

The Specialist Training Authority of the Medical Royal Colleges

Appeal Panel: His Honour Henry Palmer, Chairman: Professor A Fielder, Fellow of the Royal College of Ophthalmologists and Dr A H Freeman, Fellow of the Royal College of Radiologists.

The Oral Appeal of Dr Richard Arjun Kaul heard on the 2nd and 3rd February 1999 at the Blair Bell Lecture Theatre at the Royal College of Obstetricians and Gynaecologists, 27 Sussex Place, Regents Park, London NW1 4RG.

Decision and Reasons of the Appeal Panel.

Dr Kaul is 34 years of age and a registered medical practitioner. He is a British subject. He obtained his primary medical qualification, MB BS, in July 1988 at the Royal Free Hospital and held appointments as a House Officer in the UK. He then went to the USA where he completed his residency training in anaesthesia, graduating in July 1995, and was subsequently granted a Certificate (on the 4th October 1996) by the American Boards of Anaesthesiology (ABA). This training and qualification entitled him to practise as an attending anaesthetist anywhere in the United States. Following the completion of his residency training, he returned to the UK and worked from the 4th September 1995 to the 3rd September 1996 in a training post (senior registrar equivalent) at the Bristol Royal Infirmary. The panel notes that, according to the letter dated the 9th March 1998 from the Department of Anaesthesia, Bristol Royal Infirmary, signed by Professor Prys-Roberts and Dr Johnson (Document A 31-2), Dr Kaul's level of expertise was considered to be "that of a British trainee who had passed the FRCA and had just embarked on Higher Specialist Training" and that his status "was equivalent to SpK2". According to this letter, Dr Kaul was advised that, in view of the provisions of the European Specialist Medical Qualifications Order (ESMQO), if he wished to achieve entry to the Specialist Register, he would probably need to complete a further eighteen months to two years of training as a Senior Registrar/Specialist Registrar.

Dr Kaul chose not to heed the advice of Professor Prys-Roberts and Dr Johnson and, on the 22nd January 1997, he submitted an application directly to the Royal College of Anaesthetists (RCA) which was considered by the Equivalence Committee of the College in March 1997. The conclusion was reached that he had failed to satisfy the published criteria required for the recognition of equivalence of training of overseas trained applicants (page 81). These criteria had previously been agreed with the Specialist Training Authority (STA). The RCA, therefore, recommended to the STA that Dr Kaul was not eligible for entry to the Specialist Register and this recommendation was accepted by the STA. Accordingly, the STA informed Dr Kaul by letter dated the 12th June 1997 that his application had been unsuccessful and that, if he wished to pursue entry to the Specialist Register, it would be necessary for him to complete a further period of 18 months advanced anaesthetic training.

However, Dr Kaul felt that this decision was wrong and that the STA had failed to take into account all relevant factors. He lodged a Notice of Appeal on the 11th

September 1997 and stated in an accompanying letter that, when he graduated from his residency in the USA, he achieved attending status, which entitled him to practise independently as an attending anaesthetist, and that his training and qualifications were at least as good as those achieved by trainees in the UK. He pointed out that there were reciprocal arrangements for consultants who had been trained in Europe and that the training which he had received in America was not in any way inferior to that training.

In response to Dr Kaul's Notice of Appeal, the STA supplied the information required by Regulation 6(7) of the Regulations Governing Appeals. The Authority stated that it had assessed the application only under Article 9(2)(b) of the ESMQO and that it had concluded that Dr Kaul's training in the USA could not be considered equivalent, either in duration or content, to that required for the award of a CCST in anaesthesia. In particular, as regards duration, the period of training in the UK was six years, whereas in the USA the period was only four years.

The jurisdiction of the Appeal Panel is derived from Article 13 of the ESMQO and, for the purposes of the present case, this can be summarised as follows: where, under Article 9(2)(b), the applicant has failed to satisfy the STA that he has specialist medical qualifications [in anaesthesia] awarded outside the UK . . . which are equivalent to a CCST, he has the right to appeal against that decision to the Appeal Panel and the Appeal Panel is required "to reconsider the question and determine whether or not the appellant should so satisfy the STA". The Regulations Governing Appeals made pursuant to Article 13(2) make provision for the procedures to be followed in relation to appeals.

At the hearing of this appeal, Dr Kaul told the Appeal Panel that the only Article on which he intended to rely was Article 9(2)(b) of the ESMQO. He asserted that the STA had not adjudicated in a proper and fair way and that it had placed too much emphasis on the duration of training. He argued that the intensity of the training which he had undergone in four years in the USA had enabled him to acquire a level of experience and skill which was at least as good as that achieved by trainees who had undergone six years training in the UK. He also argued that the content of his training was as comprehensive as UK training and he observed that neither the RCA nor the STA had ever pointed out to him the areas in which his training was, or might have been, deficient in content. He contended that his competence as an anaesthetist had been established by the fact that, during the year he had spent at the Bristol Royal Infirmary, he was never attended in theatre and that there had never been any complaint or criticism of his professional work. He said that it was too simplistic an approach simply to compare the four years' training programme in the USA with the six years' programme in the UK; a detailed comparison ought to be made in order to investigate whether, and, if so, in what respects, his training had fallen short of the training provided to UK trainees.

