

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

**GENERAL OPTICAL COUNCIL**

**F(10)17**

**AND**

**ROBERT KING (01-8584)**

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**DETERMINATION OF THE INQUIRY: 20-21 JUNE 2011**

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On 20-21 June 2011, the Fitness to Practise Committee of the General Optical Council met to consider allegations against Robert King.

**ALLEGATION**

The Council alleges that in relation to you, Robert King a registered optometrist

- 1 On 12 February 2009 at a consultation with Patient A you did not adequately investigate the cause of patient A's symptoms in that:
  - (a) You did not adequately investigate the patient's history and presenting symptoms in that:
    - i. you did not obtain a full patient history
    - ii. you did not ask Patient A questions about the type of visual aura experienced, the duration or other associated symptoms;
    - iii. and/or did not record such investigation
  - (b) You did not:
    - i. perform a dilated examination of the peripheral fundus of Patient A's right eye;
    - ii. perform an examination of the anterior vitreous of Patient A's right eye;
    - iii. use a binocular indirect viewing technique; or
    - iv. refer patient A for such examinations with an appropriately qualified health care professional;
  - (c) The FDT visual field test which you used was inappropriate on its own and you failed to supplement it by performing a visual field assessment by confrontation.

2 In carrying out your examination you did not take account of the following risk factors:-

- (a) that Patient A was a high myope;
- (b) her gender
- (c) the presence of a nasal visual field defect in her right eye;

and as a result did not assess fully the eye health of Patient A

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

- (a) misconduct.

## DETERMINATION

### **Findings in relation to the application made on behalf of the Registrant at the conclusion of the Council's case.**

The Committee has considered the application made by Mr Stern on behalf of the Registrant and the submissions of Ms Bromley, on behalf of the Council, in reply. It has accepted the advice of the legal adviser. It has taken account of all the evidence presented to it.

It first considered whether it should consider the application, bearing in mind that no provision is made for such an application in the rules. It noted that Ms Bromley accepted that such an application could be made in accordance with the principles of natural justice.

The Committee agreed with this submission and considered that as a matter of justice it should entertain such an application.

The Committee first reminded itself of the question that it was required to consider. It must consider whether the Council has adduced sufficient evidence on each of the particulars of the allegation so that they were individually capable of being found proved. It noted that Mr Stern argued that the actions of the Registrant did not fall below the standard of the reasonably competent optometrist and that, consequently, his actions were not culpable.

Patient A attended the Registrant for a consultation on 12 February 2009. She complained of a grey area in her vision and of symptoms she associated with migraine but without a headache. The Registrant examined her but it is alleged that he did not adequately investigate or obtain her history and presenting symptoms and did not record the same. It is alleged that he failed to perform such tests as were required to investigate her complaint adequately or to refer her to another appropriate health care professional. Further, it is alleged that he did not conduct an appropriate visual field test such as the confrontation test. In carrying out his

examination he did not take account of the fact of Patient A's myopia, her gender or the presence of a nasal visual field defect in her right eye.

The Committee first considered the expert evidence for the Council of Dr Jones. It was concerned as to the quality of his evidence as an expert. It noted that he did not provide his CV to the Committee. The Committee considered that on a number of occasions during the course of his evidence, he appeared to be giving evidence of his own personal practise and experience rather than relying upon the standard of the reasonably competent optometrist. He appeared to indicate in his report that, with regard to the College of Optometrists' Guidelines, these provide the minimum standard to be expected of the reasonably competent optometrist but in his oral evidence he accepted that these set out best practice. It also noted that in relation to the relevance of gender with regard to retinal detachment, one of the papers he cited did not support his written assertions. He eventually resiled from his original position in his oral evidence on the relevance of gender in considering the incidence of retinal detachment. It further noted that the basis of his conclusion as to the relevance of gender in the incidence of retinal detachment was based entirely on his own experience.

Further, Dr Jones gave evidence of six risk factors which could indicate the presence of retinal detachment but that in the case of patient A, he conceded that only one was present, namely her myopia. There was possibly another present, namely a detachment in the other eye, but he accepted that the Registrant would not have been expected to know of this at the time of the consultation.

Finally the Committee noted his evidence that if the matters complained of were as the Registrant recorded them in the notes rather than as Patient A gave in her evidence, the Registrant's actions could not be criticised.

The Committee then considered the evidence of Patient A. It accepted that she gave her evidence honestly and in accordance with her recollection of what had taken place. Nevertheless, it had some concerns as to the clarity of her recollection and she herself accepted that recollecting events of two years ago was difficult. The Committee considered that she was mistaken in her recollection of the manner in which the visual field test was conducted. She accepted that, at the time she was under considerable stress as a result of events in her personal life, and that she had made no notes of what had occurred at this consultation until some six months after the event. Finally she saw up to five professionals in a relatively short period of time when she was suffering from this condition. As a result, the Committee concluded that it could not safely place reliance on her evidence as to what she had told the Registrant at the consultation.

By reason of its conclusions, the Committee determined that with regard to all the particulars of the allegations there was insufficient evidence presented by the Council on which it could find the particulars proved.

Consequently, the Committee found the following:

- 1(a) (i), (ii) and (iii): Not capable of proof;
- 1 (b) (i), (ii), (iii) and (iv): Not capable of proof;

1 (c): Not capable of proof:

2(a), (b) and (c): Not capable of proof.

Consequently, the Committee could not find Robert King guilty of misconduct and it follows that his fitness to practise as an optometrist is not impaired.

The Committee did not consider that it was either necessary or appropriate to give the registrant a warning.

**Chairman of the Committee: Mercy Jeyasingham MBE**

Signed \_\_\_\_\_ Date 21 June 2011

**Registrant: Robert King**

Signed \_\_\_\_\_ Date 21 June 2011

<b>FURTHER INFORMATION</b>
<p><b>Transcript</b></p> <p>A full transcript of the hearing will be made available via the GOC website in due course.</p>
<p><b>Appeal</b></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><b>Council for Healthcare Regulatory Excellence</b></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 <a href="http://www.chre.org.uk">www.chre.org.uk</a> or by telephone on 020 7389 8030.</p>
<p><b>Effect of orders for suspension or erasure</b></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><b>Contact</b></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>