

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

GENERAL OPTICAL COUNCIL

F(19)08

AND

JIGNESH PATEL (01-27035)

**DETERMINATION OF A SUBSTANTIVE HEARING
26-27 SEPTEMBER 2019**

Committee Members:	Ms J Wortley (Chair/Lay) Ms H McEwen (Lay) Mr P Curtis (Lay) Mr K Gohil (Optometrist) Ms A Barrett (Optometrist)
Legal adviser:	Mr P Moulder
GOC Presenting Officer:	Ms A Ling
Registrant present/represented:	Yes and represented
Registrant representative:	Mr A McGee (Counsel) Ms N Wheater (AOP)
Hearings Officer:	Mr T Yates
Facts found proved:	Yes (Conviction)
Facts not found proved:	N/A
Conviction:	Yes
Impairment:	Impaired
Sanction:	Erasure

Immediate order:	Yes
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ALLEGATION

The Council alleges that in relation to you, Jignesh Patel (01-27035), a registered Optometrist:

1. On 23 March 2018, at Cambridge Crown Court, you were convicted of the offence causing death by dangerous driving

And by virtue of the facts set out above, your fitness to practise as an optometrist is impaired by reason of your conviction.

DETERMINATION

Admissions in relation to the particulars of the allegation

The Registrant admitted the factual particulars of the allegation. In accordance with the Rules, the Chair announced the fact of the conviction as proved.

Background to the allegations

The Registrant has been registered as an Optometrist with the Council since October 2012.

The offence for which the Registrant was convicted relates to him being the driver of a car on 23 April 2016 in which a passenger, Mr 2, was killed. Following police investigations, including a voluntary interview at a police station in May 2016, the Registrant was charged with causing death by dangerous driving, contrary to section 1 of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988. After trial, on 23 March 2018 the Registrant was found guilty and convicted of causing death by dangerous driving. On 26 March 2018 he was sentenced to 3 years imprisonment, half of which is to be served in custody, and the remainder prison term served on licence in the community with conditions, supervised by the Probation Service and subject to recall. The Registrant was further disqualified from driving for a total of 3.5 years plus an extended retest. The Registrant was released from custody to serve the remainder of his sentence on licence in the community on 24 September 2019.

Findings in relation to the facts

The Committee found the facts proved by reason of the Registrant's admission of his conviction.

Findings in relation to proof of conviction

The Committee heard submissions on behalf of the Council and the Registrant. It accepted the advice of the Legal Adviser.

The Committee noted that pursuant to rule 40(3) of the General Optical Council Fitness to Practice Rules 2013 ("the Rules"), production of a certificate of conviction shall be conclusive evidence of the offence committed. In any event, as stated above, the Registrant had admitted the conviction.

The Committee found the conviction proved by reason of the Registrant's admission.

Findings regarding impairment

The Committee heard oral evidence from the Registrant, who was examined by Mr McGee, cross examined by Ms Ling and was asked questions by the Committee.

The Committee heard submissions from Ms Ling, counsel on behalf of the Council and from Mr McGee, counsel for the Registrant. It accepted the advice of the Legal Adviser, that the matter of impairment was a matter of judgment for the Committee, not involving a burden of proof. The Committee had to make a determination whether the Registrant's fitness to practise was impaired based on the evidence before it.

With reference to the case of *CHRE v NMC & Grant [2011] EWHC 927* the Committee noted that the Council had submitted that the Registrant's fitness to practise was impaired on grounds of public protection and in the public interest, in other words, that the Registrant had and/or there was a risk that the Registrant was liable to act so as to put patients at unwarranted risk of harm, or that he had and/or might bring the profession into disrepute or breach a fundamental tenet of the profession.

Ms Ling submitted that the Registrant had by the actions underlying his conviction brought the profession into disrepute and had breached fundamental tenets of the profession, in breaching the terms of the Council's Standards at paragraph 17 of the Code. The driving offence was a serious one, which had sadly resulted in the death of the Registrant's friend and meant that the Registrant had received a 3-year sentence of imprisonment. It was for the Committee to assess the degree to which the Registrant accepted responsibility for his own actions, having had a long time to reflect. She submitted that acceptance was lacking to some degree.

Ms Ling further submitted in accordance with paragraph 101 of *Cohen v GMC [2008] 581* that the need to uphold proper professional standards required a finding of impairment in this case and that public confidence in the profession would be seriously undermined, absent a finding of impairment. Ms Ling clarified that in her

submission, there was also a risk to patient safety, in that patients were part of the public and the Registrant's conduct in his driving had put the public at risk.

