



**BEFORE THE FITNESS TO PRACTISE COMMITTEE
OF THE GENERAL OPTICAL COUNCIL**

GENERAL OPTICAL COUNCIL

F(22)04

AND

MICHAEL MOON (01-9510)

**DETERMINATION OF A SECOND SUBSTANTIVE REVIEW
1 MARCH 2024**

| | |
|-----------------------------------|--|
| Committee Members: | Ms Julia Wortley (Chair/Lay) Ms Asmita Naik (Lay) Mr Ben Summerskill (Lay) Ms Caroline Clark (Optometrist) Ms Gemma O'Rourke (Optometrist) |
| Legal adviser: | Ms Aaminah Khan |
| GOC Presenting Officer: | Mr Jerome Burch |
| Registrant: | Present |
| Registrant representative: | Not represented |
| Hearings Officer: | Ms Latanya Gordon |
| Outcome: | Fitness to practise remains impaired Suspension - 6 months with Review |



DETERMINATION

Factual Allegation as found proved

1. *On or around 29 May 2019, you failed to conduct an appropriate examination of Patient 3's eyes in that you:*
 - a. *Failed to perform a visual fields test;*
 - b. *Failed to record a visual fields test;*
 - c. *...*
 - d. *Failed to record IOP measurements;*
 - e. *Failed to perform muscle balance or binocular vision test;*
 - f. *Failed to record muscle balance open binocular vision test;*
 - g. *Failed to perform an internal examination of the eyes;*
 - h. *Failed to record an internal examination of the eyes;*
 - i. *Failed to perform an external examination of the eyes;*
 - j. *Failed to record an external examination of the eyes.*
2. *On or around 12 June 2019, you failed to conduct an appropriate examination of Patient 8's eyes in that you:*
 - a. *Failed to perform examinations for the external eyes;*
 - b. *Failed to record examinations for the external eyes.*
3. *On or around 9 July 2019, you conducted a sight test on Patient 2 and behaved inappropriately by:*
 - a. *Referring to Patient 2 as a "child" or words to that effect;*
 - b. *Referring to Patient 2 as a "lady of leisure" or words to that effect;*
 - c. *...*
 - d. *Making remarks to Patient 2 about "women using headaches as excuses" or words to that effect;*
 - e. *Making remarks to Patient 2 about how you conducted "market research with women before proposing to your wife" or words to that effect; and/or*
 - f. *Stating to Patient 2's boyfriend "I will take her off your hands" or words to that effect*



4. *On or around 16 July 2019, you failed to perform an appropriate examination of Patient 6's eyes in that you:*
 - a. *Failed to perform examinations for the external eyes;*
 - b. *Failed to record examinations for the external eyes.*
5. *On or around 6 August 2019, you amended Patient 9's records for the sight test you conducted on or around 10 July 2019 by inputting details into the ophthalmoscopy section.*
6. *Your action at 5 above was dishonest and/or misleading in that you did not record that the amendments were made retrospectively.*

Background

1. The Registrant joined the GOC as a registered Optometrist on 22 October 1976. At the time of the allegations, he was employed by Vision Express Opticians as an Optometrist at its [redacted] store. He has been practising as an Optometrist for over 40 years.
2. On 27 September 2019, the Registrant self-referred to the GOC, setting out that he had received three complaints in a short period of time.
3. Allegation 1 arose following a complaint received by Vision Express from Patient 3, following an appointment that she attended with the Registrant on 29 May 2019.
4. Allegation 3 arose from a complaint received by Vision Express from Patient 2, following an appointment with the Registrant that she had attended on 9 July 2019. The complaint was included within a customer satisfaction survey completed by the patient on 15 July 2019.
5. Allegations 2 and 4 arose as a result of an audit of the Registrant's cases, conducted on 17 July 2019, following receipt of Patient 3's complaint.
6. Allegations 5 and 6 occurred during a break in the internal disciplinary hearing held into the Registrant's conduct on 6 August 2019. During the break, the Registrant was discovered in the consultation room with the patient records for Patient 9. The Registrant had performed an eye examination on Patient 9 on 10 July 2019, and the records of the eye examination were among those previously audited, showing that no record of an internal examination had been made. A subsequent computer audit trail was conducted which showed that the entry into the records had been made on 6 August 2019, during the break in the disciplinary hearing. It was alleged that the Registrant had made these retrospective entries dishonestly.

