BEFORE THE FITNESS TO PRACTISE COMMITTEE
OF THE GENERAL OPTICAL COUNCIL

GENERAL OPTICAL COUNCIL

AND

ZUHER GULAMHUSEIN (01-23114)

________________________________________

DETERMINATION OF A SUBSTANTIVE HEARING
04- 06 NOVEMBER 2019

Committee Members: Ms A Johnstone – (Chair)
Ms McEwen – (Lay)
Ms A Rickard – (Lay)
Ms C Roberts – (Optometrist)
Ms A Barrett – (Optometrist)

Legal adviser: Mr P Moulder

GOC Presenting Officer: Mr T Day

Registrant: Present and represented

Registrant representative: Mr N Peacock

Hearings Officer: Ms A Riaz

Facts found proved: Particulars 1, 2 and 3 by way of admission

Facts not found proved: Particular 4

Misconduct: Not found

Impairment: Not impaired

Sanction: None

Immediate order: N/A
ALLEGATION

The Council alleges that you, Mr Zuher Gulamhusein, a registered Optometrist:

1. On or around 11 December 2015, you signed a declaration in relation to Ms A which confirmed that she had "completed the 50 individual Pre-Qualification Portfolio case records which have all been individually signed to confirm that they have been checked for accuracy and content and that proof of authenticity can be provided if required" and you failed to take the necessary steps to satisfy the declaration in that:
   a. the case records had not been individually signed,
   b. proof of authenticity of the case records could not be provided;

2. On or around 23 May 2016, you signed a declaration in relation to Ms A which confirmed that she had "completed the 50 individual Pre-Qualification Portfolio case records which have all been individually signed to confirm that they have been checked for accuracy and content and that proof of authenticity can be provided if required" and you failed to take the necessary steps to satisfy the declaration in that:
   a. the case records had not been individually signed,
   b. proof of authenticity of the case records could not be provided;

3. Your actions set out at paragraph(s) 1 and/or 2 above failed to meet the standards required of a supervisor;

4. Your actions set out at paragraph(s) 1 and/or 2 above were dishonest in that you signed a declaration when you knew that you had not taken the actions your signature was indicating had been completed.

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

AMENDMENT

The Allegation was amended by the Committee on application by the Council, pursuant to paragraph 46(20) of the General Optical Council (Fitness to Practise) Rules Order of Council 2013 ("Procedure Rules"), to read as follows:

The Council alleges that you, Mr Zuher Gulamhusein, a registered Optometrist:
1. On or around 11 December 2015, you signed a declaration in relation to Ms A which confirmed that she had "completed the 50 individual Pre-Qualification Portfolio case records which have all been individually signed to confirm that they have been checked for accuracy and content and that proof of authenticity can be provided if required" and you failed to did not take the necessary steps to satisfy the declaration in that:

   a. the case records had not been individually signed,

   b. proof of authenticity of the case records could not be provided;

2. On or around 23 May 2016, you signed a declaration in relation to Ms A which confirmed that she had "completed the 50 individual Pre-Qualification Portfolio case records which have all been individually signed to confirm that they have been checked for accuracy and content and that proof of authenticity can be provided if required" and you failed to did not take the necessary steps to satisfy the declaration in that:

   a. the case records had not been individually signed,

   b. proof of authenticity of the case records could not be provided;

3. Your actions set out at paragraph(s) 1 and/or 2 above failed to did not meet the standards required of a supervisor;

4. Your actions set out at paragraph(s) 1 and/or 2 above were dishonest in that you signed a declaration when you knew that you had not taken the actions your signature was indicating had been completed.

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

DETERMINATION

Admissions in relation to the particulars of the allegation

The Registrant admitted particulars 1, 2 and 3 of the Allegation. In accordance with the Procedure Rules, the Chair announced these particulars as proved.

