

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

GENERAL OPTICAL COUNCIL

F(18)06

AND

ALBERTO DELLA VALLE (01-25169)

DETERMINATION OF A SUBSTANTIVE REVIEW

9 MARCH 2020

Committee Members: Ms J Wortley (Chair/Lay)
Ms A Johnstone (Lay)
Mr K Connolly (Lay)
Ms C Clark (Optometrist)
Ms C Roberts (Optometrist)

Legal adviser: Mr G Dalglish

GOC Presenting Officer: Mr R. Price

Registrant: Present and represented

Registrant representative: Mr Thomas

Hearings Officer: Miss A Riaz

Outcome: Conditional registration 6 months (varied) with
review upon expiry of current order

DETERMINATION

Background

The Registrant was employed as an optometrist at the [Redacted], Southampton ("the Opticians") from November 2014. The Opticians used software manufactured by Optix ('Optix') to manage and record the clinical notes of patients. As part of his induction the Registrant was shown how to use the system. The Opticians did not have its own record-keeping policy.

As a result of concerns raised by other members of staff, a disciplinary meeting took place on 2 September 2015. At that meeting the Registrant accepted that he did not make an entry in the clinical records for patients when they saw him for a retest. The owner of the Opticians made clear to the Registrant, among other matters, that he "*must complete a clinical record of some form each time he sees a patient.*" This was reiterated in a letter dated 20 October 2015. On 7 October 2015 Patient A was seen for a sight test by the Registrant and referred to her GP with a request that he prescribe steroid drops for superficial central ulcerative keratitis.

The GP had concerns about the appropriateness of this and wrote to that effect to the Opticians. A member of staff opened the letter and challenged the Registrant about this on 30 October 2015. She then referred the matter to the owner after work.

The owner of the Opticians accessed Patient A's clinical records at a later date. He was concerned that it appeared that the Registrant had accessed records on 30 October 2015 and made a number of amendments to the record for 7 October 2015. An internal investigatory meeting was held on 10 November 2015 and during that meeting the Registrant admitted that he made amendments to the records on 30 October 2015.

The Registrant was sent a letter on 11 November 2015 inviting him to attend a disciplinary meeting on 16 November 2015. However, on 15 November 2015 the Registrant sent an email resigning. On 20 January 2016 the owner contacted Optix to request an audit of patients whose records had been changed by the Registrant after their appointment date and conducted an audit.

A Substantive Hearing before a Committee of the General Optical Council took place in October 2018. That Committee heard evidence regarding the audit of Optix undertaken by the Opticians, and it accepted the Registrant's admissions in respect of the whole allegation.

The allegation was as follows :-

"The Council alleges that you, Alberto Della Valle, being a registered optometrist:

1. On or around 30 October 2015 inappropriately amended the clinical records of Patient A;

2. On or around 18 November 2015 inappropriately amended the clinical records of Patient C;
3. On or around 24 September 2015 inappropriately amended the clinical records of Patient D;
4. On or around 7 October 2015 inappropriately amended the clinical records of Patient E;
5. On or around 13 October 2015 inappropriately amended the clinical records of Patient F;
6. On or around 17 July 2015 inappropriately amended the clinical records of Patient G;
7. On or around 2 November 2015 inappropriately amended the clinical records of Patient H;
8. On or around 11 July 2015 inappropriately amended the clinical records of Patient I;
9. Your conduct in respect of paragraph 1 above was dishonest.

AND by reason of the facts set out above, your fitness to practise is impaired by reason of misconduct.”

All the particulars of the allegation related to the amendment of patient records by the Registrant and all were found proved. Dishonesty was alleged and was found proved in respect of particular 1 only. The Committee at the Substantive hearing found that these findings amounted to misconduct, except in relation to particular 8 of the allegation.

That Committee found the whole allegation proved. It found that the Registrant's insight was developing, but that he had not demonstrated full insight and it found a risk of repetition.

That Committee found that the Registrant's fitness to practise was impaired and found that he had in the past, and was liable in the future to place patients at risk of harm, to bring the profession into disrepute, to breach a fundamental tenet of the profession and had been, and was in the future liable to be, dishonest. A finding of impairment of fitness to practise was also made on the grounds of the public interest.

The Registrant's registration was made subject to conditions for 18 months following a substantive hearing held on 15 and 16 October 2018. The order is due to expire on 16 April 2020.

