

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

GENERAL OPTICAL COUNCIL

AND

ZARCUR DARD (SO-10581)

**DETERMINATION OF A SUBSTANTIVE HEARING
AGREED PANEL DISPOSAL (ADP)
23 MAY 2022**

Committee Members:	Julia Wortley (Chair/Lay) Alice Robertson-Rickard (Lay) Amanda Webster (Lay) Sanna Nasrullah (Optometrist) Gemma O' Rourke (Optometrist)
Legal adviser:	David Mason
GOC Presenting Officer:	Tope Adeyemi
Registrant:	Present and represented
Registrant representative:	Thomas Coke-Smyth (Counsel) Katie Holland (AOP)
Hearings Officer:	Terence Yates
Facts found proved:	All found proved
Facts not found proved:	N/A
Misconduct:	Found
Impairment:	Impaired
Sanction:	Seven months suspension without a review
Immediate order:	No

ALLEGATION

The Council alleges that in relation to you, Zarcur Dard SO–10581, a registered student optometrist, whilst completing the College of Optometrists Scheme for Registration at Specsavers [Redacted]:

- 1) Between April 2017 and September 2018, in order to fulfil competency 4.2.1, you inaccurately recorded on Patient 1's record that she had a x10 magnifier that she was not happy with and you dispensed her a x12.5 magnifier when the patient already had the x12.5 magnifier; and/or
- 2) Between February 2018 and September 2018, in order to fulfil competency 5.1.1 and 5.2.1, you created an inaccurate paper and/or a computerised record, indicating you performed an aftercare examination of a soft lens fitting for Patient 2 on 1 September 2018, when you had not examined the patient for an aftercare appointment; and/or
- 3) Between March 2018 and September 2018, in order to fulfil competency 5.1.3, you created an inaccurate record for Patient 3 indicating you carried out a Rigid Contact Lens fitting which was not actually performed and/or
- 4) Between March 2018 and September 2018, in order to fulfil competency 5.2.2, you created an inaccurate record for Patient 3 indicating you performed a Rigid Contact Lens aftercare appointment which was not actually performed; and/or
- 5) Between July 2018 and September 2018, in order to fulfil competency 6.1.10, you inaccurately amended Patient 4's original record, to state that the patient had diabetic retinopathy changes; and/or
- 6) Between July 2018 and September 2018, in order to fulfil competency 8.1.7, you created an inaccurate record for Patient 5 using a new customer number with no previous indication as to the last sight test so that the record indicated you performed a routine sight test; and/or
- 7) Your actions at 1, 2, 3, 4, 5, and/or 6 above, were dishonest in that you knew the information you added was inaccurate.

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

APD Report

Annex A

DETERMINATION

Background

The Registrant first registered with the General Optical Council (GOC) as a student optometrist on 17 October 2014. On 10 October 2018 the Registrant notified the GOC that he had falsified patient records whilst preparing for his pre-registration Stage 1 assessment. On 28 January 2019 the College of Optometrists referred the Registrant to the GOC having investigated discrepancies which had been identified in records presented to it during his Stage 1 assessment. The nature of the falsification of records involved is set out in the Allegation.

The GOC carried out an investigation into the matters raised and as a result it was agreed between the GOC and the Registrant, through his legal representatives, that the case could be disposed of on the basis of an Agreed Panel Disposal (APD). The APD report is set out in an Annex A to this determination.

The Registrant has admitted all of the particulars set out in the Allegation. The APD records that the parties are agreed that the admitted facts amount to misconduct, that as a result the Registrant's fitness to practise is currently impaired and that an appropriate sanction would be of suspension of the Registrant for seven months with no review.

In those circumstances this hearing has been convened to consider the APD, applying the GOC's policy on Agreed Panel Disposals.

Submissions

Submissions were made by Ms Adeyemi on behalf of the GOC. She referred the Committee to the APD report and submitted that the proposal for disposal of the case was appropriate.

Mr Thomas Coke-Smyth on behalf of the Registrant agreed with that submission.

Legal Advice

The Legal Adviser advised the Committee that the procedure it was asked to adopt is not an individual procedure set out in the legislation or procedural rules, but was an application of the procedure without the Committee hearing evidence or competing legal argument. He advised that the Committee should consider the case on the basis of the stages set out in the procedural rules. The Legal Adviser advised the Committee to apply the GOC policy on APDs in its consideration of the case. He advised that the relevant law as set out in the APD was accurate and comprehensive.

