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**The First-tier Tribunal
(Health, Education and Social Care Chamber)
Primary Health Lists**

Appeal Number: PHL/15517

In the matter of THE NATIONAL HEALTH SERVICE ACTS
And in the matter of THE NATIONAL HEALTH SERVICE (PERFORMERS LIST)
REGULATIONS 2004

Before :
Siobhan Goodrich
Dr John Chope
Mrs Jenny Purkis

Hearing: On the papers

Between

Mr RAJESH NARENDRANATH
(GDC Registration Number 83942)

Appellant

and

SOUTH STAFFORDSHIRE PRIMARY CARE TRUST

Respondent

DECISION ON NATIONAL DISQUALIFICATION

The background

1. By written determination (hereafter “the substantive decision”) dated 20th July 2012 Mr Narendranath’s appeal against the decision of the South Staffordshire PCT made on 5th July 2011 was dismissed. Having heard evidence and submissions over a period of 4 days and having redetermined the issues, we directed that the Appellant’s name be

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removed from the performers list of the Respondent PCT under paragraph 10 (4) (c) of the Regulations on the grounds that the Appellant is unsuitable to be included therein.

Directions re the issue of national disqualification.

2. Directions were also given in the substantive decision with reference to the issue of national disqualification. The parties were directed to submit written representations and state if it was contended that an oral hearing should be held.

The written representations

3. Neither party requested an oral hearing but each submitted written representations which we summarise below.
 - a) In a letter from Ms Baston of the MDU dated 28th August 2011 it is submitted on Mr Narendranath's behalf that the major personal and professional implications and the impact of such a direction in Mr Narendranath's personal and professional life are such that a direction for national disqualification would be disproportionate. Mr Narendranath remains committed to the profession of dentistry. The finding of unsuitability and the resulting loss of his livelihood in South Staffordshire where he has built his livelihood and his home are sufficient to deal with the issue of unsuitability on this case.
 - b) in a letter dated 21st August 2012 Ms Price, the Respondent's director of Primary Care and Specialised Commissioning, submits that notwithstanding the serious impact upon Mr Narendranath's career national disqualification is necessary and proportionate to protect the public. It is submitted that the Appellant's profound and enduring lack of insight, which is closely related to his personal attributes, will likely remain unchanged should he practice in another locality. Further it is submitted that, if a direction for national disqualification is made, the appellant's professional conduct is such that it is unlikely to have improved within 2 years and it may therefore be appropriate to preclude any review for five years under regulation 19 (a) of the NHS (Performers List) Regulations 2004. Ms Price refers to the lack of impact of a number of processes upon Mr Narendranath over a period of four years.
4. In the exercise of case management powers the First tier judge decided that that the issue of national disqualification could be justly determined by the panel without an oral hearing.

The power to direct national disqualification.

5. The power to make an order for national disqualification is to be found in Section 159 of the National Health Service Act 2006. It arises whenever the Tribunal dismisses an appeal against removal made by a practitioner. It is freestanding power and is not dependent upon any application by the PCT.

The Guidance.

6. The Department of Health Guidance "Delivering Quality in Primary Care" states at paragraph 40.2 that national disqualification may be imposed if the facts that gave rise to the original decision are so serious that they warrant disqualification. Paragraph 40.4 states that:

"PCTs should recognise the benefits of a national disqualification both for protecting the interests of patients and for saving NHS resources. Unless the grounds for removal... are essentially local, it would be normal to give serious consideration to such an application."

Our consideration.

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7. We refer to the substantive decision and paragraphs 102 to 119 in particular. In summary we considered that:
- a) although the events that unfolded between 2007 and 2011 related to a single complaint Mr Narendranath had shown repeated disregard of the recommendations of various bodies over a period of years;
 - b) it was highly significant that whilst Mr Narendranath was undergoing a remedial training course, which included communication with patients and patient complaint handling, he maintained his intransigence in his dealings with the PHSO and thereafter. He did so even though the GDC had issued him with a warning that he should follow the recommendations of professional bodies when issued to him;
 - c) Mr Narendranath's behaviour was at the extreme end of the spectrum that may be encountered when a practitioner is unable to deal adequately with a complaint. In our view it required a very extreme degree of intransigence to repeatedly ignore the recommendations made to the extent that had occurred;
 - d) despite all the efforts that have been made by others Mr Narendranath lacked any true insight. His continual failure to respond to the recommendations of national bodies over such a prolonged period gave us no confidence that this situation would not recur;
 - e) his whole approach has been governed deep-seated personality characteristics that he has been unable to master over a prolonged period. We saw no real prospect that these matters could be adequately addressed in the foreseeable future;
 - f) Mr Narendranath's attitude posed a clear risk to the public interest. The particular risks engaged are those of patient safety and well being as well as the maintenance of confidence in the ability of those who perform NHS primary services to provide an appropriate service and in the NHS itself;
 - g) the very nature of the personality traits which provided the real explanation for Mr Narendranath's response could not be adequately addressed by any conditions.
8. The circumstances that gave rise to the local decision to remove Mr Narendranath's name from the NHS list were very serious. In the absence of a direction for national disqualification Mr Narendranath would be able to apply for inclusion to the list of another PCT (or comparable or successor body). This is important because any application made by a performer for inclusion in any PCT list has to be duly considered under the NHS regulations and any refusal gives rise to a right of appeal to the Tribunal.
9. We recognise that this is a discretionary decision. We are mindful that the doctrine of proportionality requires that we should take no step greater than that which is required to meet the legitimate public interest objective identified.
10. We have weighed the effect of a direction for national disqualification upon the Appellant against the risk to the public interests engaged if an order is not made. We are fully aware that a direction for national disqualification will have a significant effect upon the Appellant's private life interests and will bring to an end his ability to earn his living as a general practitioner in the NHS for the foreseeable future. In practical terms it may very well impact adversely upon his ability to practice privately or to work in another healthcare setting. We do not consider that there are any geographical or location issues involved in the facts we found or the conclusion reached. The core reason underpinning Mr Narendranath's unsuitability is his personality traits and his lack of true insight. In the light of the findings made in our redetermination we consider that it is fair, necessary and proportionate to make an order for national disqualification.

