

**IN THE FIRST TIER TRIBUNAL
HEALTH EDUCATION AND SOCIAL CARE CHAMBER
PRIMARY HEALTH LISTS**

Case No PHL 15386

**NHS PERFORMERS LIST REGULATIONS 2004
TRIBUNAL PROCEDURE (FIRST TIER TRIBUNAL) (HESC) RULES 2008**

BETWEEN:

**MICHAEL NORONHA
GMC Ref No 41741558
Appellant**

and

**WARRINGTON PCT
Respondent**

Before

Judge J Burrow
Dr Douglas Kwan
Tim Bennett

Sitting at Pocock Street London on 4 August 2011.

1. The appeal

1.1 This is an appeal by Dr Noronha pursuant to Regulation 15(1) of the 2004 Regulations against the decision of the Warrington PCT (the PCT) on the 23 March 2011 to remove him from the medical performers list (MPL) on the ground of unsuitability. The central issue for this appeal to the Primary Health Lists (PHL) tribunal was whether Dr Noronha's behaviour in talking to patients about his religious beliefs without their consent or agreement was such that he was unsuitable to be included in the MPL and whether the decision to remove him from the list by the PCT was correct and proportionate.

2. Legal framework

2.1 The legal framework for this appeal is largely contained in the NHS Performers List Regulations 2004, which inter alia sets out the criteria by which decisions to remove a performer for unsuitability are to be considered.

2.2 Regulation 10 provides that a PCT may remove a performer from its list where he is unsuitable to be included on it. Where there has been a finding of unsuitability, Regulation 12 prevents the imposition of contingent removal.

2.3 Regulation 11 sets out the criteria to be considered when deciding to remove a performer from its list. Regulation 11(7) in particular provides that the PCT (and

therefore on appeal the PHL) should have regard to the overall effect of any relevant incidents relating to the performer.

2.4 Regulation 15 provides that the appeal to the PHL is by way of redetermination, and the PHL can make any decision which the PCT could have made.

2.5 We also took into account the relevant sections of the “Primary Medical Performers Lists Delivering Quality in Primary Care, Department of Health 2004” including paragraphs 7 and 17. Paragraph 7.10 states in respect of suitability, grounds for action may include where there is a lack of tangible evidence of a doctor’s ability to undertake the performers role (for example satisfactory qualifications, experience and essential qualities).

2.6 We further had regard to the proportionality of the decision appealed against, taking into account all the relevant evidence in the case and considering the applicant’s interest in pursuing his profession on the one hand and his suitability to be included in the list on the other.

2.7 The burden of proving any factual matter rests upon the party asserting it, to the civil standard of proof. The issue of unsuitability is a matter of judgement for the tribunal taking into account all relevant matters.

3. The Evidence

3.1 Dr Noronha qualified as a doctor in Bangalore in 1988. HE came to the UK in 1989. He was employed by the PCT from April 2002 until his resignation on 31 May 2009. In March 2006 he was employed at the practice of Dr Raj Kumar in the Eric Moore Partnership when Dr Kumar informed the PCT of instances of concern including a number of inappropriate religious references without consent while treating patients “over the last year or so”. Among the concerns was the fact Dr Noronha was said to have suggested to patients that they should seek to address their concerns to God rather than seek medical treatment.

3.2 Dr Noronha was suspended from employment by the PCT in late 2006 and suspended from the Medical Performers List in February 2007. In October 2007 he was referred to the GMC and a letter of advice was issued by them in March 2008. Following psychiatric assessment the suspension order was lifted in September 2008 and he was allowed to return to work. He was required to undergo assessment of his clinical skills, create a personal development plan and undergo monthly assessments with an educational assessor and a GP supervisor. This was at the Folly Lane practice of Dr Tyrer who was a GP trainer. He seemed to practice for a period while at that practice under close supervision without further complaint.

3.3 However in early January 2009 two further complaints about inappropriate references to religious matters during patient consultations without consent were referred to the PCT, relating to incidents in December 2008. These were discussed by Dr Noronha and Mr Beesley of the PCT on 5 January 2009. In a subsequent letter Mr Beesley directed Dr Noronha to have regard to the GMC guidance “Personal Beliefs and Medical Practice” Paragraph 19 of which reads “*You should not normally discuss your personal beliefs with patients unless those beliefs are directly relevant to the patients care. You must not impose your beliefs on patients, or cause distress by the inappropriate or insensitive expression of religious, political or other beliefs or views. Equally you must not put pressure on patients to discuss or justify their beliefs or the absence of them*”.