The Committee's decision

The Committee took fully into account the GOC policy on APDs and first considered whether it would accept the APD report as presented by the parties. It accepted the advice of the Legal Adviser and the GOC policy on APDs, and began by considering the various stages of the procedure as set out in the procedure rules.

Misconduct

The Committee determined that the facts admitted and found proved amounted to serious misconduct. It noted that the Registrant has admitted to falsifying multiple patient records over a considerable period of time. The Committee found that this conduct would be considered to be deplorable by members of the profession and amounted to a breach of Standards 15 and 16 of the GOC Standards for Optical Students. The Committee had no doubt that the Registrant's conduct was intended to mislead others for his own interests and was premeditated.

Impairment

The Committee noted that the agreed basis for a finding of impairment of the Registrant's fitness to practise was on public interest grounds alone. It was satisfied that if no finding of impairment were reached, public confidence in the profession would be seriously undermined.

The Committee found that protection of the public did not require a finding of impairment as the Registrant would, if he returned to training, be supervised as a pre-registration optometrist and would not be treating patients independently. It also found that repetition of the conduct was unlikely. In reaching its findings, the Committee took full account of the Registrant's reflective statement and his evidence of steps to remedy his conduct. The Committee noted the Registrant's candid responses when he was invited by his counsel to deal directly with issues raised by the Committee. It was satisfied that the Registrant understood the seriousness of his misconduct and the possible risk to patients which might have resulted.

Sanction

The Committee was guided in its consideration of sanction by the GOC's Indicative Sanctions Guidance.

The Committee accepted the agreement reached by the parties that taking no action and imposing a financial penalty or conditional registration would not meet the public interest requirement to maintain confidence in the profession. It therefore proceeded to consider whether the proposed sanction of suspension was appropriate and proportionate.

The Committee considered that the dishonesty involved was serious and sustained which could warrant a sanction of erasure. It took into account the positive testimonial from the Registrant's current employer, the Registrant's reflective statement, his evidence of continued CPD and efforts at remediation and what he had said directly to the Committee in the course of the hearing. The Committee accepted the submission on the Registrant's behalf that there are degrees of dishonesty. It also accepted that whilst remediation of dishonest conduct is difficult, it was possible to do so. The Committee noted that the Registrant is at an early stage towards practising as an optometrist and that if suspended he would return to the profession with the status of a student, where there would be continued consideration of his standards of conduct and practice.

Taking all of the circumstances of the case into account, the Committee found that the Registrant's conduct was not incompatible with registration as a student optometrist.

Having considered, as it was entitled to do, the criteria set out in the ISG for erasure, the Committee concluded that erasure would be disproportionate in this case.

The Committee then considered the proposed period of suspension of seven months with no review. It concluded that the agreed period of suspension was appropriate and of a length sufficient to protect the public interest of maintaining confidence in the profession, whilst taking account of the Registrant's interests.

The Committee concluded that a review hearing was not necessary. It found that a review would serve no purpose as the Registrant could not bring before a reviewing Committee anything that had not been presented to this Committee. There was, it found, no issue of public protection which would require a review.

The Committee therefore resolved to approve the APD in its entirety and directs that the Registrant's registration be suspended for a period of seven months with no review.

Immediate order

The Committee found that there was no requirement for an immediate order in this case as no issue of public protection was involved and that increasing the period of suspension was therefore not appropriate or proportionate.

Chair of the Committee: Julia Wortley



Signature

Date: 23 May 2022

Registrant: Zarcur Dard

Signature present via video

Date: 23 May 2022

ANNEX A

AGREED PANEL REPORT

Introduction

1. *This is a substantive hearing in respect of Zarcur Dard ("Registrant"), a registered student optometrist first registered with the General Optical Council ("the Council") as an student optometrist on 17 October 2014. The Fitness to Practise Committee ("FTPC") meet to consider whether to approve an agreed form of disposal under the Agreed Panel Disposal ("APD") process. Both parties agree to the proposed form of disposal set out in this report. The Registrant has had the benefit of legal advice from the Association of Optometrists ("AOP") before agreeing to dispose of this case by the APD process.*

