BEFORE THE FITNESS TO PRACTISE COMMITTEE
OF THE GENERAL OPTICAL COUNCIL

GENERAL OPTICAL COUNCIL

AND

CHRISHANTHI CHRISTY (01-24314)

DETERMINATION OF A SUBSTANTIVE HEARING
1-3 MAY 2019

| Committee Members: | Ms R O’Connell (Chair/Lay)  
|                    | Mr U Hoque (Lay)  
|                    | Ms J Wheat (Lay)  
|                    | Ms S Nasrullah (Optometrist)  
|                    | Ms C Roberts (Optometrist) |
| Legal adviser:     | Mr W Hoskins |
| GOC Presenting Officer: | Mr C Pataky |
| Registrant present/represented: | Present and represented |
| Registrant representative: | Ms N Bird (Counsel)  
|                           | Ms S Masud (AOP) |
| Hearings Officer:   | Mr T Yates (1-2 May 2019)  
|                           | Miss J Alvarado (3 May 2019) |
| Outcome:            | No case to answer |
ALLEGATION

The Council alleges that you, a Registered Optometrist:

1. On 5 January 2017 at redacted, performed a sight test on Patient A and:
   a) failed to detect an intraocular abnormality in Patient A's left eye; and / or
   b) failed to detect the signs of a possible uveal melanoma in Patient A's left eye; and / or
   c) failed to examine Patient A's eyes under dilation in circumstances where Patient A had presented with symptoms including 'black shadows'; and / or
   d) failed to refer Patient A for further investigation.

2. Your record of the examination of Patient A was inadequate in that, in addition to the circumstances set out above, you:
   a) failed to record the presenting symptoms of 'black shadows' and / or a deterioration in the vision of the left eye as reported to you by Patient A.

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

Application to amend the Allegation

Mr Pataky on behalf of the Council made an application to amend the Allegation. He submitted a draft of the proposed amendment which raised no new issue but narrowed the area in dispute between the parties. He told the Committee that the amendment properly reflected developments in the expert evidence.

Ms Bird on behalf of the Registrant did not oppose the application. She accepted what Mr Pataky had told the Committee.

The Committee accepted the advice of the Legal Adviser who reminded it of the terms of Rule 46(20).

The Committee allowed the amendment. It was clear that it could be made without injustice.

Therefore, the Committee accepted the application to amend.
ALLEGATION (as amended)

The Council alleges that you, a Registered Optometrist:

1. On 5 January 2017 at redacted, performed a sight test on Patient A and:
   a) failed to examine Patient A's eyes under dilation in circumstances where Patient A had presented with symptoms including 'black shadows'; and / or
   b) failed to refer Patient A for further investigation in circumstances where Patient A had presented with symptoms including 'black shadows';
   c) In respect of (a) above, you:
      (i) failed to detect an intraocular abnormality in Patient A's left eye and/or
      (ii) failed to detect signs of a possible uveal melanoma in Patient A's left eye;

1. Your record of the examination of Patient A was inadequate in that, in addition to the circumstances set out above, you:
   a) failed to record the presenting symptoms of 'black shadows' and / or a deterioration in the vision of the left eye as reported to you by Patient A.

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

Background to the Allegation

This Allegation arises from a complaint made by Patient A following an appointment with the Registrant at redacted on 5 January 2017. Patient A was 71 years old at the time and it is alleged that at this appointment she complained both of a deterioration in vision and of experiencing black shadows over her left eye. It is further alleged that the Registrant told Patient A not to worry about the shadows, dismissing them as ‘floaters’ and as normal. She did not dilate the pupil of the eye. If she had dilated the pupil, she would probably have seen a tumour.

On 7 February 2017, Patient A presented to the eye casualty unit at redacted, having experienced an acute onset severe headache and left eye visual loss that morning. Patient A was diagnosed with left eye angle closure with substantially raised intraocular pressure. This presentation was deemed secondary to a suspected ocular tumour. Patient A was referred to redacted where she was diagnosed with an Uveal Melanoma. Patient A’s left eye was subsequently removed.

Patient A and her sister attended again at the redacted on 23 February 2017. During that visit, it is alleged that Patient A referred to the symptoms of shadows that she
said she had reported at the earlier appointment on 5 January 2017. The Registrant denied that this symptom had been raised with her. No such symptom was recorded in the patient notes.

