

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

GENERAL OPTICAL COUNCIL

F(15)13

AND

NIMESH PATEL (D-13379)

**DETERMINATION OF A SUBSTANTIVE HEARING
7-8 NOV 2019**

Committee Members:	Mr I Crookall – (Chair) Dr P Ormerod – (Lay) Mr U Hoque – (Lay) Ms S Baylay – (Dispensing Optician) Ms J Stodel – (Dispensing Optician)
Legal adviser:	Ms L Whittle-Martin
GOC Presenting Officer:	Ms L Culleton
Registrant:	Represented (not present)
Registrant representative:	Mr J Graham
Hearings Officer:	Mr T Yates
Facts found proved:	All
Facts not found proved:	N/A
Misconduct:	Found
Impairment:	Impaired
Sanction:	12 months Suspension (with review)

Immediate order: Yes

ALLEGATION

The Council alleges that you, Nimesh Patel, a dispensing optician:-

1. In relation to your employment as Director of [REDACTED] ("the Store"):-
 - a) Between around 2004 to February 2007 you misappropriated around £3,530 from the Store by processing fraudulent refunds against Customer accounts and then stealing cash from the till.
2. Your conduct as described in Head of Charge 1 was dishonest.

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

DETERMINATION

Admissions in relation to the particulars of the allegation

The Registrant admitted particulars 1(a) and 2. The Committee found these particulars proved on the basis of the admissions.

Hearing evidence in private

In accordance with Rule 25 of the General Optical Council Fitness to Practise Rules 2013, the Committee concluded that it would be appropriate for part of the proceedings to be heard in private [REDACTED].

Background to the allegations

The GOC alleged, and the Registrant admitted, that between 2004 and February 2007, the Registrant fraudulently processed refunds at the Store, at a time when he was a franchise partner and director, and stole cash from the till.

The situation came to light after CCTV cameras were installed in the Store in November 2006 to monitor suspicions that money was being taken.

On 6 February 2007, the CCTV footage was reviewed and revealed four occasions on which the Registrant was seen to process fraudulent refunds through the till and then remove cash and put it into his pocket. The incidents caught on CCTV were dated 11 December 2006, 2 January 2007, 22 January 2007 and 5 February 2007.

On 20 February 2007 the Registrant agreed to take part in an internal investigation interview. He admitted that he had processed fraudulent refunds. He said that he had done so due to financial difficulties and to prevent an impending repossession order on his family home. He said that his business had not been performing well. He explained that he had not taken a bonus or dividends for some time.

The investigation concluded that the overall amount that had been stolen by the Registrant amounted to approximately £3,530. The largest amount taken at any one time was £480 and the average transaction was in the region of £200- £300. The Registrant agreed to repay £4,180 and paid £15,610 towards the cost of the investigation.

The Registrant provided a witness statement in which he accepted and admitted theft of the sum of £3,530 through the processing of fraudulent refunds. He said that he had been in an extremely stressful position, both financially and personally, at the time. [REDACTED]. He explained that after his interview with the Company A he volunteered to leave the business, and sold his shares in the Store at a financial loss.

He said that the shame brought about by the situation caused him to deregister with the GOC and move to Location A. [REDACTED] He had not worked for over 3 years due to personal circumstances. [REDACTED].

Findings in relation to the facts

The Committee found the facts proved by reason of the Registrant's admitted facts.

Findings in relation to misconduct

Ms Culleton submitted on behalf of the GOC that the Registrant's dishonesty was serious and amounted to misconduct.

Mr Graham on behalf of the Registrant accepted that the behaviour was serious and made no submissions with regard to misconduct.

The Committee accepted the advice of the Legal Adviser, who advised that in considering misconduct the Committee should ask whether, in its judgement, the Registrant's behaviour, as admitted, had fallen seriously below the standards required of an optician in the circumstances, and whether it would be regarded as deplorable by fellow practitioners. She took the Committee to the cases of *Roylance –v- General Medical Council No 2 [2001] 1 AC 311* and *Nandi v GMC [2004] EWHC 2317*.

