

**IN THE FAMILY HEALTH SERVICES APPEAL
AUTHORITY**

CASE 15171

**Professor M Mildred- Chairman
Dr PS Garcha - Professional Member
Ms K Wortham - Member**

BETWEEN

NEWHAM PRIMARY CARE TRUST

Applicant

and

**DR JADENG ZAMANTHANGI
(Registration Number 1721430)**

Respondent

DECISION WITH REASONS

The application

1. By a letter dated 16 June 2009 the Applicant (“the PCT”) applied for an order of National Disqualification against the Respondent.

Background

2. On 8 October 2008 the PCT’s Performance Hearing Panel decided to remove the Respondent (who had been suspended by the PCT on 4 January 2008) from its Performers List under regulations 10(3) and 10(4) of the National Health Service (Performers Lists) Regulations 2004 (“the Regulations”). This decision was communicated to the Respondent by a letter dated 9 October 2008 signed by Melanie Walker, the Chief Executive of the PCT.

3. The Respondent appealed against her removal by a letter dated 3 November 2008 from her solicitors Messrs RadcliffesLeBrasseur. She withdrew this appeal before the hearing for reasons of which we are unaware but, by inference from a communication with the Tribunal Service, on legal advice. The removal thus stands and we must take the findings of the Performance Hearing Panel at face value.

4. The findings of the Panel were, in broad terms, unsafe and sub-optimal practice, failure to provide good medical care and poor medical record keeping. In particular the Panel found that the Respondent had charged for 26 Med3 medical certificates issued to NHS patients, kept very poor records and had provided very poor practice in the records of 38 of 50 patients reviewed. In addition there was

evidence that the Respondent had used unsterilized metal speculae in the examination and treatment of female patients.

The PCT's grounds on this application

5. In his letter of 22 June 2009 Mr Philip, the Legal Affairs and Performance Concerns Manager at the PCT told us that the grounds for this application were unsafe and sub-optimal practice, failure to provide good medical care and poor medical record keeping. The PCT relied on the documents that had been before its own Panel and was content for the application to be determined on the papers.

6. The Respondent confirmed by a letter of 8 August 2009 that she would not attend the hearing and that she did not intend to carry out any more medical work.

The hearing

7. The Panel accordingly considered the application in the absence of the parties on 16 September 2009 and confirmed that they had no conflicts of interest in hearing the application.

National Disqualification: the legal framework

8. By Regulation 18A(3) of the National Health Service (Performers Lists) Regulations 2004 as amended (“the Regulations”) the Panel has power to impose a national disqualification on the application of a PCT that has (as here) removed a practitioner’s name from a performers list. The powers were derived from s 49 N (1) of the National Health Service Act 1977. The exercise of our discretion to make such an order is not specifically or further defined or constrained by statutory provision.

9. We have considered the Department of Health’s guidance for PCTs entitled “Primary Care Trust Performers List Guidance”, in particular paragraph 40.2 which provides that the FHSAA can itself decide to impose a National Disqualification if, having rejected an appeal, it considers that “the facts that gave rise to the removal decision are so serious that they warrant disqualification” and paragraph 40.4 which suggests 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”.

10. In our decision we have followed this general approach and in particular have considered whether the grounds upon which the Respondent from the Performers’ List were essentially local to that area.

11. 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 lack of insight demonstrated into her 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 and (c) patient welfare and the efficient use of NHS resources; (d) but balancing those against the proper interests of the practitioner in preserving the opportunity to work within the NHS (which includes both pursuing her professional interests and earning money).

Discussion

12. This application is uncontested and, as stated above, we must accept the conclusions of the PCT's Panel in the absence of any evidence or submissions to the contrary. The communications received from the Respondent suggest that she sees her future in terms of religious observance and activities, rather than any return to medical practice.

13. These communications do not, however, bind her in the event of a change of mind and we must consider the application on its merits.

14. The charging of NHS patients for Med3 certificates is a serious matter and it is clear that this was substantiated by an investigation by the local Counter Fraud Service. It appears that proceedings in respect of this were deferred as they were overtaken by performance concerns.

15. There is a detailed report of the failures of record-keeping and poor medical practice before us which we accept. These allegations are in any event uncontested and the incidence of failures at 76% of a sample of 50 patients is strikingly high.

16. The evidence before us and the PCT's Panel clearly indicates that the Respondent used metal speculae at a time when there was no steriliser available at the her surgery. Not only was this very poor and indeed dangerous practice but the Respondent was not candid in her response to the PCT on this point.

17. The evidence amply demonstrates poor performance of a serious and widespread nature, repeated wholly improper charging for Med3 certificates and a breach of the duty of trust and candour in relation to the PCT's investigation of the use of unsterilized speculae.

18. There were and are ample grounds for findings of inefficiency and unsuitability that are both very serious and of universal as opposed to local concern.

Decision

19. For all the reasons set out above the decision of the Panel is that Dr Jadeng Zamanthangi shall be nationally disqualified from inclusion in any list as is specified at (a) to (c) of Regulation 18A (1) of the NHS (Performers Lists) Regulations 2004 as amended, for a period of two years from the date of this decision.

20. 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.

21. 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
Panel Chair
17 September 2009