2. *The Council's published policy on the APD process is addended to this report. It is a hearing management tool, designed to assist in avoiding full hearings with the calling of evidence where the public protection and public interest objectives of the fitness to practise process would still be met by an agreed outcome. It is not a separate statutory tool or path to a finding of impaired fitness to practise. The FTPC retains full jurisdiction over the procedure and, save where it would be otherwise appropriate not to do so, the proposed APD is considered at a public hearing. The options open to the FTPC are:*
 - i. *To approve the report in its entirety and make the appropriate order(s);*
 - ii. *To vary the sanction with the agreement of both parties after inviting submissions. If one or both parties disagree with the variation suggested by the FTPC, the APD hearing will be vacated and the matter will be scheduled for a substantive hearing before a new committee without an agreed report;*
 - iii. *To disagree with all or part of the report. In this instance, the GOC and the registrant may agree to amend the report in light of the FTPC's findings and resubmit this to the same committee at a reconvened hearing, otherwise the APD hearing will be vacated and the matter will be listed for a substantive hearing before a new committee without an agreed report;*
 - iv. *If either party decides that they no longer want the case to proceed by APD, the current hearing must be immediately concluded by the FTPC with no orders being made (unless there is a request for procedural directions from both parties). The*

matter will then be scheduled for a substantive hearing before a new committee without an agreed report.

Background

3. *The Council's case was served on the registrant on 24 January 2022.*
4. *On 10 October 2018, the Registrant notified the Council that he had falsified patient records for the purposes of his pre-registration Stage 1 assessment. This was followed by a referral from the College of Optometrists on 28 January 2019 (following the conclusion of their investigation). The allegations came to light during the Registrant's Stage 1 assessment when the assessor identified discrepancies in the records presented and was unable to verify the records. The College of Optometrists ("the College") investigated and notified the Registrant's employers (Specsavers [Redacted]) of the discrepancies. The Registrant admitted further falsification of records and was therefore dismissed by Specsavers for gross misconduct and required to recomplete several stages of his assessment.*
5. *The allegation is set out below.*

Allegation

The Council alleges that in relation to you, Zarcur Dard SO-10581, a registered student optometrist, whilst completing the College of Optometrists Scheme for Registration at Specsavers [Redacted]:

- 1) *Between April 2017 and September 2018, in order to fulfil competency 4.2.1, you inaccurately recorded on Patient 1's record that she had a x10 magnifier that she was not happy with and you dispensed her a x12.5 magnifier when the patient already had the x12.5 magnifier; and/or*
- 2) *Between February 2018 and September 2018, in order to fulfil competency 5.1.1 and 5.2.1, you created an inaccurate paper and/or a computerised record, indicating you performed an aftercare examination of a soft lens fitting for Patient 2 on 1 September 2018, when you had not examined the patient for an aftercare appointment; and/or*

- 3) *Between March 2018 and September 2018, in order to fulfil competency 5.1.3, you created an inaccurate record for Patient 3 indicating you carried out a Rigid Contact Lens fitting which was not actually performed and/or*
- 4) *Between March 2018 and September 2018, in order to fulfil competency 5.2.2, you created an inaccurate record for Patient 3 indicating you performed a Rigid Contact Lens aftercare appointment which was not actually performed; and/or*
- 5) *Between July 2018 and September 2018, in order to fulfil competency 6.1.10, you inaccurately amended Patient 4's original record, to state that the patient had diabetic retinopathy changes; and/or*
- 6) *Between July 2018 and September 2018, in order to fulfil competency 8.1.7, you created an inaccurate record for Patient 5 using a new customer number with no previous indication as to the last sight test so that the record indicated you performed a routine sight test; and/or*
- 7) *Your actions at 1, 2, 3, 4, 5, and/or 6 above, were dishonest in that you knew the information you added was inaccurate.*

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

Nature of the Recommended Disposal

6. *Upon the Registrant's admissions and upon the Council and Registrant agreeing to this recommendation, the parties jointly seek and recommend to the FTPC that this matter is disposed of by a determination on the following basis:*
 - i. *All of the particulars of the allegations are admitted and found proved;*
 - ii. *That the particulars of the allegations amount to misconduct;*
 - iii. *That the Registrant's fitness to practise is impaired by reason of misconduct; and*
 - iv. *The appropriate and proportionate sanction is 7 month suspension with no review.*