The Committee concluded that the Registrant had breached the following codes of the General Optical Council Code of Conduct (2005):

10. Be honest and trustworthy;

19. Ensure your conduct, whether or not connected to your professional practice, does not damage public confidence in you or your profession.

The Registrant's behaviour had involved the theft of large sums of cash for his own gain. He had done so on numerous occasions over a protracted period of time. He had been acting in his professional capacity as an Dispensing Optician and director of the Store. The Committee concluded that this was behaviour that fell seriously below the standards expected of a registered Dispensing Optician, and was deplorable.

Accordingly the Committee concluded that in its judgment the admitted facts amounted to misconduct.

Findings regarding impairment

Ms Culleton submitted that as a consequence of the misconduct the Registrant's fitness to practise as a Dispensing Optician is impaired. She argued that due to the dishonest misconduct, public confidence in the Registrant and in the profession would be severely undermined were he to be permitted to practise unrestricted, and that he had brought the profession into disrepute. Further, the Registrant had not worked as an optician since 2016 and had provided no evidence of remediation. There remained a risk that he would repeat his misconduct.

Mr Graham submitted that the Registrant's fitness to practise is not currently impaired. The misconduct had taken place a long time ago and had been remediated by repaying the sums taken and by immediate admissions. The Registrant did not present a risk to patients. The risk of repetition was very low. The Registrant had demonstrated compelling and significant insight.

The Committee accepted the advice of the Legal Adviser who set out the criteria in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Paula Grant [2011] EWHC 927*, and encouraged the Committee to ask whether the Registrant:

- *Has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- *Has in the past and/or is liable in the future to bring the profession into disrepute; and/or*
- *Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the profession*
- *Has in the past acted dishonestly and/or is liable to act dishonestly in the future*

The Legal Adviser also advised on the case of *Cohen v General Medical Council [2008] EWHC 581*, and encouraged the Committee to ask whether the Registrant's conduct is easily remediable, whether it has been remedied and whether it is highly

unlikely to be repeated. She also advised the Committee to consider the critical public interest issues set out in the case of *Grant*.

The Committee accepted that there was no suggestion of clinical failings on the Registrant's part, and concluded that he does not present a risk to patients

The Committee accepted that the events had occurred a long time ago. The Registrant had made full admissions. He had demonstrated remorse. It was clear that he faced very difficult personal circumstances at the present time. The Committee drew no adverse inference from the Registrant's absence at the hearing, and accepted the evidence provided by him in his witness statement, as put forward by Mr Graham on his behalf.

However, dishonesty is, by its nature, difficult to remediate. The Committee did not accept that the passage of time, or the repayment of monies owed, could provide a complete remedy for past events. The Committee concluded that the Registrant has shown limited insight into his dishonesty. Whilst he has admitted his misconduct and explained his understanding of the seriousness of his behaviour on the one hand, he has prayed in aid his stressful financial circumstances, including his lack of bonus, on the other. He appeared to suggest that extraneous circumstances had been driving his behaviour, rather than accepting full responsibility for his actions.

The Committee concluded that the Registrant's behaviour was serious and amounted to a breach of a fundamental tenet of the profession. He had brought the profession into disrepute. In light of the limited insight shown by him, the Committee concluded that it could not be said that the dishonesty was highly unlikely to be repeated.

The Committee concluded that the nature of the misconduct, which had involved repeated dishonesty for personal gain over a protracted period of time whilst in a position of trust, combined with the Registrant's lack of full insight, demanded a finding of impairment. The public interest in maintaining standards and confidence in the profession would be severely undermined if the Registrant were to be permitted to practise unrestricted.

Accordingly the Committee concluded that the Registrant's fitness to practise as a Dispensing Optician is currently impaired.

Sanction

Ms Culleton submitted that erasure was the appropriate sanction due to the seriousness of the dishonesty.

