

**IN THE FAMILY HEALTH SERVICES APPEAL
AUTHORITY**

CASE 14625

**Professor M Mildred - Chairman
Dr M Sheldon - Professional Member
Mr M Cann - Member**

BETWEEN

**DR STUART GREEN
(Registration Number 3312867)
Appellant**

and

**NEWHAM PRIMARY CARE TRUST
Respondent**

DECISION WITH REASONS

1. On 11 June 2008 a Performance Panel of the respondent Newham Primary Care Trust ("the PCT") decided to remove the general practitioner appellant ("Dr Green") from its Performers List on the ground that Dr Green had failed to comply with conditions attached to his membership of that List by failing to disclose criminal convictions to an employer.

2. Dr Green appealed against his removal by letter dated 7 July 2008. The PCT asked us to order Dr Green to give further particulars of his grounds of appeal. This was because Dr Green, who was unrepresented, had not made clear on exactly what grounds he was appealing. On 28 August 2008 we gave a decision that it appeared that Dr Green was advancing the case that he is a good, competent and caring GP who should be given another chance to remain on the List despite his failures of compliance with conditions imposed by the PCT and the suspension imposed by the GMC.

3. We said that, if that was an accurate summary of his position, we should not require Dr Green to provide any further details of the reasons for or grounds of his appeal. If, however, he intended to base his appeal on any further or different grounds, he must provide details of those grounds in writing to be received by the FHSAA by 1700 on 12 September 2008. No such grounds have been received by the FHSAA.

4. We also invited Dr Green to inform the FHSAA by that date whether he wished to have an oral hearing of his appeal or for the Panel to decide his appeal by reading the papers filed by both parties without either side attending the hearing fixed for 3 October 2008.

5. No reply was received from Dr Green and accordingly this appeal was fixed to be heard on 3 October 2008. In the event Dr Green was suffering from a chest infection and we adjourned the hearing to 16th October 2008 at the Care Standards Tribunal, London SE1.

6. On 15 October Dr Green informed the FHSAA that he would not be attending but sent instead a page and a half of typescript comments on the PCT's reply to his appeal and a letter with an attached letter. Since the PCT had always wished the appeal to be heard on the papers the Panel met so to do and confirmed that it had no conflict of interest in hearing the appeal.

7. The PCT relied on a witness statement of Dr Kate Corlett, the part-time Medical Director of the PCT and the documents it had supplied for the hearing bundle. The material facts in her statement are as follows.

8. Dr Green was convicted in June 1993 on two counts of supplying Class A drugs and was sentenced to concurrent sentences of three years and one year. On 20 March 2003 the Health Committee of the GMC imposed conditions on his registration that included preventing him working alone or as a locum or undertaking out of hours work except as part of his employment in a group practice and requiring him to disclose these conditions before taking up an offer of employment. From July 2002 to February 2004 Dr Green worked four days per week for the Newham PCT and a fifth day for the Royal Docks Medical Practice to whom he did not disclose the restriction on his practice although he did inform them that he could not sign or complete prescriptions for controlled drugs.

9. On 22 September 2004 these conditions were lifted but Dr Green was subject to the then new NHS (Performers Lists) Regulations 2004. There was considerable delay in obtaining an Enhanced Criminal Records Certificate for him so that it was only on 2 January 2007 that the PCT informed Dr Green that it had admitted him to its Performers List on condition that he should disclose his criminal convictions to all future employers including practice partnerships and warned him that it would take steps to remove him from the List, if he failed to keep that condition. Dr Green accepted this condition.

10. Dr Green was employed by Mercury Health from 5 February to 17 July 2007 but failed to complete a Criminal Records Bureau check or a declaration concerning his criminal convictions despite reminders. He eventually (in July 2007) confirmed that he had been convicted of a disclosable offence but resigned rather than work under supervision.

11. On 30 January 2008 the Interim Orders Panel of the GMC suspended Dr Green for 18 months. Dr Green also worked as a locum between June 2007 and March 2008 for Dr Goel without disclosing his convictions or his suspension by the GMC. The Newham PCT was notified by City and Hackney PCT by a letter dated 7 April 2008 that Dr Green had recently been working as a locum in its area in different practices but that he had now been removed from the Locum List.

12. Accordingly the PCT decided to hold a Performance Panel hearing to consider removing Dr Green from its Performers List on the grounds of failure to disclose his convictions to Dr Goel and of working in City and Hackney PCT whilst suspended by the GMC. These were in breach of the conditions on Dr Green's admission to the Performers List and removal was sought under Regulation 8(2).

13. Although notice of the hearing of 11 June 2008 was given to Dr Green (at a new address to which he had moved without notifying the PCT in breach of Regulation 17(1) of the Performers Regulations he did not attend the hearing at which the unanimous decision was to remove him from the List on the first ground in paragraph 12 above.

