

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

GENERAL OPTICAL COUNCIL

F(20)44

AND

ARIANA FADERANI (01-31763)

**DETERMINATION OF A SUBSTANTIVE HEARING
30 MARCH – 1 APRIL 2021**

Committee Members:	Ms Pamela Ormerod (Chair/Lay) Mr Ben Summerskill (Lay) Mr David Abbott (Lay) Ms Catherine Collin (Optometrist) Mr Alexander Howard (Optometrist)
Clinical adviser:	N/A
Legal adviser:	Mr David Mason
GOC Presenting Officer:	Mr Dean Taylor
Registrant present/represented:	Yes and represented.
Registrant representative:	Ms Leila Chaker [Barrister] Ms Cassandra Dighton [AOP]
Hearings Officer:	Ms A Shabani
Facts found proved:	Particulars 1-5 were found proved in their entirety
Facts not found proved:	None

Misconduct:	Found
Impairment:	Impaired
Sanction:	12 months Suspension with Review
Immediate order:	None

ALLEGATION

The Council alleges that in relation to you, Ariana Faderani (01-31763), a registered Optometrist, whilst working at [redacted]:

1. On one or more dates between November 2019 and January 2020, you created false clinical sight test records, for the following customers:

- i. Customer Record ("CR") 299829
- ii. CR 312731
- iii. CR 406585
- iv. CR 414901
- v. CR 415997
- vi. CR 426289
- vii. CR 427511
- viii. CR 434961
- ix. CR 479142
- x. CR 108492
- xi. CR 117584
- xii. CR 354806
- xiii. CR 444947
- xiv. CR 454357

xv. CR 478712

2. On one or more dates between December 2019 and January 2020, you opened and closed clinical contact lens records to create false additional entries, for the following customers:

- i. CR 479265
- ii. CR 147386
- iii. CR 427990
- iv. CR 331435
- v. CR 467448
- vi. CR 362802
- vii. CR 348254
- viii. CR 454890
- ix. CR 425774
- x. CR 457029

3. You informed your employers at [redacted] (“SSL”) that you would attend the “Johnson & Johnson Newly Qualified Course” in Reading on 06 and 07 November 2019.

4. Your actions as set out above in Allegations 1 and 2 were dishonest, in that:

- i. You falsified clinical records in order to inflate your sales figures and related bonus; and
- ii. You falsified clinical records so that SSL would make bonus payments to you rather than the Registrant who had genuinely treated the patients concerned.

5. Your actions as set out above in Allegation 3 were dishonest, in that you deceived SSL into believing you would attend the course, despite you having no plans to do so, and using the study leave granted to you for the purposes of recreational travel instead.

And by virtue of the facts set out above, your fitness to practise is impaired by reason of misconduct.

Amendment to the Allegation

Mr Dean Taylor, GOC Presenting Officer, applied to amend the Allegation to withdraw Particulars 3 and 5 and to insert a new Particular 5 as follows:

You informed your employers at [redacted] (“SSL”) that you would attend the “Johnson & Johnson Newly Qualified Course” in Reading on 06 and 07 November 2019 and you

- a. Failed to attend the above named course
- b. Failed to inform SSL that you did not attend the course when you returned to work.

Your actions described above were misleading.

He informed the Committee that the GOC was not confident it could prove to the required standard a state of mind of the Registrant which would amount to dishonesty.

Ms Leila Chaker, counsel for the Registrant, consented to the application on her behalf.

The effect of the amendment was to remove the allegation of dishonesty contained from the Particulars contained in the original Particular 5 and to replace it with one of ‘misleading’ conduct. The Committee construed misleading to mean simply objectively misleading, without any necessity for the GOC to prove intent to mislead.

The Committee concluded that the proposed amendment could be made without injustice to the parties by reference to rule 46(17) of the General Optical (Fitness to Practise) Rules 2013. It considered the public interest in the Committee having Particulars before it which reflected the extent of the potential misconduct of the Registrant. It concluded that in the context of the whole of the Allegation the amendment satisfied the public interest.

Application for part of the hearing to be held in private

Counsel for the Registrant made an application under Rule 25(2) of the 2013 procedure rules that the Committee should conduct part of the hearing in private. She referred to the health and relationship problems the Registrant had set out in her witness statement and reflective statement and submitted that these related to private and family matters which should be dealt with in private.

Mr Taylor told the Committee that there was no objection from the GOC to the hearing of matters of health in private session but made no submission over the application to hear relationship issues in private.