Law

7. *The matter is governed by The Opticians Act 1989 ("the Act") and The General Optical Council (Fitness to Practise) Rules Order of Council 2013 ("the Rules").*

8. *In accordance with Rule 46 a hearing is required to be conducted in three stages:*

 - i. *Stage 1 - Findings of fact;*
 - ii. *Stage 2 - Findings on whether, as a result of the facts found proved, the Registrant's fitness to practise is impaired by reason of misconduct;*
 - iii. *Stage 3 - Consideration of the appropriate sanction, if any.*

9. *Rule 40(6) provides: "the registrant may admit a fact or description of a fact, and a fact or description of a fact so admitted may be treated as proved."*
10. *More detailed submissions are set out below in respect of each stage.*

Stage 1: Factual Findings

11. *On 10 October 2018, the Registrant notified the Council that he had falsified patient records for the purposes of his pre-registration Stage 1 assessment. This was followed by a referral from the College of Optometrists on 28 January 2019 (following the conclusion of their investigation). The allegations came to light during the Registrant's Stage 1 assessment when the assessor identified discrepancies in the records presented and was unable to verify the records. The College of Optometrists ("the College") investigated and notified the Registrant's employers (Specsavers [Redacted]) of the discrepancies. The Registrant admitted further falsification of records and was therefore dismissed by Specsavers for gross misconduct and required to recomplete several stages of his assessment.*
12. *The Council obtained the College investigation report, patient records and a witness statement from [Person 1] dated 1 July 2020. In [Person 1's] witness statement, she exhibits the Registrant's response to the College's investigation, where the Registrant admits to creating inaccurate records and details the patients involved. (page 11-13). This corresponds with the records obtained from Specsavers [Redacted], as well as the Registrant's self-referral to the Council dated 10 October 2018, where he states: "It was identified that a record had been falsified and when questioned I admitted the same. I proceeded to inform the store directors of other inaccurate records I have created and amended during my pre-registration training." (page 2).*

13. The Council also obtained witness statements from [Person 2], Director at Specsavers [Redacted], the Registrant's stage 1 assessor; [Person 3], Dispenser [Redacted] who participated in the Registrant's Stage 1 assessment as Patient 3; and [Person 4], who was the Registrant's supervisor.

14. In [Person 2's] statement dated 12 May 2020, he exhibits a transcript of a meeting between himself and the Registrant dated 7 September 2018. The Registrant states: "(MD) On Socrates – created cl aftercare when I hadn't seen the patient" and "(NC) Low vision record at [Redacted] – Wrote down that I dispensed a magnifier that I didn't" and "(NC) RGP fitting – In [Redacted] name – didn't fit her with an RGP". The transcript goes on to state: "We then asked [Registrant] about Patient 5 record, Zak then remembered – he amended Patient 5 DOB on her records and created a new record so that it didn't look strange that she had an eye test recently." (page 54).

15. In [Person 3] statement dated 21 November 2019, he states: "At around 11.15am, a member of staff came to Mr Dard and myself to advise that there was a patient waiting in the reception area who wanted to book an appointment for a contact lens after care. In order to ensure that this was a true assessment however, I had to confirm beforehand that the candidate (Mr Dard) had not previously seen the patient. Mr Dard proceeded to check the patient's records on the computerised system for me and upon opening them, we realised that the patient already had an aftercare appointment on the system. Mr Dard also recognised the patient's name and was able to locate the handwritten (paper) version of the patient record. Both the paper and the computerised records revealed that the patient had an initial soft contact lens fitting on 11 August 2018 and had attended a follow up aftercare appointment on 1 September 2018. As this situation did not make sense, I asked to check the practice diary to see if that patient had attended an appointment on 1 September 2018. However, there was no appointment for the patient that day. I approached the patient to confirm whether they had attended an appointment at the practice before and they confirmed that they had not been on the 1 September 2018. They also confirmed that they had not had any appointments since the initial appointment on 11 August 2018. This confirmed that something was wrong. I confronted Mr Dard who initially denied that there was anything wrong. However, eventually he owned up and explained that he had struggled to get patients to come back for their aftercare appointments at this practice. In this case, Mr Dard confirmed he had telephoned the patient to ask them how they were getting on with their lenses and created the aftercare record from that. This confirmed that Mr Dard had falsified the

records by recording things he's done when he hasn't, as he is required to examine the patient and check the patient's response to the contact lens." (page 128-129). This corresponds with the transcript of the meeting that [Person 2] had with the Registrant dated 7 September 2018.

