

IN THE FAMILY HEALTH SERVICES APPEALS AUTHORITY

Case No: FHS/15172

Heard at Westmead Hotel, Redditch Road, Hopwood, Birmingham B48 7AL
On: 11 September 2009

Before

MS M LEWIS (CHAIRMAN)
Dr S SHARMA
MRS I DALE

Between

BIRMINGHAM NORTH-EAST AND NORTH PCT

Appellant

AND

DR MADHUMITA MITRA
(GMC REGISTRATION NO. 5177510)

Respondent

DECISION WITH REASONS

The Application

1. This is an application by Birmingham East and North Primary Care Trust for a National Disqualification to be imposed on Dr Mitra pursuant to Section 159 (4) (a) of the National Health Service Act 2006.

The Background and Proceedings

2. By letter dated 1 May 2009 the PCT informed Dr. Mitra that the panel that had met on 24 April 2009 had determined that she should be removed from the Trust's Medical Performers List under Regulation 10 (3) and 10 (4) (a) National Health Service (Performers Lists) Regulations 2004: the 'efficiency' ground. Dr. Mitra did not attend that oral hearing nor did she appeal that decision. By letter dated 16 June 2009 the PCT asked the Authority for make an order for National Disqualification against Dr Mitra, The PCT asked for the application to be dealt with on the papers and, if an oral hearing was necessary, in its absence.

The Hearing

3. The Panel met on 11 September 2009 and confirmed that none of its members had any conflict of interest in hearing the appeal. It confirmed that the PCT had sent a further email that morning confirming that they did not wish to attend. We waited thirty minutes before the intended start time but Dr Mitra did not attend. This was not surprising, as Dr Mitra has failed to engage in any way in these proceedings or the earlier PCT proceedings. We were satisfied that Dr Mitra had had notice of the hearing. Case Papers were sent to her home address in the United Kingdom on 14 and 17 September 2009. Additionally a member of the FHSAA staff spoke to Dr. Mitra's husband who still lives there, who gave the address where she is living in India. An additional set of papers was sent there but were not acknowledged or responded to by Dr. Mitra. We therefore determined the case on the basis of the papers.
4. We have considered the Department of Health's guidance for PCTs entitled 'Primary Care Trust Performers List Guidance' in our decision. We have followed the general approach and in particular have considered whether grounds upon which Dr Mitra was removed from the Performers List were essentially local to that area. Among other factors we consider relevant are the (a) seriousness and range of the deficiencies or conduct identified and the explanations offered by the practitioner and the insight demonstrated into his shortcomings; (b) the likelihood of those deficiencies or conduct being remedied in the near to medium term, particularly where failings of character or personality are involved; (c) patient welfare and the efficient use of NHS resources; (d) but balancing those against

the proper interests of the practitioner and preserving the opportunity to work within the NHS (which includes both pursuing his professional interests and earning money).

The Documents and Evidence Considered

5. The only documents submitted were those in the PCT's bundle. Dr Mitra has submitted no documents and has not acknowledged this application in any way.

The Facts

6. This case arose out of the care provided by Dr Mitra to Mr King (deceased), a forty-four year old man as a result of significant pneumonic process involving both lungs.
7. By letter dated 30 July 2008 the PCT wrote to Dr Mitra, following a meeting on 23 July 2008 relating to an independent review which had been undertaken by the Health Care Commission following a complaint by the partner of the late Mr King. Dr Mitra was present at that meeting. An investigation by the Health Care Commission recommended that Dr Mitra's performance should be reviewed and she should be referred to either the National Clinical Assessment Service (NCAS) if it was an isolated case, or to the General Medical Council if there was a pattern of similar problems.
8. A meeting was held with Dr Prasad Dr Mitra's former partner GP and Mrs Edwards the practice manager on 2 July 2008. Dr Mitra had left the practice in April 2008. There was a history of six complaints over two years. These concerns related to clinical judgement and complaints which related to both clinical judgement and Dr Mitra's attitude to patients.
9. Dr Mitra was referred to the NCAS. On 27 November 2008. Dr Mitra signed a voluntary undertaking to withdraw from carrying out any clinical work as a General Medical Practitioner with immediate effect.
10. The NCAS visited the PCT on 11 December 2008. They first met with the PCT and then with Dr Mitra. During that discussion she indicated that she was intending to return to India to practice medicine as soon as her children completed the school term.
11. By letter dated 8 January 2009, Mr. Stenson Assistant Director Health Care Governance wrote to the Assistant Registrar General Medical Council to inform them of the position. He wrote that in subsequent discussions with NCAS on 11 December 2008 there was concern raised by NCAS and the PCT that Dr Mitra *'may, by stating that she was returning to India, be trying to avoid an assessment by NCAS. I view of the circumstances about the possible evasion of an*