The Committee took into account the public interest in justice being administered in public and decided that on balance it was proper to protect the Registrant’s private and family life to hold the case in private when necessary to deal with health and relationship issues.

Background

The Registrant qualified as an optometrist in July 2019. She was employed by Specsavers at its [redacted] branch from September 2019. An initial investigation carried out within the branch revealed potential irregularities in the recording of contact lens assessments and aftercare. Optometrists were paid a bonus based on

the number of contact lens assessments and aftercare sales they made. It was suspected that transactions were being recorded fraudulently by the Registrant to increase her associated bonus payments.

An investigation into the apparent irregularities was carried out by the Specsavers' Financial Risk Support team [FRS], having had the suspected irregularities referred to it on 13 January 2020 by [redacted], Specsavers [redacted] Joint Venture Partner.

On 21 January 2020 a further concern was raised by [redacted] in relation to irregularities in relation to sight test records created by the Registrant.

The FRS concluded that the Registrant had created false clinical records to associate her name with potential dispenses by other optometrists and inflate her sight test numbers. The impact was to increase her apparent daily sales and sight test numbers. This was done intentionally, it found, and the effect was to increase the bonus paid to the Registrant which also decreased the bonus of colleagues who had actually dealt with the customer. It also suspected that the Registrant had deliberately opened and closed records of contact lens customers to create additional entries, again increasing her bonus. On examination it was found that in copying the records, the Registrant had been responsible for errors and omissions so that the sight test record was no longer accurate.

The Registrant was made the subject of a disciplinary investigation by her employer during which she admitted the falsification of sight test and contact lens records. In the course of the investigation the Registrant made admissions over her activities but told the investigators that she had at the material time been receiving threats from persons demanding money from her. The Registrant admitted to the Committee that this was a fabrication she had made up during the interview.

It was found that the Registrant's conduct was dishonest and impinged on records kept by Specsavers which might have affected clinical care and affected public confidence in the provision of eyecare services. It was also found to have had the effect of increasing the bonus payment made to the Registrant and to reduce the bonuses paid to colleagues who were entitled to them. As a result of this investigation the Registrant was dismissed.

The Registrant provided the Committee with a witness statement and reflective statement which dealt in detail with [redacted] health and relationship problems she was suffering at the relevant time and which she said influenced her behaviour. She said that she was motivated by a wish to promote her own self esteem, not financial gain. The Committee was also provided with a report from a [redacted], a testimonial from a previous employer for whom she had provided limited locum cover and a testimonial from the Registrant's brother.

On 23 January 2020 [redacted] raised a further concern that the Registrant had not attended a Johnson & Johnson Newly Qualified Course which she said she would attend and for which her employer had allowed her study days. Instead the Registrant had visited Turkey during this time to meet with family members. The outcome of the FRS investigation was reported to the GOC on 10 March 2020. As a result the Registrant now faces the Allegations referred to this Committee.

Findings in relation to the facts

The Registrant admitted the Particulars contained in the amended Allegation in its entirety. In accordance with Rules 46 (5) and (6) of the General Optical Council (Fitness to Practise) Rules 2013 the Committee found the facts contained in the Particulars proved.

The Committee has heard submissions on behalf of the Council and the Registrant over the issues of misconduct and impairment of fitness to practise. It has accepted the advice of the Legal Adviser.

Findings in relation to misconduct

The Committee considered the admitted facts and applied to them the guidance contained in legal authorities related to findings of misconduct. It took into account that the Registrant has admitted dishonesty which related to both fraudulently claiming money from her employer to which she was not entitled and to falsifying records of customers seeking eyecare services which might have impacted on patient safety and their future eyecare. The effect of her dishonesty was to deprive her colleagues of bonus payments to which they were entitled and to put the public at risk. The Registrant insisted that the indication that she was financially motivated was untrue and merely a panic response to questioning. In fact she was going through a difficult time in her personal life as a result of an [redacted] and associated [redacted] health. The dishonest actions had merely been an attempt to improve her self esteem when she was actually finding it difficult to achieve the standards expected as a newly qualified professional by appearing to enhance her professional performance. The Registrant admitted to the Committee that she would not have stopped this conduct had she not been found out or her self esteem had improved.

