BEFORE THE FITNESS TO PRACTISE COMMITTEE
OF THE GENERAL OPTICAL COUNCIL

GENERAL OPTICAL COUNCIL                     F(18)19

AND

KIRAN JEERH - (01-29952)

______________________________

DETERMINATION OF A SUBSTANTIVE HEARING
21-22 NOVEMBER 2018

Committee Members: Mr I Crookall - (Chair/Lay)
                  Mr J Kellock - (Lay)
                  Ms J Wheat - (Lay)
                  Ms L Troy - (Optometrist)
                  Mr D Cartwright - (Optometrist)

Legal adviser: Mr G Leong

GOC Presenting Officer: Ms L Stephenson

Registrant: Present

Registrant representative: Mr J Milner, Counsel and Ms N Wheater (AOP)

Hearings Officer: Miss J Alvarado

Facts found proved: Particulars 1, 2 and 3

Facts not found proved: None

Misconduct: Found

Impairment: Impaired

Sanction: Suspension Order – 6 months

Immediate order: Immediate order imposed
ALLEGATION

The Council alleges that you, Kiran Jeerh, a registered Optometrist:

1) On or around 16 October 2016, submitted to the GOC your application for registration in which, in Section 6, you:
   a) entered Ms A’s name in the part entitled ‘Name of person certifying’; and/or
   b) indicated in the part entitled ‘Position of person certifying’ that Ms A was an Optometrist, when at the time of the application this was not correct; and/or
   c) signed Section 6 of the application in the name of Ms A.

2) Your actions at 1 above were done without the prior knowledge or consent of Ms A.

3) Your actions at 1 and/or 2 above were dishonest.

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

At the start of proceedings the Committee was provided with evidential bundles from the Council and from the Registrant. The bundle from the Council included the following documents:

- the Registrant’s application form;
- two witness statements of BP, Director at [Redacted];
- responses made by the Registrant during the investigation of [Redacted];
- the Registrant’s notification to the GOC

The bundle from the Registrant included the following documents:

- her curriculum vitae;
- a reflective statement by the Registrant;
- references provided on her behalf;
DETERMINATION

Admissions in relation to the particulars of the allegation
At the start of proceedings, the Registrant admitted the facts set out in particulars 1, 2 and 3 of the Allegation.

Background to the allegations
The Registrant is a registered optometrist who was first registered with the Council on 11 November 2016 and at the time of the allegations was working at [Redacted] (“the Practice”). The Registrant was employed at the Practice from 5 August 2015 to 13 January 2017.

The Registrant obtained her undergraduate degree in optometry from Anglia Ruskin University in August 2015. She undertook her pre-registration training from October 2015 to October 2016.

In October 2016, the Registrant completed an application form for registration with the GOC, signed by the Registrant and completed on 16 October 2016. The application is stamped as having been received by the GOC on 27 October 2016.

Section 6 of the application form requires another person to certify that they have known the applicant for at least 2 years and that the photograph attached to the form is a true likeness of the applicant. Section 6 is aimed at certifying the applicant's identity.

The declaration at the beginning of Section 6 is written in the first person and the end of the section requires a signature of the certifier. Therefore, Section 6 is plainly meant to be filled out by the person who was certifying the applicant's identity.

In this case, the Registrant filled out Section 6 herself but in the name of a friend, Ms A. She stated that Ms A's position was that of an optometrist. The Registrant signed the bottom of Section 6, in Ms A's name.

In fact, Ms A was not a qualified optometrist; she was a student optometrist. The GOC checked the Registrant's application form and discovered the discrepancy. This was drawn to the Registrant’s attention in early November by the GOC and an alternative certification by another person was provided. The GOC wrote to Ms A on 29 November 2016 to inform her that they were opening a fitness to practise investigation into her conduct because she had inaccurately described herself as an optometrist on another registrant's application form.

On 8 December 2016 the Registrant emailed the GOC and stated:

“I understand that you have opened a Fitness To Practise investigation into the conduct of my friend, Ms A, in relation to an allegation that she held herself out to be a qualified optometrist in signing my Application for Registration (‘the form’). This was submitted to the GOC Registration Team on October 16th, 2016.