Patient A’s complaint raised an issue as to whether in the light of what Patient A recalled saying to the Registrant on 5 January 2017, the Registrant should have carried out a dilation procedure on Patient A’s left eye and thereafter taken appropriate action.

Even if the Registrant had carried out a dilation procedure and observed the tumour, the expert ophthalmic evidence obtained by the parties for the purposes of this case has confirmed that the prognosis for the tumour and Patient A’s left eye would not have been any different if the tumour had been observed on 5 January 2017 and urgent referral made then.

Evidence

The Committee was provided with a bundle of documents which included the contemporaneous clinical records and a number of expert reports from consultant ophthalmologists and optometrists. The Council had obtained reports from Mr Simmons, consultant ophthalmologist and Dr Harper, consultant optometrist. The Registrant had obtained reports from Professor Rennie, consultant ophthalmologist and Mr Lyndon Taylor, consultant optometrist. There was little dispute between the experts. In particular, there was general agreement that the tumour was present in Patient A’s left eye on 5 January 2017 and would probably have been visible if the pupil had been dilated. However, the failure to observe the tumour at that time had made no difference to the prognosis for the left eye.

Patient A gave oral evidence to the Committee. Her evidence included her recollection of the conversation she had had with the Registrant during the course of the appointment on 5 January 2017.

Further application to amend the Allegation

At the close of Patient A’s evidence, Mr Pataky, for the Council, sought an adjournment to enable him to take instructions. The Committee allowed this. During the course of this adjournment, it became clear that the parties were not in a position to continue with the case on day 1. Therefore, the Committee allowed further time and indicated that it would resume the hearing at 9am on Thursday 2 May 2019.

At the outset of the resumed hearing, Mr Pataky made an application to further amend the Allegation. The proposed further amendment was in the following terms:

Proposed amended Allegation
The Council alleges that you, a Registered Optometrist:
1. On 5 January 2017 at redacted, performed a sight test on Patient A and:

   a) failed to examine Patient A’s eyes under dilation in circumstances where Patient A had presented with symptoms including ‘black shadows’ and/or floater(s) and/or

   b) failed to refer Patient A for further investigation in circumstances where Patient A had presented with symptoms including ‘black shadows’ and/or floater(s);

   c) In respect of (a) above, you:

      (i) failed to detect an intraocular abnormality in Patient A’s left eye and/or

      (ii) failed to detect signs of a possible uveal melanoma in Patient A’s left eye;

2. Your record of the examination of Patient A was inadequate in that, in addition to the circumstances set out above, you:

   a) failed to record the presenting symptoms of ‘black shadows’ and/or floater(s) and/or a deterioration in the vision of the left eye as reported to you by Patient A.

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

Mr Pataky submitted that the proposed amendment took account of Patient A’s oral evidence during which she had accepted that she was unsure of the precise term she had used when describing the symptoms she alleged that she reported to the Registrant. She thought it more likely that she had used the term floater or floaters rather than black shadow or shadows. Mr Pataky accepted that the proposed amendments broadened the terms of the conversation which was the basis of the Council’s case but submitted that it did not fundamentally alter the case against the Registrant. He submitted that the Registrant’s position had always been that no symptoms such as black shadows or floaters had been reported to her.

Mr Pataky also relied upon some written responses by the expert optometrists, to questions that they were asked to address following the conclusion of Patient A’s evidence. Dr Robert Harper and Mr Lyndon Taylor had heard Patient A’s oral evidence. They had responded that if floaters had been reported further follow-up questioning would have been necessary, including questions directed to the onset and duration of these symptoms. They agreed that if floaters of less than 3 months duration had been reported a reasonably competent optometrist would have chosen to dilate the pupil. But
a duration longer than 3 months may have quite reasonably led to a decision to not dilate. They also agreed based on Patient A’s oral evidence “expressed at the hearing today” that a reasonably competent optometrist would have either dilated or referred urgently to another practitioner.

Ms Bird, for the Registrant, strongly opposed this application to further amend the Allegation. She submitted that the way in which an allegation is drafted is of great importance because it determines the way in which the Registrant and her legal advisers prepare for the hearing. She said that the Registrant had prepared for the hearing based upon a clear allegation that the symptoms reported included “black shadows”. She said that if the GOC wished to broaden the terms of the Allegation the Council should have done so long ago. She pointed out that Patient A had referred to the symptom using the term “floater” twice in an email to the Council of 11 November 2017. The Council had therefore had ample opportunity to include the proposed amendment in the Allegation as originally drafted but had chosen not to do so.

