

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

GENERAL OPTICAL COUNCIL

F(08)03

AND

JANINE ELIZABETH VALI (01-20942)

DETERMINATION OF THE INQUIRY: 2-3 NOVEMBER 2009 AND 25 JANUARY 2010

On 2-3 November 2009, the Fitness to Practise Committee of the General Optical Council met to consider an allegation against Janine Vali.

FIRST APPLICATION

An application was made by Mr Leale, on behalf of the Council to make three amendments to the particulars of the allegation. Both parties agreed the application to add a new paragraph 2 and the Committee accepted this amendment.

Paragraph 1 iv of the original allegation alleged that Ms Vali “Did not refer Patient A to a medical practitioner”. Mr Leale has applied to amend this to allege that Ms Vali did not make an “adequate” referral. The Committee considers that this represents a significant change to the nature of the case. The current allegation focuses on whether a referral was made whereas the introduction of the term “adequate” changes that focus to be one of standard and type. The Committee also noted that the application to change this allegation was made within the last month when this case has been live for more than 18 months. The Committee has therefore decided that it would be unjust to allow this amendment at this late stage.

The final application considered by the Committee was the addition of consideration of “misconduct” to the existing allegation of “deficient professional performance”. This new allegation does not change the nature of the evidence that will be given. Mr Leale made it clear that he would rely only on the evidence already disclosed. He also said that he would have no objection to Mr Hodivala, for the registrant, asking questions of the experts in relation to this issue. In these circumstances the registrant will not be prejudiced by having to deal with this new allegation and the Committee has therefore decided that it is just to allow the amendment.

Returning to particular 1 iv, the Committee agreed that this was an issue about abnormal intraocular pressure measurements and found it a helpful focus to have this specificity mentioned in particular 1 iv. Subject to any submissions by the parties, the Committee would be minded to allow an amendment in the following form:

iv. Did not make a referral of Patient A to a medical practitioner concerning the abnormal intraocular pressure measurements.

SECOND APPLICATION

There were two further applications to be made. Mr Hodivala submitted that the submissions on both should be made together. Mr Leale opposed this. The Committee decided, as a matter of administration, to hear them separately in the normal way.

Mr Leale's application was for the evidence of Patient A to be given in the form of a witness statement. He told the Committee that Patient A was resident in Ethiopia and that it was impractical for the GOC to bring him to the UK to give evidence. He had ceased to engage with the GOC so options such as video conferencing were not possible. Mr Hodivala opposed this application on the basis that the evidence was inadmissible and its admission in this form was unfair to his client.

The Committee accepted the advice of the Legal Adviser that this evidence was in principle admissible under section 116(2)(c) of the Criminal Justice Act 2003 but that they should consider whether to exclude it on grounds of fairness.

The Committee considered the apparent reliability of the statement and the circumstances in which it was made. It noted that the statement was made more than 2 years after the consultation in question. It was made in English, even though English was not Patient A's first language and Patient A's son, who is also a witness, assisted with interpretation. It took into account the points Mr Hodivala made with regard to its reliability. However, it is important that this case was originated by a formal complaint from Patient A himself and his version of what happened on the day should be heard. The Committee recognises that Mr Hodivala will not be able to cross-examine Patient A but that he will be able to cross-examine other witnesses. Accordingly, the Committee will give appropriate weight to Patient A's statement and other evidence it hears.

The Committee therefore allows Mr Leale's application.

THIRD APPLICATION

The Committee went on to consider an application made by Mr Hodivala to stay these proceedings as an abuse of process. The basis of this application is that on 21/11/08 the GOC was directed to produce medical records for Patient A, who is resident in Ethiopia. The GOC has tried to obtain such records but has not succeeded. Mr Hodivala does not criticise the GOC's conduct but he says that being deprived of such records means that the registrant cannot have a fair hearing. He relies on Article 6 of ECHR and the case of *Kerojarvi*. He says that the records might confirm the registrant's case that she gave oral advice to Patient A to consult a doctor on his return. The Committee notes that there is already some support for this in the record the registrant herself made.

The Committee has accepted the advice of the legal adviser as to the approach to be adopted. It has considered whether the disadvantage to the registrant is so great that she cannot have a fair hearing of her case.

