

21 December 2009

FILE REF: 15288

PRIMARY CARE TRUST: #

PMS PROVIDER: Dr #

DISPUTE RESOLUTION: NATIONAL HEALTH SERVICE (PERSONAL MEDICAL SERVICES AGREEMENTS) REGULATIONS 2004

RE: DISPUTE RESOLUTION

1. Introduction

- 1.1 The Contractor has referred the dispute in relation to its PMS Agreement for dispute resolution under the provisions of Paragraph 95 of Schedule 5 of the National Health Service (Personal Medical Services Agreements) Regulations 2004 ("the Regulations").
- 1.2 The Secretary of State for Health has directed that the NHS Litigation Authority exercise the functions of dispute resolution on his behalf. I as an authorised officer of the NHS Litigation Authority have made this determination.

2. Application for Dispute Resolution

- 2.1 By letter dated 17 July 2009 the PCT applied to the FHS Appeal Unit of the NHS Litigation Authority for dispute resolution.
- 2.2 The following documents have been made available to me in order that I may consider the dispute matter to ensure the just, expeditious, economical and final determination of this dispute: -
 - 2.2.1 Letter from the PCT dated 17 July 2009 together with enclosures;
 - 2.2.2 Letter from the Contractor's solicitors dated 26 August 2009;
 - 2.2.3 Letter from the Contractor dated 10 September 2009;
 - 2.2.4 Letter from the PCT dated 22 September 2009;
 - 2.2.5 Letter from the Contractor's solicitors dated 30 September 2009;
 - 2.2.6 Letter from the Contractor's solicitors dated 21 October 2009;
 - 2.2.7 Letter from the Contractor's solicitors dated 30 October 2009;
 - 2.2.8 Letter from the PCT dated 19 November 2009;
 - 2.2.9 Letter from # on behalf of the Contractor dated 19 November 2009;
 - 2.2.10 Letter from # on behalf of the Contractor dated 30 November 2009.
- 2.3 It is not disputed that the PCT and the Contractor were parties to a PMS Agreement

dated 25 April 2005 which was varied on 31 October 2006 to include a second general medical practitioner.

- 2.4 The dispute relates to payments made to the Contractor following a further variation of the PMS Agreement to remove the Contractor as a party to the Agreement.

3. Consideration

- 3.1 It is not disputed that the Contractor was suspended from the GMC Medical Register with effect from 4 June 2009. I have been provided with the result of a search of the GMC List of Registered Medical Practitioners on 6 June 2008 at 11:26:20 which states the Contractor's name and the status of 'suspended.'
- 3.2 The PCT states that 'as a consequence of the Contractor's suspension taking effect and his subsequent mandatory removal from the PCT's Medical Performer's List, the PMS Agreement with the PCT was varied under Regulation 98(2)(a) of the Regulations so as to remove his name from the Agreement in accordance with Regulation 105(3)(b)...' I understand that the Contractor was removed from the PCT's Performer's List on 9 June 2009. I understand that the Agreement did not terminate but was varied so that it continued with the other general medical practitioner.
- 3.3 The PCT has confirmed that 'for the avoidance of doubt, the Contractor's suspension from the Medical Register which took effect from the 4th June 2008 was not an interim suspension but a suspension from the Medical Register following a Fitness to Practice Panel decision.' Regulation 26(1) of the NHS (Performers Lists) Regulations provides that '... the PCT must remove a medical practitioner from its medical performers list where it becomes aware...' This is a mandatory provision. I agree with the PCT position that the PCT was obliged to remove the Contractor from its Performers List. There is no provision for the PCT to allow for an appeal prior to this mandatory action by the PCT.
- 3.4 The Contractor's solicitors have advised that the Contractor has submitted an Employment Tribunal claim. They state that their client's removal 'would only be mandatory under Regulation 26 of the NHS (Performer's Lists) Regulations and not involve the exercise of any discretion on the part of the PCT if our client was not appealing the suspension.' This is not agreed as set out above.
- 3.5 Following the termination of the arrangements between the PCT and the Contractor the PCT have advised that the Contractor 'ceased to be entitled to receive payments from that date. However due to an oversight, #, an NHS agency which provides shared services including medical services payments arrangements on behalf of PCTs in the # area, erroneously made payments to the Contractor business account during the period July 2008 to November 2008' which total £114,347.76. The PCT contends that the Contractor was not entitled to receive the payments as he was no longer a PMS provider and seeks repayment of these monies. The net overpaid sum calculated by the PCT is £80,257.39 and it is this sum which is sought for repayment by the PCT. The PCT requested repayment of this sum by correspondence dated 2 December 2008. I am advised that letters have been sent chasing this on 22 December 2008 and 2 June 2009.
- 3.6 The Contractor was not entitled to receive payment for the provision of the Services following the termination of the arrangements, which was effected by way of a variation of the PMS Agreement so as to remove the Contractor's name from the PMS Agreement.
- 3.7 The Contractor's solicitors submit that their client's PMS Agreement was not lawfully terminated. The # on behalf of the Contractor has requested that the FHS Appeal Unit should not make any findings as to whether the Contractor's PMS Agreement was wrongfully terminated. I have taken this request into account when determining this

dispute.

- 3.8 The Contractor's solicitors have raised issues regarding their client's re-application to the PCT's Performer's List. I do not have the jurisdiction to consider these issues and shall not comment in these regards further.
- 3.9 The PCT has stated that the 'Paragraph 105(3)(b) [of Schedule 5 of the Regulations] provides that the agreement may terminate if the individual is disqualified or suspended (other than by an Interim Suspension Order or Direction pending an investigation or a suspension on the grounds of ill health) from practising by any licensing body anywhere in the world.' The variation of the Agreement had the effect of terminating the arrangements with the Contractor.
- 3.10 I am satisfied that the PCT has terminated the PMS arrangements between the PCT and the Contractor. The Contractor is not entitled to receive payments for the provision of the Services which he no longer provides as the arrangements have been terminated. I determine that the Contractor shall repay the sums owing to the PCT by no later than 31 March 2010.

LISA HUGHES
Appeals Manager