

THE FAMILY HEALTH SERVICE APPEALS AUTHORITY
2 October 2008

Mr D Pratt – Chair
Dr P Wray – Professional Member
Mrs J Everitt - Member

BETWEEN:

SANDWELL PRIMARY CARE TRUST

Applicant

-and-

DR CHRISTOPHER INGOLF BOHLER
(GDC registration number 84082)

Respondent

DECISION

1. This is an application by Sandwell Primary Care Trust (“the PCT”) for national disqualification of the Respondent General Dental Practitioner (“Dr Bohler”) under Regulation 18A of the National Health Service (Performers Lists) Regulations 2004 as amended (“the Regulations”).
2. Dr Bohler was the subject of disciplinary proceedings before the Professional Conduct Committee of the General Dental Council which determined on 21 April 2008 to erase him from the register of dentists. In consequence the PCT was obliged to remove his name from the Performers List in accordance with Regulation 32 (1) (a) of the Regulations. The PCT sent a letter dated 3 July 2008 to the address provided by Dr Bohler in accordance with his obligations under the Regulations (“the address”).
3. Dr Bohler did not appeal against the GDC decision to erase him from the register of dentists, and had no right to appeal his mandatory removal from the performers list.

Preliminary matters

4. At the hearing of this application at the Westmead Hotel, Birmingham, on 2 October 2008, Dr Bohler did not attend, nor did he respond to notifications of the application or the hearing date sent to him at the address by the Family Health Services Appeal Authority (“FHSAA”), nor make any written submissions. The PCT attended by its Senior Contracts Manager Mr Brian Christopher Wallis and was also represented in legal submissions by Ms Sarah Berry of Mills and Reeve, solicitors.
5. The first question for the Panel was therefore whether to proceed in his absence, or to adjourn the hearing, exercising the discretion conferred on us by Rule 40 (1) of the Family Health Services Appeal Authority (Procedure) Rules 2001 (“the Rules”)¹. The PCT made this

¹ 40 (1) If a party fails to attend or be represented at a hearing of which he has been duly notified, the panel may –
(a) unless it is satisfied that there is reasonable excuse for such absence, hear and determine the appeal or application, as the case may be in the party’s absence; or

application in accordance with Rule 16, which requires it to send a written notice to the FHSAA, containing the information there specified, including the address, or addresses of the Respondent, and his professional registration number. The only address which the PCT could and did provide was the address notified to the PCT by Dr Bohler.

6. Upon receipt of a notice of application, the FHSAA must then “serve forthwith a copy of any document submitted in connection with an application, on the other party in the case” [Rule 29 (3)]. The rules impose no obligation on the applicant to serve the opposing party, but leave it for the FHSAA to do. The only mechanism provided by the Rules for service is to send it to the address provided to the FHSAA by the applicant under Rule 16. There is no provision or requirement for personal service. Nor is there any provision expressly deeming postal service at a respondent’s last known or registered address to be sufficient service.
7. In this case the FHSAA served a copy of the notice of application for national disqualification on Dr Bohler by first class post at the address on 8 July 2008. A notice of the hearing date was sent by recorded delivery and first class post on 1 August 2008. This latter notice was returned to the FHSAA by the Post Office on 15 September 2008 with a label stating “we were unable to deliver this item because the addressee has gone away”. Enquiries were made of the PCT as to whether it had an alternative address for Dr Bohler, but the only address the PCT had was the address to which all correspondence has been sent. The PCT advised that its last correspondence, sent to Dr Bohler in July 2008, had also been returned marked “moved away”.
8. At the opening of this hearing we made further enquiries of the PCT as to the whereabouts of Dr Bohler and in evidence Mr Wallis informed us that he had not had personal contact with him since his contract for dental services was terminated in May/June 2007. At around that time Mr Wallis had made telephone arrangements to meet him, which Dr Bohler had not honoured. He had previously attended PCT hearings which took decisions to suspend him, when he was also represented. The surgery premises themselves were owned by different persons who were unable to provide Mr Wallis with any other contact details for Dr Bohler, but were themselves in dispute with Dr Bohler and anxious to trace him. The PCT were in touch with a former dental associate of Dr Bohler, who had no information as to his current whereabouts. Dr Bohler had worked with this and another associate who worked different hours or days to Dr Bohler and apparently had little or no direct contact with him. The second associate however had now returned to Sweden, her home country, on sick leave, and there was no information from her which could help to trace Dr Bohler. Mr Wallis told us that a number of letters had been returned to the PCT including the letter dated July 2008 which notified him of his removal from the performers’ list.

(b) adjourn the hearing.