Mr McGee submitted that there were no patient safety issues in this case. The Registrant's conduct had been totally unconnected with clinical practice and there was no link. He took the Committee to the sentencing remarks of the Judge. He submitted that the Judge noted that the Registrant had been a decent man, who was full of remorse for his actions. Mr McGee submitted that the Registrant remains full of remorse and has been 'seared' by the accident. He has accepted fault before the trial and pleaded guilty at Court to causing death by careless driving. Thereafter, the trial had been about the degree of failure in his driving standard. The Registrant accepted his guilt and the full facts of his conviction by the jury for the offence of causing death by dangerous driving.

Mr McGee submitted that it was perfectly fair and proper for the Committee to determine that the Registrant was unlikely to commit such an offence again. Mr McGee pointed the Committee to the assessment of professional officers in the Offender Management Unit, that the Registrant was at 'low' risk of causing harm and/or re-offending. He stated that this was the lowest possible category of risk assessment.

Mr McGee submitted that, as regards the view of the public of the Registrant's offending behaviour, the Committee should refer to the testimonials provided. These gave the views of a member of the public and fellow professionals, that supported the submission that public confidence would not be undermined by a finding of no current impairment. He submitted that, on the strength of the testimonials, the accident was 'out of character' and there was no evidence of fundamental or deep-seated personality issues. There was evidence that the Registrant was hugely able and well-respected, by peers and patients.

The Committee reminded itself that the matter of impairment was for its judgement, not involving a burden of proof. The Committee carefully considered all the evidence, both oral evidence and documentary and it took into account the submissions of the parties.

The Committee, having heard the Registrant give evidence and be cross-examined, accepted that the Registrant held a great degree of remorse for his past actions and clearly the events of the fatal incident still affected him considerably. It also accepted that the Registrant is a competent and well-respected practitioner.

The Committee accepted that the circumstances of the fatal incident happened away from his clinical practice and did not have a particular connection with it. It did not find that there was a risk of the Registrant causing harm to patients.

The Committee listened carefully to the answers that the Registrant gave on being questioned when giving evidence. It noted that the Registrant was fully able to articulate his remorse and regret for his actions and in particular the consequences for his friend and the deceased's family. Despite the passage of time, he did not appear to have fully reflected on what caused him to act in the manner that he did on

that day. Nor did he appear to have a full appreciation and understanding of the importance of maintaining public confidence in the profession, and the effect on that confidence of professionals having been convicted of such serious offences.

The Committee accepted that the Registrant stated his intention was never to speed in a motor vehicle again. The Committee also accepted that many people who know the Registrant are prepared to work with him again and that those people appear to understand and forgive his actions. However, the Committee was of the view that the wider public would be very concerned that a professional Optometrist had been convicted of such a serious offence, is still serving a sentence and is proposing to return to unrestricted practice. Accordingly, in the view of the Committee, the need to promote and maintain public confidence in the profession and the need to promote and maintain proper professional standards and conduct for members of the profession require that the Committee make a finding that the Registrant's fitness to practise is currently impaired.

The Committee found that the fitness of Jignesh Patel to practise as an optometrist is impaired.

Sanction

The Committee heard submissions from Ms Ling on behalf of the Council and from Mr McGee for the Registrant. It accepted the advice of the Legal Adviser, who stated that the Committee should consider the Council's Indicative Sanctions Guidance ("ISG") and the sanctions from the least to most serious, stopping at the sanction which was proportionate and appropriate to the determination on impairment.

Ms Ling for the Council submitted that the key consideration in this case is the collective reputation of the profession. "No further action" and "conditions of practice" would not be appropriate or proportionate. Ms Ling articulated aggravating and mitigating factors in this case. She submitted that a period of suspension would be insufficient, taking into account the nature and gravity of the offence. In the alternative, the principle set out in *The Council for the Regulation of Health Care Professionals v General Dental Council [2005] EWHC 87 (Admin)* ("*Fleischmann*"), meant that the Committee could not order a period of suspension, as the maximum period of suspension would expire before the Registrant completed his sentence on 25 March 2021. Ms Ling submitted that the appropriate and proportionate sanction would be erasure.