16. In [Person 3's] statement dated 22 December 2021, she states: "As part of his training, [Registrant] needed to practise fitting gas permeable lenses and I offered to let him practise fitting the lenses on me. I am often used as a guinea pig by students at Specsavers as I am happy to help students out with their studies, and I'm usually one of the only people happy to help due to the uncomfortable side of the lenses. It was not until after [Registrant] left Specsavers that the Practice Manager showed me notes on the computer that [Registrant] had recorded. These said "Return after trial. Patient been wearing five days a week. Distant vision and near vision is okay. Also getting used to monovision. Drives in RGP's." RGP's is shorthand for gas permeables. Under "Care regime" he had put "Use B&L [Bausch and Loum] RGP cleaner and conditioner solution. First rub lenses with cleaner and then rinse thoroughly with tap water. Then soak overnight for four hours plus in condition solution in case." The date these notes had been recorded was 20 July 2018. I cannot remember when the Practice Manager showed me the notes. I was quite surprised when I saw these notes because none of what had been recorded had happened; [Registrant] had implied in his notes that I had had the lenses fitted and had been wearing them five days a week. However he had never fitted the lenses and provided me with them, and we had never had a follow up afterwards. I had also not been advised by [Registrant] to use B&L cleaner and him recording that I should rinse the lenses with tap water made me laugh because lenses should never be washed with tap water. I also thought that it was a bit of a shame that Zac had thought that he needed to write those notes." (page 181-182).

17. In [Person 4's] statement dated 16 September 2021, he exhibits a brief statement dated 22 March 2019 which outlines the discrepancies found in Patient 2's records. He states: "The TR control report shows indicates a cl appointment by [Registrant] on 05/09/18, when in fact the clinical report show the Px was in fact examined by myself ([Redacted])."

18. The registrant admits the facts alleged against them.

Stage 2: Misconduct and Impairment

Misconduct

19. With regard to the issue of misconduct, there is no definition but a review of some of the authorities provides some guidance, Lord Clyde in Roylance v GMC (no.2) [2000] 1 A.C. 311 Lord Clyde, in his judgment at page 331, stated:

“Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances. The misconduct is qualified in two respects. First, it is qualified by the word “professional” which links the misconduct to the profession of medicine. Secondly, the misconduct is qualified by the word “serious”. It is not any professional misconduct which will qualify. The professional misconduct must be serious”.

20. In the case of R (on the application of) Remedy UK v General Medical Council [2010] EWHC 1245 at paragraph 37, it way stated:

“First, it may involve sufficiently serious misconduct in the exercise of professional practice such that it can properly be described as misconduct going to fitness to practise. Second, it can involve conduct of a morally culpable or otherwise disgraceful kind which may, and often will, occur outwith the course of professional practice itself, but which brings disgrace upon the doctor and thereby prejudices the reputation of the profession.”

21. As to seriousness, Collins J, in Nandi v General Medical Council [2004] EWHC (Admin), rightly emphasised, at paragraph 31 of his judgment,

“the need to give it proper weight, observing that in other contexts it has been referred to as ‘conduct which would be regarded as deplorable by fellow practitioners’.”

22. In the case of Calhaem v General Medical Council [2007] EWHC 2606 (Admin) at paragraph 39 at paragraph (1) Jackson J (as he then was) said:

“(1) Mere negligence does not constitute “misconduct” within the meaning of section 35C(2)(a) of the Medical Act 1983. Nevertheless, and depending upon the circumstances, negligent acts or omissions which are particularly serious may amount to “misconduct”.

(2) A single negligent act or omission is less likely to cross the threshold of “misconduct” than multiple acts or omissions. Nevertheless, and depending upon the circumstances, a single act or omission, if particularly grave, could be characterised as “misconduct”.

(3) “Deficient professional performance” within the meaning of section 35C(2)(b) is conceptually separate from negligence and from misconduct. It connotes a standard of professional performance which is unacceptably low and which (save in exceptional circumstances) has been demonstrated by reference to a fair sample of the doctor’s work.