9. The Panel noted from the documents provided that Dr Bohler had attended a two day hearing of the GDC in London in April 2008, when he was represented by Counsel and solicitor and gave evidence himself. The evidence submitted to the GDC included blood and urine tests, taken in Germany (the country where he qualified), as to the absence of drugs in his body. It may be surmised that he has returned to Germany, but that can be no more than a surmise.
10. The Panel considered the position on service of the documents on Dr Bohler and noted that Regulation 17 (1) of the Performers' Regulations imposes an obligation on Dr Bohler to notify the PCT within 28 days of any change in his private address². In our view this is consistent with the scheme adopted by the Regulations and the Rules that the obligation to provide up to date and accurate information is on the performer, and the PCT and FHSAA must rely on that information (in the case of the FHSAA because it must rely on the service address provided by the PCT) in carrying out any obligation either of those bodies may have, including sending notice of any application, document, or hearing. Neither of those bodies has resources for tracing and personally serving performers who neglect to inform the PCT of a change of address as required by Regulation 17 (1). The mandatory nature of the duty to inform the PCT of a change of address reinforces this view.
11. In our judgement, notwithstanding the absence of an express provision deeming service by post at the address provided to be sufficient service in all circumstances, service of the notice of application and notice of hearing at the address provided on the notice of application is (so long as that address is the most recent address provided by the performer) adequate service, and in this sense Dr Bohler was, in our view "duly notified" of this application and of the hearing date.
12. However we went on to consider under Rule 40 whether we could be satisfied that there was any reasonable excuse for Dr Bohler's absence. We were satisfied that on a balance of probability he did not in fact know that on 2 October 2008 this Panel was to hear an application for his national disqualification; correspondence to the address had been returned marked "gone away". However we were satisfied that this was entirely due to his own default in failing to comply with the mandatory requirement of Regulation 17 so as to inform the PCT of any change of address. In these circumstances, and given the evidence we heard, suggesting he had abandoned the dental practice in 2007 and had left no contact details with the professional and other individuals he would normally be expected to notify, in our judgement this is a case for taking a robust view. We therefore found that Dr Bohler had not satisfied us that he has no reasonable excuse for his absence, and we determined to hear and determine the application in his absence.

² 17 (1) A performer shall, unless it is impracticable for him to do so, give notice to the Primary Care Trust within 28 days of any occurrence requiring a change in the information recorded about him in its performers list and of any change in his private address.

13. In deciding whether to do so we also took into account that on the evidence available to us, an adjournment would be unlikely to enable the PCT or this Panel to discover where in fact Dr Bohler was now residing, or to secure his attendance at any adjourned hearing.

National Disqualification

14. The factors relied on by the PCT are set out in the findings and rulings of the Professional Conduct Committee of the GDC ("the PCC") which is among our papers at pages 2 - 9. We noted that Dr Bohler had admitted many of the allegations before the PCC, including that:
- a. Between 30 January and 8 August 2007 he had held himself out as being a registered dental practitioner, able to provide dental treatment and services when in fact his registration was suspended; and
 - b. Between those same dates he in fact provided dental treatment to patients, in breach of the interim order of suspension; and
 - c. Between 11 February 2006 and 8 August 2007 he provided dental treatment to patients when he did not hold any professional indemnity insurance; and
 - d. His patient records as listed in a schedule were inadequate in that on dates between 1 May and 8 August 2007 receipts were handed to patients which showed the stamp "providing dentist: Mr Rizwan Jamaluddin" who had been interviewed for a post at the surgery practice but had never worked there and did not give permission for his name to be used; and
 - e. He carried out dental work on the patients identified in another schedule without a chairside assistant; and
 - f. On 7 August 2007 at West Bromwich Police Station following a saliva test he tested positive for cocaine and heroin and accepted that the results of this screening test were an accurate reflection of substances in his body [he received a police caution].
15. Dr Bohler admitted that the conduct summarised at (a) to (c) above was misleading, unprofessional, inappropriate and not in the patient's best interests. The PCC found it was proved that the use of receipts with Mr Jamaluddin's name was misleading, and that the above conduct (except for (b)) was also intended to mislead, and further that the conduct summarised at (d) to (f) was misleading, intended to mislead, unprofessional, inappropriate and not in the patient's best interests or his own interest, except that did not find proved that the facts that Mr Jamaluddin had been interviewed for a post but had never worked at the surgery practice nor given permission for his name to be used were to be characterised as misleading, unprofessional and so on, or that the fact of his drug screen test was misleading or intended to be so. The PCC did find that the failure to use chairside assistance and the positive drug screen were unprofessional, inappropriate, and not in the patient's best interests, nor (save for accepting the results) in his own interests.

16. The PCC went on to find that Dr Bohler's fitness to practise was impaired by reason of misconduct. In particular it held:

"Your behaviour breached these ethical standards and fell far below that expected of a dental practitioner".

Having considered the alternative lesser sanctions, it also concluded that erasure was the appropriate sanction:

"A further period of suspension would fail to protect and reassure the public and would a misleading message to the profession. The Committee has concluded therefore that your behaviour has been so damaging to your fitness to practise and to public confidence in the dental profession that erasure is the appropriate and proportionate sanction."

