

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

**GENERAL OPTICAL COUNCIL**

**F(18)15**

**AND**

**DEEPA ACHARYA (SO-11704)**

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**DETERMINATION OF A SUBSTANTIVE REVIEW**

**25 NOVEMBER 2019**

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<b>Committee Members:</b>	Dr P Ormerod(Chair/Lay) Mr U Hoque (Lay) Ms C Tetlow (Lay) Ms L Gerson (Optometrist) Dr E MacMillan (Optometrist)
<b>Legal adviser:</b>	Mr G Dalglish
<b>GOC Presenting Officer:</b>	Mr R Price
<b>Registrant present/represented:</b>	No and unrepresented
<b>Registrant representative:</b>	N/A
<b>Hearings Officer:</b>	Ms K Pentol
<b>Impairment:</b>	Impaired
<b>Sanction:</b>	Erasure

### **Proof of service**

The Committee heard an application from Mr Price for the Council for the matter to proceed in the Registrant's absence. First, the Council was required to satisfy the Committee that the documents had been served in accordance with Section 23A of the Act and Rule 61 of the Fitness to Practise Rules 2013. The Committee accepted the advice of the Legal Adviser.

The Registrant was sent written Notice in terms of the rules on 12 September 2019. The Committee is satisfied that service has been effected in terms of the rules to notify the Registrant of the hearing.

### **Proceeding in the absence of the Registrant**

The Committee then went on to consider whether it would be in the public interest to proceed in the Registrant's absence in accordance with Rule 22. The Committee accepted the advice of the Legal Adviser who reminded it of the GOC Guidance and of the guidance in GMC v Adeogba [2016] EWCA Civ 162.

The Committee considered matters. The Registrant indicated to the Council by email on 14 November 2019 that she would be attending. She is not in attendance and she has not sought an adjournment. The Committee noted that the Substantive Hearing was held at the same venue as today's hearing. The Committee allowed an additional 45 minutes before proceeding in case the Registrant had been delayed.

The Committee is satisfied that all reasonable efforts have been made to give notice and it considers that there is a public interest in expedition and in proceeding with the review. The Suspension Order expires on 10 December 2019. In the circumstances, the Committee concluded that it is fair and appropriate to proceed in the absence of the Registrant.

## **ALLEGATION**

The Council alleges that you, Deepa Acharya, being a registered student optometrist:

1. Incorrectly stated that you had achieved GCE Advanced Level ("A Level") results of:

- a. B in Biology; and/or
- b. B in Chemistry; and/or
- c. A in Economics
  - i. in an email to [Redacted] on 22 June 2015; and/or
  - ii. on a UCAS application form submitted on 30 June 2015

2. Incorrectly stated that you had achieved a 2.1 in the first year of your Pharmaceutical Science degree:

- a. in an email to [Redacted] on 22 June 2015; and/or
- b. on a UCAS application form submitted on 30 June 2015 under the Qualifications section; and/or
- c. on a UCAS application form submitted on 30 June 2015 under the Personal Statement section

3. Your actions in 1 and/or 2 above:

- a. were dishonest, in that you stated that you had achieved those results in the knowledge that you had not; and/or
- b. lacked integrity; and/or
- c. were misleading.

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

## **Background**

The background circumstances as alleged by the General Optical Council (GOC) were as follows. The Registrant is a student member of the GOC. She began a course in Pharmaceutical Science in September 2014 at the [Redacted] (“the University”).

Towards the end of the Registrant’s first year on the Pharmaceutical Course, she applied to transfer on to the MOptom Programme for the academic year 2015-2016. As a result of an investigation made by her Programme Leader it came to light that the Registrant had misrepresented her qualifications.

In 2015-16 the Registrant did not pass all of her first year MOptom modules; she received one FREN (Fail, re-enrol) grade, which means the Registrant failed to meet the minimum pass criteria for the module, but the Board would permit re-enrolment, with reassessment in all elements.

During the summer of 2016, the Registrant appealed to the Dean of School, due to Serious Adverse Circumstances. The appeal was upheld, and the Registrant’s grade was altered to a referral (FREF) meaning that although the Registrant had failed, she

would be referred in relation to the coursework/exam so that she could undertake a reassessment.

The Registrant then appealed to the Vice Chancellor against the FREF grade. That appeal was rejected, and the original appeal decision was upheld. The Registrant informed the university that she was going to take the case to the Office of the Independent Adjudicator (OIA). The University then started to compile a full file of student records for the Registrant, in case an OIA investigation was going ahead. It asked the current MOptom admissions tutor to retrieve the Registrant's UCAS records. As the Registrant was not a current applicant, the historical UCAS records were accessed; both her 2013 application and her 2015 application were available to view.

