

BEFORE THE FAMILY HEALTH SERVICES APPEAL AUTHORITY

CASE NO. FHS/14628

DR. MED KLAUS-JOCHEN KIJEWski

Appellant

And

NEWCASTLE PRIMARY CARE TRUST

Respondent

DECISION AND REASONS

This is an appeal by Dr. Kijewski against the decision of Newcastle Primary Care Trust to refuse to admit Dr. Kijewski to their Medical Performers List on the 17th December 2007 on the grounds that admitting Dr. Kijewski to its performers list would be prejudicial to the efficiency of the services, which those included in that list perform.

The appeal was heard on the 1st October. Both parties were in person. The panel had considered the papers which were presented and in addition requested the disclosure of papers held by the Respondent PCT referred to in their documents, namely the documents which founded the concerns raised by the PCT which led to their decision not to include Dr. Kijewski to their performers list.

The panel gave both parties an opportunity to consider those documents before commencing the hearing.

DECISION

Our unanimous decision is to refuse the Application.

REASONS

Preliminary Documents

1. Dr. Kijewski had applied to the Newcastle Primary Care Trust in April 2007 to provide Out of Hours Service
2. Newcastle Primary Care Trust had refused the application due to a number of concerns which arose after they had conducted a number of routine checks which they carried out in accordance with the requirements of the NHS (Performers Lists) Regulations 204
3. The FHSAA confirmed that Dr. Kijewski had been removed by North Surrey PCT on the 5th May 2006 as he had failed to demonstrate that he had performed the relevant services in that area in the preceding 12 month period

4. Further the FHSAA confirmed that Dr. Kijewski had been refused admission to Southampton City Performers List on the ground of efficiency and that he had failed to provide satisfactory evidence of his intent to perform services in that area.
5. Dr. Summers, Medical Director Primecare Out of Hours Service (previous employer) highlighted a number of concerns going back over 3 years in relation to Dr. Kijewski.
6. The concerns raised were inadequate record keeping, inappropriate referrals, lack of response to complaints, inappropriate handling of an expected death and management of a patient with chronic obstructive airways disease. Dr. Summer's notes on a review of a sample of his clinical notes concluded that the records were completely inadequate which led to Dr. Summers placing Dr. Kijewski on the Clinical Alert Register.
7. Newcastle PCT had sought advice from Dr. Jamie Harrison of the Northern Deanery who stated that the GP in question already had concerns raised about his clinical practice, once there were performers concerns the returners scheme was not an option. The PCT were further advised to refer the matter to the GMC
8. Dr. Kijewski denied inappropriate prescribing of oral steroids stating that there was no known appropriate steroid dose in treating exacerbated COPD.
9. Dr. Kijewski stated in response to the allegation of completely inadequate record keeping that it was simply not true and that no one except Dr. Summers had ever complained about his record keeping
10. Dr. Kijewski confirmed that he used ultrasound, ECG and lab tests in many cases and that there had never been any legal action either in Germany where he practised or in the UK against him to date.
11. Dr. Kijewski advised that those doctors with only simple methods at their disposal were always in danger to commit serious errors and relying purely on your memory and being convinced that you were doing the right thing no longer fitted into modern medicine.

ORAL EVIDENCE

1. Dr. Neil Morris on behalf of the Respondent PCT gave evidence. He confirmed that the PCT had carried out a number of checks which led to concerns being raised. In particular Dr. Summers had raised concerns over a number of years. The concerns had been highlighted but not investigated as Dr. Kijewski was no longer on the Performers List.
2. Dr. Summer had had some difficulty in obtaining a response from Dr. Kijewski and that the major concern was one of record keeping. Dr. Summers and Dr. Kijewski had had a meeting when they reviewed a number of clinical records. This took place on the 23rd April 2007. It was Dr. Summer's conclusion that the records were completely inadequate.
3. It was not recognised as normal procedure in the UK to carry a portable ultra sound machine.
4. The PCT had taken advice from the Deanery but they could not offer induction/re-training because of concerns which had been inadequately addressed.
5. Under cross examination Dr. Morris explained that it would not be normal procedure to carry out ECG because it was error prone and only gave you part of the picture.
6. Answering questions from the panel Dr. Morris confirmed that the references which he had received were from German GPs in their capacity of working with Dr. Kijewski they did not cover the ability of Dr. Kijewski to work within the UK.
7. Dr. Kijewski was asked about the specific concerns in relation to the notes. He accepted that in respect of patients no 37554, 37789, 37681, and 37427 specifically that the notes were inadequate. He stated that his notes were inadequate but that he did not have time to complete the notes and further that the computer screen did not allow you to record medical notes as there was insufficient space to do so.

8. In response to patient 37681 who was a diabetic and had no clinical findings recorded he maintained that it may cause a problem to that patients GP in a later consultation if the notes were not recorded.
9. Patient 37427 he advised refused to go to hospital, he had not recorded the findings, and she had had a distended abdomen for several days. He accepted that the patient should have been admitted. He advised that he would never contact her GP that she should have gone to hospital. He said that AF had been recorded as she had a fast irregular pulse.
10. He maintained that he had never made a serious error in any of his patients whether here or in Germany. He conducted his work by doing what scientists did, he consulted with the expert opinion on his computer, he diagnosed by using his equipment and that this was the way to deal with patients. You did not have time to record properly as you had to rush to the next patient.
11. Under questions from the panel he stated that it was not a danger to the patients to have inaccurate record keeping.
12. Dr.Kijewski stated that he had tried to improve but that the concerns were historic. He accepted that the handling of the patient who had an expected death was inappropriate.
13. Further evidence was given by Dr. Morris in response to the evidence given by Dr. Kijewski concerning the computers. Dr. Morris said that the computers allowed you to record clinical notes and that there was adequate space to do so.
14. Under questions from the panel Dr. Morris said that he had no complaints from any GP in respect of any inability to record information. Nor had this matter been raised at any meeting,

LAW

1. This Appeal proceeds by way of a re-determination 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. The grounds on which a Primary Care Trust may refuse to include a performer in its performers' list are, in addition to any prescribed in the relevant part, that (e) there are any grounds for considering that admitting him to its performers' list would be prejudicial to the efficiency of those services, which those included in that list perform.
4. The FHSAA may also impose a national disqualification on a practitioner if it dismisses an appeal by him against the refusal by a PCT or Health Authority to include him in such a list (or, in the case of a medical list, to nominate or approve him for inclusion in it) Section 49N(3).
5. The burden of proof falls upon the PCT.

The standard of proof is the civil burden of proof i.e. the balance of probabilities.

In the light of the above findings the Panel find that there are grounds for considering that admitting Dr Kijewski to the Newcastle Primary Care Trust performers' list would be prejudicial to the efficiency of the services, which those included in that list perform.

The Panel also disqualify the Respondent from inclusion in all lists referred to in Section 49N(1)(A-C) the National Health Act 1977.

Finally, in accordance with Rule 42(5) of the Rules we hereby notify that a party to these proceedings can appeal this decision under Section 11 of the Tribunals and Enquiries Act 1992 by lodging a