The Committee accepted that the motive for the Registrant's dishonesty was not financial but was aimed at boosting her standing with her employer and thereby improving her self esteem. However, there was a clear risk to patient safety in her falsification of records and the Registrant was fully aware that the effect of her dishonest manipulation of records was that she received money to which she was not entitled.

The Committee considered the admissions made by the Registrant to the FRS. It also took in to account the personal circumstances described by the Registrant in her evidence.

The Committee found that the conduct admitted to by the Registrant fell significantly below the standards of honesty expected of a registered professional. It referred to the GOC's Standards of Practice document, in particular:

Standard 8: Maintain adequate patient records;

Standard 11: Protect and safeguard patients, colleagues and others from harm;

Standard 16: Be honest and trustworthy;

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

In relation to Particular 5 of the Allegation, as amended, the Committee noted that the Registrant admitted that she misled her then employer over her non attendance at a training course which she had said she would attend and had been given study leave to attend. It took the word 'misled' to mean objectively misled and concluded that this admission added little to the seriousness of the case it had to consider.

The Committee found that the admitted facts found proved amount to misconduct by the Registrant.

Findings regarding impairment

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

The Committee accepted that in considering the issue of impairment it had to consider both the need to protect the public and the need to protect the public interest in maintaining proper standards of conduct in the profession and the protection of its reputation. It considered the extent of the Registrant's misconduct as a whole and then considered the issue of public protection and public safety individually. It considered the issue of impaired fitness to practise in the present tense, looking forward.

The Committee was aided by the guidance provided by Dame Janet Smith in the course of the Shipman enquiry:

“Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or
- b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or
- c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or
- d. has in the past acted dishonestly and/or is liable to act dishonestly in the future.”

It found that the past conduct of the Registrant breached all four of the criteria for a finding of impaired fitness to practise.

The Committee considered carefully whether the Registrant had insight into her conduct and its effects. It found that the Registrant had shown insight in her witness statement, reflective statement and the evidence she gave to the Committee. It was concerned, however, that much of her insight was about herself and that she had not shown full insight into the potential effect of her conduct on patient safety. Therefore, it could not find that the Registrant had complete insight but concluded that this was developing and that she was in a process of reflection

over her misconduct and its causes. It considered that her professions of remorse were genuine.

The Committee considered whether the Registrant's misconduct could be remedied, had been remedied and what was the likelihood of its repetition. It considered that the personal and health problems which affected the Registrant were not an excuse for her behaviour but was satisfied that the Registrant was developing an understanding of them and their impact on her behaviour.

The Committee accepted that dishonesty is difficult to remedy but that it can be remedied to at least some extent with insight and reflection. It concluded that the Registrant had to a considerable degree remedied the misconduct which brought her before the Committee. However, having concluded that misconduct of the type shown in this case was unlikely to be repeated, it could not discount the possibility that the calculated and sustained nature of the dishonesty shown by the Registrant in this case might not result in her acting at some time in the future in a dishonest way which could affect patient safety. It said this taking into account that at the time of her dishonesty the Registrant had, on her own admission, little or no regard or insight in to the risk to patients as a result of her behaviour. The Committee concluded that the Registrant had shown herself capable of elaborate, calculated and potentially damaging dishonesty.

The Committee then considered the public interest in the upholding of standards and the protection of the reputation of the profession as a distinct aspect of its deliberations over impaired fitness to practise. It accepted that the protection of the public interest may outweigh the personal circumstances of the Registrant and the remediation of misconduct which had been achieved by her.

In *Yeong v GMC* [2009] EWHC 1923 (Admin) Sales J said at paragraph 50:

First, in my judgment, the overarching function of the GMC as set out in s. 1(1A) of the Act informs the meaning of impairment of fitness to practise by reason of misconduct in s. 35C(2), so that under s. 35C(2) and s. 35D the FTTP (acting on behalf of the GMC) is entitled to have regard to the public interest in the form of maintaining public confidence in the medical profession generally and in the individual medical practitioner when determining whether particular misconduct on the part of that medical practitioner qualifies as misconduct which currently impairs the fitness to practise of that practitioner. Where a medical practitioner violates such a fundamental rule governing the doctor/patient relationship as the rule prohibiting a doctor from engaging in a sexual relationship with a patient, his fitness to practise may be impaired if the public is left with the impression that no steps have been taken by the GMC to bring forcibly to his attention the profound unacceptability of his behaviour and the importance of the rule he has violated. The public may then, as a result of his misconduct and the absence of any regulatory action taken in respect of it, not have the confidence in engaging with him which is the necessary foundation of the doctor/patient relationship. The public's confidence in engaging with him and with other medical practitioners may be undermined if there is a sense that such misconduct may be engaged in with impunity.