7. Following the internal disciplinary process within Vision Express, the Registrant was dismissed from his employment on or around 4 October 2019. On the same date, the GOC was given notice of the fact of his dismissal and was provided with a copy of the disciplinary letter outlining the employer's concerns as to the Registrant's conduct.
8. Between 5-9 and 12-13 September 2022, a substantive hearing was held, which the Registrant attended but was not represented. The Committee found all facts proved save 1(c) and 3(c) and found that those facts proved amounted to misconduct. It went on to find that his fitness to practise was impaired by reason of that misconduct and imposed a Conditional Registration Order on his registration for a period of three years, with a review after 12 months. On 27 January 2023, minor amendments were made to the conditions at a procedural hearing to correct minor errors.
9. The First Substantive Review took place on 31 August 2023, at which hearing the reviewing Committee found that the Registrant's fitness to practise remained impaired on both public protection and public interest grounds. The Committee determined to continue the Conditional Registration Order until its expiry, with a Review hearing in 12 months' time (August 2024). The Conditional Registration Order is due to expire on 12 October 2025.
10. This Review has been scheduled as an early review hearing, at the request of the Council, due to its concerns regarding the Registrant's compliance with the conditions, as set out in the Council submissions outlined below.

Early 2nd Substantive Review – 1 March 2024

Findings regarding impairment

11. For the purpose of this Review, the Committee has been provided with documentation, including, but not limited to, the following:
 - a. The determination from the substantive hearing, dated 13 September 2022;
 - b. The determination from the first Review hearing, dated 31 August 2023;
 - c. Correspondence between the GOC and the Registrant subsequent to the first Review hearing regarding the Registrant's compliance with the conditions imposed;
 - d. A skeleton argument on behalf of the GOC, dated 16 February 2024;
 - e. Documents submitted on behalf of the Registrant including a reflective statement, an undated PDP and email correspondence between the Registrant and his supervisor.
12. The Committee heard submissions from Mr Burch, on behalf of the Council, who summarised the background of the case and the findings of the earlier

Committees. Mr Burch reminded the Committee that it was not bound by the views of earlier Committees and it must make its own independent judgement based upon all of the information before it today.

13. Mr Burch highlighted to the Committee what had happened since the last Review hearing in August 2023. Mr Burch submitted that the Council's position was that '*not a lot had happened*', as the Council had not received either the updated Personal Development Plan ('PDP') nor a written report from a supervisor that was due. Mr Burch referred the Committee to the conditions which required this engagement from the Registrant, namely A1.3J and A1.3G.
14. Mr Burch referred the Committee to multiple chaser emails from the Council to the Registrant where these were requested and were not responded to. The Registrant then responded stating that he would deal with it, but the documents were not received.
15. Mr Burch submitted that the Council's position was that these conditions had not been complied with and the burden is on the Registrant to show that he has addressed the issue of impairment, which he had not done.
16. Mr Burch referred the Committee to case law on impairment including the cases of *Cohen v GMC* [2008] EWHC 581 (Admin), *Blakely v GMC* [2019] EWHC 905 (Admin) and the case of *CHRE v NMC & Paula Grant* [2011] EWHC 927 (Admin), para 74.
17. The Registrant, who was unrepresented, made submissions on his own behalf and gave evidence. He stated that his supervisor had been coming into the practice and he believed that the supervisor had been sending supervisor reports to the Council. The Registrant stated that he had updated his PDP earlier this year and uploaded it in January 2024 to the Council's website. He accepted that he had not sent it to the Council email address that he had been corresponding with in relation to these proceedings and acknowledged that he ought to have done so. He accepted that he had received emails from the Council chasing for updates regarding his compliance with the conditions and stated that he did struggle to deal with Council correspondence as '*the whole thing got on top of me.*'
18. The Registrant confirmed that he had not put many activities on his PDP as he was close to retirement. Rather, he was '*keeping himself up to date*' and had just attended a two day conference in [redacted]. He had been thinking about not re-registering but kept getting positive patient feedback and he had a particular specialism with patients with learning difficulties.
19. Following questioning, the Registrant accepted that he had not complied fully with the requests from the Council and that he ought to have checked with his supervisor that he had sent the reports to the Council. Following a break in the hearing, the Registrant produced the copy of the PDP he said he had uploaded to the Council website and an email chain with his supervisor regarding the report due in December 2023, which had been left with the supervisor offering to submit it. The email chain provided to the Committee did not include the actual supervisory report. Mr Burch had no objection to these documents being put before the Committee.
20. The Committee accepted the advice of the Legal Adviser, who cited the cases of *Abrahaem v GMC* EWHC 183 (Admin) and *Khan v GPhc* [2016] UKSC 64 and

advised that there is a persuasive burden upon a Registrant to demonstrate that they are fit to resume unrestricted practice. Further, the focus of a review hearing is upon the current fitness of the registrant to resume practice, judged in light of what they have, or have not, done since the substantive hearing and whether they remain impaired.

