

IN THE FAMILY HEALTH SERVICES APPEAL AUTHORITY

Case No: FHS/13740

BETWEEN

**Dr V Edema-Rose
(GMC no. 4780434)**

Appellant

and

Tower Hamlets Primary Care Trust

Respondent

(The references in the footnotes refer to the pagination in the agreed bundle of papers submitted to the FHSAA by the parties.)

Introduction

1. This is an appeal by Dr Edema-Rose against the decision by the Tower Hamlets PCT (the PCT) to remove her from their performers list. The grounds of the removal were **unsuitability** and **efficiency** under regulations 10(3) and 10(4)(a) and (c) of the NHS Performers List Regulations 2004. Dr Edema-Rose was notified of the decision by letter dated 13 March 2007 and she submitted her appeal on 3 April 2007.
2. The appeal was first listed for hearing on 2 July 2007. Because there was not sufficient time to hear that case on that day the hearing was postponed, with the agreement of the parties. The case was then heard on 20, 21 and 22 August 2007.
3. The PCT called the following witnesses: Marion Brown, Dr Mawer and Dr Russell. Dr Edema-Rose gave evidence, she did not call any other witnesses.

Dr Edema-Rose's legal representation

4. Prior to Dr Edema-Rose's suspension she was represented by solicitors, RadcliffesLeBrasseur, instructed by the Medical Protection Society.¹ Following her suspension she was represented by Stephen Climie of counsel who submitted particulars of appeal on Dr Edema-Rose's behalf.² Dr Edema-Rose notified the FHSAA on Friday 17 August 2007 (the hearing was fixed to commence on Monday 20 August 2007) that she was no longer represented by Stephen Climie. On 20 August 2007 Dr Edema-Rose requested an adjournment to obtain legal representation. The panel refused her application taking into account a number of factors, in particular the time that had elapsed since Dr Edema-Rose submitted her appeal and the opportunities that she had had during that period to secure legal representation. On 22 August 2007 a solicitor from Soorii Ayoola and Okra attended the hearing and made a further application for an adjournment. This was again refused for similar reasons.

The allegations against Dr Edema- Rose

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² 12-18

5. On 6 March 2007 the PCT convened a meeting to consider whether there were grounds to remove her from the performers list. Dr Edema-Rose did not attend that meeting. The allegations against Dr Edema-Rose (contained in the PCT's letter to her dated 13 March 2007) were:
 1. Your clinical performance is seriously substandard and as a result:
 - (i) Your continued inclusion in the PCT's Performers list would be prejudicial to the efficiency of the services;
 - (ii) you are unsuitable to be on the Performers List.
 2. In your dealings with the PCT, which involved addressing very serious concerns about your practice and which resulted in a formal suspension from the Performers List, you sought to mislead the PCT and, in doing so, you abused the trust of the PCT and put patients at risk. As a result:
 - (i) Your continued inclusion in the PCT's Performers list would be prejudicial to the efficiency of the services;
 - (ii) you are unsuitable to be on the Performers List.
 3. Once suspended from the PCT's performers List, you continued to perform Primary Medical Services by doing a session at the Dilip Sabnis Medical Centre on 24th August 2006. As a result you are unsuitable to be on the Performers List.³
6. At the August 2007 hearing the PCT decided not to rely on allegation 3; the allegations against Dr Edema-Rose therefore fall within two discrete (but linked) areas, poor clinical performance and misleading the PCT.

Poor clinical performance

7. The evidential material that the PCT primarily relied upon in respect of establishing poor clinical performance were the assessments of Dr Mawer and the National Clinical Assessment Service (NCAS). Other matters were relied upon by the PCT, in particular two complaints that had been made against Dr Edema-Rose in July 2006 when she was working in the Hampshire area. These complaints were investigated by the Southampton City PCT. The outcome of the investigation into the complaints was:

It appears that Dr Edema-Rose may have some training needs in the areas of communication skills and record keeping.⁴

Because of this, and without hearing any evidence about these complaints, the panel decided not to attach any weight to this aspect of the PCT's case.