The Committee asked itself what an informed member of the public would conclude if there was no finding of impairment in this case. In considering this it took account of the calculated dishonesty of the Registrant over a prolonged period, which could have affected patient safety and over which she had not shown insight or understanding at the time. It also took account of her dishonesty over the reasons for her behaviour when investigated by her then employer and her lack of regard for her colleagues who might have been deprived of money to which they were entitled. It noted that the Registrant had offered to repay to her employer the money she had improperly received and had apologised to her employer.

It was clear to the Committee that the public would lose confidence in the profession and its regulator if no action were taken to mark the serious nature of the Registrant's misconduct, its potential for risk to patient safety and her disregard of the effect on colleagues, her then employer and the public. The Committee accepted that an informed member of the public would also take in to account the circumstances of the Registrant at the material time and her efforts at personal rehabilitation.

The Committee found, weighing all of the circumstances of this case, that public confidence in the profession would be seriously damaged if the Committee did not make a finding of impairment. It concluded that the protection of the public interest was its prime concern in this case, but it was left with reservations regarding public protection because it could not entirely discount the possibility of the Registrant resorting to some form of dishonesty or other serious misconduct in the future if faced with similar circumstances. Her coping strategies, which the Committee accepted are developing, are as yet untested.

The Committee found that the fitness of the Registrant to practise as an optometrist is currently impaired.

Sanction

The Committee heard submissions from Mr Taylor on behalf of the Council and from Miss Chaker on behalf of the Registrant. It accepted the advice of the Legal Adviser.

The Committee considered the sanctions available to it from the least to the most severe (no sanction, financial penalty, conditional registration, suspension, erasure).

The Committee noted the submission made on behalf of the GOC that the appropriate sanction in this case is one of not less than suspension. It also noted the submissions on behalf of the Registrant that suspension was the appropriate sanction.

The Committee accepted that the purpose of a sanction is not to be punitive, although it may have that effect, and that they are intended to protect the public and the public interest. The Committee in its deliberations applied the principle of proportionality, weighing the interests of the public and the interests of the Registrant. It proceeded on the basis that any action it takes in relation to the Registrant should be the minimum necessary to protect the public and the public interest and no more.

The Committee was guided by the Council's Indicative Sanction's Guidance [ISG] and took into account the Guidance on Dishonesty at paragraph 21 of the Guidance. In addition the Committee took into account the Guidance on mitigating and aggravating factors beginning at paragraph 23.2. It considered the Guidance in relation to the various Sanctions open to it at the appropriate stages. It was at this stage that the Committee considered the testimonials provided by a locum employer and from the Registrant's brother.

The Committee found the following aggravating circumstances:

- Sustained and premeditated acts of dishonesty involving the manipulation of patient records on numerous occasions;
- Personal gain by the Registrant;
- The potential for harm to patients;
- That the Registrant blamed her conduct entirely on her personal circumstances.

The Committee considered the following mitigating features:

- Previous professional good history, although of short duration;
- Good testimonials, although limited in number;
- The Registrant's youth and inexperience;
- A low risk of repetition of the conduct;
- The significant events relating to her health and relationship that were occurring at the time.

The Committee considered the Sanctions in ascending order of seriousness. It considered where necessary the next most restrictive Sanction to assess whether a sanction was sufficient or appropriate.

The Committee began by considering first whether it was necessary to impose a Sanction. It concluded that to impose no sanction would not be sufficient to reflect the serious misconduct it has identified nor the need to protect the public interest. Similarly, the Committee found that to impose a financial penalty was, for those reasons, insufficient and inappropriate.

In relation to the imposition of conditional registration, it considered the guidance at paragraph 33 of the Guidance. The Committee concluded that it could not formulate conditions which would be appropriate given its findings which would address its findings of serious dishonesty or that would meet the need to protect the reputation of the profession.