Background to the allegations

The Registrant obtained a BSc in Ophthalmic Optics in 1993 and was first registered with the General Optical Council on 9 December 1994 until 2005 and re-registered on 01 April 2007. He had previously worked in the family optical business in Location A,
before coming to the UK in 2003 and working in [REDACTED]. The Registrant then moved to Location B from 2004 to 2007, again working in optical practice. In 2007 the Registrant returned to the UK [REDACTED] and eventually became a joint venture partner and director.

In 2011, a Ms A wanted to complete her optical portfolio, as part of obtaining the Dispensing Opticians Qualification with the Association of British Dispensing Opticians (ABDO). Ms A approached the Registrant, who agreed to act as Ms A’s principal supervisor. In 2012, the Registrant’s practice was inspected on behalf of ABDO, and the practice and the Registrant were approved as, respectively, practice base and principal supervisor to Ms A for Pre-Qualification Portfolio for Dispensing Opticians.

As part of her entry for the 2016 examinations, Ms A was required to submit a portfolio of work. In respect of the portfolio and his supervision of Ms A, the Registrant was required to sign a declaration before its submission. The declaration included two statements by the Registrant: firstly, that Ms A had completed 50 individual PQP case records which had all been individually signed to confirm that they have been checked for accuracy and content and, secondly, that proof of authenticity could be provided if required. The Registrant signed the declaration, dated 11 December 2015.

Ms A was not successful in her examinations and attempted a further sitting in June 2016. As part of the re-sitting, Ms A again submitted her case records portfolio, with the same records. The re-submission by Ms A was supported by a further declaration, in the same form as before, signed by the Registrant and dated 23 May 2016.

As part of a random audit of case records submitted, ABDO undertook an examination of the case records provided by Ms A. The audit found that 19 of the 50 case records were not supported by an audit trail and Ms A was invited to re-submit the cases. The case records inspected in the audit did not bear any signatures from the Registrant. A further audit was carried out in January 2017.

As a result of the lack of audit trail for the case records submitted by Ms A, a referral was made to the GOC of both Ms A and the Registrant. An investigation was commenced, in part in respect of the Registrant’s signed declarations, because it did not appear that the Registrant’s declarations could have been correct. Following the investigation, the allegation was brought against the Registrant.

Findings in relation to the facts
The Committee considered the particulars of the Allegation.

Particulars 1, 2 and 3
The Registrant had admitted these particulars of the Allegation at the outset of the hearing. In accordance with Rule 46(6) of the Procedure Rules the Chair had announced these particulars as proved.
During the course of the hearing, the Committee heard evidence from ABDO that, at the relevant time in accordance with the 2008 scheme, there had been no obligation that each individual case record should be signed by the supervisor.

On the closure of the factual stage of the case, Mr Day on behalf of the Council, made an application, pursuant to paragraph 46(11) of the Rules to amend particulars 1, 2 and 3 of the Allegation, to replace the words “failed to” with “did not” in all cases where they appeared in order to accord with the evidence given. Mr Peacock did not oppose the application.

The Legal Adviser advised the Committee that, pursuant to the Rules, the Committee could make the amendment, at any stage, provided it could be made without injustice. The guiding principle should be the justice of the case, in the light of the evidence. The Committee determined to allow the amendments.

Mr Peacock confirmed that the Registrant’s admissions stood, as related to the amended particulars 1, 2 and 3 of the Allegation.

**Particular 4**

Particular 4 of the Allegation alleged that the Registrant’s actions in relation to his signing the two declarations had been dishonest, in that the Registrant knew, when he signed the declarations, that he had not taken the actions his signature had indicated.

The Committee heard from Ms 1, [REDACTED] a director at ABDO and Mr 2 an ABDO examiner, auditor and tutor, as witnesses for the Council. Ms 1 gave evidence as to the Pre-Qualification Period portfolio (PQP) and verification process. Both had provided witness statements that the Committee had read. Ms 1 exhibited the ABDO guidance for 2008 and 2014 issued in respect of the PQP qualification. Ms 1 confirmed that Ms A would have received the 2008 syllabus materials. The 2008 guidance had been issued solely to students and not to supervisors. Ms 1 indicated to the Committee the part of the guidance which referred to keeping an audit trail.