Direction on national disqualification.

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11. Accordingly we direct pursuant to Section 159 of the National Health Service Act 2006 that the Appellant, Mr Rajesh Narendranath (GDC registration number 83942) is hereby nationally disqualified from inclusion in:
- a. the supplementary lists prepared by each Primary Care Trust;
 - b. the lists of persons performing primary care services prepared by each primary Care Trust under Section 91 of the Act and
 - c. the lists corresponding to the lists mentioned above prepared by each Primary Care Trust and each Local Health Board under or by virtue of the National Health Service (Wales) Act 2006.

The review period

12. The ordinary effect of the statute and the regulations is that a disqualified practitioner may not apply for a review of national disqualification until two years has elapsed from the date of its imposition. At such a review the Tribunal may confirm or revoke the disqualification. Regulation 18 A is subject to Regulation 19 which provides as follows:

“The period for review shall be the different period specified below instead of that in regulation 18A (8) (a) where the circumstances are that-

(a) on making a decision to impose a national disqualification the (Tribunal) states that it is of the opinion that the criminal or professional conduct of the performer is such that there is no realistic prospect of a further review being successful, if held within the period specified in regulation 18A (8) (a), in which case the reference to “two years” in that provision shall be a reference to five years...”

13. We considered **Swain v Hillman [2001] 1 All ER 91** where, in the context of the court’s power to summarily dispose of claims in civil proceedings and the overriding objective, Lord Woolf MR said this:

“The words ‘no real prospect of succeeding’ do not need any amplification, they speak for themselves. The word ‘real’ distinguishes fanciful prospects of success or, as [counsel] submits, they direct the court to the need to see whether there is a “realistic” as opposed to a “fanciful” prospect of success.”

14. The issue at stake for the Appellant is his potential ability to work as a general dental practitioner delivering NHS primary care services after a minimum of two years following the direction for national disqualification. In proper context the burdens of entertaining an application for review of national disqualification are not substantial. The Respondent need not attend or be represented although that body may wish to be heard. When weighing the practitioner’s prospective ability to apply for review at two years (or at some stage before five years) with such factors as the general public interest in the efficient use of tribunal resources and the overall interests of justice, we do not consider that it is proportionate to preclude the ability of a performer to seek review of the national disqualification for as long as five years unless the prospects of success are clearly fanciful. In our redetermination we saw no real prospect that the deep seated personality characteristics that underpinned Mr Narendranath’s attitude could be adequately addressed in the foreseeable future. However we recognise that the concept of “unsuitability” is not a fixity. Mr Narendranath may yet acquire insight. We are not of the opinion that it can properly be said today that there are no realistic prospects of success on review at some stage at or after two years. If such application is made to the Tribunal it will be judged in the circumstances and merits then prevailing.

Conclusion on Review period.

15. We do not consider that it fair, necessary and proportionate to express the opinion

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that there is no realistic prospect of a further review being successful, if held within the primary review period. It follows that two years must elapse before application can be made for review pursuant to section 159 of the 2006 Act.

Consequential direction

16. We direct the PCT to send a copy of this decision to the Secretary of State for the Department of Health, the National Assembly of Wales and the Registrar of the General Dental Council.

Rights of review and/or appeal.

17. The Appellant is hereby notified of the right to appeal this decision under section 11 of the Tribunals Courts and Enforcement Act 2007. He also has the right to seek a review of this decision under section 9 of that 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.

Siobhan Goodrich

Judge of the First-tier Tribunal

10th October 2012