The Conditions imposed were as follows:-

“CONDITIONS

1. Identify a workplace supervisor who would be prepared to monitor your compliance with the conditions and to:

a) Two weeks from today's date, randomly select 20 of your patient records every month to review:

- the quality of the record keeping;*
- clinical competence; and*

- *evidence of amendment.*

b) *[Redacted];*

c) *Meet with you every 3 months to discuss issues arising from practise and the records reviewed in (a) above.*

2. *You must:*

a) *Ask the GOC to approve your workplace supervisor within 2 weeks of the date this order takes effect. If you are no longer employed, you must ask us to approve your workplace supervisor before you start work.*

b) *Place yourself under the supervision of the supervisor and remain under his/her supervision for the duration of these conditions*

c) *Prepare a personal development plan (PDP), which should include issues addressed in Standards of Practice for Optometrists:*

7. Maintain adequate patient records

17. Reputation of your profession

d) *At least once a week meet your supervisor to review compliance with your conditions and your progress with your personal development plan.*

e) *At least every three months or upon request of the GOC, request a written report from your supervisor to be provided to the GOC, detailing how you have complied with the conditions he/she is monitoring. Also attach your PDP.*

f) *Identify another supervisor if the GOC does not agree to your being monitored by the proposed supervisor.*

g) *Inform the GOC of any proposed change to your supervisor and again place yourself under the supervision of someone who has been agreed by the GOC.*

3. *You must inform the GOC within 14 days if you become aware of any criminal investigation or formal disciplinary investigation against you.*

4. *You must continue to comply with all legal and professional requirements of*

registration with the GOC. A review hearing will be arranged at the earliest opportunity if you fail to:

- a) Fulfil all CET requirements; or*
- b) Renew your registration annually.*

5. You must:

- a. Not undertake any locum work unless agreed in advance by your workplace supervisor.*
- b. Not carry out work as a sole practitioner*

6. You must arrange for the GOC *[Redacted]* every six months from today's date and as otherwise requested by the GOC"

The Registrant is currently employed by Specsavers Opticians as an Optometrist and has been subject to supervision by his manager there, a registered Optometrist.

The Council's Submissions

Mr Price for the Council summarised the background to the case and the findings of the Committee at the Substantive Hearing in October 2018. He took the Committee to the supervision reports produced by the Registrant which he submitted were largely, but not exclusively, positive.

Mr Price submitted there remained some concerns about the Registrant's practice and his record keeping and that there was a "*chequered*" history with the repeated issue in particular of not recording near vision and near acuity tests. He submitted that there were concerns that the Registrant had not fully dealt with all the deficiencies in his practice. There were no concerns expressed regarding the Registrant's honesty.

Mr Price referred the Committee to the Registrant's reflective piece and he reminded it of the guidance in the cases of Cohen v GMC [2008] EWHC 581 (Admin) and CHRE v NMC & Grant [2011] EWHC 97 (Admin).

Mr Price submitted that the Registrant's fitness to practise remained impaired and suggested that a further period of conditional registration may be appropriate.

The Registrant's Evidence

The Registrant gave evidence to the Committee. He explained that at the time of the internal investigation he had admitted to being dishonest.

[Redacted]

The Registrant explained that he understood the impact of his dishonesty on public confidence in the profession. He said it was important to be transparent and clear. He

said that when he had been [Redacted] he had "*not been himself*" and as a result he had not appreciated the risks to others presented by his behaviour.

The Registrant told the Committee that over the past 18 months he had met with his supervisor approximately every 3 weeks. He stated that they discussed the clinical cases and his record keeping, and if there was a mistake, how best to deal with that. He referred to the Supervision reports and he confirmed that this went beyond what was required by the conditions imposed on his practice. He had also attended some training courses for new procedures and equipment, and he told the Committee that he considered he had improved his practice. He accepted, however, that he did still make some mistakes in his record keeping. He stated that his record keeping was not below average and said in relation to his mistakes he was "*only human*".

The Registrant told the Committee that his Supervisor presently does monthly reports on records to all staff and there are regular discussions with the staff about the record keeping. He referred to the positive testimonials from customers and his employer.

