

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

GENERAL OPTICAL COUNCIL

F(22)04

AND

MICHAEL MOON (01-9510)

**DETERMINATION OF A SUBSTANTIVE REVIEW
31 AUGUST 2023**

Committee Members: Julia Wortley (Chair/Lay)
Jackie Alexander (Lay)
Asmita Naik (Lay)
Denise Connor (Optometrist)
Sanna Nasrullah (Optometrist)

Legal adviser: Megan Ashworth

GOC Presenting Officer: Tom Stevens

Registrant: Present and unrepresented

Registrant representative:

Hearings Officer: Arjeta Shabani

Outcome:

Fitness to practise remains impaired on both public protection and public interest grounds.

Sanction of conditions of practice order with amendments to continue until its expiry (12 October 2025 - (With a Review in 12 months' time)

DETERMINATION

Factual Allegation as found proved

1. *On or around 29 May 2019, you failed to conduct an appropriate examination of Patient 3's eyes in that you:*
 - a. *Failed to perform a visual fields test;*
 - b. *Failed to record a visual fields test;*
 - c. *...*
 - d. *Failed to record IOP measurements;*
 - e. *Failed to perform muscle balance or binocular vision test;*
 - f. *Failed to record muscle balance open binocular vision test;*
 - g. *Failed to perform an internal examination of the eyes;*
 - h. *Failed to record an internal examination of the eyes;*
 - i. *Failed to perform an external examination of the eyes;*
 - j. *Failed to record an external examination of the eyes.*
2. *On or around 12 June 2019, you failed to conduct an appropriate examination of Patient 8's eyes in that you:*
 - a. *Failed to perform examinations for the external eyes;*
 - b. *Failed to record examinations for the external eyes.*
3. *On or around 9 July 2019, you conducted a sight test on Patient 2 and behaved inappropriately by:*
 - a. *Referring to Patient 2 as a "child" or words to that effect;*
 - b. *Referring to Patient 2 as a "lady of leisure" or words to that effect;*
 - c. *...*
 - d. *Making remarks to Patient 2 about "women using headaches as excuses" or words to that effect;*
 - e. *Making remarks to Patient 2 about how you conducted "market research with women before proposing to your wife" or words to that effect; and/or*
 - f. *Stating to Patient 2's boyfriend "I will take her off your hands" or words to that effect*
4. *On or around 16 July 2019, you failed to perform an appropriate examination of Patient 6's eyes in that you:*
 - a. *Failed to perform examinations for the external eyes;*
 - b. *Failed to record examinations for the external eyes.*
5. *On or around 6 August 2019, you amended Patient 9's records for the sight test you conducted on or around 10 July 2019 by inputting details into the ophthalmoscopy section.*

6. *Your action at 5 above was dishonest and/or misleading in that you did not record that the amendments were made retrospectively.*

Background

1. The Registrant joined the GOC as a registered Optometrist on 22 October 1976. At the time of the Allegation, he was employed by Vision Express Opticians as an Optometrist at its [redacted] store. He has been practising as an Optometrist for over 40 years.
2. On 27 September 2019, the Registrant self-referred to the GOC, setting out that he had received three complaints in a short period of time.
3. Allegation 1 arose following a complaint received by Vision Express from Patient 3, following an appointment that she attended with the Registrant on 29 May 2019.
4. Allegation 3 arose from a complaint received by Vision Express from Patient 2, following an appointment with the Registrant that she had attended on 9 July 2019. The complaint was included within a customer satisfaction survey completed by the patient on 15 July 2019.
5. Allegations 2 and 4 arose as a result of an audit of the Registrant's cases, conducted on 17 July 2019, following receipt of Patient 3's complaint.
6. Allegations 5 and 6 occurred during a break in the internal disciplinary hearing held into the Registrant's conduct on 6 August 2019. During the break, the Registrant was discovered in the consultation room with the patient records for Patient 9. The Registrant had performed an eye examination on Patient 9 on 10 July 2019, and the records of the eye examination were among those previously audited, showing that no record of an internal examination had been made. A subsequent computer audit trail was conducted which showed that the entry into the records had been made on 6 August 2019, during the break in the disciplinary hearing. It was alleged that the Registrant had made these retrospective entries dishonestly.
7. Following the internal disciplinary process within Vision Express, the Registrant was dismissed from his employment on or around 4 October 2019. On the same date, the GOC was given notice of the fact that of his dismissal and was provided with a copy of the disciplinary letter outlining the employer's concerns as to the Registrant's conduct.
8. Between 5-9 and 12-13 September 2022, a substantive hearing was held, which the Registrant attended but was not represented. The Committee found all facts proved save 1(c) and 3(c) and found that those facts proved amounted to misconduct. It went on to find that his fitness to practise was impaired by reason of that misconduct and imposed a conditional registration order on his registration for a period of three years, with a review after 12 months. On 27 January 2023, minor amendments were made to the conditions at a procedural hearing to correct minor errors.
9. The Conditional Registration Order is due to expire on 12 October 2025.