She submitted that the reason for the proposed amendment was because Patient A had not confirmed the contents of her witness statements in both of which she had repeatedly referred to black shadows and not to floaters. As matters presently stood, in the light of the oral evidence of Patient A, Ms Bird submitted that the Registrant would be able to make a powerful submission of no case to answer. She would be deprived of that opportunity if this further amendment was allowed. She submitted that the Registrant had come to meet the Council’s case and that it was very unfair for the goal posts to be moved in the middle of the hearing.

The Committee accepted the advice of the Legal Adviser. He reminded the Committee of Rule 46(20). He advised that the Committee might wish to consider in particular two matters:

- Did the proposed amendment significantly change the case which the Registrant had to meet?
- If it did, was it unfair to expect the Registrant to meet that case at this stage of the proceedings?

He reminded the Committee that it was well established that cases involving fitness to practise ought not to be determined upon technicalities but also that the Committee’s power to amend the Allegation should only be exercised if an amendment could be made “without injustice”.

The Committee was of the view that the proposed amendment significantly altered the case against the Registrant. It noted that the two witness statements of Patient A dated respectively “06/07/2017” and “28/01/2018” were both unequivocal in alleging that Patient A had reported experiencing “black shadows” over her left eye. There was no suggestion that the symptom might have been reported using some other term.

The Committee also noted that the expert reports in the case had proceeded upon the basis that this was the symptom which had been reported and which should, if reported as alleged, have caused concern and further investigation. So, for example, Dr Harper in his report of 2 April 2018 concluded:
“If however, the symptoms of “black shadows” over the left eye had been reported to the Registrant by Patient A, as she states she did, then this presentation ought to have triggered additional testing and investigation and/or referral in the event that the Registrant was unwilling to dilate the patient. The symptom of “black shadows”, and in particular if of acute onset or relatively new and/or unexplained, falls within the spectrum of symptoms associated with a patient presenting with retinal detachment, although such symptoms may be attributed to other eye conditions. If reported, such a symptom should precipitate the action of pupil dilation to allow a more thorough examination of the retina.

Had Patient A reported this symptom to the Registrant on 5th January 2017, failure to dilate Patient A’s pupils (or to arrange for someone else to do so) would, in my opinion, fall far below the standard expected of a reasonably competent optometrist.”

Mr Lyndon Taylor in his report of 19 January 2019 concluded:

“47. If the Panel is of the opinion that the shadow above the left eye was reported to the registrant then
48. The registrant should have recorded and then investigated the symptom”

…

“51. Conversely if the Panel is of the opinion that the shadow above the left eye was NOT reported to the registrant then

52. There are no other red flags or warning [SIC] signs in the records which would have led a reasonably competent optometrist to dilate Patient A’s pupils”

Mr Ian Simmons, Consultant Ophthalmologist, concluded:

“The panel will need to decide whether Patient A did indeed complain of shadows. If she did, all of us experts appear to agree that the registrant should have taken steps to investigate more fully with a dilated retinal examination.”

The report of the other Consultant Ophthalmologist Professor Rennie was also predicated upon a report of black shadows being made to the Registrant. He identifies such a report as being more sinister than a report of flashes or floaters.

The Committee has carefully considered the responses of the expert optometrists to the questions asked of them on day 1. The Committee is of the view that if the Allegation had been more widely drafted at the outset it is certain that the expert reports in the case would have been more nuanced in their approach. There would have been more extensive discussion of the implications of a report of ‘floaters’.

Further, the Committee attaches limited weight to the contents of the Council’s document C5, which records the experts’ responses to the questions they were asked yesterday. In her oral evidence, Patient A described what she remembered of her symptoms in a variety of different ways. However, the Council’s case against the Registrant has always been based upon a specific report of a particular sinister symptom at the consultation 5 January 2017.
The Committee has come to the conclusion that it would be unfair to expect the Registrant to meet now a case in which a broader less explicit complaint is alleged to have been made. The proposed amendment changes the factual basis of the case against the Registrant and the nature of the finding which would have to be considered by the Committee. Further, it appears to the Committee that the expert evidence prepared for the purposes of this case and the way in which the Registrant prepared for the case would have been significantly different. Accordingly, the Committee has decided that the proposed amendment cannot be made without injustice and therefore rejects the Council’s application to further amend the Allegation.

