

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

GENERAL OPTICAL COUNCIL

F(08)21

AND

MARJORIE MARTIN (01-11282)

DETERMINATION OF THE INQUIRY: 14-17 JUNE 2010

On 14-25 June 2010, the Fitness to Practise Committee of the General Optical Council met to consider an allegation against Marjorie Martin.

ALLEGATION

The Council alleges that the fitness to practise of you, Marjorie Martin (a registered optometrist), is impaired in that:

1) Regarding Patient A

(a) In relation to the GOS(S) 3 Form dated 30 August 1999 you made a dishonest declaration in that you:

(i) Claimed to have supplied glasses to the patient on 30 August 1999 when the supply was not made until 16 September 1999.

(ii) Claimed payment for two pairs of glasses when the supply on 16 September 1999 was in relation to a single pair.

(b) In relation to the GOS(S) 3 Form dated 31 March 2000 you made a dishonest declaration in that you:-

(i) Claimed to have supplied glasses to the patient on 31 March 2000 when the supply was not made until 22 May 2000.

(ii) Claimed payment for two pairs of glasses when the supply on 22 May 2000 was in relation to a single pair.

(c) In relation to the GOS(S) 3 Form dated 16 November 2000 you made a dishonest declaration in that you:

- (i) Claimed to have supplied glasses to the patient on 16 November 2000 when the supply was not made until 19 January 2001.
 - (ii) Claimed payment for two pairs of glasses when the supply on 19 January 2001 was in relation to a single pair.
- (d) In relation to GOS(S) 3 Form dated 26 September 2001 you made a dishonest declaration in that you claimed payment for two pairs of glasses when the supply was in relation to a single pair.
- (e) You supplied glasses to Patient A when these were not clinically justified given the records, in relation to record cards numbered:
- (i) E6702 dated 10 June 1999.
 - (ii) E7491 dated 29 March 2000.
 - (iii) E9292 dated 30 September 2001.
- (f) You supplied glasses to Patient A with prisms without recording sufficient evidence that prisms were clinically justified in relation to record cards numbered:-
- (i) E6702 dated 10 June 1999.
 - (ii) E8590 dated 29 September 2000.

2) Regarding Patient B

- (a) In relation to the GOS(S) 3 Form dated 11 December 1999 you made a dishonest declaration that you had supplied the patient with two pairs of glasses on this date when any supply was made after 26 April 2000.
- (b) In relation to the GOS(S) 3 Form dated 5 May 2000 you made a dishonest declaration that you had supplied the patient with two pairs of glasses in that:
- (i) Supply was in respect of a single pair.
 - (ii) Any supply was made after 10 May 2000.

3) Regarding Patient C

- (a) In relation to the GOS(S) 3 Form dated 6 October 2000 you made a dishonest declaration that you had supplied the patient with two pairs of glasses when no such supply was ever made by you.
- (b) In relation to the GOS(S) 3 Form dated 29 June 2001 you made a dishonest declaration in that you:-
- (i) Claimed to have supplied glasses to the patient on 29 June 2001 when the supply had been made on 6 December 2000.
 - (ii) Claimed payment for two pairs of glasses when the supply on 6 December 2000 was in relation to a single pair.

4) Regarding Patient D

- (a) In relation to the GOS(S) 3 Form dated 15 April 1999 you made a dishonest declaration in that you:

- (i) Claimed to have supplied glasses to the patient on 15 April 1999 when the supply had been made on 11 January 1999.
- (ii) Claimed payment for two pairs of glasses when the supply on 11 January 1999 was in relation to a single pair.
- (b) In relation to the GOS(S) 3 Form dated 30 June 2000 you made a dishonest declaration that you had supplied the patient with two pairs of glasses when no such supply was ever made by you.
- (c) In relation to the GOS(S) 3 Form dated 13 February 2001 you made a dishonest declaration that you claimed for a Voucher B when the lens order was for a Voucher A.

5) Regarding Patient E

- (a) In relation to the GOS(S) 3 Form dated 26 November 1999 you made a dishonest declaration that you had supplied the patient with two pairs of glasses when no such supply was ever made by you.
- (b) In relation to the GOS(S) 3 Form dated 20 May 2000 you made a dishonest declaration in that you:
 - (i) Claimed to have supplied glasses to the patient on 20 May 2000 when the supply was made on 7 April 2000.
 - (ii) Claimed payment for two pairs of glasses when the supply on 7 April 2000 was in relation to a single pair.

