

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

GENERAL OPTICAL COUNCIL

F(11)01

AND

ASIF MUSHOOD AKHTAR (01-24209)

DETERMINATION OF THE INQUIRY: 11-12 JULY 2011

On 11-12 July 2011, the Fitness to Practise Committee of the General Optical Council met to consider allegations against Asif Akhtar.

ALLEGATION

The Council alleges that in relation to you, Asif Akhtar (a registered optometrist):

1. On 26 January 2009, at Manchester Crown Court, you were convicted of:
 - (a) conspiracy to defraud; and
 - (b) perverting the course of justice.
2. You failed to declare that you were the subject of a criminal investigation in:
 - (a) your application for registration 2008/9 made to the General Optical Council by application form dated 30 September 2008;
 - (b) your application for retention made to the General Optical Council by application form dated 17 December 2008.
3. On your application for inclusion on NHS Manchester Primary Care Trust's Ophthalmic Performers List, dated 28 October 2008, you failed to declare that you were the subject of a criminal investigation, in answer to question (g) at Section B of the form.
4. Your actions at (3) above were contrary to the NHS (Performers Lists) Regulations 2004 (as amended).

5. You failed to notify NHS Manchester Primary Care Trust in accordance with the NHS (Performers Lists) Regulation 2004 (as amended).
 - (a) your conviction of 26 January 2009;
 - (b) the General Optical Council investigation into your conduct.
6. Your actions at 2, 3 & 5 above were dishonest.

And by virtue of the matters set out above your fitness to practise is impaired by reason of your:

- (a) conviction;
- (b) misconduct.

DETERMINATION

Findings in relation to the allegation

The Registrant admitted the following facts of the allegation: 1(a), 1(b), 2(a), 2(b), 3, 4, 5(a) and 5(b).

1. When the hearing opened, the Council made an application to amend the allegation with the consent of the Registrant so as to revise paragraph 5 and delete paragraph 6 (the former paragraph 7 becoming the new paragraph 6). The Committee granted that amendment and this decision therefore refers to the amended allegation.

2. The only facts in dispute which are the subject of this decision are those alleged at paragraph 6, namely the allegation that the Registrant's conduct in filling in the application forms set out in paragraphs 2 and 3 and his failure to notify the PCT as required by the NHS Performers Lists Regulations 2004 (as amended) was on each occasion dishonest.

3. In reaching its determination the Committee has accepted and taken into account the advice of the legal adviser, the evidence adduced by the Council and the Registrant and the submissions of both parties. It has borne in mind the seriousness of each head of the allegation and the fact that the burden of proof lies on the Council. It has also given very careful and close consideration to the evidence before it when applying the standard of proof and the two stage test against which an allegation of dishonesty in these proceedings must be judged. Each allegation has been considered separately although for convenience this determination will address those at paragraphs 2 and 3 together.

4. In relation to the application forms in paragraphs 2 and 3 the Committee was satisfied, applying the first objective element of the appropriate test, that the Registrant's answers to the forms were dishonest by the standards of reasonable and honest people. The Committee was also satisfied on the balance of probability, applying the subjective element of that test, that he was aware when completing

each of the forms identified in those paragraphs that his answers were dishonest.

5. The Committee considered that it was inconceivable that the criminal investigation and proceedings were not at the forefront of the Registrant's mind when completing these forms on 30 September, 28 October and 17 December 2008 respectively. He had attended a formal police interview under caution in July 2008 and on 14 October appeared before the Stockport Magistrates Court and had been bailed to attend trial at the Crown Court. Having listened to the Registrant giving his evidence and having assessed his evidence the Committee find that these experiences would have been a stressful and memorable sequence of events for someone like the Registrant, a young man of previous good character who had never been involved in the criminal courts before. The Committee also consider that because, as he explained in his evidence, he had become involved in a criminal prosecution through the actions of other members of his family, and because the criminal proceedings gave rise to conflict and divisions within his family, the ongoing criminal proceedings, and the forthcoming trial at Manchester Crown Court, could not have been absent from his mind.

6. It was against this background that the Registrant told the Committee that although his answers on each of the three forms were not correct he did not give proper consideration to the questions or understand their full meaning when completing them on each occasion. The Committee rejects that evidence in each case. The questions for registration and retention required careful reading but were quite clear. The question at section B(g) of the Performers List application was succinct and specific. In each case the Committee is satisfied that the Registrant, as an intelligent and educated man, was well able to understand them and knew that he was not answering them accurately or truthfully. It cannot have escaped his mind that he was under investigation for a criminal offence. He may have persuaded himself that there was a possibility that the investigations and charges might not result in a conviction but he knew very well that they might well do so.

7. For these reasons the Committee finds paragraph 6 of the allegation proved in relation to the Registrant's actions at paragraphs 2 and 3.

8. The Committee does not, however, find paragraph 6 of the allegation proved in relation to the Registrant's admitted conduct in paragraph 5.

