect of Dr C but question in any event the purpose of the assessment when Dr C does not accept the concerns nor the need to undertake such an assessment.

The Panel accept the evidence of Dr Liversedge that Dr C would need a prolonged and structured program of work in clinical area before his competence could be endorsed.

In the light of those findings the Panel find that Dr C has not provided satisfactory references in accordance with the legislation and further that the inclusion of Dr C on the list would prejudice the efficiency of the PCT's services.

Finally, in accordance with Rule 42 (5) of the Rules we hereby notify that a party to these proceedings can appeal this decision under Sec 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 …. day of …… 2008.

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Judith R Crisp
Chairman