The issues in this case concern a single consultation on 26/7/05. It is not the task of this committee to consider events that may have happened subsequently. Much has been made of the Committee's preliminary order in November 2008. That decision sought to address any sense of grievance or injustice the registrant might feel if no efforts were made to try to obtain these records. As a result of that order, efforts have been made to obtain the records but unfortunately those efforts have been unsuccessful.

This committee must focus on the allegations concerning the events of July 2005. These matters stand alone and the committee must confine its judgements to the matters in issue. It is theoretically possible that the Ethiopian medical records might have cast light on what

happened at the consultation, but equally they might not. The Committee has no confidence that Ethiopian records from 2005 to May 2007 even exist. Mr Leale described the application for disclosure as a fishing exercise.

The Committee has borne in mind that if this case proceeds it will have to evaluate the strength of the GOC's case. There will be ample opportunities for Mr Hodivala to identify weaknesses in that case. The Committee does not consider that the disadvantage to the registrant resulting from the absence of Ethiopian records makes it impossible for there to be a fair hearing. All that has happened is that there has been the loss of a chance of possibly obtaining corroborative evidence.

The Committee does not agree to Mr Hodivala's application to stay the proceedings.

ALLEGATION

The Council alleges that the fitness to practise of Janine Elizabeth Vali (a registered optometrist), is impaired in that:

1. On 26 July 2005, at a consultation with Patient A, you:
 - i. Recorded Intra Ocular Pressure Measurements of 28 mmHg in the right eye and 17 mmHg in the left eye;
 - ii. Did not repeat the recording of Intra Ocular Pressure Measurements either immediately and/or at a different time of day;
 - iii. Did not perform a visual field test;
 - iv. Did not make a referral of Patient A to a medical practitioner concerning the abnormal Intra Ocular Pressure Measurements.
2. Your actions as described in paragraph 1 above were:
 - i. Not in the best interests of the Patient; and/or
 - ii Not of the standard expected of a registered optometrist.

AND by reason of the facts set out above, you are guilty of deficient professional performance and/or misconduct.

DETERMINATION

Findings in relation to the particulars of the allegation

The Committee found particulars 1.i, 1.ii, 1.iii of the allegation admitted as a matter of fact.

The Committee found particulars 1.iv, 2.i, 2.ii of the allegation proven.

Findings in relation to the particulars of the allegation

In relation to particulars 1(iv) the Committee heard oral evidence from Patient A's son and from Ms Vali. It also considered Patient A's witness statement and the record of the consultation made by Ms Vali.

The Committee found the evidence of Patient A's son to be consistent, coherent and reliable. It was supported by the documentary evidence of the record card, which indicates that any discussion in relation to consulting a medical practitioner was in relation to cataracts, not intra ocular pressure measurement. Apart from recording the intra ocular

pressures measurement, the record card does not contain any reference to the abnormality of the pressure test results. The committee accepts the son's evidence that if he had been told that there was a problem with abnormal intra ocular pressure, he would have arranged for this to be followed up. Patient A was due to stay with him in the UK for several more months.

In addition, the Committee considers that even if something was said by Ms Vali to the son about seeing a doctor that would not constitute a 'referral of Patient A to a medical practitioner concerning the abnormal intra ocular pressure measurement'.

The Committee therefore finds particular 1(iv) proven.

With regard to particular 2 (i), the Committee is satisfied that Ms Vali's actions as set out in particular 1 were not in the best interests of Patient A. The expert evidence which was not challenged was that the pressure findings required either further tests or a referral to a medical practitioner. Ms Vali did neither. The Committee finds this particular proven. With regard to particular 2(ii), there was again expert evidence that was not challenged that Ms Vali's actions as set out in particular 1 were not of the standard to be expected of a registered optometrist. The Committee finds this particular proven.

Findings in relation to misconduct and deficient professional performance

The Committee has found that on 26 July 2005 Ms Vali was consulted by patient A. She recorded intra ocular pressure measurements of 28 mmHg in the right eye and 17 in the left. A difference of this level is abnormal and unusual. It required further action from the Optometrist. However, Ms Vali failed either to repeat the measurements or to perform a visual field test. She did not make a referral to a medical practitioner. The Committee has found that her actions were not in the best interests of the patient and were not of the standard expected of a registered optometrist.