Findings regarding impairment

10. For the purpose of this review, the Committee has been provided with documentation, including the following:
 - a. The determination from the substantive hearing, dated 13 September 2022;
 - b. Correspondence between the GOC and the Registrant subsequent to the conditions being imposed, in particular requesting details of the Registrant's nominated workplace supervisor;
 - c. Two reports from the Registrant's supervisor, dated 21 March 2023 and 13 June 2023;
 - d. A copy of the Registrant's PDP;
 - e. A skeleton argument on behalf of the GOC, dated 31 July 2023
11. The Committee heard submissions from Mr Stevens, Counsel instructed on behalf of the Council. Mr Stevens took the Committee through the background of the case, and directed the Committee's attention to the skeleton argument which had been prepared setting out the position of the GOC. Mr Stevens explained that a GOC approved supervisor had been put in place in February 2023, and there were two supervision reports provided from the supervisor, which were positive regarding the Registrant's practice. Mr Stevens explained that the GOC was neutral on the question as to whether or not the Registrant's fitness to practise remains impaired.
12. The Registrant, who was unrepresented, gave evidence on his own behalf. The Registrant accepted that he had started practising shortly after the substantive hearing had ended, and that it was before he had a GOC approved supervisor in place. He described the difficulties that he had had in finding a supervisor. He said that he had not understood that his conditions did not permit him to work as an Optometrist until a GOC approved supervisor was in place, although he accepted that the conditions made it clear that this was the position.
13. The Registrant described for the Committee the efforts he had made in respect of record keeping and interaction with patients, particularly being careful in what he said to them. He said he understood how the patient would have felt and would have been upset by his comments. The Registrant drew the Committee's attention to the supervisor's reports which confirmed the improvements in his record keeping, satisfactory communication with patients and the positive feedback from patients in patient feedback forms.
14. In respect of the dishonesty, the Registrant said that with hindsight, he understood that his retrospective amendment of the record was viewed as dishonest.
15. The Committee accepted the advice of the Legal Adviser, who cited the case of *Abrahaem v GMC EWHC 183 (Admin)* and *Blakely v GMC [2019] EWHC 905 (Admin)* and advised that there is a persuasive burden upon a Registrant to demonstrate that they are fit to resume unrestricted practice. In reaching its decision, the Committee understood its responsibility for ensuring public protection as well as the wider public interest elements of

maintaining public confidence in the profession and declaring and upholding proper professional standards of conduct and behaviour.

16. The Committee bore in mind that the persuasive burden is on a Registrant to demonstrate that they are fit to practise unrestricted. The Committee noted the three areas of concern of the original Committee, namely: inadequate eye examinations and record keeping thereof; inappropriate conduct in respect of a patient; and dishonesty in retrospectively amending a patient record. The Committee noted that the original Committee had considered that the Registrant had insufficient insight, particularly into his inappropriate conduct and his dishonesty. Whilst the original Committee considered that there was a low risk of repetition, it nevertheless had not been satisfied that the Registrant had appreciated the seriousness of his actions, or its potential impact on others, including the reputation of the profession.
17. The Committee noted the correspondence of the GOC case officers chasing the Registrant for details regarding his workplace supervisor, which the Registrant had not engaged with until around January 2023. The Committee noted that the Registrant said he had had some [redacted] around that time, but it bore in mind that he was also still working at that time. In the Committee's judgement, this demonstrated that the Registrant had not taken on board the seriousness of either the fitness to practise process or the requirements on him of the conditions of practice order, which had been imposed following a finding of misconduct and impaired fitness to practise so as to protect the public.
18. In respect of the conditions themselves, the Committee noted that the Registrant accepted that he had been practising before a supervisor had been approved by the GOC, which was not in compliance with the order's conditions. It appeared to the Committee that the GOC workplace supervisor had been in place since around February 2023. In light of this, it appeared to the Committee that the Registrant had been practising with a supervisor for only approximately seven months of the 12 months which had been the expectation of the original Committee. The Committee also considered that the Registrant's Personal Development Plan (PDP) which had been provided on the date of the hearing. The Committee concluded that the PDP was inadequate for the purposes of the requirements of the conditions, in that it was not targeted towards the specific concerns raised by the original Committee, nor did the PDP identify any steps taken by the Registrant to address them.
19. The Committee had regard to the two reports from the supervisor. It noted that for the seven months when the supervisor had been in place, the supervisor had recorded that the Registrant had made some improvements to his practice. However, the Committee was not satisfied that this shortened period of time, supported only by two supervisor's reports, was sufficient for the Registrant to discharge the persuasive burden of demonstrating that the risks of repetition were sufficiently reduced. It also considered that during this time the Registrant had not demonstrated sufficient insight into the potential risk of harm to patients as a result of his record keeping failures.
20. In respect of the Registrant's insight into his inappropriate conduct and his dishonesty, the Committee was of the view that the Registrant had still not grasped the seriousness of both these issues. In the Committee's view, he had not yet satisfactorily demonstrated that he had taken on board the true