3.4 Later in January 2009 three further complaints were received by the PCT concerning inappropriate discussion of religious matters without consent by Dr Noronha. Dr Noronha met Dr Tyrer of the PCT on the 16th January 2009 to discuss these further complaints. Dr Noronha was initially dismissive of them, but later in the meeting he promised Dr Tyrer that he would significantly alter his approach to patient contact.

3.5 The situation was further discussed by Dr Baker, the PCT's then Medical Director at a meeting with DR Noronha on the 3rd February 2009. In a subsequent letter dated 9th February 2009 Dr Baker warned that any further complaints concerning inappropriate discussion about religious beliefs may lead to dismissal, possible action in respect to the Performers List, or referral to the GMC.

3.6 However the warning seemed to have little effect. Three further complaints of a similar nature were received on the 17th and 19th March 2009, and the 6th May 2009. On the 15th May 2009 the PCT referred Dr Noronha to the GMC. On the 31st May 2009 Dr Noronha resigned from his post as a salaried GP. Subsequently an investigation was undertaken by the PCT during which Dr Noronha was assessed by Occupational Health (OH). The consultant, Dr Zacharias, concluded that no psychiatric diagnosis could be reached, but that he felt there would continue to be occasions when Dr Noronha would struggle to avoid referring to spiritual matters during consultations.

3.7 On the 14th September 2009, following a GMC Investigation Committee hearing, a warning was issued, to remain on record for five years, in the following terms: *The Committee considers that you have shown limited insight and this is likely to lead to repetition of your behaviour. In spite of the letter of advice from the GMC in March 2008 and advice from your employer and Medical Director you continued to present your religious beliefs to patients in a way which they found to be uncomfortable and distressing. You also stated that you did not change your consultation style following the letter of advice of March 2008. The Committee is not satisfied that you will not repeat this behaviour in the future unless the gravity of this matter is brought home to you.*"

3.8 On the 13th September 2010 a further complaint was received from a patient about Dr Noronha's actions during a consultation on 2nd September 2010. The patient was pregnant and was concerned about the baby because of the extreme stress she was experiencing through an expected diagnosis of her husband's serious medical condition.

3.9 Dr Noronha was said to have spoken to the patient for 20 minutes without her consent about turning to God and accepting Jesus into her life. He said if she did this everything would be ok. He repeatedly asked if she accepted Lord Jesus into her life. Eventually the patient said she would because "she felt uncomfortable and he was in a position of authority". The patient complained that she did not receive any medical treatment and that she was so distressed at the time she felt unable to say anything to the doctor. She felt stunned, upset and distressed.

3.10 Thereafter Dr Noronha attended a meeting with the Deputy Medical Director of the PCT, Dr Velkamp on the 30th September 2010, a hearing of the PCT Decision Making Group (DMG) on the 20th October 2010 where he was suspended from the MPL, and a further meeting of the DMG on the 23rd March 2011 where he was removed from the MPL. On all three of these occasions Dr Noronha attended and answered questions about the complaint.

3.11 He said that the complainant could and should have stopped him or left if she was unhappy with what he was saying. In other words he was placing the onus on her to bring the conversation to an end. During questioning, he appeared to fail to treat the complaint seriously, on one occasion laughing inappropriately. He was ambiguous about whether he was sorry about causing distress to the patient, saying on one occasion, 'yes and no'. When asked whether he understood the distress the patient was experiencing he said he believed she had an unclean spirit and "the patient did not understand the spiritual discussion." He said that it is not harmful to talk about God.

3.12 When asked he failed or refused to provide assurances that similar events would not occur in the future. In respect of the GMC, he contested its ability to lay down rules. He said that he "refused to be zombified", that he "could not be governed by the GMC" and that he was not going to "bow down". He said the GMC were not there in the situation and could not make a judgement. Dr Noronha said that he felt justified in failing to examine the patient's baby even though she was anxious about its welfare.

3.13 The PCT concluded that Dr Noronha had failed to demonstrate concern for the patient, failed to accept the warning of the GMC and failed to address the concerns of the patient about her child. He was removed from the medical performers list on 23 March 2011.

Dr Noronha's case.

3.14 In his Grounds of Appeal dated 21st April 2011 he referred to what he termed "the patient's greater knowledge of her husband's medical condition than she informed Dr Noronha during the consultation". He suggested that meant that her expectations of Dr Noronha were greater than the actions he considered were clinically appropriate. He said he felt the verdict went against him because of the spiritual nature of the complaint. He said no substantive harm was caused to the patient. He suggested removal was not a proportionate response.