Dr Kaul called two witnesses in support of his case, both of whom were impressive and helpful. Professor Albert Saubermann is a distinguished anaesthetist from the Montefiore Centre, New York, who has had many years experience of training residents in the USA and who was himself involved in the training and supervision of

Dr Kaul He gave carefully considered and thoughtful evidence which the Appeal Panel found valuable and helpful. He gave details of the training programme and, having compared this with the UK training programme, concluded that there was no significant difference. He considered that the duration of training in the USA was adequate to meet their curriculum objectives and that the goal of each of the programmes was the same, namely to produce fully trained and competent anaesthetists. He said that a trainee in Dr Kaul's time would expect to average 350 to 400 anaesthetics per year and that, although the "numbers game" was of limited value, he considered that this was the optimum number, qualifying this by saying that one might learn a great deal from a few cases or very little from a large number of cases. In both programmes the trainees were highly supervised and monitored and the training centres themselves were carefully regulated.

Professor Strunin, the President of the RCA and also a member of the STA, gave evidence at the hearing. He confirmed that the criteria applied by the Equivalence Committee of the RCA in the case of applications for recognition of equivalence of overseas training were as set out at page 81 and that these criteria had been agreed by the STA. They included, amongst other things, the requirement that the applicant should have completed whole time training, equivalent in duration, content and assessment to that defined by the current Royal College training guides. He said that when he had to assess a trainee from overseas, he did so by first looking at the length of his training and he almost invariably found that there was a deficiency in training at the Senior Registrar level and that was the position in Dr Kaul's case. He said that the system in the USA is totally different to that of the UK; "our goal is to train doctors for the NHS under the training programme approved by the STA, and that is the only goal which we have, whereas the goal of the USA training programme is to train doctors to work in the American system". He said that the six year training period could not be reduced because it would be impossible to include all the components of the very comprehensive curriculum in a shorter period; in fact the RCA had recently come to the conclusion that the period of training would have to be increased from six years to seven. Professor Strunin dealt with the details of the UK training programme as set out in the documentation provided to the Appeal Panel and said that the STA had considered the issue of equivalency of content and had concluded that Dr Kaul had failed to establish this. As regards numbers of cases, he said that a trainee in the UK might expect to do 4000 to 5000 cases over the whole of the training period and that, with the reservation that numbers alone were only part of the story, this was a significantly higher number of cases than those which a trainee might expect to do in the USA. In these circumstances, the RCA was not prepared to recommend, nor the STA to conclude, that Dr Kaul should be entitled to entry to the Specialist Register. The view of both the RCA and the STA was that only four-and-a-half years of his training could be considered as relevant for purposes of equivalency and that, if Dr Kaul wished to pursue entry to the Specialist Register, he would have to complete a further period of 18 months advanced anaesthetic training.

As noted above, the function of the Appeal Panel is to decide whether or not Dr Kaul should satisfy the STA that his specialist medical qualifications in anaesthetics awarded in the USA are equivalent to a CCST. "Equivalent" does not necessarily mean "identical" but can properly be taken to mean "equal in value or worth".

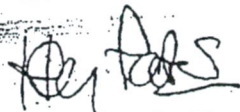
However, the STA, as the body to which Parliament has entrusted the functions set out in the ESMQO, including issues relating to the assessment of equivalence, is entitled to specify the criteria which an applicant must satisfy as a condition of satisfying the test of equivalence. The case of The Queen v. Specialist Training Authority of the Medical Royal Colleges, ex parte British Medical Association (Divisional Court 5th November 1998, Mr Justice Dyson) is authority for the proposition that, once the criteria have been specified by the STA, they cannot be challenged unless they are not authorised by the legislation or they are unreasonable in the Wednesbury sense, that is to say that they are so irrational that no rational person could have made them. The appeal Panel is aware that Mr Justice Dyson was dealing with a case in which equivalence was an issue under Article 12 (2)(c)(ii) of the ESMQO, as amended but, despite that, it does not seem possible to distinguish the two cases; Article 12(2)(c)(ii) is concerned with whether or not UK specialist qualifications are equivalent to a CCST, whereas Article 9(2)(b) is concerned with whether or not non-UK qualifications are equivalent to a CCST; if the STA are entitled to specify conditions which must be satisfied in the former case, then they are entitled to do so in the latter case. If the Appeal Panel were free to do so, it might have been prepared to consider whether or not the short-fall in the duration of the training period was fatal to Dr Kaul's case, but it considers that it is bound to follow the decision of Mr Justice Dyson and, therefore, bound to decide that, since the STA has specified a six year training period as a condition of equivalence, Dr Kaul's case must fail on this point.

Nevertheless, the Appeal Panel wishes to express its views on some other aspects of the case. As regards the content of the training programmes, we consider that the UK programme is designed to meet the requirements of the UK health system and that it is, therefore, inevitable that the USA training programme, which is designed to meet the requirements of the USA health system, is significantly different. It is, we think, for that reason that the USA training programme is not equivalent in breadth or depth to the UK programme and, whilst not wishing to place undue emphasis on mere numbers, we think that the greater number of cases included in the UK programme is likely to provide the trainee with a greater level of skill and experience than his opposite number in the USA.

For all these reasons, the Appeal Panel is satisfied that Dr Kaul has failed to demonstrate that his specialist medical qualifications in anaesthetics awarded to him in the USA are equivalent to a CCST in the specialty of anaesthetics and, accordingly, we have unanimously concluded that his appeal must fail.

The Appeal Panel would like to make it clear that this decision is not in any way intended as implying any criticism of Dr Kaul's competence as an anaesthetist. Competence is not an issue. He has called witnesses and produced testimonials which provide ample evidence to support the fact that he has achieved a high level of skill and ability. We have no reason to doubt this. In this appeal, we are concerned solely with the equivalence of qualifications and it is no part of our task to judge Dr Kaul's professional expertise. We express the hope that he will not feel that our decision will in any way adversely influence his future career.

Dated the 23rd day of February 1999



His Honour Henry Palmer, Chairman



Professor A Fielder



Dr A H Freeman