Ms 1 told the Committee that both the supervisor and the trainee could provide detail of the authenticity of the records. Ms 1 gave evidence that the guidance had been altered in 2014 to be more explicit as to expectations of supervisors. The case records had been amended, to add a signature space on each record for the supervisor. Ms 1 told the Committee that ABDO relied on the educational institutions to notify students and/or supervisors that guidance had altered.

Ms 1 also told the Committee that, after 2014, the former case records without the signature space were still being accepted by her department. ABDO did not require the Registrant to have signed the case records submitted by Ms A, because they had been ‘2008’ case records. She said that in June 2016, Ms A had still been entitled to submit those records, unsigned. Ms 1 was asked why, if it was not a requirement for the student to submit signed case records in 2015/16, it was a requirement for the supervisor to sign a declaration to the effect that they had been signed. Ms 1 stated that she did not know, it was just a cross-over in the paperwork. Answering questions from the Committee, Ms 1 stated that both the student and the supervisor bore
responsibility for the ‘audit trail’ concerning the case records. In practice the audit trail was kept by the student, with supervisors having an awareness of it. This was the case both in respect of creating the ‘audit trail’ and holding the trail.

Mr 2 gave evidence that he had been asked to carry out the verification visit in January 2016, and the further audit in 2017. Very little had apparently been done by Ms A in the intervening period, although she had been allowed a relatively long time to correct things. Mr 2 confirmed that the Registrant had not been present at this meeting because he was not required to be.

The Committee heard evidence from the Registrant and had read his two witness statements. The Registrant told the Committee that he had no previous disciplinary findings or criminal convictions. He told the Committee that he had been approached by Ms A in 2011, upon recommendation of the head of department of University A. He found that Ms A was already dispensing “at a high level”. All that she needed was to prepare case records to submit in a bundle. The Registrant said that Ms A had “hit the ground running” and had an air of competence. She was already lecturing to students at a university and doing research, which matters the Registrant had verified.

The Registrant gave evidence that he had placed a great degree of trust in Ms A, because of her status with University A, where she had been a lecturer to students on the dispensing opticians course. The Registrant also told the Committee that he had found Ms A to be very competent and experienced when he had worked alongside her. He had been aware that, when she had been working at the Registrant’s practice, she had been working on the case records.

At the time of signing the first declaration, Ms A had approached the Registrant with the form, towards the end of the day. She had told the Registrant that she needed him to sign the form and there was a deadline for submission that was near. The Registrant said with regards to the form that he would have looked at the highlighted bits and signed it. He checked with Ms A that all was in order and she replied “Yes”. He understood that she had completed the case records correctly and she had an audit trail. On the next occasion that the Registrant had signed a declaration, Ms A had again approached him at the end of the day, stating that she needed the declaration signed and that time was short due to a deadline. The Registrant stated that he did not know the detail as to why Ms A had not passed her exam the first time. He had believed that Ms A had not passed an oral exam or viva.

The Registrant said that, in relation to the allegation of dishonesty, he had “been to hell and back” as to how this portrayed him as a practitioner. In his view, this “simply isn’t me”. The Registrant said that he was generally a careful person and hardworking, a perfectionist and workaholic, but that he accepted that he had been careless in this case.

The Registrant was asked what had been in his mind when he signed the actual declarations. He told the Committee that he had thought that he was signing that Ms A had completed the case records. He had had an initial discussion with Ms A about her completing the ‘audit trail’. He had been aware of Ms A working on the case
records in the store. He had gone through anything different or interesting with her. He denied having acted dishonestly.

The Committee heard from a number of witnesses as to the Registrant’s character. The witnesses gave evidence as to their experience of working with the Registrant. Their evidence was relevant at the facts stage, because the Registrant’s approach to administrative matters was in issue and the witnesses were able to give evidence of the Registrant’s working practices, and in addition dishonesty was alleged and under consideration at the facts stage.