The Committee then considered whether suspension was an appropriate and sufficient Sanction. It considered the factors set out in the ISG at 34.1:

This sanction may be appropriate when some or all of the following factors are apparent (this list is not exhaustive):

- a. A serious instance of misconduct but where a lesser sanction is not sufficient;

- b. No evidence of harmful deep-seated personality or attitudinal problems;
- c. No evidence of repetition of behaviour since incident;
- d. The panel is satisfied the registrant has insight and does not pose a significant risk of repeating behaviour;
- e. In cases where the only issue relates to the registrant's health, there is a risk to patient safety if the registrant was allowed to continue to practise even under conditions; or

It considered that suspension was the minimum Sanction necessary in this case. Whilst it had found dishonesty, it did not consider, that given the Registrant's mitigation and the steps that she had taken to remediate her conduct, that she had a deep-seated personality or attitudinal problem. There was no evidence of any repetition of her misconduct and the Committee considered that the risk of repetition was low. The Committee had previously concluded that the Registrant has insight which is incomplete but developing.

The Committee as part of its deliberations considered the factors indicating that erasure was an appropriate sanction at ISG 36.5:

This sanction is likely to be appropriate when the behaviour is fundamentally incompatible with being a registered professional and involves **any** of the following (this list is not exhaustive):

- a. Serious departure from the relevant professional standards as set out in the Standards of Practice for registrants and the Code of Conduct for business registrants;
- b. Doing serious harm to individuals (patients or otherwise), either deliberately or through incompetence, and particularly where there is a continuing risk to patients;
- c. Abuse of position/trust (particularly involving vulnerable patients) or violation of the rights of patients;
- d. Offences of a sexual nature, including involvement in child pornography;
- e. Offences involving violence;

The Committee has found a serious departure from professional standards. There was no evidence in this case of harm to patients, although the Committee has found there was the potential for harm. The Registrant had abused the trust of her employer, but the risk of harm was related to patients only indirectly and without intent to cause them harm.

The Committee took full account of the factors in this case pointing to both suspension and erasure. It did not consider that erasure was the only means of protecting patients and the public interest. It considers that the Registrant has the potential to be a useful member of the profession and took into account in particular her youth and inexperience, professionally and personally.

On balance and taking fully in to account its duty to protect the public and the public interest, in the particular circumstances of this case it concluded that the appropriate sanction was of suspension from the Register for the maximum period permitted to the Committee, which is twelve months. The Committee in reaching its decision took into account the possible financial effect this might have on the Registrant. However, it considered that a suspension of this length was necessary to mark the seriousness of her misconduct and uphold the public interest. This will give time for the Registrant to reflect more upon her misconduct and the steps she still needs to take to improve her insight and to accept that her misconduct cannot be wholly explained by the personal health and other circumstances she has experienced.

The Committee directs a review of the sanction in this case before the end of the period of suspension. It considers that a reviewing Committee might well be aided by:

- Evidence of additional reflection in particular in relation to her personal responsibility;
- Testimonials from any place of paid or unpaid work during the period of suspension;
- Proof of continued CET and CPD engagement and any other relevant courses the Registrant has attended during the period of suspension.

Immediate Order

The Committee heard submissions on behalf of the Council who requested an immediate order and on behalf of the Registrant whose Counsel was neutral. It accepted the advice of the Legal Adviser.

The Committee considered whether it should exercise its power under the Opticians Act 1989 s13(1) to impose an immediate order of suspension following its substantive direction that the Registrant's registration be suspended for twelve months. It applied the test that an order for immediate suspension may be directed where it is:

- (i) necessary for the protection of members of the public;
- (ii) otherwise in the public interest; or
- (iii) in the best interests of the individual

The Committee accepted advice that where the only ground for imposing an order for immediate suspension is the public interest, not public protection, the bar to imposing an order is set high and the imposition of an order requires a high degree of necessity.

It noted that there has been no interim order imposed upon the Registrant although the GOC has been aware of the allegations against her since March 2020. She has been permitted to practise without restriction since then. No complaint against her has been received in that time.

The Committee considered whether not making a direction would be inconsistent with its primary order in this case. As it has found that the risk to public safety is low in this case and that its direction of suspension is primarily on public interest grounds it decided that it would not be inconsistent not to apply an order of immediate suspension.

The Committee decided not to impose an immediate suspension order for the reasons given above.

Chair of the Committee: Ms Pamela Ormerod

Signature

Date: 1 April 2021

Registrant: Ariana Faderani

Signature

Date: 1 April 2021

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.

Where a registrant can appeal against a decision, the Authority has 40 days beginning with the day which is the last day in which you can appeal. Where a registrant cannot appeal against the outcome of a hearing, the Authority's appeal period is 56 days beginning with the day in which notification of the decision was served on you. 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.

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.