I write to inform you that I signed and completed ‘Section 6’ of the form on behalf of Ms A. She was unaware of this until after the form had
been submitted and I sincerely apologise for my actions. I have since spoken to the AOP who have assisted me with this declaration. I anticipate that this will require further investigation and I am content to cooperate with this and to provide my representations to the GOC in due course, if required.”

BP is an optometrist and store Director at the Practice. He was also the Registrant’s pre-registration supervisor.

The Registrant asked to meet with BP in November 2016. She informed him that she had signed the declaration section on her registration application form on behalf of her friend and that the GOC had written to say they intended to investigate her friend. BP discussed the matter with [Redacted], HR and then investigated the allegations against the Registrant on behalf of the Practice.

BP conducted an investigatory meeting with the Registrant on 9 December 2016. During that meeting, the Registrant accepted that she had filled out the ‘witness’ part of the form, in her own writing. She said that she did not realise Ms A was not registered. She did not ask Ms A whether she consented to her name being used on the application form prior to filling it out. She agreed that she forged Ms A's signature. The Registrant was asked to describe her action and said it was "dishonest, negligent, not my smartest moment”.

The Registrant's explanation for her actions was, in summary, that she was in Canada at the time of completing the form, thought she could not use a referee in Canada, and was not due to return to the UK until 3 November 2016. She was concerned that the Canadian post to the UK took several weeks and she did not want to add to the delay in submitting her application to the GOC, so that she could commence her employment in the UK in early November.

**Findings in relation to the facts**

In accordance with Rule 46(6) of the Rules, the Committee finds Particulars 1, 2 and 3 proved by way of the Registrant’s admissions.

**Findings in relation to misconduct**

The Committee heard submissions on behalf of the Council and the Registrant. Ms Stephenson submitted that the admitted facts fell far below the standard expected of a reasonable and competent optometrist and as such constituted misconduct.

Ms Stephenson submitted that the Registrant's conduct breached the following standards of the GOC's Standards of Practice:

(16) be honest and trustworthy

(17) do not damage the reputation of your profession through your conduct

(17.3) be aware of and comply with the law and regulations that affect your practice, and all the requirements of the General Optical Council.

Mr Milner told the Committee that the Registrant admitted the factual particulars were so serious that they amounted to misconduct.
The Committee was aware that there was no burden or standard of proof at this stage in proceedings. Whether a factual particular amounted to misconduct was a matter for the Committee exercising its professional judgment.

The Committee was aware that misconduct is “a word of general effect, involving some act or omission, which falls short of what would be proper in the circumstances.” It was also aware that “misconduct” is qualified by the word “serious”. Misconduct has been described as conduct that would be regarded as "deplorable" by fellow practitioners and which would include a degree of moral blameworthiness or a degree of opprobrium.

The Committee found that the Registrant's conduct was so serious as to amount to misconduct. It was dishonest conduct that directly affected a fellow practitioner, Ms A, in that it caused a GOC investigation to be launched into her conduct. This would have caused great distress and inconvenience to Ms A, and could have had reputational impact on her at work. It was conduct that was deplorable, and in acting dishonestly the Registrant breached the Standards of Practice set out above.

Findings regarding impairment

The Committee has heard submissions from Ms Stephenson on behalf of the Council and from Mr Milner on behalf of the Registrant.

The Committee also heard oral evidence from the Registrant. The Registrant told the Committee that the situation which led to her dishonesty was of her own making, as a result of her disorganisation. She told the Committee that she had gone back to Canada for a month to extend her visa so she could continue to work in the United Kingdom. She had taken the registration form with her, but had not read it. The Registrant said that she was due to start the new job when she returned to the United Kingdom in November 2016. However, she did not look at the registration form to fill it in until a few days before her return to the United Kingdom. She said that on the day when she spoke to the Canadian Post Office, she realised that she would have to post the registration form immediately if there was any chance of her being registered by the time she returned to the United Kingdom. She said as a result she panicked, and inserted her friend’s name and forged her signature on the part of the form which required a third party to certify that the photograph attached to the form was indeed the person making the application.

The Registrant told the Committee that when she forged the signature of her friend on that form she knew it was wrong and dishonest. She said she would not do it again and that she had taken steps to ensure that she would not be in such a position again. She told the Committee that she was now more organised, and gave details of the steps she had taken to be more organised.