6) Regarding Patient F

- (a) Claimed for two eye tests carried out on 26 May 2000 and 31 May 2000 for the patient when you should have claimed for only a single eye test.
- (b) In relation to the GOS(S) 3 Form dated 31 May 2000 you made a dishonest declaration by claiming a small frame supplement when this was not applicable given the size of the frame.
- (c) In relation to the GOS(S) 4 Form dated 24 July 2000 you made a dishonest declaration in that you claimed for replacement glasses for the patient which were never supplied by you.
- (d) In relation to the GOS(S) 4 Form dated 25 August 2000 you made a dishonest declaration in that you:
 - (i) Claimed for replacement glasses with a small frame supplement when this was not appropriate given the size of the frame.
 - (ii) Claimed for a B Voucher having ordered glasses with a prescription which related to an A Voucher.
- (e) In relation to the GOS(S) 3 Form dated 23 November 2000 you made a dishonest declaration by claiming a small frame supplement when this was not appropriate given the size of the frame.

(f) In relation to the GOS(S) 4 Form dated 10 January 2001 you made a dishonest declaration in that you claimed for replacement glasses for the patient which were never supplied by you.

(g) In relation to the GOS(S) 4 Form dated 10 January 2001 you made a dishonest declaration in that you claimed for replacement glasses with a small frame supplement when this was not appropriate given the size of the frame.

7) Regarding Patient G

(a) In relation to the GOS(S) 3 Form dated 5 August 1999 you made a dishonest declaration in that you:

- (i) Claimed to have supplied glasses to the patient on 5 August 1999 when the supply was not made until 22 December 1999.
- (ii) Claimed payment for two pairs of glasses when the supply on 22 December 1999 was in relation to a single pair.
- (iii) Claimed for having supplied two single vision glasses when the prescription was for bifocals.

(b) In relation to the GOS(S) 3 Form dated 13 July 2000 you made a dishonest declaration that you had supplied the patient with two pairs of glasses when no such supply was ever made by you.

8) Regarding Patient H

(a) In relation to the GOS(S) 3 Form dated 14 August 1999 you made a dishonest declaration in that you claimed to have supplied two pairs of glasses to the patient when no such supply was ever made by you.

(b) In relation to the GOS(S) 3 Form dated 5 February 2000 you made a dishonest declaration in that you claimed to have supplied two pairs of glasses to the patient on this date when you had not.

9) Regarding Patient I

(a) In relation to the GOS(S) 3 Form dated 28 June 2000 you made a dishonest declaration that you had supplied the patient with two pairs of glasses when no such supply was ever made by you.

10) Regarding Patient J

a) In relation to the GOS(S) 3 Form dated 17 November 1999 you made a dishonest declaration in that you claimed to have supplied a pair of glasses to the patient on this date when you had not.

b) In relation to the GOS(S) 3 Form dated 22 May 2000 you made a dishonest declaration in that you claimed to have supplied two pairs of glasses to the patient on this date when you had not.

And by reason of the facts set out above you are guilty of misconduct.

APPLICATION

Mr Hepworth, for the Council, made an application to amend the following particulars of the allegation: 1(e)(iii) (change of date to 13 September 2001), 6(b) (change of date to 7 June 2000), 6(f) & 6(g) (change of date to 13 January 2001), 7(b) (to read ever), 8(a) (change of date to 23 August 1999), 9(a) (to confirm that the registrant declared that she had supplied to the patient one pair, not two pairs, of glasses), 10 (b) (change of date to 27 May 2000).

Miss Martin, the registrant, did not raise any objections. The Committee reminded itself of the provisions of Rule 34(2) which allows the Committee to grant an application where it is satisfied that it is just to do so. The Committee considered it was in the interests of justice to grant the application and that there was no prejudice to Miss Martin.

DETERMINATION

Findings in relation to the particulars of the allegation

At the beginning of the hearing the registrant made no admissions as to the particulars of the allegation.

The Committee has considered all the evidence placed before it by the Council, both oral and documentary. It has noted that the registrant did not give evidence herself or call any witnesses on her behalf. It has taken account of the submissions made by Mr Hepworth, on behalf of the Council, and those made on her own behalf by the registrant. It has accepted the advice of the Legal Adviser.

The Committee has, in particular, noted the evidence of Hazel Thomson and Mary Thompson, both former employees of the practice, with regard to issues concerning the management of the practice and how matters were recorded on the patient record cards and the GOS(S) 1, GOS(S) 3, and GOS(S) 4 forms.

The Committee accepted the evidence which had been provided by Mr S Patel into the process followed in identifying the inconsistencies in a number of practices including the Registrant's. It heard how the investigation into the forms for the Registrant's practice was carried out. It disregarded the opinion evidence given by him.