(4) A single instance of negligent treatment, unless very serious indeed, would be unlikely to constitute “deficient professional performance”.

(5) It is neither necessary nor appropriate to extend the interpretation of “deficient professional performance” in order to encompass matters which constitute “misconduct”.

23. It is agreed by both the Council and the Registrant that the Registrant's conduct breached the following paragraphs of the Standards for Optical Students:

15. Be honest and trustworthy

15.1 Act with honesty and integrity to maintain public trust and confidence in your profession.

15.6 Do not make misleading, confusing, or unlawful statements within your communications.

16. Do not damage the reputation of your profession through your conduct

16.1 Ensure that your conduct, whether or not connected to your professional study does not damage public confidence in you or your profession

24. It is agreed by both parties that the allegations amount to a serious departure from the standard of practice expected of a competent student optometrist.

25. The parties agree that the Registrant's conduct therefore amounts to misconduct within the meaning of section 13D(2)(a) of the Act.

Impairment

26. There are a number of authorities from the High Court in appeals against decisions of the General Medical Council's Fitness to Practise Panels, where the Panel has found a doctor's fitness to practise to be impaired. These authorities discussed the way in which regulatory committees should approach impairment in this case at the second stage. They are:

- Cohen v GMC [2008] EWHC 581 (Admin);
- Zygmunt v GMC [2008] EWHC 2643 (Admin);
- Cheatle v GMC [2009] EWHC 645 (Admin);
- Yeong v GMC [2009] EWHC 1923 (Admin);
- CHRE v NMC and Grant [2011] EWHC 927 (Admin)

27. As to the meaning of fitness to practise, in the case of Zvamunt v GMC [2008] EWHC 2643 (Admin) Mr Justice Mitting (at para 29) adopted the summary of potential causes of impairment offered by Dame Janet Smith in the Fifth Shipman Inquiry Report (2004, Paragraph 25.50). Dame Janet Smith considered that impairment would arise where a doctor:

- a) presents a risk to patients;
- b) has brought the profession into disrepute;
- c) has breached one of the fundamental tenets of the profession;
- d) has acted in such a way that his/her integrity can no longer be relied upon.

28. Factors (a), (b) (c) and (d) are engaged in this case.

29. In Cheatle v GMC, Mr Justice Cranston said this (at paragraphs 21 - 22):

21. There is clear authority that in determining impairment of fitness to practise at the time of the hearing regard must be had to the way the person has acted or failed to act in the past As Sir Anthony Clarke MR put it in Meadow v General Medical Council [2006] EWCA Civ 1390 [2007] 1 QB 462:

"In short, the purpose of fitness to practise proceedings is not to punish the practitioner for past misdoings but to protect the public against the acts and

omissions of those who are not fit to practise. The FPP thus looks forward not back. However, in order to form a view as to the fitness of a person to practice today, it is evident that it will have to take account of the way in which the person concerned has acted or failed to act in the past".

22. In my judgement this means that the context of the doctor's behaviour must be examined. In circumstances where there is misconduct at a particular time, the issue becomes whether that misconduct, in the context of the doctor's behaviour both before the misconduct and to the present time, is such as to mean that his or her fitness to practise is impaired. The doctor's misconduct at a particular time may be so egregious that, looking forward, a panel is persuaded that the doctor is simply not fit to practise medicine without restrictions, or maybe not at all. On the other hand, the doctor's misconduct may be such that, seen within the context of an otherwise unblemished record, a Fitness to Practice Panel could conclude that, looking forward, his or her fitness to practise is not impaired, despite the misconduct".

30. In Yeong v GMC [2009] Mr Justice Sales said (at Para 21):

"It is a corollary of the test to be applied and of the principle that a FFTP is required to look forward rather than backward that a finding of misconduct in the past does not necessarily mean that there is impairment of fitness to practise - a point emphasised in Cohen and Zygmunt...in looking forward the FFTP is required to take account of such matters as the insight of the practitioner into the source of his misconduct, and any remedial steps which have been taken and the risk of recurrence of such misconduct. It is required to have regard to evidence about matter that have arisen since the alleged misconduct occurred".