The Committee was also referred to the Registrant’s CET record, her reflective statement, and the references provided on her behalf.

The Committee accepted the advice of the Legal Adviser. He reminded the Committee that impairment was a forward-looking exercise, and a matter for the professional judgement of the Committee.
The Committee was aware of the guidance set out in the case of *CHRE v NMC and Grant (2011) EWHC 927 (Admin)*. It was also aware that whilst dishonesty is a serious matter for any professional, it was not the case that every allegation of dishonesty found proved would automatically result in a finding of impairment. The Committee did note that this was a single incident of dishonesty isolated to one occasion.

The Committee was not satisfied that the Registrant had demonstrated sufficient insight into her misconduct. It could not be satisfied that there was no risk of repetition of dishonesty on the part of the Registrant. The Committee was satisfied that the Registrant had demonstrated some insight, in that she had moved from her initial belief that her actions were “technically” a fraudulent act, to her understanding now that they were serious. The Committee took into account the Registrant’s obvious concern and distress that these proceedings had caused for her, and her assurance that she would not act in this way in the future. However, the Committee was not satisfied that the Registrant had shown sufficient insight into what it means to be a professional and all the expectations of honesty and integrity that entails. Her reflection on why honesty mattered to the profession came late in the day, and most of her answers, as to the effect of her dishonest actions, related to the effect upon her and her friend, Ms A. The Committee noted the testimonials submitted on the Registrant’s behalf, which did not address the issue of dishonesty in any detail.

The Committee was also not satisfied that the Registrant had fully remedied the cause of her misconduct. She continued to refer to pressure of time and disorganisation in relation to her dishonesty. She had said that she was now more organised and that there was little chance that she would put herself in a position where she would be as pressured as she was on this occasion. When she was asked how she would cope if she found herself in a time pressured situation again, her response was that, as she was more organised, she would not be in such a situation, but if she did she would be honest with her employers and the GOC.

The Committee was not satisfied that the Registrant fully understood her professional obligations. It noted her Continuing Education and Training (“CET”) record in which all targets were not met, for instance the Registrant had only undertaken limited interactive CET. The Registrant accepted that as she was intending to return to Canada this week, there appeared to be no possibility or intention of her completing her interactive CET requirements for this year. The Committee also noted that none of the CET undertaken was targeted towards the requirements of probity or candour. The Committee was of the view that her CET record demonstrates a lack of commitment to the requirements of her profession.

The Committee considered that the Registrant was aware that her actions were dishonest at the time and she did not disclose them, although she had the opportunity to do so when the GOC contacted her about the inaccuracy of the declaration. She only disclosed the matter to the GOC after it had started its investigation into Ms A. Her actions were directed towards deceiving her regulator, the GOC, through the forging of a certifying signature on her application for registration with the GOC. The Registrant’s dishonesty was directed at obtaining registration with the GOC so she could commence her employment in the UK as
soon as she wanted. Her actions undermined the integrity of the GOC’s vetting process and its robustness.

The Committee determined that these matters were so serious that a finding of impairment was required in order to uphold proper professional standards and confidence in the profession.

The Committee was satisfied that a finding of impairment was necessary in this case. Therefore the Committee finds that the fitness of Kiran Jeerh to practise as an optometrist to be impaired.

Sanction (where impairment has been found)

The Committee has heard submissions from Ms Stephenson on behalf of the Council and from Mr Milner on behalf of the Registrant. It has accepted the advice of the Legal Adviser.

The Committee considered the sanctions available to it from the least restrictive to the most severe (no sanction, financial penalty, conditional registration, suspension, erasure). It also had regard to the Indicative Sanctions Guidance issued by the Council.

The Committee considered the following mitigating features of this case to be significant:

• This was a one-off isolated incident of dishonesty limited to specific circumstances;
• The Registrant has apologised for her actions to Ms A and the GOC;
• The Registrant did make early admissions to these matters, albeit not at the first opportunity, and not until there was no other choice;
• The Registrant has demonstrated developing insight;
• There is no evidence of a deep seated attitudinal problem in relation to honesty and integrity on the part of the Registrant;
• There is no evidence of repetition since this incident; and
• No serious harm was caused, although the Committee recognised that Ms A’s reputation was damaged.

