BEFORE THE FITNESS TO PRACTISE COMMITTEE
OF THE GENERAL OPTICAL COUNCIL

GENERAL OPTICAL COUNCIL

AND

SMITA TRIVEDI (01-11478)

DETERMINATION OF A SUBSTANTIVE HEARING
14-17 JANUARY 2019

Committee Members: Ms S Fenoughty (Chair/Lay)
Ms J Wheat (Lay)
Ms A Robertson – Rickard (Lay)
Dr E MacMillan (Optometrist)
Mr D Cartwright (Optometrist)

Legal adviser: Ms L Whittle-Martin

GOC Presenting Officer: Mr C Pataky

Registrant present/represented: Present and represented

Registrant representative: Mr S Thomas
Ms E Franci AOP

Hearings Officer: Mr T Yates

Facts found proved: N/A

Facts not found proved: N/A

Outcome: No impairment (by way of an application of no case to answer)
ALLEGATION

The Registrant is a registered optometrist.

It is alleged that:

1. On or around 9 July 2013, you conducted a sight test on patient B and you prescribed spectacles to him that were not clinically appropriate in that:
   a) The spectacles interfered with the treatment Patient B was receiving via the Hospital Eye Service at Moorfields Eye Hospital;

2. On or around the 5 November 2013, you conducted a sight test on patient B and you prescribed spectacles to him that were not clinically appropriate in that:
   a) The spectacles caused the angle of patient B's squint to increase;
   b) The spectacles interfered with the treatment Patient B was receiving via the Hospital Eye Service at Moorfields Eye Hospital;

3. Between around July 2013 and January 2014, you provided Patient B with optometric care and:
   a) You provided Patient B with inappropriate clinical care;
   b) You provided Patient B with clinical care which interfered with the treatment he was receiving via the Hospital Eye Service at Moorfields Eye Hospital

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

Background to the Allegations

The Registrant has been registered as an optometrist with the Council since 21 October 1983.

Patient B was under the care of Moorfields Eye Hospital ("Moorfields") in respect of a significant squint in his left eye. Patient B was 5 years old at the material time. At Moorfields, Patient B was prescribed spectacles (right +2.00/-0.25x10 and left +2.50/-0.25x170) on 15 January 2013. On 9 May 2013 occlusion therapy was commenced. A patch was to be worn on the right eye for two hours each day. Patient B was under Moorfields' care until 7 December 2015.

Patient B came under the care of the Registrant between 9 July 2013 and 7 January 2014. Patient B’s mother’s evidence is that she was told by the Registrant that the Registrant had had excellent success helping children to achieve 3D binocular vision. Moorfields had told her that Patient B would not achieve 3D binocular vision.

During the time Patient B was in her care, the Registrant commenced a concurrent course of treatment which was not in accordance with the care given by Moorfields, in particular:

i. On 9 July 2013, the Registrant prescribed spectacles of right +1.00 and left +1.00 for distance with a near addition of +1.00 for executive bifocals;

ii. On 13 August 2013, the above prescription continued to be advised and bi-nasal occlusion was advised, when at an appointment at Moorfields on 11 July 2013 the advice given was the continuation of part time total occlusion;

iii. On 5 November 2013, the Registrant prescribed spectacles of right +1.50 and left +1.50.

It was alleged that the Registrant did not communicate with Moorfields the nature of the treatment she was providing, notwithstanding that she was aware that Patient B was under Moorfields’ care.

The Council's case was that the treatment provided by the Registrant was inappropriate and interfered with the treatment provided by Moorfields.

In essence it was alleged that the Registrant had conducted a series of appointments with Patient B with a view to undertaking a treatment regime which conflicted with that advised by Moorfields, which ran concurrently, and that the Registrant did this without adequate communication with Moorfields. This was inappropriate, and as a consequence the treatment at Moorfields could have been compromised.
**Witnesses**

The Committee heard evidence from Witness A, who worked at Moorfields as a Consultant Ophthalmic Surgeon at the relevant time, and an expert witness called on behalf of the GOC, Professor Eperjesi.

Professor Eperjesi said, in relation to Allegation 1(a) that, in summary, the Registrant significantly and inappropriately changed the prescription without communicating with Moorfields. It was Professor Eperjesi’s opinion that a reasonably competent optometrist would not change the treatment regime of a patient who was already under the care of the hospital without communicating with them first. By doing so it was Professor Eperjesi’s opinion that the Registrant interfered with the treatment from Moorfields and fell far below the expected standard.

Professor Eperjesi said, in relation to Allegation 2(b) that, in summary, the Registrant significantly and inappropriately changed the prescription without communicating with Moorfields. It was Professor Eperjesi’s opinion that a reasonably competent optometrist would not change the treatment regime of a patient who was already under the care of the hospital without communicating with them first. By doing so it was Professor Eperjesi’s opinion that the Registrant interfered with the treatment from Moorfields and fell far below the expected standard.

In relation to Allegation 3(a), which the Council clarified related only to the bi-nasal occlusion therapy, Professor Eperjesi said that the Registrant’s actions, in the provision of bi-nasal occlusion therapy, were inappropriate and fell below, but not far below, the expected standard.