21. The Committee noted that the misconduct that was found proved was a mix of clinical concerns, inappropriate behaviour towards a patient and a finding of dishonesty in respect of amending records. The Committee noted that whilst some of this conduct could be classed as easily remediable, such as the clinical concerns, other aspects such as the dishonesty were more difficult to remediate.
22. The Committee considered the steps that the Registrant has taken since the imposition of the Conditions and was of the view that he had started to take some steps, including reportedly implementing changes to his practice and reportedly being supervised by his supervisor, albeit those reports were not before the Committee. The Committee noted that the Registrant had referred to undertaking some CPD but no certificates or course information had been produced.
23. The email correspondence submitted by the Registrant showed that there had been a further meeting with his supervisor arranged towards the end of 2023 and a draft report was subsequently sent to the Registrant by the supervisor. Whilst it had been left between the Registrant and his supervisor that the latter was sending the report to the Council, the Committee was of the view that it remained the Registrant's responsibility to ensure that the supervisor's reports were correctly submitted to the Council in compliance with his Conditions. The Committee considered that the Registrant has not demonstrated that he has appreciated the importance of diligent and full compliance with the Conditions.
24. In relation to the Registrant's PDP, the Committee noted that the adequacy of the Registrant's PDP was an issue at the last Review hearing in August 2023 and he was given the opportunity to update it. It noted that the Registrant's position was that he could not put much in his PDP because he was close to retirement. However, the Committee was of the view that the Registrant's uploaded PDP was general in nature and more akin to a document produced by all Optometrists regarding their CPD requirements, rather than being focused upon the misconduct and impairment that had been found in this case. The Committee considered that the Registrant did not appreciate that the PDP required of him under the Conditional Registration Order was required to address the concerns arising from these proceedings, those concerns relating to clinical matters, the inappropriate conduct towards a patient and the dishonesty. Furthermore, the letter submitted to the Committee by the Registrant comprised some reflections but fell short of demonstrating insight into the charges found proved and the steps needed to address these concerns.
25. The Committee was concerned that the Registrant had not yet taken steps to remediate the concerns arising in this case and did not appear to appreciate the seriousness of his actions, or potential impact on others, including the reputation of and public confidence in the profession. The Committee considered that the Registrant was largely in the same place as he was at the last Review and still had to develop insight and remediate, particularly in respect of the inappropriate conduct and dishonesty misconduct.

26. The Committee was mindful that the onus at a Review was on the Registrant to demonstrate that he was no longer impaired and in effect there is a persuasive burden upon him to show that he is currently fit to practise unrestricted. Given the above concerns, the Committee was not satisfied that the Registrant had discharged that persuasive burden and there remained at this time a risk of repetition.
27. As a result, there remained in the Committee's view a risk to the public and a finding of impairment was therefore required on public protection grounds. Furthermore, the Committee concluded that the public interest required a finding of current impairment on public interest grounds, as if a well-informed member of the public was aware of the facts and history of this case, they would be concerned if no finding of impairment was made.
28. Accordingly, the Committee found that the fitness of the Registrant to practise as an optometrist is currently impaired.

Sanction

29. The Committee has heard submissions from Mr Burch on behalf of the Council and from the Registrant.
30. Mr Burch reminded the Committee that, having found the Registrant to be impaired, it had the power to maintain the existing Conditions, vary them, or to change the type of order to one of suspension. Mr Burch submitted that the Council's position was that there had been very little compliance with the Conditions. His instructions remained that the Council had not received the latest report from the Registrant's supervisor and therefore in all the circumstances he invited the Committee to consider changing the sanction to a suspension.
31. Mr Burch remained neutral on the length of suspension and submitted that it was a matter for the Committee. Mr Burch confirmed, upon being asked by the Committee, that he was not instructed to seek any immediate order.
32. Mr Moon submitted that he needed to get in touch with his supervisor to check what had been submitted, but the supervisor reports had been completed and could be re-sent. He stated that he would like to continue practising, which his patients also wanted and this would also make retirement easier to arrange. If he was allowed to continue with his Conditions, the Registrant submitted this would assist with a smooth closure of his practice. The Registrant acknowledged that he had found the matter stressful but could '*rectify the situation*' if permitted to do so.
33. The Committee heard and accepted the advice of the Legal Adviser. She advised that the Committee should impose the least onerous sanction sufficient to meet the risks, having regard to the principle of proportionality and the public interest. The Committee had regard to the Indicative Sanctions Guidance ('ISG').
34. The Committee considered the sanctions available to it from the least restrictive to the most severe, as set out in the ISG. The Committee applied the principle of proportionality by weighing the Registrant's interests with the public interest.
35. The Committee was of the view that given the issues that the Registrant had in engaging with the Council, his inadequate compliance with the existing

Conditional Registration Order, and the lack of material remediation and insight, it would not be appropriate or proportionate to revoke the order.