Dr Mawer's assessment (29 January 2006)

8. Dr Mawer was asked by Dr Russell (PCT medical director) to assess Dr Edema-Rose following problems that she had been experiencing with her GP partners, Drs Batra and Stanley. The purpose of the assessment, as described in Dr Mawer's statement, was to allow Dr Edema-Rose to 'move on professionally' and was 'not to be an exam but a formative process.'⁵ The core of the assessment centered around Dr Mawer observing Dr Edema-Rose consulting in a well regarded GP practice within the PCT area. In the event during the course of this assessment Dr Mawer developed some 'very significant

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concerns⁶ about Dr Edema-Rose's clinical skills. She therefore terminated the assessment. Three days later she sent a memorandum to Dr Russell outlining her concerns.

9. The panel were not able to draw any significant conclusions about the deficiencies in Dr Edema-Rose clinical practice from Dr Mawer's assessment. This was primarily because Dr Edema-Rose was apparently unwell at the time with stress and/or secondary reactive depression. This was noted by Dr Mawer and verified by Dr Edema-Rose GP's sick notes. In a letter from Dr Assoufi (Consultant in Occupational Medicine) to Dr Russell dated 9 February 2006 he advised that Dr Edema-Rose was not fit enough to undergo sessions of 'supervised consultation.'⁷ When Dr Russell gave evidence he confirmed he would not have pursued the assessment with Dr Mawer if he had had the benefit of Dr Assoufi's advice prior to the commencement of that assessment.

The NCAS assessment (Clinical assessment 2-3 August 2006)

10. Following Dr Mawer's abortive assessment Dr Edema-Rose agreed that she would participate in a NCAS assessment. This is confirmed in a letter that her Medical Protection Society representative wrote to Dr Russell on 17 February 2006.⁸ Dr Edema-Rose was certified fit to be assessed by an occupational health physician instructed by the NCAS prior to the NCAS clinical assessment commencing in August 2006.⁹ On 27 July 2007 Dr Assoufi wrote to Marion Brown that he was happy for Dr Edema-Rose to return to 'her full operational duties'¹⁰ from 1 August 2006.
11. The NCAS assessment contained comprehensive and compelling evidence about Dr Edema-Rose's clinical performance. The panel were not offered any reasonable basis to challenge or question any of the main findings of the NCAS.
12. Dr Edema-Rose raised concerns about any analysis based on records obtained from her previous practice. Her concerns were twofold. Firstly the records were of 'dubious'¹¹ origin because they emanated from her previous practice and there had been concerns, investigated by the PCT at the time, that the records had been tampered with by her former partners. Secondly when Dr Edema-Rose gave evidence she explained that when being assessed by the NCAS assessors she found the form in which the records were presented to her, by way of computer printouts, confusing.
13. The NCAS assessors evaluated the quality of Dr Edema-Rose's clinical practice and care by employing a number of methods including: reviewing a random selection of case records from her old practice, observing her consult in the 'host practice' (as with Dr Mawer's assessment a GP practice in the PCT area provided facilities for the assessment) and discussing a number of cases with Dr Edema-Rose. Out of the twenty four cases identified by the NCAS assessors as evidencing poor practice¹², eight were based on record reviews only. The more significant omissions in her records review were further explored as part of a case based analysis and her grasp/knowledge was still found to be below standard. The panel are therefore satisfied that Dr Edema-Rose's concerns about the quality of the old records cannot explain away her failings in the direct clinical observations.

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¹¹ This phrase is used in the written submissions served on behalf of Dr Edema-Rose dated 29 August 2006.

