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**HM COURTS & TRIBUNALS SERVICE  
HEALTH EDUCATION AND SOCIAL CARE CHAMBER  
PRIMARY HEATH LISTS**

**CASE PHL/15395**

**Professor M Mildred- Chairman  
Dr J Chope - Professional Member  
Mrs J Alderwick - Member**

**BETWEEN**

**BETSI CADWALADR LOCAL HEALTH BOARD  
Applicant**

**and**

**SAVCHO GYOREV (GDC Registration Number 173888)**

**Respondent**

**DECISION WITH REASONS**

**Background**

**1. Between 29 March and 22 April 2010 the Respondent (“Mr Gyorev”) worked for Mr Bhunjun at Wyndcott Dental Practice in Aberdare in the area served by Cwm Taf Local Health Board. On 9 May 2010 Mr Bhunjun informed that body by email of his serious concerns about Mr Gyorev’s clinical performance.**

**2. These concerns centred on his general clinical ability and “rustiness”, unwillingness of dental nurses to work with him, dental colleagues feeling that patients were at risk and a lack of understanding of NHS dental procedures and**

units of dental activity. The Cwm Taf LHB passed these concerns on to the General Dental Council (“GDC”) and the Respondent (“the LHB”) in whose Performers List Mr Gyorev was included.

3. On 10 June 2010 the LHB suspended Mr Gyorev for 6 months pending investigation. The suspension was reviewed on 7 December 2010 when a Reference Panel of the LHB contingently removed him to allow him an opportunity to undergo within 3 months a further period of training and vocational assessment. Mr Gyorev made no contact with the LHB during that 3 month period and at a further Reference Panel meeting on 12 April 2011 the LHB removed him from its Performers List under Regulation 10(3) and (4)(a) of the National Health Service (Performers Lists) (Wales) Regulations 2004 as amended (“the Regulations”) and decided to seek his National Disqualification.

#### The application

4. By an application dated 5 July 2011 the LHB sought an order for National Disqualification against Mr Gyorev and asked for the application to be dealt with on the papers. At a telephone case management directions on 29 July 2011, attended by Dr Fraser Campbell on behalf of the LHB but not by Mr Gyorev, Judge Burrow directed that there be a paper hearing and that Dr Campbell should provide a witness statement on behalf of the LHB, a bundle should be provided by the LHB and further attempts should be made to contact Mr Gyorev to inform him of the position.

#### The hearing

5. A paper hearing took place on 8 September 2011. The Panel had a short witness statement from Dr Campbell, Assistant Medical Director, Primary Care (West) of the LHB. This statement annexed all relevant papers so that the Panel had in front of it the complete file relating to all stages of the processes involving Mr Gyorev and the LHB.

6. The evidence details allegations of clinical failings. Perhaps more importantly it cast some doubt on Mr Gyorev’s professional experience and qualifications. His CV describes him as having qualified as a stomatologist (dentist) in Bulgaria in 1994 and then as working as a general dentist in Bulgaria between January 1994 and December 1999. Thereafter he spent 10 years in the US. Neither his CV nor the evidence of his UK referees substantiates the impression he sought to give that he had regularly dentally treated patients during that period. When asked about this at the suspension hearing Mr Gyorev declined to comment and said that he needed proper representation before answering the question.

7. We concluded, however, that Mr Gyorev was entitled through his Bulgarian qualification, to practise clinical dentistry in the UK and to practise in NHS dental primary care, if he succeeded in an application to join the Performers List of a Primary Care Trust or Local Health Board.

**8. John Croad, a dentist interviewed on behalf of the LHB told the investigators (including Dr Campbell) that he had understood Mr Gyorev to apologise for the fact that he had misled him about his qualifications. Another interviewee, Mr Lowe, told Dr Campbell that he was aware Mr Gyorev had not passed the examinations to practise as a dentist in the US.**

**9. One of Mr Gyorev's referees, Ms K Tzvetkova, told Dr Campbell that she believed that Mr Gyorev has passed Parts 1 and 2 of the US National Board examinations and obtained a Masters degree in clinical research but her evidence was silent on the question whether he was entitled to provide clinical treatment in the US.**

**10. Dr Campbell attempted to obtain an answer to the question of Mr Gyorev's qualifications in July to September 2010 including contacting his solicitor who replied that he no longer represented Mr Gyorev. In addition he conducted and commissioned extensive investigations into Mr Gyorev's clinical and record-keeping skills ending in the decision contingently to remove him on 7 December 2010 in order to allow retraining.**

**11. Mr Gyorev did not attend that hearing although he had been notified of it by Dr Campbell on 5 November 2010. Dr Campbell also notified him of the outcome. The further Panel (which Mr Gyorev again failed to attend) was convened after the LHB had received no contact at all from him. By 19 April 2011 the LHB had been made aware by the GDC that it had registered his address as 2116 Menahan Street, New York 11385, Ridgewood, USA. Dr Campbell notified Mr Gyorev of this by email on 19 April 2011. None of the emails sent to him at [theygyorev@yahoo.com](mailto:theygyorev@yahoo.com) had been returned by the service provider.**