9. The admitted facts are that the Registrant entered a plea of guilty in January 2009 but was not sentenced until October 2009. Regardless of whether reasonable and honest people would understand that a conviction occurs when a guilty plea is entered rather than at the later stage when sentence was passed the Committee was not persuaded that it has been proved that the Registrant himself understood this fact. In his favour the Committee consider that the Certificate of Conviction at page 6 of the bundle C1 is itself dated 16 November 2009 and appears therefore only to have been issued following the sentence hearing. The Committee noted also that the Registrant did take steps to notify the PCT immediately in October of the outcome of the sentencing hearing and that the sequence of emails between himself, his employer, and the PCT in Exhibit R2 shows that the PCT represented to him that the GOC had been notified and that they were therefore aware that the GOC was

involved. Indeed a statement from the PCT investigator in the Committee's bundle (C1 page 145) suggests that the PCT did indeed liaise with the GOC as a result of that notification in October.

10. For these reasons, and having regard to the burden of proof, although he failed to notify the PCT of his conviction or of the GOC investigation, the Committee did not therefore feel able to conclude that this failure was dishonest.

Findings in relation to misconduct

The Committee find Asif Akhtar guilty of misconduct. The Committee will now hear evidence and submissions from the Parties on the issue of whether impairment arises by reason of the convictions proven in paragraph 1 and the misconduct proven in paragraphs 2 and 3.

Findings regarding impairment

1. In reaching its determination the Committee has again accepted and taken into account the advice of the Legal Adviser, and has had regard to the facts found in its determination at stage 1 of the proceedings. It has also revisited the evidence adduced at that stage which has been referred to in the submissions of the Council and on behalf of the Registrant.

2. The Committee has noted that the Registrant's conviction and misconduct took place over a period between 2006 and 2009. The events which gave rise to his conviction involved a sustained period of repeated dishonesty. On two separate occasions he was prevailed upon to assist criminal conduct suggested to him by members of his family. His participation involved presenting himself to a medical practitioner in April 2006 to whom he gave a completely false and detailed account of having suffered whiplash injuries in an accident in which he had not in fact been involved and which he knew full well had been staged. He did so in order to promote a completely fabricated personal injury insurance claim. At a later stage he gave statements to insurance investigators denying that the accident or his injuries had in fact been fabricated. The second act of deception involved the production of his driving documents at a police station - again maintaining the pretence that he had been the driver of his vehicle at the relevant time in order to deceive the police at the request of a family member.

3. The Registrant did not admit his guilt for a considerable period. He gave a no comment interview with the police in July 2008. The matter was committed for trial in October 2008. It was not until January 2009 that he entered a guilty plea. By that time, in the Committee's view, he had compounded his criminal actions by further acts of dishonesty which are the subject of the findings of fact which have been made at stage one of these proceedings. On three successive occasions between September and December 2008 the Committee has found that he deliberately sought to mislead his regulatory body, namely the General Optical Council (GOC), and the PCT about the existence of the criminal investigation which he faced and the charges to which he was later to plead guilty.

4. It is acknowledged that the Registrant entered a plea of guilty in the Crown Court in January 2009. Whether or not that plea represented a change of perception on

his part or was based on advice received is not for this panel to judge. He is entitled to a degree of credit for doing so and appears to have received that credit in the form of a lenient sentence in the Crown Court. It is also acknowledged that the Registrant took steps to notify his employers and relevant bodies promptly after sentence was passed.

5. However in the judgment of this Committee these actions, particularly when viewed cumulatively, represent a sustained and serious violation of the standards which the GOC's Code of Conduct obliges registrants to uphold, and a series of failures which are so serious and that the question of remediability is of marginal if any weight.

6. In reaching that view the Committee has taken fully into account the surrounding circumstances which led to the convictions and the matters urged upon it on the Registrant's behalf. For example it recognises that in relation to the criminal conduct he did not take part for personal gain. However he knew that his close family members did stand to make such gains. Furthermore in relation to his dishonesty in completing the application forms to the GOC and to the PCT he did stand to gain. Likewise the Committee has taken into account the remarks of the sentencing judge. But the judge was not concerned with the impact of the Registrant's behaviour upon the standards of his profession nor with the impact of public confidence in the maintenance of those standards. Indeed the judge would not have been aware of the additional aspects of dishonesty which are now before this Committee.

7. In reaching its determination the Committee has also paid careful regard to the issue of insight and the Registrant's conduct since the conviction. In particular the Committee has read and considered the contents of the testimonials in R1. Nevertheless, it remains concerned that the Registrant has not fully faced up to the full nature of what he has done. Indeed the Committee has already rejected his evidence in relation to his state of mind when completing the relevant forms. Whether or not his evidence to this Committee was itself a dishonest account or was a reflection of a maintained attempt to delude himself that there was a justified reason for not completing the forms properly on each occasion, on either basis he lacks full acceptance and insight into his conduct at that time.