(At Para 48): "Miss Grey submitted that each of Cohen, Meadow and Azzam was concerned with misconduct by a doctor in the form of clinical errors and incompetence. In relation to such type of misconduct, the question of remedial action taken by the doctor to address his areas of weakness may be highly relevant to the question whether his fitness to practise is currently (i.e. at the time of consideration by a FFTP) impaired; but Miss Grey submitted that the position in relation to the principal misconduct by Dr Yeong in the present case (i.e. improperly crossing the patient/doctor boundary by entering into a sexual relationship with a patient) is very different. Where a FFTP considers that the case is one where the misconduct consists of violating such a

fundamental rule of the professional relationship between medical practitioner and patient and thereby undermining public confidence to the medical profession, a finding of impairment of fitness to practise may be justified on the grounds that it is necessary to reaffirm clear standards of professional conduct so as to maintain public confidence in the practitioner and in the profession, in such a case, the efforts made by the medical practitioner in question to address his behaviour for the future may carry very much less weight than in the case where the misconduct consists of clinical errors or incompetence. I accept Miss Grey's submissions that the types of cases which were considered in Cohen, Meadow and Azzam fall to be distinguished from the present case on the basis she puts forward".

31. The High Court revisited the issue of impairment in the recent case of CHRE v NMC and Grant where Mrs Justice Cox noted (at paragraph 74):

*"In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not **only** whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances."*

32. The Registrant accepts that his fitness to practise is currently impaired, in that:

- i. *It is necessary in the public interest to make a finding of impairment of fitness to practise in order to uphold professional standards and public confidence in the profession.*

Stage 3: Sanction

33. Where the FTPC find that a registrant's fitness to practise is impaired, the powers of the FTPC are listed under section 13F (2) (3) and (4) of the Act. Section (2) states that the FTPC may, if they think fit, give a direction specified in subsection (3).

34. The purpose of sanctions in fitness practise proceedings are as follows:

- a) the protection of the public;
- b) the declaring and upholding of high standards in the profession; and

c) *the maintenance of public confidence in the profession*

35. *Sanctions are not intended to be punitive. Accordingly, matters of personal mitigation carry very much secondary weight. In Bolton v The Law Society [1994] 1 WLR 512 Bingham LJ said:*

"...the reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits but that is part of the price."

36. *The FTPC should have proper regard to the Indicative Sanctions Guidance unless the FTPC have sound reasons to depart from it – per Lindblom LJ in PSA v (1) HCPC (2) Doree [2017] EWCA Civ 319 at paragraph 29.*

37. *The FTPC must have regard to the principle of proportionality. The principle requires that when considering what sanction to impose in order to fulfil the statutory over-arching objective, the FTPC must take into consideration the interests of the Registrant, which may include the wider public interest in a competent student optometrist being permitted to return to practice. The FTPC should consider the sanctions available, starting with the least restrictive sanction available, judging whether that sanction will be sufficient to achieve the over-arching objective, and if it will not, moving on to consider the next least restrictive sanction.*

38. *In terms of aggravating features, the matter involves falsifying multiple patient records that could have put patients at risk of harm.*

39. *In terms of mitigating circumstances, the Registrant has no previous fitness to practise history and he has shown insight by admitting the allegations and agreeing to facts,*

Misconduct and impairment for the purposes of the fitness to practise hearing.

40. *Having regard to the GOC's Indicative Sanctions Guidance, the parties agree that the appropriate and proportionate sanction is a 7 month suspension with no review.*

Suspension is appropriate given the seriousness of the misconduct. Suspension is also sufficient to address the public interest concerns and to declare and uphold proper standards of conduct and behaviour and maintain confidence in the profession.

The parties gave consideration to the length of the order and concluded that 7 months was the appropriate length to address the seriousness of the misconduct and the public interest concerns.

No Further Action/ Financial Penalty Order

41. No further action, or a financial penalty order are not proportionate or sufficient given the seriousness of the misconduct.

Conditional Registration

42. Conditional registration is insufficient to address the public interest concerns.

Erasure

43. The parties agree that the Registrant's conduct is not fundamentally incompatible with registered practise and that, at this stage, this sanction would be disproportionate and excessively punitive.

Immediate Order

44. The parties do not consider it is necessary to impose an immediate order as the Registrant is a student.

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.