**12. Since this application has been made we have been informed by the office that the Tribunal documents sent to Mr Gyorev's registered address in Wales have been returned to sender stating that he was not at the address given by the PCT. Papers were then sent to the address in the USA referred to above with a request to return them to sender, if not delivered. These papers have not been returned. All the emails sent to Mr Gyorev have been delivered but he has made no contact with the Tribunal.**

### **National Disqualification: the legal framework**

**13. By Regulation 18A of the Regulations the Panel has power to impose a national disqualification if (as here) it removes 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.**

**14. 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 (now this Tribunal) 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".**

**15. In our decision we have followed this general approach and in particular have considered whether the grounds upon which we removed Mr Gyorev from the LHB's Performers' List were essentially local to that area.**

**16. 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 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 his professional interests and earning money).**

**17. We must also consider whether national disqualification is proportional to the mischief of the conduct or clinical failings of the practitioner in the light of our findings and consider the common law requirement that national disqualification is reasonable and fair (see *Kataria v Essex SHA* [2004] 3 AER 572 QBD).**

**18. The standard of proof which we should apply (where fact-finding is involved) is the balance of probabilities, in accordance with the guidance of the House of Lords in *Re D* [2008] UKHL 33.**

### **Discussion**

**19. The complaints that resulted in Mr Gyorev's removal were not confined to his activities in the LHB's area: the initial complaints relating to his clinical and administrative skills were made when he was working in the Cwm Taf LHB area and he had also begun or attempted to begin working in Gwynedd LHB where complaints were made about him in October 2009. The LHB had interviewed**

representatives of 4 practices (2 each in North and South Wales) and all produced critical results.

**20. Further, Mr Gyorev failed to inform the LHB of his change of address contrary to Regulation 4(3)(b).**

**21. We now turn to the matters set out at (a) to (d) in paragraph 16 above. There is a range of clinical and administrative shortcomings identified in the papers before us. Mr Gyorev has failed to persuade any of the practices in which he has worked that he has all the necessary skills to perform general dentistry unsupervised. He has been given the opportunity to be retrained and to bring his standards up to a satisfactory level but has wholly failed to respond to or engage with that offer.**

**22. The clinical failings evidenced by the LHB's enquiries suggest that his clinical and administrative skills were not by any means the worst and could, with his co-operation, have been remediated by retraining. To that extent it appears to the Panel that the LHB's decision to offer retraining under the discipline of a contingent removal was entirely appropriate and proportionate. Mr Gyorev has, however, turned his back on this option and simply, as it appears, returned to live and presumably work in the USA. In so doing he has demonstrated an entire failure of insight into his shortcomings and how to co-operate with the authorities in the delivery of NHS dental services.**

**23. Even worse, he has refused to answer legitimate questions about his clinical experience in the US and allowed references to be given on his behalf that do not truly and completely document his skills and experience and thus has risked allowing the LHB to be misled.**

**24. Mr Gyorev has refused to engage with the LHB and has simply disappeared from view so that there is no likelihood of those deficiencies or conduct being remedied in the near to medium future. The clear inference from the papers is that, having failed properly to deal with the Welsh authorities, he has returned to the USA. This is something he is fully entitled to do but in so doing must accept the consequences of failing to satisfy an UK regulator that he is competent and suitable to practice here.**

**25. In these circumstances patient welfare and the efficient use of NHS resources are best protected by barring Mr Gyorev from NHS primary care dental practice in the UK until he chooses to submit to and engage with the regulatory conditions for inclusion on a Performers List which are necessary for him to remediate his practice and develop some insight into the problems created by his conduct hitherto. We think that Mr Gyorev should not have the opportunity to join a Performers List of an LHB or PCT where the concerns about his practice are unknown.**

**26. Mr Gyorev has had the opportunity to explain his interests in continuing his career and how they can be fairly balanced against the risks created by his conduct**

and any shortcomings of skill or experience but has chosen not to take it. In those circumstances we have no evidence favourable to him to put into the balance between the competing interests set out at paragraph 16(c) and (d) above .

**Decision**

27. For all the reasons set out above the decision of the Panel is that Mr Gyorev 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) (Wales) Regulations 2004 as amended, for a period of two years from the date of this decision.

28. We direct 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 Dental Council.

**Rights of Review and/or Appeal.**

29. The parties are hereby notified of the rights to appeal this decision under section 11 of the Tribunals Courts and Enforcement Act 2007. They also have the right to seek a review under section 11 of the Act. Pursuant to paragraph 46 of the Tribunal Procedure (First- tier Tribunal) Health, Education and Social Care Chamber) Rules 2008 (SI 2008/2699) a person seeking permission to appeal must make a written application to the Tribunal no later than 28 days after the date that this decision was sent to the person making the application for review and/or permission to appeal.

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Mark Mildred  
Chair of Appeal Panel  
12 September 2011