8. In the result the Committee consider that this is a case in which the Registrant's past conduct overall represents a fundamental departure from the Code of Conduct and from the standards of conduct and behaviour which membership of this profession requires. The Committee is also not satisfied that the Registrant has full insight into the seriousness and nature of that conduct. For these reasons the Committee is satisfied that the Registrant's fitness to practice is impaired. Indeed the Committee considers that a finding of impairment should be made both to uphold the professional standards to which we have referred and in order to maintain public confidence in those standards and the fact that they will be upheld.

The Committee found that the fitness of Asif Akhtar to practise as an optometrist is impaired.

Sanction

1. In reaching its determination the Committee has again accepted and taken into account the advice of the Legal Adviser, and has had regard to the facts found in its determinations at stages 1 and 2 of the proceedings. It has also taken into account the submissions made by both parties and has reviewed the testimonials and mitigating factors advanced.

2. It has in particular borne in mind the public interest factors which underpin the purpose of these proceedings, the principles of proportionality and the indicative sanctions guidance.

3. Applying those principles the Committee has considered the successive sanctions open to it. The Registrant accepted that this was not a case where no sanction would be appropriate or where a financial penalty would be appropriate. The Committee agrees. The Committee then considered whether conditions were appropriate. It has concluded that this sanction would not in this case be sufficient to meet the need to declare and uphold the professional standards of this profession. Nor was the Committee satisfied that conditions would be workable or appropriate.

4. In deciding whether or not a period of suspension was the appropriate sanction or whether erasure should be ordered the Committee has paid particular regard to the factors outlined at page 23 to 25 of the Guidance.

5. In doing so it has borne very much in mind the need to make it absolutely clear that serious and sustained or repeated dishonesty represents conduct which is ordinarily incompatible with retention on the register of this profession. The Committee's findings at the preceding stages have indicated the view which it takes of the Registrant's conduct and are not repeated here. The doubts that the Committee have formed as to the full scope of the Registrant's insight have been highlighted.

6. The Committee has also taken into account fully the need to maintain proportionality. Mitigating factors have been urged upon it. They include the following features:

- a. The contents of the testimonials;
- b. The Registrant's age and previous good character;
- c. The fact that none of his behaviour arose out of his professional activities or pose any risk of harm to patients;
- d. The fact that the insurance fraud conspiracy was not something which the Registrant was involved in from the outset but was drawn into by family pressure at a late stage and even then remained involved only at the periphery;
- e. The fact that his second conviction arose out of a similar picture of pressure from his brother;
- f. The fact that the exceptional circumstances which applied to his criminal involvement were reflected in the passing of a community sentence order by

the Judge at Manchester Crown Court rather than a custodial sentence which such offences might ordinarily have attracted;

- g. The steps which he did take to report the outcome of the criminal proceedings to his employer and the relevant bodies in October 2009;
- h. The lessons which he has learnt and will learn from these proceedings. In particular we have been told by the Registrant's Counsel that he has had an opportunity to reflect further and that he does now fully recognise the seriousness of these matters.

7. The Committee has given very anxious consideration to whether these mitigating factors can be regarded as sufficient to make an order for suspension appropriate in this case or whether the facts demand erasure. The Committee has, on balance, concluded that suspension is the proportionate sanction. As to the period of suspension the Committee consider that 12 months is necessary both to reflect the seriousness of his dishonesty and in order to provide a sufficient period in which the Registrant can demonstrate trustworthiness, full acceptance, and insight into his misconduct.

8. A review hearing will be held approximately four weeks before the expiration of this order at which this Committee would expect that the review Committee would wish to have specific evidence as to the Registrant's continued good conduct during the intervening period, and confirmation of the submission made on his behalf today that he now fully recognises and accepts the seriousness of the actions which have formed the basis of the allegations.

Chairman of the Committee: Lady Margaret Wall

Signed _____ Date 12 July 2011

Registrant: Asif Mushood Akhtar

Signed _____ Date 12 July 2011

FURTHER INFORMATION
<p>Transcript</p> <p>A full transcript of the hearing will be made available via the GOC website in due course.</p>
<p>Appeal</p> <p>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).</p>
<p>Council for Healthcare Regulatory Excellence</p> <p>This decision will be reported to the Council for Healthcare Regulatory Excellence (CHRE) under the provisions of section 29 of the NHS Reform and Healthcare Professions Act 2002. CHRE 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 unduly lenient and/or should not have been made, and if they consider that referral is desirable for the protection of the public. CHRE is required to make its decision within 40 days of the hearing (or 40 days from the last day on which a registrant can appeal against the decision, if applicable) and will send written confirmation of a decision to refer to registrants on the first working day following a hearing. CHRE will notify you promptly of a decision to refer. A letter will be sent by recorded delivery to your registered address (unless CHRE has been notified by the GOC of a change of address).</p> <p>Further information about the CHRE can be obtained from its website at www.chre.org.uk or by telephone on 020 7389 8030.</p>
<p>Effect of orders for suspension or erasure</p> <p>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.</p>
<p>Contact</p> <p>If you require any further information, please contact the Council's Hearings Manager at 41 Harley Street, London, W1G 8DJ or, by telephone, on 020 7580 3898.</p>