¹² 84-88

14. Dr Edema-Rose also sought to explain her underperformance during the NCAS assessment as a result of the 'pressure that I felt under at the time.'¹³ The panel do not find that a credible explanation given that the PCT had arranged, and funded, a four week 'window'¹⁴ at the host practice in July 2006 to allow Dr Edema-Rose to familiarize herself with the workings of that practice.
15. The most significant concerns about Dr Edema-Rose's practice are summarized by the assessors in the serious concerns report¹⁵ dated 8 August 2006. The panel considered the following of particular significance:
 - a. an inability to properly assess and treat basic medical emergencies such as asthma, anaphylaxis and hypoglycaemia,
 - b. failure to consider potentially serious diagnoses such as cervical cancer in a case of post-coital bleeding,
 - c. failure to explore 'red flag' symptoms of gastro-intestinal malignancy in a case of new dyspepsia over the age of 50,
 - d. failure to consider pre-eclampsia when presented with a headache during pregnancy,
 - e. prescribing an unnecessarily prolonged course of doxycycline for an inadequately made diagnosis of salpingitis without excluding pregnancy and then not fully appreciating that it would have been a contraindication in pregnancy, and
 - f. labelling and treating a patient as hypertensive without an adequate number of blood pressure readings and no baseline investigations or appropriate follow-up. (For example monitoring renal function with ACE inhibitors.)
16. Dr Edema-Rose accepted that the NCAS assessment contained a number of legitimate findings but felt that for a number of factors, including pressure and lack of training, the decision to remove her from the performer's list on the basis of the NCAS report was not justified. The panel do not agree and in particular took into account the resources that were made available to Dr Edema-Rose to allow her to participate effectively in the assessment and the simple fact that she was an experienced practitioner; by the time she joined the Batra/Stanley practice she had at least 17 years experience of practicing as a GP. The panel are satisfied that the findings made by the PCT on the basis of the NCAS assessment¹⁶ justified their decision to remove Dr Edema-Rose from the performers list.

Misleading the PCT

17. On 18 November 2005 Dr Russell and Marion Brown met with Dr Edema-Rose. The purpose of the meeting was described by Dr Russell to assist her in tackling the 'difficult situation in which she found herself.'¹⁷ By that time her relationship with her business partners had collapsed, she wanted to leave the practice and her GP had signed a medical certificate certifying she should refrain from work because of a 'stress related problem.'¹⁸ These sickness certificates continued until July 2006.

¹³ 396

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¹⁵ 111-114

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¹⁸ 223

18. Dr Russell wanted to assist Dr Edema-Rose and also wanted her to demonstrate that her practice was of an acceptable standard, this resulted in the two assessments detailed above.
19. Following the 18 November 2005 meeting Dr Russell wrote (and wrote again in similar terms on 6 January 2006) to Dr Edema-Rose:

You agreed to voluntarily refrain from seeking work until the PCT has had the opportunity to assess your knowledge and skills.¹⁹
20. Marion Brown who was at the 18 November 2005 meeting gave evidence that Dr Edema-Rose agreed not to work. She wrote minutes of the meeting.²⁰ Marion Brown's minutes state that Dr Edema-Rose last worked on 4 November 2005, she had been off sick with stress related illness and she would not 'seek work' until after the assessment. Dr Russell wrote detailed notes of the meeting which record the agreement in similar terms.²¹ The assessment referred to is to Dr Mawer's assessment. As this assessment was abortive the NCAS assessment was then agreed. At a meeting on 16 March 2006 to discuss the NCAS assessment, Marion Brown gave evidence that Dr Edema-Rose agreed not to work until after this assessment had concluded.
21. It is unfortunate that the March meeting was not minuted. Despite this the panel are satisfied on the basis of the evidence of Marion Rose and Dr Russell that Dr Edema-Rose was not only unequivocally advised not to work from November onwards, she agreed that she would not work.
22. At the meeting convened by the PCT on 22 August 2006 to consider a suspension of Dr Edema-Rose pending further investigation (she was suspended for six months) she confirmed she was not working.²² When she made written representations to NCAS following receipt of their full report she wrote 'I did not practice since Nov 2005, due to ill health.'²³
23. Dr Edema-Rose accepted the existence of the certificates from her GP but maintained that they only related to her work at the GP practice where she had been working, but could no longer work because of fundamental disagreement with her partners. She said she did not regard that working for an agency was 'part of working' and she denied that she ever agreed not to work in November 2005 or March 2006. She did not seek clarification of any of the matters raised in correspondence by Dr Russell.
24. Dr Edema-Rose did not dispute that she was working 'regularly'²⁴ for Pioneer Recruitment Limited from November 2004 to August 2006. In early February 2006 when she maintained she was too unwell with a sore throat to meet with Dr Russell to discuss Dr Mawer's assessment she was working. (On 9 February 2006 Dr Assoufi advised Dr Russell that 'it is difficult at this point to predict when she will be able to return to work'²⁵) When on 9 August 2006 the PCT was trying to contact her to discuss the NCAS Serious Concerns Report and set up a meeting, email correspondence implies that she was in Germany whereas she was working. These records were not entirely clear.²⁶ Dr Edema-

