BEFORE THE FITNESS TO PRACTISE COMMITTEE
OF THE GENERAL OPTICAL COUNCIL

GENERAL OPTICAL COUNCIL

AND

JOHN MARGETTS (01-16433)

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DETERMINATION OF A 1st SUBSTANTIVE REVIEW
03 AUGUST 2018

Committee Members:  Ms A Johnstone - (Chair)
                      Mr J Kellock - (Lay)
                      Ms J Wheat (Lay)
                      Ms T Cox - (Optometrist)
                      Mr K Gohil - (Optometrist)

Legal adviser:       Mr D Clark

GOC Presenting Officer:  Mr T Stevens

Registrant:          not present and unrepresented

Hearings Officer:    Ms V Desai

Outcome:             Erasure

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This is the first review of a suspension order made at the conclusion of a substantive hearing on 11 August 2017. The Committee at that hearing imposed the order for a period of 12 months, and directed that there should be a review before the expiry of the order.

At the review hearing, the Council was represented by Mr Tom Stevens. The Registrant, who had previously been represented by his brother, did not attend and was not represented at the review hearing.

**Proof of Service**

The Committee heard submissions from Mr Stevens on behalf of the Council and accepted the advice of the Legal Adviser. The Notice of Hearing relating to today's review had been sent to the Registrant’s brother on 4 June 2018. The Committee saw documentation, which appeared to have been submitted to the Council in the name of the Registrant in April 2018, in which he confirmed that all correspondence should be sent to his brother’s address. The Committee considered very carefully the provenance of that documentation, because the version seen by the Committee had been sent by the Registrant’s brother under cover of an email on 31 July 2018. That, it seems, was a replacement copy because the original had never been received. The Committee noted that the Registrant’s brother had represented him at the substantive hearing and that his role appeared to be continuing. The Committee was satisfied that the use of the Registrant’s brother’s address for the purposes of service of documentation was not inappropriate.

The Committee concluded that the Registrant had been properly notified of the hearing in compliance with Section 23A of the Opticians Act 1989 (the Act) and Rules 56 and 61 of the General Optical Council (Fitness to Practise) Rules 2013 (the FtP Rules).

**Proceeding in absence**

The Committee next considered whether to proceed with the review in the Registrant’s absence in accordance with Rule 22 of the FtP Rules. Mr Stevens invited the Committee to proceed in the Registrant’s absence. The Committee accepted the advice of the Legal Adviser.

The Committee reminded itself that in exercising its discretion under Rule 22, and following the authority of GMC v Adeobga [2016] EWCA Civ 162, it should take into account the requirement of fairness to the Registrant as a prime consideration, but that it should also consider fairness to the Council and the interests of the public. The Committee was mindful that this is a review of a suspension order in accordance with Section 13F(7) of the Act and that the order will expire on 8 September 2018 if no action is taken by the Committee.

The Committee noted that the Registrant’s brother had sent an email to the Council dated 2 June 2018 in which he stated: “My brother John Margetts no longer wishes to practice (sic) as an optician and is happy for the GOC to remove his name from the ‘register’ as it were. I know you have to go through the motions of this hearing - but I though (sic) I would just let you know so that we are all on the page. I understand from
my brother John, that he has already written to you - announcing his intentions to retire.” This was before the Notice of Hearing had been sent, but was in response to an email from the Council requesting confirmation of the service address in the context of arranging the review hearing. In a further email dated 13 July 2018, the Registrant’s brother said: “With reference to my brother John Margetts - he wants nothing more than to be left alone, but I understand the pressure on the GOC to fully follow through their codes of practice. I assume that the decision following the coming review will be to remove his name from the register permanently, which is something that he expects”. A third email was sent by the Registrant’s brother on 3 August 2018 in which he stated: “I have no plans to attend as we pretty much know the outcome and hence we are happy for the GOC to proceed in our absence.” The Committee had no reason to doubt that the Registrant’s brother was acting on direct or implied instructions when sending the emails.

The Registrant has not requested an adjournment and appears to have waived his right to attend the hearing. Whilst there could be prejudice to him if the review hearing were to proceed in his absence, as he would not be able to make any representations to the Committee, any prejudice is outweighed by the need to carry out the review before the expiry of the current order.