Application to recall Patient A

At the outset of day 3 of the hearing, Mr Pataky made an application to recall Patient A who had given oral evidence on day 1. He wished to ask her one further question. The question was:

“During the consultation on 5 January 2017, what term or terms did you use to describe your symptoms?”

Mr Pataky accepted that this issue had already been canvassed with Patient A and various answers had been given. He submitted that the Committee would be assisted if Patient A was recalled to address this issue again and he reminded the Committee of its responsibility to safeguard the public and to protect the public interest.

Mr Pataky also accepted that the recall of Patient A would involve a further delay of up to 2 hours because Patient A was not within the building.

Ms Bird opposed the application. She said that, notwithstanding the fact that proceedings had been adjourned yesterday, before lunch, so as to enable Mr Pataky to take instructions, she had been given about 20 seconds notice of this application. She submitted that it would be manifestly unfair for the Committee to permit the Council to reopen this question as Patient A had already been given every opportunity to address this issue in her evidence. She also submitted that Mr Pataky’s application, if successful, was bound to involve considerable further delay. Patient A was not within the building and Mr Pataky wished to recall her in person. It would therefore be at least an hour and probably longer before she was in a position to give further evidence. In view of the delays that had already occurred because Mr Pataky needed to take further instructions from the Council, she submitted that this further delay was not to be tolerated.
The Committee accepted the legal advice of the Legal Adviser. He reminded the Committee that it had a wide discretion which was to be exercised with fairness to both parties. This was an unusual application because it involved the recall of a witness to deal with matters that had already been canvassed in evidence with that witness. He reminded the Committee of its function in securing the public interest and also in ensuring that hearings were fairly conducted.

The Committee rejected the application to recall Patient A.

The question which Mr Pataky wished to put to Patient A had already been answered by Patient A on a number of occasions, both in cross examination, questions from the Committee and Mr Pataky's own re-examination following questions from the Committee. The Committee found it impossible to see how asking the same question again of Patient A would assist it in its assessment of her evidence or in resolving the issues in this case. To allow the recall of Patient A in these circumstances and without good reason is not in the interest of justice and would be particularly unfair to the Registrant.

The Committee had become very concerned about the delays that had occurred in the presentation of this case. This application had been made following an afternoon in which no further effective progress was made with the case. That was because Mr Pataky needed to take instructions from the Council. At the close of proceedings yesterday, the Committee stated that it would expect to resume the hearing of this case at 10am this morning. That was to enable Mr Pataky to ensure that he was in receipt of whatever instructions were necessary. It seemed to the Committee therefore, to be particularly unfortunate that the Registrant's representative was given no notice of this application. The Committee was told by Mr Pataky that the potential recall of Patient A had not been discussed with Patient A herself and could not, in any event, take place without a further delay while she travelled from her home to central London.

Although the Committee has reached its decision in relation to Mr Pataky's application based on its merits, it wishes to record clearly its view that the delay that has occurred in this case is very regrettable.

Application to offer no evidence

Mr Pataky made an application to offer no evidence in support of the Allegation. He told the Committee that the Council had carefully considered its options in view of the evidence of Patient A and the Committee’s refusal of the application to further amend the Allegation. He accepted that Patient A had, in her oral evidence, veered away from her original insistence that she had told the Registrant of a black shadow or shadows in her left eye and had used other terminology to describe the symptoms which she thought she had mentioned to the Registrant. In those circumstances, the
Council had concluded that the Allegation against the Registrant could not be supported and had decided to offer no evidence.

Ms Bird made no further submissions.

The Committee accepted the advice of the Legal Adviser who indicated that the present situation was not specifically catered for in the Rules but was nonetheless a matter that arose from time to time and that it was customary for the Council to explain the reason for any decision of this sort to the Committee.

The Committee noted Mr Pataky’s appraisal of the situation and accepted it.

In those circumstances, the Committee allowed the application to offer no evidence. Therefore, the Registrant has no case to answer in relation to the Allegation.

Chair of the Committee: Ms Rachel O’Connell

Signature ........................................... Date: 3 May 2019

Registrant: Ms Chrishanthi Christy

Signature ........................................... Date: 3 May 2019
FURTHER INFORMATION

Transcript

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

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](http://www.professionalstandards.org.uk) or by telephone on 020 7389 8030.

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.