¹⁹ 132

²⁰ 127-131 and 373-383

²¹ 318-323

²² 270

²³ 115

²⁴ 136

²⁵ 224

²⁶ 281-282

Rose, however, declined to answer questions during the panel hearing that could have explained where she was at the time.

25. Dr Edema-Rose also did not accept that the reasons for her being advised not to work, that is she suffered from a stress related problem, had any bearing on patient care and safety. The panel do not agree and concluded that she was improperly relying on her own assessment of the risk that she presented to her patients. Her position was contradictory. She regarded herself as unwell, she states that in January 2006 'looking back I think I was probably clinically depressed'²⁷ yet she did not regard this as any impediment to her seeing patients.
26. In summary the panel found that Dr Edema-Rose misled the PCT and the NCAS when she maintained she was not working from November 2005 to August 2006. Because of the acrimonious dispute between her and her business partners she did not appear to be drawing anything from the practice after November 2005. When she gave evidence she justified her actions on the basis of her difficult financial circumstances. The panel did not find that an acceptable reason for misleading the PCT, the NCAS and others concerned with her case. By her actions she also put her patients potentially at risk.

Contingent removal

27. In her statement Dr Edema-Rose suggest that the PCT decision making panel on 6 March 2007 should have recommended 'additional training.'²⁸ If the decision makers on that date had only chosen to proceed on the efficiency ground, that would have been a course of action open to them. The PCT however proceeded both on the efficiency and suitability ground, and contingent removal cannot be imposed in a suitability case. Because of the nature of the allegations against Dr Edema-Rose the panel consider that it was proper that the PCT proceeded on both grounds.

Decision

28. For the reasons given above we dismiss the appeal of Dr Edema-Rose and we order that she be removed from the PCT's list.

National disqualification

29. The panel will reconvene on Thursday, 20th September 2007 at 2.30pm at 18 Pocock St, London SE1 0BW to hear representations as to whether Dr Edema-Rose should be made subject to a national disqualification.²⁹

Appeal

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²⁹ The FHSAA will provide the Appellant with the following documents should an oral hearing on the 20th September 2007 be necessary: (i) a copy of Regulation 18A of the NHS (Performers Lists) Regulations 2004 (as amended) (ii) a copy of section 17 of the Department of Health Guidance entitled "Primary Medical Performers Lists Delivering Quality in Primary Care"

30. In accordance with Rule 42(5) of the Family Health Services Appeal Authority (Procedure) Rules 2001s we hereby notify any party to these proceedings that they can appeal this decision under section 11 Tribunals & Inquiries Act 1992 by lodging notice of appeal in the Royal Courts of Justice, The Strand, London WC2A 2LL within 28 days from receipt of this decision.

Dated this 6th day of September 2007

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A Harbour

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V Lee

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G Sharma