The Committee accepted the evidence of Mr S Whittaker, Optometric Adviser to the Scottish Executive Health Department at the relevant time, who gave both expert and factual evidence to the Committee. He gave evidence on the prescribing of prisms, the clinical appropriateness in the changes in prescription, the voucher bands and the definition of the child frame supplement. He also gave evidence about the design of the GOS forms and the unacceptability of the pre-signing of the forms.

The Committee noted that Mr C McKinley's evidence concerned the investigation and the conclusions he drew from the documents seized from the practice and those provided by the Practitioner Services.

In reaching its decisions on the individual particulars of the allegation, the Committee accepted the evidence of both former employees with regard to whether no, one, or two order numbers appeared on the record cards; and whether the letters “TOF” appeared on the record cards. In the former case what appeared on the record card indicated whether glasses had been ordered or not, and if so how many pairs; in the latter, the Committee accepted the evidence that if the letters “TOF” appeared on the patient record card, this meant that no glasses had been ordered and supplied.

The Committee also had regard to the evidence regarding the “hold over drawer” and the evidence that the relevant parts of the GOS 3 and GOS4 forms were signed by the patients or their representatives at the first visit and were later completed within the practice.

The Committee also had regard to the form in which the final pages of the GOS3 and GOS4 forms are set out which makes clear that the person signing as the supplier is responsible for what appears on the form. It noted the evidence that certain of the signatures on the documents appeared to be not that of the Registrant.

The Committee considered that the Registrant had instigated a dishonest system to increase her NHS claims. The Committee accepted the evidence that the Registrant was signing the respective forms deliberately and not merely as the designated responsible person.

The Committee found the following particulars of the allegation proved.

1(a)(i) On the basis that the Committee was satisfied that it was dishonest to sign the GOS(S)3 form and submit it for payment before the spectacles had been supplied.

1(a)(ii) The Committee was satisfied that only one pair of spectacles were ordered and supplied.

1(b)(i) As 1(a)(i)

1(b)(ii) As 1(a)(ii)

1(c)(i) As 1(a)(i)

1(c)(ii) as 1(a)(ii)

1(e)(ii) was proved on the basis that the Committee was satisfied on the evidence provided by Mr Whittaker and on the patient record card that the patient’s complaint of eye irritation did not justify a change in prescription.

1(f)(i) and 1(f)(ii) there was no evidence that a binocular vision assessment was carried out.

2(a) As 1(a)(i)

2(b) (i) As 1(a)(ii)

2(b)(ii) As 1(a)(i)

3(a) The Committee was satisfied from the patient record card that no order for spectacles was ever made.

3(b)(i) The Committee was satisfied that this claim was held back in order to qualify for payment and consequently was dishonestly presented because of the incorrect date appearing on it for the supply of the spectacles.

4(a)(i) As 3(b)(i)

4(a)(ii) As 1(a)(ii)

4(b) As 3(a)

4(c) The Committee was satisfied that the prescription on the order justified a claim for a voucher A only but the GOS3 form dishonestly claimed for a voucher B.

5(a) As 3(a)

5(b)(i) As 3(b)(i)

5(b)(ii) As 1(a)(ii)

6(b) The Committee accepted the evidence that, on the basis of the size of the frame supplied, it was not appropriate to claim a child frame supplement, now called small frame supplement.

6(c) The Committee was satisfied on the evidence that three claims were made for the supply of spectacles in the relevant period but only two pairs of spectacles were ordered.

6(d)(i) As 6(b).

6(d)(ii) As 4(c).

6(e) As 6(b).

6(f) The Committee was satisfied that there is no evidence that replacement spectacles were ordered or supplied.

6(g) The Committee made no finding, on the basis of its finding on 6(f).

7(a)(i) As 1(a)(i).

7(a)(ii) As 1(a)(ii).

7(a)(iii) The Committee made no finding on the basis of its finding on 7(a)(ii) in that the allegation in 7(a)(ii) incorporated the allegation in 7(a)(iii).

7(b) As 3(a).

8(a) As 3(a).

9(a) as 3(a).

10(a) As 1(a)(i).

10(b) As 3(a).

The Committee found the following particulars of the allegation not proved.

1(d) The Committee was satisfied that the registrant was not the signatory on this document.

1(e)(i) The Committee accepted the evidence of Mr Whittaker that the change of prescription was justified.

1(e)(iii) The Committee accepted the evidence that the examination was not conducted by the registrant.

3(b)(ii) The Committee accepted the evidence that two pairs of spectacles were ordered and supplied.

6(a) The Committee accepted the evidence of Mr Whittaker that the second eye examination could be clinically justified.