Mr McGee, for the Registrant submitted that this was not such a serious departure from professional standards, as to warrant erasure. Mr McGee said it was an isolated incident, out of character and not involving professional practice. There was no violence, nor dishonesty, nor lack of insight into consequences. He set out the mitigatory features of the case. Mr McGee emphasised the strength of the testimonials provided and submitted that these were very important at this stage. Mr McGee submitted that a period of conditional registration was proportionate and

appropriate to this case, taking the form of mentoring to assist the Registrant back into work to help him with professional matters and to monitor emotional issues. Mr McGee submitted that the principle in *Fleischmann* did not apply to this case, with reference to the case of *Opore v Nursing and Midwifery Council CO/326/2019* and in particular paragraph 30. His submission was that the Registrant had “satisfactorily completed” his sentence by serving the “required period in respect of an immediate sentence” and this equated to the “requisite custodial period” with reference to section 244 of the Criminal Justice Act 2003. In the alternative, Mr McGee submitted, the case fell into an exceptional category, which was referred to in *Fleischmann*. Mr McGee submitted that it was important to consider the full facts of *Fleischmann* and regard the judgment in context. Mr McGee’s submission was that the Committee could make an order for 12 months’ suspension if it thought that this was proportionate and appropriate.

The Committee considered the Registrant’s insight into the full circumstances of his conviction. The Committee reminded itself of its view that the Registrant did not appear to have reflected fully on what caused him to act in the manner in which he did on the day of the fatal incident. Furthermore, the Registrant did not appear to have a full appreciation and understanding of the importance of the effect on public confidence of his offending behaviour and its consequences.

The Committee considered that there were a number of mitigatory factors present in the case. The Registrant had accepted a degree of responsibility for his actions at an early stage, he was clearly remorseful for his actions and he had no previous disciplinary history. He had done good works whilst in custody supporting fellow prisoners. The Registrant had worked hard to sustain his engagement with his profession and to maintain his Continuing Education and Training requirements. The Registrant had the support of a good number of strong testimonials from members of the profession. However, the Committee was mindful of the principle expressed in *Bolton v Law Society [1994] 1 WLR 512* that:

“Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases”.

The Committee considered that, although a single incident, this was a very serious incident resulting in the death of a young man, for which the Registrant was responsible. As stated at an earlier stage, the Committee felt that the public would view the Registrant’s conviction for such a serious offence with grave concern.

The Committee considered the sanctions available to it from the least to the most severe (no sanction, financial penalty, conditional registration, suspension, erasure). It determined to balance the interests of the Registrant with the public interest and impose a sanction which was appropriate and proportionate to the level of impairment found.

The Committee first considered taking no further action and did not find any exceptional circumstances in the case which would warrant it taking no further action.

The Committee next considered whether it could impose an order for conditional registration. In the view of the Committee it was not possible to formulate conditions which were enforceable, measurable and workable which could meet its findings on impairment. The central concern of the Committee was with the seriousness of the conviction, the underlying circumstances, and the effect on public confidence in the profession. In the view of the Committee there were no conditions that could adequately address these issues.

The Committee considered whether it could impose a sanction to meet the level of impairment by suspending the Registrant's registration. The Committee was of the view that suspension may serve to mark the fact of the conviction and to uphold appropriate standards for the profession in certain cases. The Committee referred to the Indicative Sanctions Guidance (ISG) and noted that the Registrant met some of the factors indicated, for example there was no evidence of deep-seated personality issues and no evidence of a repetition of the behaviour since the event.

The Committee considered, however, that the conviction and the underlying circumstances, as set out above, involved a serious departure from relevant professional standards. It noted in particular the Council's Standards of Practice for Optometrists and Dispensing Opticians (effective from April 2016) which states:

17. Do not damage the reputation of your profession through your conduct.

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

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.

The Committee considered that the ISG at paragraph 36.5(b) is engaged in this case. It considered that the reference to "patients or otherwise" was a reference to the broad duty of a professional registered optometrist not to harm others. It did not accept the submission that the duty was restricted to clinical matters. The Committee considered that very serious harm had been caused, as the incident involved a fatality.

The Committee considered the judgment of Newman J in *The Council for the Regulation of Health Care Professionals v General Dental Council* [2005] EWHC 87 (Admin) ("Fleischmann"). In paragraph 54 of the case, the learned judge said:

"I am satisfied that, as a general principle, where a practitioner has been convicted of a serious criminal offence or offences, he should not be permitted to resume his practice until he has satisfactorily completed his sentence. Only circumstances which plainly justify a different course should permit otherwise. Such circumstances could arise in connection with a period of disqualification from driving or time allowed by

the court for the payment of a fine. The rationale for the principle is not that it can serve to punish the practitioner whilst serving his sentence, but that good standing in a profession must be earned if the reputation of the profession is to be maintained. “

The Committee noted the common position that the statement of ‘general principle’ as contained in the above paragraph, was not binding as it was *obiter dicta* or ‘other things said’ by the judge. However, the parties had agreed that the words did outline a general principle to which the Committee could have regard.

