

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

GENERAL OPTICAL COUNCIL

F(08)24

AND

WILLIAM JOSEPH BYRNE (SO-2100)

DETERMINATION OF THE INQUIRY: 6 OCTOBER 2009 AND 28 JANUARY 2010

APPLICATION

The Committee has considered the submissions of both parties regarding jurisdiction. The Committee has accepted the advice of the Legal Adviser. It is satisfied that Mr Byrne was properly entered in the register of Student Optometrists and that he remains on that register until such time as the Registrar exercises her powers under Rule 20 of the General Optical Council (Registration) Rules 2005. The Registrar has not yet done so and accordingly the Committee is satisfied that it continues to have jurisdiction in the case.

FURTHER APPLICATION

The Committee considered an application from the Council to amend the allegation under Rule 34 of the Fitness to Practise Rules 2005. Mr Singh, on behalf of the registrant, offered no objection. The Committee accepted the advice of the Legal Adviser and granted the application.

On 6 October 2009, the Fitness to Practise Committee of the General Optical Council met to consider the following allegation against William Joseph Byrne:

ALLEGATION

The Council alleges that you, William Byrne (a registered student optometrist):

1. during your pre-registration training to qualify as an optometrist, dishonestly:
 - i. Submitted false records for assessment with regard to Patient A as part of the Quarter 1 competency assessment;
 - ii. Submitted false records for Patients B and C as part of the Quarter 2 competency assessment;

- iii. Prepared false records for submission with regard to Patients D and E as part of the Quarter 3 competency assessment;

And by virtue of the matters set out above your fitness to undertake training as a registered student optometrist is impaired by reason of your misconduct.

DETERMINATION

Findings in relation to the particulars of the allegation

The Committee has carefully considered the evidence of Professor Brough and Professor Parrish, and it has noted the admissions made by Mr Singh, acting on behalf of Mr Byrne. On the evidence the Committee finds the following facts proven:

- i. That Mr Byrne submitted false records for assessment with regard to Patient A as part of, and at the time of, the Quarter 1 Competency Assessment.
- ii. That at the time of the Quarter 3 Competency Assessment, Mr Byrne submitted false records for Patients B and C as part of the Quarter 2 Competency Assessment.
- iii. That Mr Byrne prepared false records for submission with regard to Patients D and E as part of the Quarter 3 Competency Assessment.

Findings in relation to misconduct

The Registrant conceded that the facts admitted amount to Misconduct and the Committee accordingly found Mr Byrne guilty of misconduct.

Findings regarding impairment

The Committee has carefully considered the evidence of Mr Byrne and Ms Karen Sparrow and it has noted the submissions of Counsel on the issue of impairment.

Mr Byrne has today admitted that on two separate occasions in November 2007 and May 2008 he dishonestly falsified records for five patients with the intention of satisfying the requirements of his Competency Assessment.

As is made clear in the Code of Conduct it is a fundamental requirement that optometrists and dispensing opticians must be honest and trustworthy and the Committee is in no doubt that this equally extends to students who are undergoing training to join this profession.

The Committee is satisfied that cheating for the purpose of making progress in ones student training is an extremely serious matter that fully justifies a finding that the person's fitness to undertake training is impaired.

The Committee has carefully considered the evidence of Mr Byrne, supported as it was to a limited extent by Ms Sparrow, regarding deficiencies that he says existed in the standards of supervision he was receiving at the material time.

The Committee has noted that although Ms Sparrow had personal experience of supervising and mentoring some 400 pre-registration students under varying degrees of pressure she was unable to recall another incident of falsification of records of competencies in the training process.

The Committee has concluded that even if Mr Byrne's allegations were to be accepted the matters complained of by him would in no way justify his decision on more than one occasion to resort to dishonest conduct in order to improve his position.

In the circumstances the Committee is in no doubt that the fitness of Mr Byrne to undertake training as an optometrist was, and continues to be, impaired.

Sanction

The Committee accepted the advice of the Legal Adviser and noted the submissions on sanction by the representatives. It noted that the matter raised no direct issues of patient safety and that consideration needed to be a balance between the Committee's task to maintain standards and public confidence in the profession and the interests of the Registrant. In reaching its findings the Committee reminded itself that any sanction should reflect the seriousness of the facts found proved and the earlier judgement with respect to impairment of fitness to undertake training, but should be proportionate and not punitive.

The Committee has carefully considered and accepts that there are a number of matters to be taken into account by way of mitigation. In particular:

- The Committee accepts that Mr Byrne made a full and frank admission at the first available opportunity that he had falsified five patient records for the purpose of his assessment.
- The Committee has taken into account Mr Byrne's evidence as to deficiencies in his pre-registration supervision which the Committee accepts may well have affected his judgement during the assessment process.
- The Committee had noted and accepted Mr Byrne's evident remorse and his insight following the discovery of his misconduct.
- The Committee has taken account of the numerous references and testimonials as to Mr Byrne's previous good character and conduct, which would indicate that his misconduct is unlikely to be repeated.

However, the Committee has already determined that it is a fundamental requirement that optometrists and dispensing opticians must be honest and trustworthy at all times, that that requirement extends equally to students who are undergoing training to join the profession and that cheating for the purpose of making progress in one's student training is an extremely serious matter.

The Committee is satisfied that its first duty must be to maintain public confidence and to uphold proper standards of conduct within the profession. In the circumstances of this particular case the Committee has concluded that it would not

be appropriate to deal with this case by way of the imposition of a financial penalty. The Committee is satisfied that there are no conditions that could be imposed on Mr Byrne's registration that would be appropriate, workable, or serve any useful purpose.

After weighing in the balance the seriousness of Mr Byrne's misconduct against the matters that Mr Singh has urged on the Committee in mitigation, the Committee has concluded that it is both necessary and proportionate to suspend Mr Byrne's registration for a period of three months. In arriving at this period the Committee took into account the fact that this hearing commenced in October 2009 and has only been concluded today, at the end of January 2010.

Since it is unlikely that Mr Byrne will be able to undertake any further training for the foreseeable future, the Committee has decided not to order a review hearing.

Chairman of the Committee: Peter North

Signed _____ Date 28 January 2010

Registrant: William Joseph Byrne

Signed _____ Date 28 January 2010