Mr Day submitted that in relation to the Registrant’s state of mind at the time, there were two possibilities: either the Registrant had in effect been careless in signing the declarations, not appreciating the meaning of what he had signed; or alternatively, he had signed because he had trusted Ms A, but knew in effect what he was signing. The latter was dishonest conduct, but the former was not. He submitted that it did not accord with the general evidence of the Registrant as a careful person, that he would be careless.

Mr Peacock submitted that the evidence was not binary: there were more nuances to the matter of human behaviour. He said that, although the Council was not required to prove a motive, the absence of any discernible motive was telling. The evidence did not support the case that the Council appeared to assert at the outset. The hallmark of the case was that the Registrant had been careless, but not dishonest.

The Committee heard and accepted the advice of the Legal Adviser. He advised the Committee that the test for dishonesty was set out in the case of *Ivey v Genting Casinos* [2017] UKSC 67 namely that:

[Para 74] “When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”

Further, in this case particular 4 of the Allegation specified the manner in which it was alleged that the Registrant had been dishonest. The Committee had to be satisfied that the Council had proved that the Registrant, when signing the declarations, knew that he had not carried out the actions that he was indicating had been completed.

The Committee determined to first decide what had been the Registrant’s actual state of mind when he signed each declaration. For the purposes of this particular, the Committee considered whether, at the time of signing the declarations, he had known that he had not taken the actions that his signature was indicating had been completed.
The Committee carefully assessed the evidence as to the background of the Registrant signing the two declarations. It was aware that it should make a finding in relation to each declaration signed. It noted the Registrant had admitted, in relation to the amended particulars 1 and 2, that he “did not” take the necessary steps in relation to signing the case records and/or checking proof of authenticity, as it related to both declarations.

The Committee noted the Registrant’s evidence in his witness statement, where he addressed his state of mind on signing the declarations, where he stated: “I thought I was signing off the fact of her doing case records under my supervision, which in my view she had as I had seen evidence of so many being done in the Store”.

The Committee reminded itself of the evidence that the Registrant was of ‘good character’, having no previous convictions, or disciplinary record. This was relevant both to his propensity to behave dishonestly, and to the credibility of his evidence.

The Committee also received evidence from witnesses on behalf of the Registrant, who gave clear and persuasive evidence as to the Registrant’s general diligence, dedication and good character. The witnesses were all extremely surprised to learn that it had been alleged that the Registrant had acted dishonestly. The Committee accepted the evidence of these witnesses that such behaviour was not at all in accordance with their experience of the Registrant or their assessment of his good character.

The Committee considered that the wording of the declaration, at the relevant paragraph, was not particularly clear. Firstly, the earlier parts of the declaration all related to actions which were expressly to be done by the student. Then secondly, the relevant clause (e) was open to an ambiguity as to on whom lay the obligation to sign the case record, from the words “which have each been signed”. The same applied to the obligation to keep an ‘audit trail’ of the records. This lack of clarity might be relevant to determining what had been the Registrant’s state of mind at the time.

The Committee noted the wording of the 2008 ABDO Guidance for Students that had been put into evidence. It was the evidence of Ms 1 that this would not have been provided directly to the Registrant, but to Ms A. It could not be demonstrated that this had been provided to the Registrant. The Committee noted that, within the Guidance, the only relevant part which related to these obligations on the supervisor appeared to be “7. The Principal Supervisor must ensure that the Final Declaration is signed and adhered to”. This was not especially specific as to the duties of the supervisor. The additional stricture concerning keeping “a document which can show the relationship between case records and patient records, and the supervisor is signing the Final Declaration to corroborate this” appeared in a section addressed to the student and not the supervisor.

In her evidence, Ms 1 had stated that “unsigned” case records would have been accepted at the relevant time by ABDO, and that she conceded that there had been no requirement on the Registrant at the relevant time, to have signed each case record, because it had been “2008 paperwork”.
The Committee noted that there appeared to be an unfortunate lack of information passing between ABDO and supervisors at the time, concerning the responsibilities of the latter (both in terms of initial instruction for supervisors and in terms of feedback from assessment), and noted that ABDO was now appearing to address this. This was the first dispensing optician student that the Registrant had supervised.