36. The Committee next went on to consider whether the Conditional Registration Order remained a sufficient and proportionate response to the risks identified. The Committee noted that the original order was imposed for serious and wide-ranging allegations and was imposed for a lengthy period of three years. The Registrant has already been subject to the Conditional Registration Order for a significant period, since September 2022, with chasers from the Council and advice at the last Substantive Review hearing. In the view of the Committee the conditions are not working, as the Registrant is not in full compliance with them.
37. The Committee considered whether there was a way in which the existing Conditions of practice could be strengthened, for example, by including further training requirements. However, the Committee was not reassured by the history of this case, that the Registrant would abide by amended conditions. The Committee was of the view that the Registrant had already been given sufficient, multiple opportunities to comply with the Condition of practice order over the 18 months that it has been in place. The Committee noted that the Council had attempted to engage the Registrant in relation to his compliance on multiple occasions without a response from the Registrant, which has led to this early review of the order.
38. The Committee considered the previous lack of compliance and the ongoing lack of evidence that the Registrant appreciates the seriousness of the case. It further noted that the Registrant has not provided any evidence of relevant re-training. He has made little progress in terms of reflection, developing insight, and completing remediation over the period of the existing Conditions of practice. In particular, the Conditions required the Registrant to formulate a PDP, specifically targeted to the conduct in this case, which was made clear at the last Review and the Committee noted that the Registrant has still not adequately done so.
39. The Committee had regard to the Registrant's position in respect of his compliance and noted he had indicated a willingness to improve. However, the Committee was not satisfied that he would engage with all of the requirements of the Conditions if they were maintained or varied. The Committee considered that the Registrant did not appear to understand the significance or gravity of engaging with the Council, despite there being a duty upon all registered Optometrists to engage with the Regulator and carefully comply with the regulatory framework.
40. The Committee determined that in the circumstances, the most appropriate and proportionate sanction to impose is one of suspension. The Committee was mindful that this was an increase in the severity of the sanction and bore in mind the impact of this upon the Registrant and his practice. However, it was of the view that Conditions are no longer workable and would not satisfy neither public protection nor the public interest. A fair-minded observer, knowing the background and history of this case, would lack confidence in the profession if any sanction lower than a suspension was imposed.
41. The Committee went on to consider the length of suspension to impose and determined that an appropriate and proportionate period was one of six months. The Committee bore in mind the length of time that the Registrant has already been practising under Conditions. The Committee considered that six months



was the minimum required in order to protect the public and meet the public interest and was also a sufficient period to allow the Registrant to further reflect, develop his insight and remediate.

42. A review hearing will be held between four and six weeks prior to the expiration of this order. The Review Committee would be assisted by documentary evidence, such as records of training undertaken, reflective pieces, testimonials and a detailed personal development plan specific to the concerns raised by the previous Committees.

43. The Review Committee will need to be satisfied that the Registrant:

- i) has fully appreciated the gravity of the offence,
- ii) has not re-offended and has maintained his skills and knowledge and
- iii) that the Registrant's patients will not be placed at risk by resumption of practice or by the imposition of conditional registration.

Chairman of the Committee: Julia Wortley

Signature

Date: 1 March 2024

Registrant: Michael Moon

Signature present via MS teams

Date: 1 March 2024

| FURTHER INFORMATION | |
|---|--|
| Transcript | |
| | A full transcript of the hearing will be made available for purchase in due course. |
| Appeal | |
| | Any appeal against an order of the Committee must be lodged with the relevant court within 28 days of the service of this notification. If no appeal is lodged, the order will take effect at the end of that period. The relevant court is shown at section 23G(4)(a)-(c) of the Opticians Act 1989 (as amended). |
| Professional Standards Authority | |



This decision will be reported to the Professional Standards Authority (PSA) under the provisions of section 29 of the NHS Reform and Healthcare Professions Act 2002. PSA may refer this case to the High Court of Justice in England and Wales, the Court of Session in Scotland or the High Court of Justice in Northern Ireland as appropriate if they decide that a decision has been insufficient to protect the public and/or should not have been made, and if they consider that referral is desirable for the protection of the public.

Where a registrant can appeal against a decision, the Authority has 40 days beginning with the day which is the last day in which you can appeal. Where a registrant cannot appeal against the outcome of a hearing, the Authority's appeal period is 56 days beginning with the day in which notification of the decision was served on you. PSA will notify you promptly of a decision to refer. A letter will be sent by recorded delivery to your registered address (unless PSA has been notified by the GOC of a change of address).

Further information about the PSA can be obtained from its website at www.professionalstandards.org.uk or by telephone on 020 7389 8030.

Effect of orders for suspension or erasure

To practise or carry on business as an optometrist or dispensing optician, to take or use a description which implies registration or entitlement to undertake any activity which the law restricts to a registered person, may amount to a criminal offence once an entry in the register has been suspended or erased.

Contact

If you require any further information, please contact the Council's Hearings Manager at 10 Old Bailey, London, EC4M 7NG or, by telephone, on 020 7580 3898.