

NHS TRIBUNAL (SCOTLAND)

STATEMENT of the TRIBUNAL

In the case of

ANDREW NORMAN, having a place of business at the Haymarket Dental, 264 Morrison Street, Edinburgh
EH3 8DT (APPLICANT)

Against

LOTHIAN HEALTH BOARD, a Health Board constituted under Section 2 of the National Health
Service (Scotland) Act 1978 (RESPONDENT)

The Tribunal, having considered all representations, evidence and submissions, finds as follows:

1. Facts

- i. Found proved that the Applicant is a Dental Practitioner who has been listed on the Performers' List of Lothian Health Board since 1 August 2009.
- ii. Admitted and found proved that, at a Hearing on 28 June 2018, the Tribunal found certain facts proved against the Applicant which engaged the first condition for disqualification under section 29(6) of the Act. The Tribunal determined that conditional disqualification of the Applicant was the appropriate disposal. The Tribunal disqualified the Applicant from inclusion in the Performers' List of Lothian Health Board conditionally, to come into effect only if the Tribunal determined upon review that the Applicant had failed to comply with the following conditions:

Condition 1 - that the Applicant submits work in respect of his outstanding quality improvement activities obligation (for the cycle 2013-2016, which were referred to as clinical audit activities during that cycle) within a period of 6 months from the date of the Tribunal's decision:

Condition 2 - that the Applicant follows up any reasonable amendments required by NHS Education for Scotland (NES) on the outstanding quality improvement activities for the cycle 2013-2016 that are necessary to allow the quality improvement activities to be deemed

completed by NES within such a period as NES consider to be reasonable in the particular circumstances of the case; and

Condition 3 - that the Applicant also meets his quality improvement activities obligation during the current audit cycle (2016 - 2019) by the appropriate date (31 July 2019).

- iii. Admitted and found proved that the Tribunal also found the Applicant liable to the Health Board for payment of expenses in the sum of Eight Hundred Pounds Sterling (£800).
- iv. Admitted and found proved that the Applicant has complied with conditions 1 and 2. He submitted the work required for his outstanding quality improvement activities for the 2013 - 2016 cycle within 1 month of the date of the Tribunal hearing.
- v. Admitted and found proved that the Applicant has complied with condition 3. The Applicant submitted 15 hours of quality improvement activities in the 2016 - 2019 cycle. By email dated 7 June 2019 the Applicant's agent advised the Health Board that condition 3 of the Tribunal Order had been met. Following this correspondence, the Health Board's agent confirmed by email dated 19 June 2019 that the Health Board accepted that each of the conditions set by the NHS Tribunal in June 2018 had been met.
- vi. Admitted and found proved that he has now paid the expenses for which he was found liable.
- vii. Admitted and found proved that the Applicant has now fulfilled all the conditions imposed at the Tribunal hearing on 28 June 2018.

2. Decision on Review

Section 30 of the National Health Service (Scotland) 1978 Act sets out the circumstances in which a Review of Conditional Disqualification may take place. This is an Application brought by the conditionally disqualified person in terms of s.30(1)(a) of the Act.

The Applicant in his Representations contends that the conditions attaching to the disqualification imposed by the Tribunal on 28 June 2018, as set out above, have all been met. In the circumstances, he seeks removal of the Conditional Disqualification.

As set out above, the Respondent accepts that the conditions have all been met. They offer no resistance to the Application.

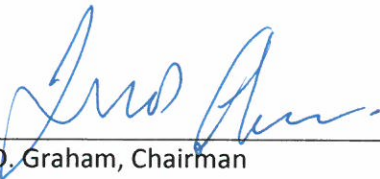
Parties invited the Tribunal to deal with this Application on the papers, and they presented an agreed position that the Conditional Disqualification should be removed and that there should be a finding of no expenses due to or by either party.

The issue of disqualification is a question for the professional judgement of the Tribunal in the exercise of its discretion, rather than being a matter resting on the parties' agreement or on which there is an evidential burden. However, the Tribunal was content that the conditions imposed by it have all been met, and that in all the circumstances, it was appropriate to give effect to the agreement reached between the parties.

3. Disposal

In light of the Tribunal's finding that the conditions of disqualification have been met by the Applicant, the Tribunal hereby REMOVES the Conditional Disqualification against the Applicant's name in the list, and finds no expenses due to or by either party.

That concludes the case.



J. Michael D. Graham, Chairman

21 August 2019