impact of such behaviour on the reputation of the profession or public confidence in members of the profession.

21. The Committee was mindful that the onus was on a Registrant at a review to demonstrate that his fitness to practise was no longer impaired. However, in this case, the Committee was not persuaded by the Registrant's written or oral evidence at this time. Accordingly, in the Committee's judgement, the Registrant's fitness to practise remains impaired.
22. The Committee found that the fitness of Mr Michael Moon to practise as an optometrist is currently impaired on the grounds of both public protection and public interest.

Sanction

23. The Committee heard submissions from Mr Stevens, on behalf of the GOC. Mr Stevens submitted that, consistent with the position of the GOC's neutrality on the question of impairment, he made no positive submissions for a particular sanction. He drew the Committee's attention to the available sanctions under section 13F(13) of the Opticians Act 1989.
24. The Registrant, on his own behalf, recognised that he had not been off to a good start in respect of compliance with his conditions, and that there was room for improvement. He recognised that continued supervision would be appropriate in his case.
25. The Committee accepted the advice of the Legal Adviser. She advised in accordance with section 13F(13), and that the Committee should impose the least onerous sanction sufficient to meet the risks. It had regard to the Indicative Sanctions Guidance.
26. The Committee considered the sanctions available to it from the least restrictive to the most severe, as set out in section 13F(13) of the Opticians Act 1989. The Committee applied the principle of proportionality by weighing the Registrant's interests with the public interest.
27. The Committee was of the view that the Registrant had not engaged well with his conditions initially. The GOC had been compelled to chase the Registrant for details of a supervisor, and he had been working without a supervisor for some months (until February 2023), thereby failing to comply with conditions. The Committee considered that this was a serious failure on the Registrant's behalf. It was evident to the Committee that he had not fully engaged with the process or the importance of the conditions. The Committee considered that even once he had the supervisor in place, he had adopted a lax approach to the time frames in which to submit the required information. Further, the Committee considered that the PDP submitted by the Registrant fell significantly short of the requirements of the conditions.
28. Given this context, the Committee considered that revoking the order would not be a sufficient and proportionate response.
29. The question for the Committee was whether, given the previous lack of compliance and the ongoing lack of appreciation as to the seriousness of the case, the conditions of practice order remained a sufficient and proportionate response to the risks identified.

30. The Committee was mindful that the misconduct dated back to 2019, and there had been no further allegations since that time. Whilst the Registrant had not discharged the onus on him to demonstrate that his fitness to practise was no longer impaired, the Committee considered that he was making some improvement as evidenced by the two supervisor's reports. In light of this, looking at the case objectively, the Committee did not consider that there was an enhanced risk to the public and the public interest. It therefore considered that the current conditions of practice order, with minor amendments to the conditions, particularly in relation to the PDP, would continue to meet the risks which had been identified.
31. The Committee did consider whether suspension may be the appropriate sanction, given the lack of full compliance with the conditions of practice order. The Committee determined, on balance, that for the reasons given above, that the conditions of practice order remains proportionate.
32. The Committee wished to point out to the Registrant that the next supervisor's report is due on 13 September 2023, and that the onus is on him to provide the required documentation in compliance of the conditions, within the timeframes specified.
33. The Committee therefore decided to continue the conditional registration order in its amended form for the remainder of the period. The Committee also orders that the order should be reviewed in 12 months' time.