From these records the admissions tutor noticed a discrepancy between the A level grades in the Registrant's original 2013 application (for 2014 entry) and those entered on her 2015 application. The University asked the Registrant to provide her original certificates so that they could be checked. These confirmed that the Registrant's actual grades were CDD and the grades of ABB recorded on her 2015 application were false. The matter was referred to the University Fitness to Practise Officer.

The University's Fitness to Practise process commenced on 10 October 2016 in respect to the referral. An investigation was undertaken by an independent member of staff. The case proceeded to an internal university fitness to practise hearing.

At a Substantive Hearing before a Fitness to Practise Committee of the General Optical Council on 10 and 11 December 2018 the Allegation was found proved, which amounted to misconduct, and the Registrant's fitness to practise was found to be impaired. The committee imposed a 12 month Suspension Order. This is the first review of that Order.

### **Submissions on Impairment for the GOC**

Mr Price for the GOC summarised the history of the case. He advised that a 12 month Suspension Order had been imposed following a Substantive Hearing on 10 and 11 December 2018. The Allegations had been admitted by the Registrant, except for dishonesty in relation to particular 2, and lack of integrity alleged at particular 3(b). These particulars were found proved following the Substantive Hearing. Her actions were found to amount to misconduct and her fitness to practise to be impaired. A 12 month Suspension Order was imposed on the Registrant. That committee was concerned as to the lack of insight by the Registrant who had sought to blame the University for not checking her UCAS forms and focussed on the fact that other students had lower A level grades than the CDD grades that she had achieved.

Mr Price advised that there are now further concerns that the Registrant has presented the wrong GCSE grades on her UCAS forms and that matter is presently before the Council's Case Examiners.

Mr Price submitted that despite the suggestions made by the committee at the Substantive Hearing to the Registrant as to what would assist at Review, the Council has not received any information from the Registrant about her current circumstances, any reflection, or any references or testimonials. Mr Price submitted that the Registrant has provided no evidence of any remediation of her fitness to practise and she has told the Council that she has nothing to submit for the Review. He submitted that there was no evidence that her insight had improved and a risk of repetition remained, and that the Registrant remained liable to bring the profession in to disrepute and was liable to act dishonestly in the future.

#### Further Consideration of Proceeding in Absence

After adjourning to consider current impairment, the Committee was provided with an email from the Registrant to the Council dated 24 November 2019 at 7.47pm (which had not been provided to them earlier). This states that the Registrant [Redacted] and cannot attend the Review. The Registrant has provided no further details or information. She has not asked for an adjournment. The Committee was mindful that she has previously told the Council in an email dated 7 November 2019 that she would not be submitting any material for the Review.

The Committee has no details or evidence from the Registrant about [Redacted], such as a [Redacted]. She has not asked for an adjournment. There is nothing to suggest she would attend at any adjourned hearing. The Suspension Order is due to expire on 10 December 2019. She had told the Council previously that she is providing no further written information for the Review. The Committee considers that in these circumstances it remains fair and appropriate, and in the public interest, to proceed in the absence of the Registrant.

#### **Findings regarding impairment**

The Committee has heard submissions from Mr Price on behalf of the Council. It has accepted the advice of the Legal Adviser. He reminded the Committee of the GOC Guidance on Impairment and on Sanction. He reminded it to comprehensively review the Registrant's current fitness to practise and to consider the guidance on impairment in CHRE v Nursing and Midwifery Council & Grant [2011] EWHC 927 (Admin).

The Committee was mindful of the submissions, the findings of the committee at the Substantive Hearing; the guidance on impairment in Grant; and the importance of the public interest and confidence in the profession as expressed in Cohen v GMC [2008] EWHC 581.

The committee at the Substantive Hearing in December 2018 observed that there was very little evidence that the Registrant appreciates the gravity of her misconduct... and that *“in the absence of a sufficient level of insight there remains a risk of repetition”*.

The Committee has no evidence before it regarding the Registrant’s current circumstances. The findings are serious. There is no reflection from her and no references or testimonials. The Committee had no evidence before it in respect of the Registrant’s insight into her misconduct and her repeated dishonesty, a crucial aspect in assessing impairment.

The Committee concluded that despite the Substantive Hearing almost one year ago, there is nothing to reassure this Committee regarding the reservations and concerns expressed at that time. The Committee concluded that a significant risk of repetition of the misconduct and dishonesty remains, and that the Registrant’s current fitness to practise remains impaired.