The Committee first considered the question of misconduct. It has borne in mind that a single negligent act or omission is less likely to cross the threshold of 'misconduct' than multiple acts or omissions. However, there was a particularly serious failing in this case. This was not a routine presentation. The difference in ocular pressure measured for patient A was strikingly unusual and worrying. This was particularly so given that the patient was in a high risk category due to his age and ethnicity. Ms Vali did not take any appropriate action in response to her measurements. The Committee could not understand how an optometrist could have failed to act on something that was so obviously wrong. It has concluded that Ms Vali's failings were so serious that they do amount to misconduct.

The Committee went on to consider the question of deficient professional performance, bearing in mind that it is a different concept from misconduct. The Committee has not seen a performance assessment and does not have any other evidence as to the general standard of Ms Vali's performance. The Committee has carefully considered whether the single, very serious, incident in this case enables it to form a view as to the standard of Ms Vali's performance at the relevant time. It is important that the failing in this case was not an error of judgement. The readings were obviously highly abnormal. Even a member of the optical support staff might have questioned them. However, Ms Vali failed to take any action. The Committee found it incomprehensible that a competent practitioner could fail to take to any action in this situation. Her performance was not at a level that would be acceptable to the profession or the public. The Committee has concluded that Ms Vali was guilty of deficient professional performance in relation to the facts that have been proved.

Findings regarding impairment

The Committee has found that Miss Vali is guilty of misconduct and deficient professional performance in failing to act appropriately when abnormal ocular pressure measurements were found at a consultation in July 2005.

The incident occurred four and a half years ago. The Committee has considered very carefully whether Ms Vali's fitness to practise is currently impaired. The presentation of the patient in 2005 was a very clear indication of possible glaucoma. Most cases are much less clear. The Committee has looked for evidence that Ms Vali has developed a good level of skill and knowledge to enable her to identify possible glaucoma issues. The Committee was disappointed by the evidence that was presented. It has seen a CET record, but most of the points gained have been from reading general articles rather than undergoing courses and very little of the material has been relevant to glaucoma.

Ms Vali gave evidence and told the Committee that she has commenced a diploma course in Glaucoma, but she has not yet been able to sit the exam. She submitted no evidence as to the content of her studies to date, no records and no independent confirmation. In her evidence she was not able to identify any specific consultations when possible glaucoma issues arose. She did not present any records of patient consultations when glaucoma issues had arisen to show how she had managed such cases.

The Committee accepts that Ms Vali has gained 4.5 years of general experience but nothing in the evidence presented indicated that the deficiencies in her practice and her insight, especially in regard to glaucoma, have been remedied.

The Committee heard evidence from two of Ms Vali's colleagues. One was a recently qualified registered optometrist, who had not observed Ms Vali conducting examinations since qualifying. He was complimentary about her general abilities but he did not give evidence about her skills in relation to glaucoma. The other witness was a registered dispensing optician. Again she was generally complimentary but she accepted that she was not able to give evidence about Ms Vali's skills in diagnosing glaucoma.

The Committee also received written references concerning Ms Vali's professional skills. It has disregarded two personal testimonials at this stage. The references had been prepared for a hearing in 2008 and had not been updated. None of them dealt specifically with glaucoma and did not deal in detail with Ms Vali's specific clinical skills.

The Committee has concluded that despite the passage of time, and the opportunities it presented for Ms Vali to make specific improvements to her practice in relation to glaucoma, her fitness to practise is impaired.

Sanction

The Committee was firmly of the view that the matters found proven were of a serious nature and that to take no action would be an insufficient response.

The Committee next considered the sanction of conditions. It noted that both the GOC and the registrant's representative favoured conditions being applied to rectify the deficiencies found in relation to Ms Vali's clinical practice. The Committee agrees that Ms Vali's deficient professional performance and impaired fitness to practise in relation to glaucoma could be addressed through CET learning and the application of appropriate conditions.

The Committee has taken into account public perception of the profession and the safety of the public, who have a right to expect a good standard of care when consulting optical professionals. The Committee considered whether suspending or erasing Ms Vali's registration might be necessary but was satisfied that those sanctions would be disproportionate. Conditions will be sufficient to meet the public interest.