The Committee did not accept Ms Ling’s submission that the application of the ‘general principle’ mentioned in *Fleischmann* meant that it could not order a period of suspension, because this power was limited to a maximum of 1 year, simply on the basis that the Registrant’s period on licence continued after the expiry of such an order.

The Committee was of the view that it should make a determination on sanction in pursuit of the statutory objectives and in line with the ISG. Further, it should bear in mind the ‘general principle’ set out in the paragraph of *Fleischmann* above, so far as relevant to the facts of the case and its determination.

With reference to *General Pharmaceutical Council v Khan [2016] UKSC 64* and *Taylor General Medical Council [1990] 2 AC 539*, the Committee accepted the common position of the parties that it should not consider the power of another Committee on any review of an order to extend any suspension. The Committee focussed on its own powers to order a sanction in the circumstances of the case.

The Committee noted the submission from Mr McGee, based on the case of *Opore v Nursing and Midwifery Council CO/326/2019* and in particular paragraph 30, that the satisfactory completion of an immediate custodial sentence occurred once the person had “served the required period in respect of that immediate sentence”.

The Committee considered the terms of section 244 of the Criminal Justice Act 2003, the reference to the “requisite custodial period” and the duty imposed on the Secretary of State to release a prisoner on licence after this period. The Committee did not accept Mr McGee’s submission that was the same as the reference to “the required period” made by the judge in *Opore*, and that thereby this demonstrated that the Registrant had satisfactorily completed his sentence. It appeared in that case that the judge was seeking to contrast a suspended sentence with an immediate custodial sentence. However, the Committee also noted that there was no direct binding authority on this point.

The Committee noted the facts of *Fleischmann*, and the particular concern that the judge expressed in that case that the period of the ancillary sexual offences treatment order imposed in that case extended beyond the expiry of the 1 year suspension imposed by the Committee, and the concern of the court that any treatment order may not have been effective by then.

The Committee considered that the ‘general principle’ relating to a person having ‘satisfactorily completed his sentence’ was a term which was dependent on the facts of the case. In this case, the Registrant had been sentenced to an immediate

custodial sentence of 3 years. He had been released on licence halfway through that sentence and was still subject to potential recall to prison in certain circumstances. In the view of the Committee, the Registrant has not at the present time, 'satisfactorily completed' his sentence.

The Committee did not regard this case, with reference to paragraph 54 of *Fleischmann*, as one in which the circumstances "plainly justified" a different course. In its view the circumstances of the case were that this had been a very serious offence resulting in the death of a person and in respect of which the Registrant continued to serve his sentence, on licence in the community.

The Committee concluded that the seriousness of the offence, combined with the circumstances in which harm was occasioned, the breach of a fundamental professional standard and the fact that the Registrant's sentence was continuing, albeit in the community, meant that it was not proportionate nor sufficient to order suspension of the Registrant's registration.

The Committee considered the interests of the Registrant and balanced these with the public interest. It accepted that a sanction of erasure would prevent the Registrant from pursuing a career that he was clearly committed to, passionate about and very competent in. The Committee also recognised that he was likely to suffer financially as a consequence of this sanction. It also accepted there would be the loss of a qualified optometrist to the community. However, the Committee was of the view that the public would be very concerned about the inclusion of a registrant, who had not completed his 3-year custodial sentence for such a serious offence, being on the register. The Committee considered that the reputation of the profession in this regard was an important factor, outweighing the Registrant's own interests.

In the Committee's view it was necessary and proportionate, in order to promote and maintain public confidence in the profession and in order to promote and maintain proper professional standards and conduct for members of the profession to order that the Registrant be removed from the register.

The Committee ordered that the Mr Jignesh Patel's registration is erased from the register.

Immediate order

The Committee has heard submissions from Ms Ling on behalf of the Council and from Mr McGee on behalf of the Registrant. It has accepted the advice of the Legal Adviser that the relevant tests were set out in section 131 of the Opticians Act 1989 (as amended).

The Committee has decided to impose an immediate suspension order for the following reasons.

The Committee had made a finding that it was necessary to erase the Registrant from the register. The decision on sanction had been based on the need to maintain

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.