The PCC meanwhile made an order of immediate suspension until erasure could lawfully take effect 28 days hence.

17. The findings, whether based on admissions or otherwise, are findings of a properly constituted disciplinary body acting within its statutory authority, and in the absence of persuasive evidence tending to disprove them, are to be regarded by us as evidence of the conduct which gave rise to them.
18. We have carefully considered the findings of the PCC in support of its conclusions [bundle pages 7 – 9]. We note also that the PCC found that the records it had seen were wholly inadequate in that there was little or no indication of symptoms, treatment provided or advice given to patients, and that that omission could compromise future patient care.
19. We also noted that the PCC was told that Dr Bohler did not currently have a drug problem and had furnished the Committee with the results of several blood and urine tests taken in Germany which proved negative. We were informed by Mr Wallis in the course of his evidence that the PCT's own investigations were triggered by a complaint from a patient who alleged that Dr Bohler had appeared to be under the influence of something while treating him, and that police had subsequently been informed. We also heard that the address provided by Dr Bohler (about which we had carefully enquired) was both the surgery premises and the place where Dr Bohler was apparently living.
20. We were concerned that, whatever his current drug status may be, Dr Bohler's then lifestyle, involving drug abuse, was being pursued in the same premises where he practised dentistry, which was likely to aggravate the already unacceptable risk to patients of such conduct. We were satisfied that the positive drugs screen test carried out at West Bromwich Police Station in August 2007 did not reflect an isolated misuse of drugs but was evidence of a lifestyle problem which created a risk to patient safety. This risk to patient safety also had a consequence for NHS resources and efficiency; we heard in evidence that it had carried out a "look-back" exercise to identify and contact patients put at risk.

21. We considered that the range of conduct and deficiencies identified by the findings of the PCC was significant, across a range of key factors which demonstrated inadequate clinical standards and performance, dishonesty, drug abuse and lack of insight into those deficiencies and their consequences for patients and himself.
22. We have considered all the evidence and also the Primary Care Trust Performers List Guidance issued by the Department of Health, and in particular to Paragraph 40.4 which suggests [emphasis added] that a PCT should *recognise the benefits of a national disqualification both for protecting the interests of patients and for saving the NHS resources*. It says further that *“unless the grounds for removal ... were essentially local, it would be normal to give serious consideration to such an application”*.
23. The exercise of our discretion under Regulation 18 A of the Regulations is not specifically constrained or guided by statutory provision. It is available whether the ground for removal is a mandatory or discretionary one. In our view these wide powers are conferred on us so that we can deal with the multiplicity of different factual situations which arise without the necessity to pay undue regard to the label attached to the conduct or deficiency.
24. We agree that it is relevant and important to consider whether Dr Bohler’s misconduct was essentially local to the area of Sandwell PCT. Among other factors which we think it appropriate to take into account are:
 - a. The seriousness of the deficiencies or conduct identified;
 - b. The range of those deficiencies;
 - c. The explanations offered by the practitioner;
 - d. The likelihood of those deficiencies or conduct being remedied in the near to medium term;
 - e. Patient welfare and the efficient use of NHS resources; but balancing those against
 - f. The proper interests of the practitioner in preserving the opportunity to work within the NHS (which includes both pursuing his professional interests and earning money).
25. On each of these criteria the balance comes down in favour of the application sought by the PCT. As Mr Wallis indicated in evidence, there is nothing specifically about Sandwell which makes the conduct peculiar to that area and not likely to be replicated elsewhere. The misconduct and failures are in our view very serious, and the range over clinical standards, personal honesty, drug abuse, patient safety and professional insight is striking. We have not been offered any explanation for them which might mitigate our view of the seriousness, nor do we see any evidence that the deficiencies have been or are about to be remedied. We attach the greatest importance to patient safety, which in our view was put at risk, and the proper and efficient use of NHS resources.

26. It was submitted to us by the PCT that national disqualification is a necessary and prudent step because in theory Dr Bohler could apply to be restored to the dental register 10 months after his original erasure, and (if restored) might then be in a position to apply to be admitted to other PCT performers' lists.

Decision

27. In our view national disqualification is proportionate and necessary, and we therefore direct that national disqualification be imposed upon Christopher Ingolf Bohler (GDC reg no 84082) with immediate effect. The Panel makes no further direction under Regulation 19, regarding the review period.
28. We further direct that in addition to the bodies listed in Rule 47 (1) of the 2001 Rules, a copy of this decision shall be sent to the appropriate professional registration body for dentists in the Federal Republic of Germany.
29. In accordance with Rule 42 (5) of the Family Health Service Appeal Authority (Procedure) Rules 2001 the Respondent is hereby notified that he may have the right to appeal against this decision under Section 11 of the Tribunals and Inquiries Act 1992. Any appeal shall 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.

DUNCAN PRATT
Chair of the Panel

7 October 2008