8(b) The Committee considered this particular on the basis that was put before it by the Council that two pairs of spectacles were ordered and supplied to the patient.

Findings in relation to misconduct

The Committee has taken account of the submissions of Mr Hepworth, on behalf of the Council, and those of the registrant's on her own behalf. It has considered its findings that the registrant had instigated and persisted in presenting fraudulent claims for payment to the NHS. It has found that this course of conduct was dishonest. It has had regard to paragraph 10 of the Code of Conduct which states that an optometrist must "be honest and trustworthy" and to paragraph 15 of the Code which states that an optometrist "must "avoid abusing his or her position as an optometrist....." it has taken account of the advice of the legal adviser and has noted the definitions of misconduct given in the cases of *Roynance v GMC* and *Doughty v GDC*. The Committee has decided that, in its judgment, the registrant is guilty of misconduct.

Findings regarding impairment

The Committee has taken account of the submissions of Mr Hepworth on behalf of the Council and those of the registrant on her own behalf. It has accepted the advice of the legal adviser. The Committee reminded itself that the issue for it to decide was whether the registrant's fitness to practise is impaired today and looking forward from today. The Committee reminded itself also, that it must consider, in particular, the nature of the misconduct it has found proved and whether the dishonesty found violated such a fundamental rule of the profession that any steps that the registrant may have taken to remedy her shortcomings would have less significance than they might have in another case. Finally it reminded itself that it was a matter for its judgment whether the registrant's fitness to practise is impaired.

Having considered all the matters it has heard, the Committee concluded that the registrant has demonstrated no insight into her misconduct and she has accepted no personal responsibility for what occurred. She couched her submissions in terms of the business and what it had done since these incidents she did not address the Committee in terms of her own responsibility. She has not taken any rehabilitative steps. She told the Committee that the business had been sold back to her parents and indicated that she was working for the business but did not indicate what steps she had taken personally to remedy her shortcomings other than to indicate that she had undergone Continuous Education and Training.

In reaching its decision, the Committee noted that these events occurred some nine to ten years ago and that there was no evidence that there had been any further acts of dishonesty. Nevertheless, the Committee concluded that a finding of such dishonesty against an optometrist, even if it was concerning events a number of years ago, does violate such a fundamental rule of the profession that the maintenance of public confidence in the profession and the requirement to declare and uphold standards in the profession led it to the inevitable finding that the registrant's fitness to practise is impaired.

Sanction

The Committee has taken account of the submissions of Mr Hepworth on behalf of the Council and those of the registrant on her own behalf. It has accepted the advice of the legal adviser. The Committee reminded itself that it must act proportionately, imposing the lowest sanction which is appropriate bearing in mind all the facts in the case. The Committee also took account of the Guidance and Indicative Sanctions for this Committee.

The Committee first considered whether it should make any order in this case. It concluded that, bearing in mind the seriousness of the case, to make no order would not be appropriate. It then went on to consider whether to make an order for a financial penalty alone, but again concluded that the case was too serious to do this.

The Committee then considered whether to order that the registrant's registration should be conditional for a period not exceeding three years. It reminded itself that any conditions imposed should be appropriate, workable and measurable. It concluded that there were no conditions which could be devised that would meet this test, and that the case was too serious for an order for conditions to be imposed.

The Committee next considered whether it should order that the registrant's registration should be suspended. It reminded itself that suspension should be imposed where there were serious matters found against the registrant but that what had been found proved was not fundamentally incompatible with the registrant remaining on the register.

The Committee determined that on the basis of the findings of fact that supported the findings of misconduct and impairment in this case, these were serious matters which were fundamentally incompatible with the registrant remaining on the register and that, consequently, an order of suspension was not the proportionate or appropriate order to impose. In reaching this decision the Committee noted that the registrant has not demonstrated any insight into her failings.

The Committee therefore decided that the only appropriate and proportionate sanction to impose in this case was one of erasure.

The Committee then considered whether it would be appropriate to impose a financial penalty in addition to erasure. It reminded itself that it could only impose a maximum penalty of £1,600 because these matters occurred before 1st July 2005. It decided that on the basis of the sanction of erasure imposed, it would not be proportionate to also order a financial penalty.

The Committee went on to consider whether to impose an immediate order of suspension. The Committee considered the submissions of Mr Hepworth, on behalf of the Council, and those of the registrant on her own behalf.

The Committee concluded that it was not satisfied that it was in the public interest for an immediate order to be made under section 13I of the Opticians Act 1989, as amended.

Chairman of the Committee: Margaret Hallendorff

Signed _____ Date 17 June 2010

Registrant: Marjorie Martin

Signed _____ Date 17 June 2010