The Committee also accepted the Registrant’s evidence he had placed trust in Ms A as a student. Ms A was clinically competent, and they had worked together for a long period and she held a senior lecturing role at University A. It did not accept the submission that trust was only relevant to the Registrant knowing that what he was signing was untrue. In its view, the fact that the Registrant had trusted Ms A had led to him being less diligent in his approach to the declaration generally and explained his departure from his usual manner. It accepted the evidence that Ms A had approached the Registrant at the end of the day on both occasions and had suggested that there was an urgency to him signing the declarations. This was consistent with the evidence of Mr 2, that Ms A had a disorganised approach to paperwork, but this was not something of which the Registrant had been aware.

The Committee accepted that the Registrant had not been aware of the reasons for Ms A having failed the exam on the first occasion and had therefore not been aware of any issue with the case records. It noted that this was consistent with the evidence that the Registrant had not been present at meetings between Mr 2 and Ms A.

Considering all the evidence together, including the lack of clarity in the declaration, the lack of other direction to the Registrant as to his obligations and the trust that the Registrant had placed in Ms A, the Committee accepted the Registrant’s evidence that he had, at the time of signing the declaration in December 2015, thought that he was signing off the fact that Ms A had carried out the actions listed at (a) to (e) of the Final Declaration and in particular had completed the requisite number of case records and that the records could be authenticated. The Committee had regard to Ms 1’s evidence that in practice the ‘audit trail’ was kept by the student with the supervisor having an awareness of it. It did not find, in respect of either declaration that the Registrant knew, that he had not taken actions that he was indicating had been completed on either Final Declaration.

In the view of the Committee, nothing material had changed in relation to the Registrant’s state of mind in signing the declaration in May 2016, having accepted that the Registrant was not aware of the reasons that Ms A had failed to obtain her qualification. It followed that the Registrant’s state of knowledge was no different in May 2016, to December 2015.

The Committee next considered whether, according to the standards of ordinary decent people, the Registrant’s conduct had been dishonest, at either time. Having accepted that the Registrant believed he was signing off Ms A’s having completed her case records and not having found that he knew he was indicating actions which had not been completed, the Committee did not find that ordinary decent people would regard the Registrant’s conduct as dishonest, in relation to either particular 1 or 2 of the Allegation.
It followed that particular 4 of the Allegation is not proved.

The Registrant having admitted the amended particulars 1, 2, and 3 of the Allegation as amended, the Committee then proceeded to receive submissions on the matter of misconduct.

**Findings in relation to misconduct**

The Committee has heard submissions on behalf of the Council and the Registrant. It has accepted the advice of the Legal Adviser.

Mr Day, for the Council, submitted that the Registrant’s conduct, as admitted and found proved, had fallen far below the standard required of an optometrist and amounted to misconduct. The Registrant had been under a duty to take necessary steps as a supervisor, notwithstanding he was not required by ABDO to sign the records. He invited the Committee to find that the Registrant had not been working to an appropriate standard for a supervisor. By relying on the student to check the records, he had assumed they would be complete. There was a risk that students might qualify, potentially having fabricated records. This led to a position where the qualification system might break down. This would have an impact on patient safety.

Mr Peacock, for the Registrant, submitted that mere negligence was not sufficient for finding serious professional misconduct. In one sense, the Registrant’s shortcoming had been a ‘single’ event, which could only rarely, and if particularly grave, amount to misconduct. He submitted that the Registrant’s role fitted within a framework of supervision created by ABDO: the Registrant was playing his part. He pointed to the lack of guidance to the Registrant by ABDO. As to the ‘audit trail’, according to the evidence of Ms 1, this had been a joint responsibility with the trainee. This was in effect, a single instance of falling short. He submitted that there was no suggestion of patients being put at risk or being liable to be put at risk. This was not a case of misconduct.