In all the circumstances, the Committee concluded that it was in the public interest to proceed with the review in the absence of the Registrant.

**DETERMINATION**

**Background**

At the substantive hearing, the Committee found that the Registrant had, on a date unknown, prior to 7 September 2015:

- failed to provide Patient A with sufficient information about the risks of laser eye surgery to enable him to make an informed decision;
- failed to provide Patient A with information about laser eye surgery in a clear and understandable manner;
- made various comments to Patient A about laser eye surgery that were both misleading and dishonest - many of these concerned purported practices in the Royal Air Force.

Patient A was an undercover reporter working for the BBC who had secretly recorded his appointment with the Registrant.

The Registrant admitted the alleged conduct but denied that his actions were dishonest. The Committee at the substantive hearing found that he had acted dishonestly. It went on to find that there were serious breaches of the Code of
Conduct which meant that Patient A, had he been a patient seeking treatment, could not have given informed consent.

In relation to impairment, the Committee at the substantive hearing noted the absence of any evidence of remediation and was concerned by the lack of insight demonstrated by the Registrant. That Committee identified a continuing risk to the public which meant that the Registrant's fitness to practise was impaired at that time. The Committee was also of the view that a finding of impairment was necessary in the public interest, in order to maintain public confidence in the profession in the light of the damage to the reputation of the profession caused by the Registrant's actions.

Immediately prior to making its sanction decision, the Committee at the substantive hearing received correspondence from the Registrant in which he accepted full responsibility for his failures in the consultation with Patient A and recognised the implications of his misconduct in terms of the wider public, the profession and the regulator. He expressed a “genuine wish to return to practice”.

In deciding to impose the 12-month suspension order, the Committee acknowledged that the misconduct arose out of a single incident in a long unblemished career. There were signs of developing insight, and evidence that the Registrant was a competent and effective practitioner. There was also some evidence, [redacted] at the relevant time. Balancing the aggravating and mitigating factors in the case, the Committee decided that the ultimate sanction of erasure was not required.

The Committee indicated that a reviewing Committee may be assisted by:
- Evidence that the Registrant has reflected on and accepted the seriousness of his misconduct;
- [redacted]
- Evidence that the Registrant has continued to engage with his regulator;
- Evidence that the Registrant has kept his professional knowledge up to date;
- The attendance of the Registrant.

**Submissions by the parties**

On behalf of the Council, Mr Stevens invited the Committee to find that the Registrant’s fitness to practise remained impaired, in the absence of any additional evidence of remediation. He argued that, in fact, the Registrant may pose a greater likelihood now of repeating his misconduct, or otherwise putting the public at risk of harm, as a further year has elapsed since he last practised in November 2015 and he has not undertaken any continuing education and training (CET). He submitted that the appropriate sanction now, in all the circumstances, was erasure. The risks identified by the Committee at the substantive hearing remain, and may now be greater; and suspension would no longer be a proportionate sanction in the public interest.
The Committee noted the comments in the emails sent by the Registrant’s brother on 2 June 2018, 13 July 2018 and 3 August 2018 to the effect that the Registrant no longer intended to return to practice and that he wished to be removed from the register. No other submissions were received on behalf of the Registrant.

Findings regarding impairment

The Committee took into account the submissions made by the parties and it accepted the advice [redacted] the Legal Adviser. The Committee first considered whether the Registrant’s fitness to practise remained impaired as of today. The Committee noted the reasons given for the finding of impairment at the substantive hearing in August 2017. It bore in mind the comments made by Mr Justice Blake in the case of Abrahaem v GMC [2008] EWHC 183 (Admin): “In practical terms there is a persuasive burden on the practitioner at a review to demonstrate that he or she has fully acknowledged why past professional performance was deficient and through insight, application, education, supervision or other achievement [has] sufficiently addressed the past impairments”.