14. In reply Dr Green repeated that he was a good GP, well liked and respected by the community he served, whose career would be finished by removal from the List. He produced a letter dated 6 August 2002 from East London and The City Family Health Services Agency proving that he had been admitted to the Supplementary List for the PCT area without any CRB check. Dr Zarifa, the senior partner of the practice in which he was working at that time, was well aware of Dr Green's past history and the restrictions imposed by the GMC on his practise of medicine.

15. He accepted that the requirement to notify the PCT of his change of address had slipped his mind and asked us to accept that he could not be expected to be aware of "all the minutiae" of the Performers List Regulations. He pointed out that his convictions

related only to his own use of controlled drugs rather than to the sale to others; he had dealt with his addiction and rehabilitated himself. He had only been in front of the GMC Health Committee for health rather than disciplinary reasons.

16. Dr Green said his employers were fully aware of the conditions imposed upon him by the GMC and were happy with his performance. He ended by disputing the PCT's contention that he had failed to comply with the 2004 Regulations including obtaining an Enhanced Criminal Records Certificate on the basis that he believed he was already on the PCT's Supplementary List.

Discussion

17. There is no doubt that Dr Green was under an obligation to disclose his convictions to future employers and warned that the PCT would take action to remove him, if he did not. This is apparent from the letter of 2 January 2007 informing him of his conditional admission to the Performers List and we cannot accept that Dr Green could have been in any doubt about this or considered his 2002 admission to the Supplementary List can have been of any further relevance.

18. Just a week later he was offered a post by Mercury Health but failed to complete an application for an ECRC or a declaration of criminal convictions. Further copies were sent to him a fortnight later but he did not respond. The omission was discovered some five months later on 11 July 2007 upon which Dr Green was asked but failed to provide an application for an ECRC. He did, however, in an occupational health questionnaire admit limitations imposed on his practise by the GMC and criminal convictions.

19. Further, it is clear that Dr Green worked at Dr Goel's practice as a locum between June 2007 and March 2008 despite being suspended by the GMC on 30 January 2008. Dr Goel also confirmed that Dr Green did not ever inform him of his previous suspension by the GMC for substance misuse.

20. Dr Green simply does not deal with his failures to inform Mercury Health or Dr Goel or, even worse, why he thought it appropriate to carry on working for two months after his 2008 suspension by the GMC. He has concentrated his response on matters in 2002. Even then it is clear that he failed to inform Dr Lawrie of the GMC conditions upon him when he joined the Royal Docks Medical Practice in 2002 although he did inform him that he could not fill or sign prescriptions for controlled drugs.

21. As noted above, we excused Dr Green from giving further particulars of the grounds for his appeal because he was unrepresented. We adjourned the hearing scheduled for 3 October to allow Dr Green to appear to argue his case. In the event he decided with minimum notice not to do so but has merely put in a response that is patently inadequate to meet the case against him. Given that he asks us to exercise our discretion to save his career, we cannot understand why he has given us so little material so to persuade us.

22. We find that Dr Green has breached (a) the conditions of his admission to the Performers List in relation to his employment with Mercury Health and Dr Goel in the recent past and (b) the conditions imposed upon him by the GMC in his dealings with the Royal Docks Medical Practice in the manner set out in paragraphs 10 and 11 above.

23. We further find that he has practised for approximately two months from January to March 2008 whilst suspended by the GMC. These are very serious failures showing a blatant and serial disregard for conditions properly imposed for the protection of the public. His conduct of the appeal shows a total lack of insight into the seriousness of his conduct: to give one further example, Dr Green has told us that he has only been before the GMC for matters connected with his own health whereas it is a matter of record that he

has been referred to the Fitness to Practice Panel for decisions on allegations almost identical to the complaints made by the PCT with which we have been dealing.

24. For the sake of completeness we have considered whether a contingent removal (for which Dr Green effectively contends) would be sufficient. We regard this as wholly inappropriate given his history of serial breaches of disclosure obligations and conditions on his practice, his working while suspended, the length of time he has been and will be suspended from practice (requiring major retraining, if ever allowed to return), his forthcoming appearance before the GMC Fitness to Practice Panel and his entire lack of insight.

Decision

25. Our decision is that the appeal should be dismissed and Dr Green should be removed from the PCT's Performers List for failure to comply with the condition imposed by the PCT on his inclusion in its Performers List to disclose his criminal convictions to all future employers.

26. 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.

27. Any party to these proceedings has the right to appeal this decision under and by virtue of Section 11 of the Tribunals and Inquiries Act 1992 by lodging notice in the Royal Courts of Justice, Strand, London WC2A 2LL within 28 days from the date of this decision.

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Mark Mildred
Chair of Appeal Panel
17 October 2008