Closing Submissions

Mr Price for the Council submitted that the Registrant appeared not to fully understand where he had gone wrong and that issues remained in respect of record keeping. He submitted that the Registrant had not fully remediated his practice and even the most recent supervision report raised issues. He said there was a risk to patients and the Registrant had not been able to clearly articulate those risks. He accepted that there was no evidence of any dishonesty. He submitted that a further period of 6 months of conditions of practice may be appropriate.

Mr Thomas for the Registrant submitted that there was a difference between good practice and a gold standard of practice. He submitted that the Supervision reports demonstrate that the Registrant's record keeping was above average and nothing had arisen that the Supervisor considered required referral to the GOC. The Registrant's Supervisor had been positive and 160 records had been reviewed, with only five found to be wanting. He submitted that the Registrant had more than met his training objectives.

Mr Thomas said that, even in the absence of formal conditions the Registrant would continue to be monitored by his Supervisor, the practice director. In those circumstances he submitted that there was no need for conditions of practice and the public interest had been satisfied.

Findings regarding impairment

The Committee heard the submissions from Mr Price on behalf of the Council and from Mr Thomas on behalf of the Registrant. It has accepted the advice of the Legal Adviser who reminded it that it should conduct a comprehensive appraisal of the Registrant's current fitness to practise and, if relevant, have careful regard to the guidance on sanctions.

The Committee conducted a comprehensive review of the Registrant's current fitness to practise. It considered all the documentary evidence, the live evidence from the Registrant and the submissions from both Mr Price and Mr Thomas.

The Committee noted that the Registrant is presently working in a positive and supportive environment. The Supervision reports are largely positive and demonstrated that, in many respects, the Registrant has improved his practice. The Committee found that the Registrant has remediated his practise, so far as is possible, in respect of dishonesty. It also found that on the issue of amendment of records the Registrant has successfully taken steps to remediate his practice. He showed genuine remorse and apologised for his misconduct.

The Committee found that the Registrant's reflective piece was somewhat brief and limited in scope in that it failed to consider sufficiently the risk to patients. The Committee took account of the Registrant's live evidence which was of assistance to the Committee.

The Committee was concerned regarding his apparent omissions in recording necessary tests, including near acuity tests. The Registrant failed to explain clearly in his live evidence the risks associated with such omissions and this caused the Committee concern. These issues were highlighted in each of the Supervision Reports, including in the most recent Supervision report dated 21 February 2020.

The Committee was of the view that these tests are basic and important. Their recording is significant and supports safe practice. The Committee had concerns that, although subject to the scrutiny of supervision, there was evidence of an on-going and recurring omissions by the Registrant in his record keeping.

The Committee found that the Registrant in his evidence did not appear to fully appreciate the importance of record keeping and the potential risk to patients. It found that the Registrant's evidence, and the Supervision reports, indicated a continuing lack of developed insight by the Registrant into his misconduct in respect of the importance of record keeping and the potential risk to patients.

The Committee considered the guidance in Grant. It concluded that the first limb was engaged in that the Registrant remains liable to place patients at unwarranted risk of harm, and that a risk of repetition remains in respect of the quality of his record keeping.

In all these circumstances the Committee concluded that, in respect of the quality of record keeping, the Registrant's fitness to practise remains currently impaired.

The Committee concluded that the public interest in this residual respect remained engaged in that there was a reputational risk for the profession should the Registrant be permitted to return to unrestricted practice at this stage.

The Committee accordingly found that the fitness of the Registrant to practise as an Optometrist is currently impaired.

Sanction

The Committee has heard submissions from Mr Price for the Council and from Mr Thomas for the Registrant. Mr Price sought that the conditions of practice be continued for a further 6 months to allow for the Registrant to address the outstanding issues. He advised that he and Mr Thomas had agreed the terms of proposed conditions of practice including an independent clinical assessment of 50 of the Registrant's records. This was devised to address the specific deficiencies in the Registrant's practice.

Mr Thomas confirmed the Registrant's agreement to the proposed conditions and supported the independent clinical supervisor condition. He advised that the reference to amendment of records, [Redacted] and the performance development plan in the current conditions would be deleted as they had been dealt with and remediated. He said that the Registrant accepted and understood the need for the conditions.

The Committee accepted the advice of the Legal Adviser who reminded the Committee to have regard to the Indicative Sanctions Guidance and to keep in mind the need to act proportionately and to balance the interests of the Registrant with the need to protect the public.