The Legal Adviser advised the Committee that the question of misconduct was a matter for its own judgment, based on its findings at the factual stage. Misconduct was a word of general effect, involving “some act or omission which falls short of what would be proper in the circumstances”. To be found as misconduct, the conduct concerned had to be sufficiently bad to be properly judged as serious professional misconduct.

The Committee noted that it had found proved, by the admissions of the Registrant, particulars 1, 2 and 3, as amended. The findings in summary were that the Registrant had signed the Final Declarations on two occasions, whereby he stated that case records had been signed and an ‘audit trail’ had been preserved, when this was incorrect and that (as a result) he had not met the standard required of a supervisor.

The Committee accepted the submission that a failure on the part of a supervisor to exercise proper supervision, viewed in general terms, had the potential to undermine
the qualification system and in some cases could present a potential risk of harm to patients, further down the line. However, it also accepted that, considering the particular facts of this case, no actual risk of harm to patients had been evidenced.

The Committee accepted that the Registrant had worked closely alongside Ms A for a significant period, had seen her working on her case records and was confident in her abilities. It had not been the Council’s case that the records had actually been fabricated in this case, but rather that there had been a failure to demonstrate the ‘audit trail’ in relation to the patients in 19 of 50 case records, despite the signature on the declarations. Following the allegations against him the Registrant conducted his own audit of the case records, with the help of IT Support staff, and was able to verify the records in all but five of them.

The Committee accepted the submission that the Registrant’s failings had to be viewed in the context of the overall supervision system created by ABDO. In judging the conduct of the Registrant, the Committee carefully considered its findings on the evidence. It had found that the obligations of the Registrant as a supervisor had not been clearly communicated to him by ABDO. The Committee had found that there was ambiguity in the wording of the Final Declaration, as to the relative responsibilities of the supervisor and the supervisee and had accepted that the Registrant did not know that by his signature on the declarations, he was confirming actions without having ensured that they had been carried out.

In the Committee’s view the Registrant could have looked further into the meaning of the Final Declaration or made further enquiries about his duties as a supervisor. It noted however, that the relevant declarations had been presented to the Registrant at the end of the supervision period and there was no evidence he had seen the forms before. Although this had resulted in a shortcoming in the standard of supervision achieved in respect of the case records, in light of his actual supervision of Ms A and the degree of uncertainty over his obligations, the Committee concluded that the degree of culpability attaching to the Registrant was low.

The Committee considered the Council’s Code of Conduct and considered whether its terms had been breached by the Registrant’s conduct. Having considered paragraphs 9, 16 and 17 of the Standards for of Practice for Optometrists and Dispensing Opticians effective from April 2016 (“the Standards”) (set out below), the Committee did not judge that the Registrant had breached the Standards:

“As a registered optometrist […] you must:
9. Ensure that supervision is undertaken appropriately and complies with the law.
16. Be honest and trustworthy.
17. Do not damage the reputation of your profession through your conduct.”

The Registrant had admitted to not reaching the standard of a proper supervisor, but in the view of the Committee this concession appeared to have been made with a
degree of hindsight, the Registrant having been made aware of the ABDO standards which had applied from 2014, during the investigations.

The Committee concluded that, whilst the Registrant might be said not to have attained his usual high standards in relation to his conduct in understanding his obligations as a supervisor, in all the circumstances it judged the Registrant’s conduct to have been a falling short of a relatively minor level and not of such an extent that it reached the level of serious professional misconduct.

The Committee found that the facts found proved do not amount misconduct.

That concludes the case.

Declaration

The Committee makes a formal declaration that the Registrant’s fitness to practise is not impaired because it has not found misconduct has been made out.

Chair of the Committee: Ms A Johnstone

Signature …………………………………………… Date: 06 November 2019

Registrant: Mr Z Gulamhusein

Signature …………………………………………… Date: 06 November 2019

--- FURTHER INFORMATION ---

Transcript

A full transcript of the hearing will be made available for purchase in due course.

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.