

IN THE MATTER OF DR PAUL HIRSCHOWITZ

BETWEEN

DR PAUL HIRSCHOWITZ

AND

NORTH YORKSHIRE AND YORK PCT

DECISION AND REASONS

1. This matter proceeds in respect of consideration as to whether Dr Hirschowitz should be the subject of National Disqualification following from an appeal heard by the FHSAA from the 19th – 21st May 2008.
2. The decision of the panel was that Dr Hirschowitz should be removed from the Performer's List of the North Yorkshire and York PCT. Following the decision the panel advised that consideration would be given in respect of National Disqualification.
3. Both parties were given the opportunity to provide submissions and to attend the hearing which took place on the 28th August 2008.
4. The Appellant advised that he did not wish to attend the oral hearing by letter dated 17th July 2008 and neither did he attend to make any representations.
5. The Respondent forwarded their submissions by letter dated 24th July 2008. Thus, the matter proceeded on paper only pursuant to the Family Health Services Appeal Authority (Procedure) Rules 2001.
6. This decision should be read alongside the decision dated 25th June 2008 as this made various findings of fact which led to the original Appeal being dismissed.
7. The allegations in the matter were of such a nature that at the initial hearing the panel adopted the criminal standard of proof and it was against this standard that the findings were made.
8. The Respondent PCT made the following submissions.
 - (i) The PCT submit that a doctor who has allegations of this nature against him proven, to a criminal standard of proof, is unsuitable to be included on a NHS Performers List.

- (ii) The FHSAA have a wide discretion in considering whether to impose a National Disqualification and there is no statutory definition of the circumstances in which such a Disqualification should, or should not, be imposed.
- (iii) In the Department of Health Publication, Primary Medical Performers List; Delivering Quality in Primary Care (DH, August 2004), the Department acknowledge the risk of a doctor “who has been removed from the list of one PCT may go on to offer his services in turn in the hope that he will find one prepared to accept his services as a performer”.
- (iv) The PCT submit that, in the case of a doctor unsuitable to be included in one PCT’s list by reason of sexualised misconduct, he is equally unsuitable to be included in the list of any PCT.
- (v) The PCT say that this is a proportionate response which is in the public interest both for the protection of the public and for the preservation of confidence in the NHS and the medical profession generally.

LAW

Under Section 49 (N) 4 of the NHS Act as amended by the Health and Social Care Act 2001.

A Health Authority may apply to the FHSAA for a National Disqualification to be imposed on a person after they have

- a) removed him from a list of theirs or any of the kinds referred to in subsection 1(a) – (c) or
- b) refuse to include him in such a list (or, in the case of a medical list, to nominate or approve him for inclusion in it)
- c) any such application must be made before the end of the period of three months beginning with the date of the removal or of their refusal.

The FHSAA can of their own volition following an Appeal against removal which was not granted consider the imposition of a National Disqualification.

The Department of Health guidelines provide as follows:

- (i) A decision by a Health Authority to remove a Doctor from one of its lists applies only within that Health Authority. Whilst other Health Authorities must consider the fact behind that decision they could reach a different conclusion. Though it should be emphasized that in doing so they are recommended to consider how they would justify this different approach if asked to do so by the public, especially if there were to be an adverse incident.
- (ii) Where facts of the case are so serious it would be wrong to allow the Doctor to offer his services to every Health Authority in turn in the hope that he will find one willing to accept him. The FHSAA can ensure National Disqualification to prevent such a Practitioner joining the list of another Health Authority.

CONCLUSION

In respect of the definition of suitability we adopt, pursuant to the legislation, the everyday meaning of the word.

The Panel find that the allegations were serious and that the findings which were made were to the criminal standard.

The Panel considered the imposition of conditions when considering potential removal but found that any conditions which could be imposed would be prejudicial to the efficiency of the services provided. Equally the panel were not of the opinion that by providing a chaperone or seeing only male patients would be either practical or enforceable.

The panel also considered that any conditions which could be imposed would undermine public confidence in the light of the seriousness of the allegations. It was impossible to envisage any conditions which could be imposed which would address the serious matters of concern.

In considering National Disqualification the panel have considered the issue of public protection. The panel believe that by finding Dr Hirschowitz to be unsuitable to be included in the North Yorkshire and York PCT list that he is equally unsuitable to be included in any PCT list.

We have balanced the effect which National Disqualification will have upon Dr Hirschowitz and believe that due to the nature of the incidents concerned, when weighing against the public interest, together with the lack of insight, acceptance or any remorse that National Disqualification is proportionate.

The panel is of the unanimous view that Doctor Hirschowitz is unsuitable and should be made the subject of a National Disqualification on the grounds of unsuitability.

Accordingly the panel impose a National Disqualification.

The panel have considered whether the review period should be extended to a period of 5 years but have not heard anything during the course of this hearing or the previous hearing which cause the panel to impose such a review condition.

The Respondent is therefore disqualified from inclusion in all lists referred to in section 49 (N) (1) (a) to (c) of 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 a decision under Section 11 of the Tribunal and Enquiries Act 1992 by lodging Notice of Appeal in the Royal Courts of Justice, The Strand, London WC2A 2NN within 28 days from receipt of this decision.

Dated this 29th August 2008

JUDITH R CRISP

Chairman