assessment and the PCTs concerns about Dr. Mitra's performance as highlighted by the care of the patient in January 2008, it was felt that the GMC should be advised of Dr. Mitra's stated intentions. '

We read that the partner of the late Mr. King was bringing a legal action against Dr Mitra for breach duty of care .

12. It is understood that Dr Mitra left the United Kingdom on 30 December 2008. There was no evidence before us that there had been any further correspondence with the PCT and any communication with the FHSAA has come through her husband, who is still living at the home address.

The Applicant's submissions

13. Having considered the evidence presented to the Performance Panel the PCT concluded that the continued inclusion of the Respondent on the PCT's Performers List would be prejudicial to the efficiency of the services. Therefore the Appellant took the decision to remove the Respondent from its Medical Performers List under Regulation 10 (3) and 10 (4) (a). It further resolved to make an application to the FHSAA Panel for a national disqualification to prevent the Respondent from being included in any other Primary Care Trust or local health board list.
14. Dr Mitra did not appeal that decision. The complaint was of a significant and serious nature and that to allow the possibility that Dr Mitra could continue in practice in the absence of any NCAS assessment would represent a serious risk to patients. The Respondent's failure to co-operate with the NCAS assessment or undertake any additional training or professional development suggested a lack of true insight into the serious nature of the complaint and the potential and actual effect upon patients. These impacted negatively upon the efficiency of the services Dr Mitra would be expected to provide.

Conclusions

15. We find that the PCT has followed all due processes.
16. It is striking that Dr Mitra not only failed to engage with the NCAS assessment but has also made no acknowledgement of this application to the FHSAA, despite the serious implications of a National Disqualification.
17. We are satisfied that Dr Mitra has had notice of this application and all other PCT proceedings. It has been Dr. Mitra's choice to play no part in either the proceedings before the PCT or this Panel. We note that she was offered the

assistance of the Medical Defence Union who wrote at least one letter to her giving her advice.

18. We have made our own independent review of the papers and we accept that the complaint was of a significant and serious nature and that to allow the possibility that Dr Mitra could continue in practice in the absence of any NCAS assessment would represent a serious risk to patients. As an expert tribunal, we can take an overview and six complaints in two years seems a large number. Dr Mitra's failure to co-operate with the NCAS assessment or undertake any additional training or professional development suggests a lack of true insight into the serious nature of the complaint and the potential and actual effect upon patients. It may also be that in going to India she was seeking to avoid a NCAS clinical assessment.

Decision

For all the reasons set out above the decision of the Panel is that Dr Mitra should be nationally disqualified from conclusion in any of the Lists specified at (a) – (c) of Regulation 18A (i) of the NHS (Performers List) Regulations 2004 as amended for a period of two years from the date of this decision.

We direct pursuant to Rule 47 (i) of the Family Health Services Appeal Authority Procedure Rules 2001 that a copy of the 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.

Ms M E Lewis
Chair

Either party to these proceedings has the right to appeal this decision under and by virtue of Section 11 Tribunals and Inquiries Act 1992. Any appeal should 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.