**Withdrawal of allegations**

At the close of the case for the Council, Mr Pataky, on behalf of the Council, formally withdrew Allegation 2(a) and Allegation 3(b).

**Application pursuant to Rule 46 (8)(b) – No case to answer**

Mr Thomas, for the Registrant, submitted, that even if the remaining factual allegations were capable of being proved, there was nevertheless no case to answer on misconduct and no case to answer on impairment. He submitted that the interference alleged in Allegation 1(a) and 2(b) and the inappropriate care alleged in Allegation 3(a) was not so serious as to constitute misconduct, and that in any event there was no case to answer on the issue of impairment because the events involved a single patient and had taken place over 5 years ago. There was no suggestion that harm had been caused by reason of the alleged misconduct. The Registrant had demonstrated insight in her initial response to the case examiners and had demonstrated remediation and further insight since, as demonstrated by the Registrant’s bundle which had been handed to the GOC.
Mr Pataky, for the Council, having taken detailed instructions from the Council, then confirmed that whilst the Council was of the view that the remaining allegations of fact were capable of proof and capable of sustaining a finding of misconduct, nevertheless the misconduct here was not capable of supporting a finding of current impairment. He explained the Council’s reasoning in this regard, which included consideration of the fact that the concerns dated back over 5 years, concerned a single patient, and there was no suggestion that there had been any repetition of similar concerns. The Council had taken into account the bundle of evidence served by the Registrant which included testimonials, her CET and evidence of a number of courses recently undertaken by the Registrant demonstrating remediation. It had also taken into account the Registrant’s response to the initial allegations, indicating insight on her part. Mr Pataky explained that in those circumstances the Council did not seek to oppose the application made by the Registrant.

The Committee accepted the advice of the Legal Adviser. She reminded the Committee of Rule 46 (8) which states:

“Before opening the registrant’s case the registrant may make submissions as to-

(a) Whether sufficient evidence has been adduced upon which the disputed facts could be found proved;

(b) Whether the facts, whether they are disputed or proved, could support a finding of impairment.”

The Legal Adviser reminded the Committee that the Registrant did not seek to argue that there is no case to answer on the facts but that there was no case to answer on misconduct or impairment. She reminded the Committee that whilst the Council was of the view that the remaining allegations of fact were capable of proof, and were capable of sustaining a finding of misconduct, nevertheless they agreed that the misconduct is not capable of supporting a finding of current impairment. In those circumstances the Council did not seek to oppose the application made by the Registrant.

The Legal Adviser advised that it was for the Committee to decide whether it agreed with that course of action. She reminded the Committee of the case of CRRE -v- (1) GMC (2) Ruscillo [2004] EWHC 527 in which it was said that Panels conducting fitness to practise proceedings:

“should play a more proactive role than a judge presiding over a criminal trial in making sure that the case is properly presented and that the relevant evidence is placed before it”

She advised that the Committee’s task was to decide whether it agreed with both parties that the facts, whether they are disputed or proved, could not support a finding of impairment.
The Committee concluded that the facts, if proved, were capable of amounting to misconduct. The Committee accepted that the allegation of interference with the treatment Patient B was receiving at Moorfields, namely an inappropriate and significant change in prescription without communicating with the hospital, could, if proved, support a finding that the Registrant’s actions fell far below the standard expected of a registered optometrist and amount to misconduct in the circumstances of the case. There was evidence before the Committee that the Registrant had acted contrary to Moorfields’ ongoing programme of treatment for Patient B, and was in breach of the Code of Conduct regarding working with colleagues. There was evidence that the Registrant had not acted in the best interests of her patient, by putting in place a conflicting regime, which ran concurrently with the regime already imposed by Moorfields. The Committee took all these factors into account in concluding that these matters were sufficiently serious such that they were capable of supporting a finding of misconduct.

In relation to Allegation 3(a), in the light of Professor Eperjesi’s evidence, the Committee determined that the facts could not support a finding of serious misconduct.

However the Committee accepted that whilst capable of supporting a finding of misconduct, the facts could not support a finding of current impairment. The Committee accepted the submissions made by Mr Thomas, endorsed by Mr Pataky on behalf of the GOC, that this allegation involved a single patient, with no suggestion of harm; the events had occurred five years ago; and there was no suggestion that the Registrant had repeated this behaviour. The Committee accepted that the Registrant’s Bundle provided evidence of remediation and insight, and that, on the basis of all the material before it, it was highly unlikely that the Registrant would repeat the alleged misconduct. It appeared that she had reflected and shown insight, understood that she should have communicated with Moorfields and had now changed her working practice as a consequence.

It was the judgement of the Committee that it could not be said that the Registrant had brought the profession into disrepute or that confidence in the profession would be undermined if no finding of impairment were to be made.

The Committee agreed with the submission made by Mr Thomas, supported by Mr Pataky, that the facts, whether they are disputed or proved, could not support a finding of impairment.

In those circumstances the submission made by Mr Thomas under Rule 46(8)(b) is upheld.
Declaration

The Committee determines that the facts in this case could not support a finding of impairment.

Chair of the Committee: Ms Sara Fenoughy

Signature ...................................................... Date: 17 January 2019

Registrant: Ms Smita Trivedi

Signature ...................................................... Date: 17 January 2019
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.