The Committee has therefore decided to impose the conditions attached below to be achieved within two years of today. The period of two years has been chosen because Ms Vali has told us that she is pregnant. A sufficient period must be allowed for her to complete the steps required by the committee.

A review hearing will be held within four weeks of the expiration of this order. The review committee will need to be satisfied that Ms Vali has remedied the deficiencies that brought her before the GOC and is safe to resume unrestricted practice.

Chairman of the Committee: Francesca Jones

Signed _____ 25 January 2010

Registrant: Janine Elizabeth Vali

Signed _____ 25 January 2010

JANINE VALI (01-20942)
LIST OF CONDITIONS

1. Within 28 days you must provide details of a proposed supervisor to the GOC. The GOC is to agree or otherwise the suitability of the supervisor within 14 days or thereafter. You must place yourself and remain under the supervision of that supervisor who would be prepared to monitor your compliance with conditions and provide reports to the Registrar every six months providing details of any progression or regression in relation to compliance with these conditions. You must advise the Registrar of the nominated supervisor's contact details and of any proposed change to the supervisor.
2. The GOC will enter these conditions against your name in the register. You must allow the Registrar to share any information, including confidential information, with any employer, supervisor, professional colleague or any organisation for which you provide ophthalmic services for the duration of your conditional registration.
You must also allow the Registrar to share this information with other regulatory bodies and the Department of Health.
3. You must notify the Registrar within 14 days of commencement of any professional appointment you accept whilst you are subject to these conditions and provide contact details of your employer and if providing ophthalmic services under a NHS contract, the PCT on whose ophthalmic practitioners list you will be included (this includes any equivalent employer in the EC).
4. You must inform the Registrar within 14 days of any criminal convictions, police cautions or formal disciplinary proceedings taken against you from the date of this determination.
5. You must inform the Registrar:
 - a. If you cease working;
 - b. If your work takes you out of the UK for a significant period of time; or
 - c. Of any employment you apply for outside of the UK (and in which countries), as conditions of registration only apply to practice undertaken in the UK (you must consider whether your time out of work or out of the UK will allow you to fulfil the conditions during the period of conditional registration). The Registrar may inform the relevant competent authorities in that country of your current conditions of UK registration.
6. You must continue to fulfil the CET requirements under the GOC CET scheme to secure appropriate points for continued inclusion on the GOC register. 12 of these points (in total over the period of the conditions) must relate specifically to glaucoma and its management. At least 50% of the points relating to glaucoma must be obtained by personal attendance at courses.

7. You must inform the following parties that your registration is subject to conditional registration:

- a. Any organisation or person employing or contracting with you to undertake ophthalmic services (to include any locum agency);
- b. Any prospective employer (whether within the UK or EC);
- c. Chairman of the Local Optometric Committee;
- d. The PCT in whose ophthalmic practitioners list you are included or seeking inclusion.

8. You must ensure that your GOC registration is renewed by 15 March annually while you are subject to the GOC FTP conditional registration procedures. Should you fail to renew your registration a review hearing will be arranged immediately.

9. You must work with your nominated supervisor to formulate a personal development plan, submitted 6 monthly, specifically designed to address the deficiencies in the following areas of your practice:

- a. Glaucoma and its management.

10. While in daily practice you must:

- a. Not carry out examinations of patients over 40 years of age **unless** supervised (because of the increased risk of glaucoma in such patients). The supervisor (who must be a registered optometrist) is not required to be present during your examinations but must view and approve the record of that examination within 7 days.
- b. Maintain a log detailing every case where you have undertaken examinations of patients over the age of 40 years which must be signed by the supervisor; and
- c. Provide a copy of the log to the Registrar on a six monthly basis or confirm that there have been no cases where such procedures have been necessary.

11. You must attend a glaucoma specialist clinic in a hospital eye department as an observer for a total of twelve sessions over the period of this order. Where an opportunity presents itself, you should discuss the procedure with the hospital optometrist or medical practitioner. A record of attendances and content is to be maintained by you and countersigned by the hospital optometrist or medical practitioner to be submitted to the Registrar on completion of the twelve attendances.

12. You must not undertake any locum work in any form without the prior agreement of your supervisor and the Registrar.

13. You must not act as a professional mentor to or supervise student optometrists.