3.15 Dr Noronha's responses to the most recent complaint of the 3rd September 2010 are set out above. They appear to be accepted by him as accurate. He has sent two further letters dated 15th June 2011 and 18th July 2011 to the tribunal. The letter of 15th June 2011 was headed "Assurance of Compliance". He said "It is my firm endeavour to not have any further complaints of this nature and I am happy to state I will do everything in my power to prevent this from happening again."

3.16 He said he recognised that "some of my past motivation, despite being well-intentioned, may well have been over zealous and misguided." He said he "may have been flippant and insensitive." He said he "owed it to himself and his family and to

my patient community to be given the opportunity to continue in this treasured vocation.” He said he had “recognised some of his failings” and that “I shall indeed work with everything in my power to avoid any further recurrence.” He later said, “it is my genuine hope I shall benefit from this experience.”

3.17 In the letter of 18th July 2011 he referred to taking such remedial action such as was required of him and mentioned training and mentoring assistance. He said he was aware of the need to improve on his patient-centred approach. He apologised for anguish and upset caused to patients, colleagues and authorities.

4. Consideration by the Tribunal

4.1 We considered the evidence with care. We noted that Dr Noronha had been referring inappropriately to religious matters during patient consultations without their consent since about 2005. Since that time he had been warned on numerous occasions by members of the various practices he had worked in, by the GMC and by the PCT. He had been taken before the GMC twice, suspended from his employment by the PCT and had been suspended from the Performers List for twelve months.

4.2 Once the suspension ended in February 2008 he was closely supervised and supported for a period by an educational tutor and a GP supervisor. He was made fully aware of the patient distress and unhappiness his actions caused on a number of occasions but he continued to repeat the same behaviour. In respect of the most recent complaint in September 2010 he had refused to provide an undertaking the behaviour would not be repeated, had sought to justify it, and had at least partially blamed the patient for allowing the situation to develop. He had challenged the GMC’s authority to impose constraints on his practice and had indicated he would not comply with GMC guidelines. He had failed or refused to acknowledge the distress caused to patients by his actions. He has shown an almost total lack of insight into his actions which have continued over a period of five or six years.

4.3 We considered his letters of the 15th June and 18th July 2011. We concluded that these letters fell well short of being an unconditional apology, indicated something less than full insight, and were not an unconditional agreement not to repeat the behaviour in the future. We further had regard to the fact that he had promised to change his approach to patients on previous occasions (such as at the meeting with Dr Tyrer on the 16th January 2009) but had subsequently repeated his actions. We also had regard to the evidence in the case that he appeared to suffer a compulsion to repeat his actions.

4.4 Dr Zacharias, the consultant occupational health physician, in his letter of 11th June 2009 said “there will continue to be occasions when Dr Noronha struggles to avoid reference to spiritual matters. “ There are also Dr Noronha’s own remarks that he was “programmed for love” and that there was a driving force in him and there may come a point when he may be driven. There is also the larger situation of his continuing to repeat his actions despite the numerous warnings he has been given. We concluded that if allowed to continue to practice Dr Noronha would continue to repeat his actions, despite the letters of 15 June 2011 and 18 July 2011.

Unsuitability

4.5 Dr Noronha was removed by the PCT from the MPL under Regulation 10(4) (c) of the National Health Service (Performers List) Regulations 2004, that is to say under unsuitability grounds. We had regard to the Department of Health's Guidance Document "Primary Care Performers List: Delivering Quality in Primary Care". At Paragraph 7.10 there is a partial definition of suitability which states that the ground for action could be relied on where "*there is a lack of tangible evidence of a doctor's ability to undertake the performer role (for example, satisfactory qualifications and experience, essential qualities).*"

4.6 We accepted that essential qualities for a General Practitioner included an ability to refrain from discussing matters of personal belief where this was not welcomed by or consented to by patients and a readiness to comply with the legitimate requirements of the GMC. We accepted that Dr Noronha had misused his position as a GP to disseminate his personal beliefs to patients who were often vulnerable, ignoring a GMC intervention. We considered the proportionality of a finding of unsuitability, but we concluded that the distress caused to vulnerable patients, the fact that it had continued for 4 or 5 years and was likely to continue in the future, made Dr Noronha unsuitable to be included on the performers list.

4.7 We considered the sanction of removal and concluded again that following the finding of unsuitability for the reasons set out above, removal was proportionate and necessary. We finally considered National Disqualification, but we accepted the PCT's argument that such an order was not necessary at the current time.

4.8 We dismissed the appeal.

John Burrow

Judge PHL/HESC

8.8.11