The Committee considered the following aggravating features of this case to be significant:

• The Registrant’s dishonesty was directed at her regulator, and it was done to enable her to commence employment as soon as possible;
• The nature of the Registrant’s misconduct and dishonesty undermined the vetting procedures of the GOC, procedures designed to protect the public and the public’s confidence in the profession; and
• The Registrant’s actions were a serious departure from the standards of conduct and behaviour expected of her.

The Committee determined that these matters involving dishonesty were too serious to take no further action. A sanction is required in this case.

The Committee then considered whether to impose a financial penalty. However, it determined that these matters are too serious for a financial penalty which the Committee considered to be inappropriate or insufficient. To impose a financial penalty for misconduct of this nature would send out the wrong message to the public and the profession.

The Committee next considered the imposition of a Conditions of Practice Order. This was not a case where the Registrant’s clinical skills are in question. The Public Interest in this case cannot be addressed by the imposition of conditions of practice. The Committee concluded that conditions could not be formulated and therefore a Conditions of Practice Order would not be appropriate.

The Committee went on to consider whether a period of suspension would be appropriate in this case. There is no evidence of harmful deep-seated personality or attitudinal problems, nor has there been any repetition of the misconduct. The Committee has determined that the Registrant has developed insight and does not pose a significant risk of repeating her misconduct. She is at the start of her career as an optometrist, and she has provided positive professional references speaking to her competence as an optometrist. The Committee determined that a period of suspension would be the proportionate and appropriate sanction in this case.

The Committee did go on to consider whether erasure would be appropriate. It determined that it would not be just or proportionate. There was no long lasting harm caused to any person. The Registrant has not demonstrated a persistent lack of insight into the seriousness of her actions. Furthermore, whilst the Registrant’s dishonesty was serious, it was not persistent or covered up. The Committee concluded that these matters, taken in the light of the current circumstances, could not justify the most serious sanction of erasure.

In the circumstances of this case, the Committee is satisfied that a period of suspension would be sufficient to uphold professional standards and public confidence in the optometry profession and in the GOC as a regulator.

The Committee took into consideration the representations made on behalf of the Registrant in regard to her personal circumstances. The Committee determined that the appropriate period of suspension should be 6 months. The Committee determined that this period would enable the Registrant to further develop her insight
into her misconduct, and was the shortest period sufficient to mark the seriousness of her misconduct.

The Order will be reviewed before it expires and a future panel of the Committee reviewing this Order may be assisted by the following:

a) a further reflective piece by the Registrant, setting out her reflection on this Committee’s decision, the importance of honesty in the profession, and the manner she has conducted herself since this incident;

b) Evidence of the Registrant undertaking targeted professional development or learning around probity and candour;

c) Up to date references from person(s) who are aware of these proceedings.

The Committee makes a Suspension Order for the period of six months. It further directs that there shall be a review of this order four to six weeks before it expires.

Immediate order

The Committee has heard submissions from Ms Stephenson on behalf of the Council and from Mr Milner, on behalf of the Registrant. It has accepted the advice of the Legal Adviser.

The Council applied for an immediate order. Mr Milner did not oppose the application of the Council. The Committee considered whether an immediate order was necessary for the protection of the public in these circumstances, and/or otherwise in the public interest. The Committee has decided to impose an immediate suspension order because it is in the public interest to do so in the circumstances of this case. It would be incongruous with the Committee’s decision on impairment and sanction if an immediate order were not imposed.

Chair of the Committee: Mr I Crookall

Signature …………………………………………………….. Date:
Registrant: Ms K Jeerh

Signature ……………………………………………… Date:

NOTICE TO REGISTRANT:

- The GOC will enter these conditions against your name in the register save for any conditions that disclose information about your health.

- In accordance with Section 13C(3) of the Opticians Act 1989, the GOC may disclose to any person any information relating to your fitness to practise in the public interest.

- In accordance with Section 13B(1) of the Opticians Act 1989, the GOC may require any person, including your learning/workplace supervisor or professional colleague, to supply any information or document relevant to its statutory functions.

FURTHER INFORMATION

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<td>A full transcript of the hearing will be made available for purchase in due course.</td>
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<td>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).</td>
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<td>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).</td>
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Further information about the PSA can be obtained from its website at [www.professionalstandards.org.uk](http://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.