

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

GENERAL OPTICAL COUNCIL

F(10)19

AND

JONATHAN POINTER (01-9650)

DETERMINATION OF THE INQUIRY: 16 JUNE 2011

On 16 June 2011, the Fitness to Practise Committee of the General Optical Council met to consider allegations against Jonathan Pointer.

ALLEGATION

The Council alleges that in relation to you, Jonathan Pointer (a registered optometrist):

1. Patient A attended an examination with you on 12 October 2009.
2. When assessing Patient A's vision, you failed to use a test suitable for the age of patient being assessed in that you undertook a Sheridan Gardiner single letter test.
3. You incorrectly concluded that a visual acuity of 3/9 (which you recorded as "approximately equivalent to 6/18") was an acceptable visual acuity for this patient.
4. You did not undertake retinoscopy with a cycloplegic agent in circumstances where your examination indicated:
 - a. visual acuity of 3/9;
 - b. stereo acuity was 200 seconds of arc;
 - c. there was limited co-operation from the patient;
 - d. the reason for the visit was that Patient A, for around 12 weeks, had been squinting and closing her eyes when watching television and reading.
5. You advised the mother of Patient A that:
 - a. Patient A was squinting out of habit and there was no problem with her eyes, or words to that effect; and
 - b. Patient A attend for a return appointment in 12 months

in circumstances where you had not undertaken a complete examination.

6. On 20 October 2009 you repeated your advice to the mother of Patient A that Patient A should attend for a return appointment in 12 months.

7. You did not

a. request that Patient A return for a further appointment in the near future to allow you to complete your examination of Patient A; or

b. refer Patient A for specialist examination by the Hospital Eye Service.

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

DETERMINATION

Findings in relation to the facts of the allegation

At the conclusion of the evidence called on behalf of the Council, Mr Stern QC on behalf of Jonathan Pointer made a submission that there was no evidence to support paragraphs 2, 3 and 4 of the allegation. The Committee accepted the advice of its legal adviser.

The Committee considered each of the paragraphs of the allegation separately, and the evidence set out in the papers before it as well as the evidence given by Mr Kierl. to the Committee today.

In relation to paragraph 2 the Committee found that there was no evidence to prove that Dr Pointer did not use a test suitable for the age of the patient. A Sheridan Gardner test is frequently considered as a suitable test for a patient of this age.

In relation to paragraph 3, the Committee found that there was no evidence to support the allegation that Dr Pointer came to a conclusion that a visual acuity of 6/18 was acceptable for this patient.

Equally the Committee found that that there was no evidence to support the allegation in paragraph 4. In the light of the patient's non-cooperation at this stage of the examination, no retinoscopy – either cyclopegeic or non-cyclopegeic – would have been possible so this part of the allegation must fail.

In the light of the admissions made as to allegations at paragraphs 1, 5 6 and 7 (as amended), the Committee formally finds those matters proved.

Findings in relation to misconduct

On the 12 October 2009 Dr Pointer was asked to examine patient A. At the time she was six weeks short of her third birthday. The patient's mother explained that she was concerned as her daughter had, in her words been 'squinting' while watching television and reading over the past three months. Dr Pointer undertook a number of tests as part of what turned out to be an incomplete eye examination. His conclusion was that there was no problem with her eyes. He said that the mother should bring her daughter back in 12 months time.

It has been accepted by Dr Pointer that he advised the mother of patient A that she was squinting out of habit and there was no problem with her eyes or words to that effect; and that Patient A should attend for a return appointment in 12 months. He also accepted that he repeated that advice on 20 October 2009 when she came to collect a copy of the examination record as she intended to seek a second opinion elsewhere. He also accepted that he did not request that Patient A return for a further appointment in the near future so

that the incomplete examination could be completed, or refer Patient A for specialist examination by the Hospital Eye Service. The mother went for a second opinion which resulted in the referral of patient A to the Hospital Eye Service when glasses were prescribed. Patient A's mother gave evidence to the Committee today that Patient A remains under the care of the Hospital Eye Service and wears glasses full time.

The question for the Committee at this stage is whether the facts set out at paragraphs 5, 6 and 7 can in law amount to misconduct. The Committee was referred to the case of *Calhaem v. General Medical Council* [2007] EWHC 2606 (Admin) and in particular the passage in the judgement where Mr Justice Jackson sets out a number of principles on the issue of misconduct having reviewed a number of other authorities.

The Committee found that Dr Pointer did not acquit himself well with this patient. From the material before the Committee he is a man with lengthy experience of treating patients in a general optometric practice. The Committee was of the view that he clearly made an error in his management of Patient A. The question is whether his actions and omissions amount to misconduct. Applying the test in *Calhaem*, and in particular what Mr Justice Jackson said at paragraph 30(2) that a single act or omission is less likely to cross the threshold of "misconduct" than multiple acts or omissions, the Committee found that the acts and omissions did not in this case amount to misconduct although they were negligent. The error was not so serious as to amount to misconduct. No doubt Dr Pointer will have reviewed his practices with pre-school children and the unique circumstances of this case will not recur.

The Committee thus found Jonathan Pointer not guilty of misconduct.

Chairman of the Committee: Corinna Kershaw

Signed _____ Date 16 June 2011

Registrant: Jonathan Pointer

Signed _____ Date 16 June 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>