Chair of the Committee: Julia Wortley

Signature

Date: 31 August 2023

Registrant: Michael Moon

Signaturereceived via email **Date: 31 August 2023**

List of conditions

<p>A1.1 Informing others</p>	<p>You must inform the following parties that your registration is subject to conditions. You should do this within two weeks of the date this order takes effect.</p> <ul style="list-style-type: none"> a. Any organisation or person employing or contracting with you to provide paid or unpaid optical services, whether or not in the UK (to include any locum agency). b. Any prospective employer or contractor where you have applied to provide optical services, whether or not in the UK.
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	<ul style="list-style-type: none"> c. The Chair of the Local Optometric Committee for the area where you provide optometric services. d. The NHS body in whose ophthalmic performer or contractor list you are included or are seeking inclusion.
<p>A1.2</p> <p>Informing others</p>	<p>You must inform the GOC within two weeks if:</p> <ul style="list-style-type: none"> a. You accept any paid or unpaid employment or contract, whether or not in the UK, to provide optical services. b. You apply for any paid or unpaid employment or contract to provide optical services outside the UK. c. You cease working. <p>This information must include the contact details of your prospective employer/ contractor and (if the role includes providing NHS ophthalmic services) the relevant NHS body.</p>
<p>A1.3</p> <p>Supervision of Conditions</p>	<p>You must:</p> <ul style="list-style-type: none"> a. Identify a supervisor who is not related to you who would be prepared to monitor your compliance with the conditions A1.3 (e), (f) and (g) set out below. b. Ask the GOC to approve your supervisor within 2 weeks of the date this order takes effect. If you are not employed, you must ask us to approve your workplace supervisor before you start work. c. Identify another supervisor if the GOC does not agree to your being monitored by the proposed supervisor. d. Place yourself under the supervision of the approved supervisor and remain under their supervision for the duration of these conditions. e. Arrange for your supervisor to review 10 randomly selected patient records within 3 months of these conditions taking effect and thereafter at 3 monthly intervals until the next review of these conditions. f. At least once every 3 months meet your supervisor to review compliance with your conditions and your progress with any personal development plan, focussing on the following areas: <ul style="list-style-type: none"> i) demonstrate how you have ensured that your clinical records accord with the standards expected of a GOC registered Optometrist.

	<ul style="list-style-type: none"> ii) demonstrate how you have adapted your practice to ensure that your clinical assessments of patients accord with the standards expected of a GOC registered Optometrist. iii) demonstrate how you have developed your approach and skills to interact with patients and colleagues in a professional environment. <p>g. Within 14 days of the meetings referred to at f. above and at least 1 month before each review hearing or upon request by the GOC, submit a written report from your supervisor to the GOC, detailing how you have complied with the conditions which the supervisor is monitoring.</p> <p>h. Develop a structured system to enable patients to give you feedback on their experience of being treated by you and to take action to address any issues which may arise.</p> <p>i. Formulate a personal development plan, including proposals for training, which should be specifically designed to address deficiencies in those areas of your practice identified by the Committee, in particular your record keeping, your assessment of patients and your interaction with patients.</p> <p>j. Submit an appropriate personal development plan, in accordance with condition i above, to the GOC within two weeks of this order taking effect.</p> <p>k. Submit an updated personal development plan before the next review, with details, examples and timeframes of how you have complied with conditions in f. above.</p> <p>l. Inform the GOC of any proposed change to your supervisor and again place yourself under the supervision of someone who has been agreed by the GOC.</p>
<p>A1.4 Other proceedings</p>	<p>You must inform the GOC within 14 days if you become aware of any criminal investigation or formal disciplinary investigation against you.</p>
<p>A1.5 Registration requirements</p>	<p>You must continue to comply with all legal and professional requirements of registration with the GOC.</p> <p>A review hearing will be arranged at the earliest opportunity if</p>

	<p>you fail to:-</p>
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- a. Fulfil all CET requirements; or
- b. Renew your registration annually.

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
<p>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.</p> <p>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).</p> <p>Further information about the PSA can be obtained from its website at www.professionalstandards.org.uk or by telephone on 020 7389 8030.</p>
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.