There has been no further evidence put before the Committee in relation to the Registrant’s insight or the steps he has taken to remediate his misconduct. In addition, it appears to the Committee that the Registrant has not practised as an optometrist since November 2015 and there is a risk of his skill levels diminishing over that period. Mr Stevens informed the Committee that the Council could find no evidence of CET in the period from 1 January 2016. In the Committee’s view, there remains a risk of the Registrant causing harm to patients if he returned to practice without restriction. The Committee also identified a risk of repetition of the original misconduct. Consequently, the Committee finds that the Registrant’s fitness to practise remains impaired on public protection grounds. The Committee took into account the observations made by Lord Justice Newey in GOC v Clarke [2018] EWCA Civ 1463 that: “Where…repetition is improbable merely because the optometrist will no longer be practising, that would not seem to be indicative of fitness to practise. If anything, cessation of practice may point in the opposite direction, since the optometrist’s skills could deteriorate with lack of use”.

The Committee is concerned that the Registrant’s failure to take action to address his misconduct continues to cause damage to the reputation of the profession. He has done nothing to seek to restore public confidence in himself or in the profession. For these reasons, the Committee also finds that the Registrant’s fitness to practise remains impaired on public interest grounds. A finding of current impairment is necessary in order to maintain public confidence in the profession, and in the regulatory process.

The Committee has taken into consideration the limited information it has before it regarding [redacted]. He submitted in advance of the substantive hearing that various [redacted] had led to his acting out of character at the time of the misconduct. This was noted by the Committee at the substantive hearing, but no
particular weight was attached to the evidence. The Committee at the review hearing has had the benefit [redacted] who had read the material submitted at the original hearing. [redacted]. The Committee noted that the Registrant had been encouraged by the previous Committee to share any relevant information about [redacted] with the Council and the Committee, but he had not done so. The only additional information about [redacted] was contained in his letter apparently sent in April 2018. In that letter, the Registrant said that he has had to officially retire as he remains [redacted]. The Committee felt unable to attach any greater weight to the [redacted] than the Committee had done at the substantive hearing. These do not alter the Committee’s findings on current impairment, as explained above.

Sanction

The Committee considered the sanctions available to it from the least restrictive to the most severe. In this case, the available sanctions as set out in section 13F of the Act were to take no action; extend the period of suspension; direct the erasure of the Registrant’s name from the register; or replace the current suspension order with an order for conditional registration.

In the circumstances, it would be wholly inappropriate for the Committee to take no action. This would result in the suspension order lapsing on 8 September 2018, after which the Registrant could return to unrestricted practice. In the light of the Committee’s decision on impairment, this would put the public at risk of harm and would not satisfy the public interest requirements of the case.

The Committee was unable to conclude that a period of conditional registration would be appropriate. The underlying misconduct is too serious to be met by such a sanction, particularly where the Registrant has made no effort to remediate his misconduct or engage in any substantial way with the Committee. Furthermore, the Committee could not identify suitable conditions which would adequately address the public safety and public interest concerns.

The Committee considered whether it would be appropriate to impose a further period of suspension. Whilst this would provide protection to the public, in the sense that it would prevent the Registrant from practising, the Committee concluded that the degree of risk now demonstrated by the Registrant is greater than that which appertained at the time of the substantive hearing. This is due to the further period of time that has elapsed since the Registrant has practised as an optometrist, coupled with his failure to undertake any CET activity.

The Committee also considered that the public interest would no longer be satisfied by the imposition of a further period of suspension. The Registrant has been given the opportunity to address the concerns about his clinical practice and integrity, and in the Committee’s view he has chosen not to do so. The public would rightly expect a professional person in his position to seek to remedy those errors and deficiencies,
and would expect the regulator to take firm action if no such efforts were made by the practitioner.

In all the circumstances, the Committee has concluded that erasure is the only sanction which now meets the public protection and public interest requirements in the case. In reaching this decision, the Committee has sought to balance the public interest with the interests of the Registrant, noting that the Registrant himself has tacitly urged the Committee to erase his name from the register.

The direction for erasure will take effect when the current period of suspension ends on 8 September 2018.

Chair of the Committee: Ms Anne Johnstone

Signature .......................... Date: 3 August 2018
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.
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/court/county-court/](https://www.judiciary.gov.uk/you-and-the-judiciary/going-to-court/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.