Mr Graham submitted that suspension was the appropriate sanction due to the mitigating factors in the case, and in particular the Registrant's current personal circumstances.

The Committee accepted the advice of the Legal Adviser who advised the Committee to consider the range of available sanctions in ascending order of seriousness; to consider any aggravating and mitigating factors in the case; to act proportionately; and to remember that the purpose of sanction is not to be punitive, but is to protect the public, maintain public confidence in the profession, and declare and uphold proper standards of conduct and behaviour. She advised the Committee to take into account the factors set out in the GOC's "Hearings and Indicative Sanctions Guidance".

The Committee took into account the following mitigating factors:

- the Registrant's previous good character
- the Registrant's admissions to his employer and to the GOC
- the length of time since the misconduct combined with the lack of any repetition of it
- the remorse expressed by the Registrant
- the repayment made by the Registrant
- the Registrant's personal circumstances at the time of the misconduct and at the present time.

The Committee took into account the following aggravating factors:

- the dishonesty was calculated and deliberate
- the dishonesty was carried out at work
- the dishonesty was conducted for personal gain
- the dishonesty had involved an abuse of trust
- the dishonesty had taken place repeatedly over an extended period of time.

The Committee concluded that in view of the seriousness of the misconduct, to take no further action or to impose a financial penalty would not be appropriate or sufficient to protect the public or maintain confidence in the profession and the regulatory process.

The Committee concluded that conditional registration would not be sufficient in light of the seriousness of the dishonesty. Further, such an order would not be workable due to the nature of the misconduct, which did not involve identifiable areas of practice in need of assessment or retraining.

The Committee considered a Suspension Order.

The Committee took into account the fact that the Registrant's dishonesty had taken place on numerous occasions over an extended period of time. It had been deliberate. It had been conducted in circumstances which amounted to an abuse of trust. It had been carried out for personal gain.

However, the Committee was mindful of the exceptional personal circumstances faced by the Registrant, both at the time of the misconduct and at the present time. Those circumstances, together with the Registrant's admissions, remorse, insight, albeit limited, previous good character, and the lack of repetition since the time of the misconduct back in 2004-2007, led the Committee to conclude that a reasonable member of the public, in possession of all the facts, would accept that suspension was the proportionate sanction. The Committee concluded that the public interest would be satisfied by such an order, in that it would declare and uphold proper standards of conduct and behaviour and maintain confidence in the profession.

The Committee wished the Registrant to be aware that the Committee considered the possibility of erasure and concluded that the aggravating factors listed in this decision, when seen in isolation, were suggestive of erasure. However, when balanced against the exceptional mitigating circumstances of this case, the Committee was persuaded, after considering the matter at length, that erasure would be disproportionate.

The Committee gave consideration to the length of the order and concluded that 12 months was the appropriate length due to the seriousness of the misconduct, which had involved dishonesty in a position of trust over an extended period of time.

The Committee therefore imposes a Suspension Order for a period of 12 months.

A review hearing will be held prior to the expiration of this order. The Committee considered that a Review Committee might be assisted by:

- the Registrant's presence
- a written piece reflecting on his dishonest behaviour and the effect of that behaviour on colleagues and the reputation of the profession
- evidence that he has maintained his skills and knowledge, including his compliance with his Continuing Education and Training obligations
- written references or testimonials from persons who can attest to the Registrant's character, to include professional colleagues.

Immediate order

Ms Culleton asked the Committee to impose an immediate order of suspension to cover the appeal period or the time taken for any appeal to be determined. Mr Graham raised no objection to this order. The Committee accepted the advice of the Legal Adviser.

The Committee decided to impose an immediate suspension order on the basis that this was required to protect the public interest in light of the seriousness of the dishonesty.

Chair of the Committee: Mr Ian Crookall

Signature **Date: 8 November 2019**

Registrant: Mr Nimesh Patel

Signature **Date: 8 November 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
<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 www.professionalstandards.org.uk or by telephone on 020 7389 8030.</p>
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.