The Committee considered the sanctions available to it from the least restrictive to the most severe (no sanction, financial penalty, conditional registration, suspension, erasure).

The Committee was mindful of its findings on impairment. It considered that taking no action and a financial penalty would not be sufficient or appropriate to address the risks and issues that arise in this case.

The Committee was satisfied that the appropriate and proportionate sanction would be to impose conditional registration. The Committee considered the conditions proposed by Mr Price and Mr Thomas. Subject to a number of alterations, the Committee considered that these conditions properly focussed on the issue of record keeping, particularly the independent clinical assessment of 50 patient records.

The Committee decided that these were workable, realistic and proportionate conditions. The Registrant is willing and able to comply and he has responded well to the conditions imposed in October 2018 having fully remediated elements of his practice. A further period of focussed conditions will allow the Registrant to work towards full remediation.

The Committee decided to impose the following conditions for a period of 6 months which it concluded was a realistic and proportionate period to allow the Registrant to remediate his practice :-

CONDITIONS

1. *Remain under a workplace supervisor who would be prepared to monitor your compliance with the conditions and to:*
 - a) *Randomly select 20 of your patient records every month to review:*

- *the quality of the record keeping*
- b) *Meet with you every 3 months to discuss issues arising from practice and the records reviewed in (a) above.*
2. *You must:*
- a) *Place yourself under the supervision of the supervisor and remain under his/her supervision for the duration of these conditions.*
 - b) *At least once every three weeks meet your supervisor to review compliance with your conditions.*
 - c) *At least every three months or upon request of the GOC, request a written report from your supervisor to be provided to the GOC, detailing how you have complied with the conditions he/she is monitoring.*
 - d) *Inform the GOC of any proposed change to your supervisor and again place yourself under the supervision of someone who has been agreed by the GOC.*
3. *Obtain an independent clinical assessment of 50 of your patient records over the next six months. The clinical assessment should focus and comment on, the quality of your record keeping. The clinical assessor must provide a report in advance of the next substantive review hearing.*
4. *You must inform the GOC within 14 days if you become aware of any criminal investigation or formal disciplinary investigation against you.*
5. *You must continue to comply with all legal and professional requirements of registration with the GOC. A review hearing will be arranged at the earliest opportunity if you fail to:*
- a) *Fulfil all CET requirements; or*
 - b) *Renew your registration annually.*
6. *You must:*
- a. *Not undertake any locum work unless agreed in advance by your workplace supervisor.*
 - b. *Not carry out work as a sole practitioner.”*

A review hearing should be held between four and six weeks prior to the expiration of this order. The Review Committee will be assisted by the Registrant providing full details of his compliance with the conditions at least seven working days in advance of the review hearing.

Chairman of the Committee: Ms Julia Wortley

Signature **Date: 9 March 2020**

Registrant: Mr Alberto Della Valle

Signature **Date: 9 March 2020**

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. PSA 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. 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.

European Alert

The General Optical Council is required by Regulation 67 of the European Union (Recognition of Professional Qualifications) Regulations 2015 to inform all European competent authorities of any restrictions or prohibitions on a dispensing optician or an optometrist's practice. 'Competent authority' effectively means the relevant regulator for each EU member state.

The GOC is the competent authority for all opticians registered in the United Kingdom (UK).

If you have been made subject to either a suspension or conditions of practice order (whether interim or substantive), or to an erasure order, we hereby notify you of the following:

- Within 3 days of the Fitness to Practise Committee decision taking effect you will be the subject of an alert sent under article 56a(1) of the Directive;
- You have the right to appeal the decision to issue the alert or to apply for rectification of the decision; and
- You have the right to access remedies in respect of any damage caused by false alerts sent to other competent authorities.

The alert is sent securely via the Internal Market Information (IMI) system. The alert will include the following details:

- Your identity (full name and date of birth);
- Your profession;
- Your GOC registration number;
- The fact that the GOC is the national authority which adopted the decision on the restriction or prohibition of your professional activities;
- The scope of the restriction or prohibition;
- The period during which the restriction or the prohibition applies.

If you wish to appeal the decision to issue this alert then please see the information sheet below. Please note that this relates to your right of appeal against the issuing of the alert – see above regarding your right of appeal against a substantive decision.

A copy of the alert may be obtained via the contact details at the end of this document.

Please see the attached information sheet for further information.

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.