Given the nature and gravity of the misconduct, a finding of impairment is also appropriate on public interest grounds in order to maintain confidence in the profession and to declare and uphold proper standards.

The Committee found that the fitness of Deepa Acharya to undertake training as a Student Optometrist is impaired.

### **Submissions on Sanction from the GOC**

The Committee has heard submissions from Mr Price on behalf of the Council. He submitted that there had been no remediation of the repeated dishonest conduct. He submitted this was brazen and arrogant dishonesty right at the start of the Registrant’s career. She had provided no evidence of insight and he invited the Committee to erase the Registrant from the register. He submitted that the Committee should consider whether the Registrant had any deep-seated attitudinal issues. He submitted that Erasure was the only appropriate sanction and referred the Committee to the Council’s Indicative Sanctions Guidance at paragraph 36. He submitted that there was a persistent lack of insight and that the findings were incompatible with continued registration.

### **Findings regarding sanction**

The Committee accepted the advice of the Legal Adviser. Having decided that the Registrant’s fitness to practise is currently impaired the Committee should consider the matter of Sanction. He reminded the Committee to consider the GOC Indicative Sanctions Guidance (“ISG”) and to act proportionately.

The Committee considered the sanctions available to it from the least necessary to the most severe (no sanction, financial penalty, conditional registration, suspension, erasure). It carefully considered the Council’s ISG.

The Committee decided that the aggravating features were the repeated dishonesty and lack of any evidence of insight and remediation. The dishonesty was also directly connected with her career and profession. The dishonesty was for personal gain. The Committee found no mitigating features.

The Committee concluded that taking no further action, or a financial penalty order were not proportionate or sufficient given the seriousness and the nature of the misconduct.

The Committee considered paragraph 33 of the ISG. It decided that to impose Conditions on the Registrant's registration would fail to deal with the risks identified and to do so was not sufficient or proportionate given the nature of the misconduct. The Committee was not able to devise Conditions that were relevant, workable and realistic. It knows nothing of the Registrant's current circumstances and there is nothing to suggest that the Registrant would, in any event, be willing or able to comply with Conditions.

The Committee also considered that Conditions would fail to protect the public interest as Conditions would not sufficiently mark the seriousness of the misconduct and such a sanction would undermine public confidence in the profession and the regulator.

The Committee next considered Suspension and considered paragraph 34 of the ISG. The misconduct was serious, involving repeated dishonesty. Despite the passage of one year since the Substantive Hearing the Registrant has provided no evidence to the Committee to indicate any reflection, development of insight, or any remediation of her fitness to practise. Despite indications as to what may assist the Committee at this Review and reminders from the Council, the Registrant has chosen to supply no evidence to this Committee. Indeed, she told the Council that she did not intend to submit any further written information for the Review. The Committee has identified a risk of repetition and that, in light of all the circumstances, the risk of repetition is significant.

The Committee therefore concluded that Suspension is not a sufficient or proportionate sanction. Given the seriousness of the misconduct and serious lack of insight and remediation, the Committee also concluded that Suspension would fail to maintain public confidence in the profession.

The Committee considered paragraph 36 of the ISG on Erasure. The Registrant's misconduct involved repeated dishonesty directly in relation to her profession. The misconduct was a serious departure from professional standards and a breach of fundamental tenets of the profession, namely being honest and trustworthy. It occurred at the outset of her career. The Committee has found that there is a persistent lack of insight by the Registrant into her conduct, its seriousness and the consequences of her actions. The Committee concluded that the Registrant's behaviour is fundamentally incompatible with continued registration.

The Committee has therefore concluded that nothing less than Erasure will serve to protect the public interest, to declare and uphold proper standards and maintain confidence in the profession and the regulator.

This Erasure Order will take effect immediately on the expiry of the current Suspension Order.

**Chairman of the Committee: Dr Pamela Ormerod**

**Signature .....**      **Date: 25 November 2019**

**Registrant: Deepa Acharya**

**Signature .....**      **Date: 25 November 2019**



<b>FURTHER INFORMATION</b>
<b>Transcript</b>
A full transcript of the hearing will be made available for purchase in due course.
<b>Appeal</b>
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).
<b>Professional Standards Authority</b>
<p>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).</p> <p>Further information about the PSA can be obtained from its website at <a href="http://www.professionalstandards.org.uk">www.professionalstandards.org.uk</a> or by telephone on 020 7389 8030.</p>
<b>Effect of orders for suspension or erasure</b>
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.
<b>European Alert</b>
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.