European Alert – Information Sheet

Please see the below Frequently Asked Questions (FAQs) which have been developed to assist you with this process and explain your options.

1. Why has the General Optical Council (GOC) sent this alert?

With effect from 18 January 2016 the GOC is legally required to issue alerts concerning all registrants whose practice has been prohibited or restricted – this includes all determinations of suspension, conditions or erasure issued by a Fitness to Practice Committee (FTPC), whether interim or substantive, and any extensions ordered by the High Court.

This legal requirement is placed on us by article 56a of Directive 2005/36/EC on the recognition of professional qualifications ('the Directive'). This article was adopted into UK legislation via Regulation 67 of the European Union (Recognition of Professional Qualifications) Regulations 2015. All other Member States must also comply with the provisions of the Directive and participate in the alert mechanism.

2. What is the purpose of these alerts?

The purpose of these alerts is to ensure public protection across all Member States. The intention is that each member state will be notified of any restrictions or prohibitions placed on UK registrants so that they are able to check this against their own registers and applicants. We will also be notified of any restrictions or prohibitions handed down to European optical professionals. This will assist us with safeguarding the public and maintaining the integrity of our registers.

3. Why was I not consulted before the alert was sent?

The terms of the Regulations are very strict; the alert must be issued within three days of the panel's decision coming into effect. The notification must be issued at the same time the alert itself is sent.

4. Who will see the alert?

The alert is sent securely via the Internal Market Information (IMI) system to the competent authority in each Member State.

In the UK, statutorily regulated health and social care professionals have to be registered with, and show that they meet the standards of, the relevant regulatory body, in order to practise their profession. The regulators control access to regulated professions, professional and vocational titles and professional activities which require specific qualifications, and are subject to national law. The European Commission term these organisations the 'competent authorities' although the exact duties of the competent authorities vary across member states, they are effectively the regulator (in the same way the GOC is) for each member state.

A competent authority has been defined by the European Commission as: *any authority or body empowered by a Member State specifically to issue or receive training diplomas and other documents or information and to receive the application and take the decision, referred to in Directive 2005/36/EC.*

5. If there is a mistake in the alert can I apply for it to be corrected?

If you notice a mistake in the alert (such as a typing error or incorrect information) then please contact the GOC and we will consider your request to amend the alert. Please note the GOC is not able to remove an alert at your request, see next question for further information.

6. What if I disagree with the alert being sent?

If you disagree with the sending of an alert then you have the right of appeal to the County Court. If you merely consider there to be a mistake within the alert then please refer to the above question.

Please note that the GOC is required to send the alert under European Law. With this in mind, and if you still wish to appeal to the County Court, then you may find the following government website useful: <https://www.judiciary.gov.uk/you-and-the-judiciary/going-to-court/county-court/>

If you attended the hearing and were given the FTPC decision document by hand then the period for submitting an appeal with the County Court is 28 days from the date you were handed the document. If the FTPC decision document has been sent to you by post, the appeal period is 30 days from the date the decision document was posted to you (there is an additional 2 days allowed to cover postage time).

7. Can the GOC assist me with my appeal against the issuing of an alert?

The GOC is unable to help you with your appeal – we strongly advise that you seek independent legal advice.

8. If I appeal an alert being sent, what effect will that have on the substantive decision made in relation to my registration?

There will be no effect on the decision made by the GOC affecting your registration. This would be an appeal against the issuing of the alert and not the substantive decision – they are two separate things and each have different appeal routes. If you require details on how to appeal the substantive decision (i.e. the erasure, conditions or suspension) then please refer to the separate guidance sheet enclosed with the decision letter regarding your substantive GOC case.

9. If I successfully appeal the issuing of an alert, what will happen to the alert itself?

While your appeal is ongoing the alert will remain on the IMI system but with a qualification to say that an appeal has been lodged.

On appeal the County Court may:

- Dismiss your appeal;
- Allow your appeal and direct the alert be withdrawn or amended accordingly.

If the County Court decide to allow the appeal then the GOC has a duty to delete the alert (or amend as appropriate) within three days of this decision.

10. What happens if the order made by the FTPC is revoked?

When an order is revoked by the FTPC (or the High Court) and that order was the subject of a European alert, we will close the alert within 3 days of the decision to revoke the order.

When an alert is closed, all personal data is removed from the alert system.