

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

GENERAL OPTICAL COUNCIL

F(20)35

AND

ANGELINA BHOPAL (01-29224)

**DETERMINATION OF A SUBSTANTIVE REVIEW
26 July 2022**

Committee Members: Ms Anne Johnstone (Chair/Lay)
Ms Vivienne Geary (Lay)
Mr Mark McLaren (Lay)
Ms Catherine Collin (Optometrist)
Ms Sanna Nasrullah (Optometrist)

Legal adviser: Mr Mike Bell

GOC Presenting Officer: Ms Rachel Birks

Registrant: Present

Registrant representative: Ms Jocelyn Ledward
Ms Victoria Koramoah (AOP)

Hearings Officer: Ms Abby Strong-Perrin

Outcome: Allow current suspension order to lapse on expiry

DETERMINATION

Preliminary Issue

At the commencement of the hearing Ms Nasrullah advised that she considered that she had a potential conflict of interest and sought to recuse herself from today's hearing.

Ms Birks submitted that if such a potential conflict existed that it was appropriate for Ms Nasrullah to recuse herself and that if this did occur the Committee could still proceed to deal with the review as there would still be quorate. Ms Ledward concurred with Ms Birks' submission.

The Committee accepted the Legal adviser's advice who referred it to Rules 22 and 25 of the General Optical Council (Committee Constitution Rules) Order of Council 2005 and advised that if Ms Nasrullah recused herself that there would still remain quorate.

The Committee determined that, having identified a potential conflict of interest, it was appropriate for Ms Nasrullah to recuse herself and that, it still being quorate, it would continue with today's review.

Background

The Registrant has been registered with the Council since December 2015 and, at the material time, was working as an optometrist at Specsavers REDACTED. On 19 April 2019 the Registrant saw Patient A. Patient A had diabetes and was myopic, which meant that Patient A was at greater risk of retinal detachment. The registrant conducted a Minor Eye Conditions Service (MECS) examination and, on that day, recorded the presenting symptoms as "*Floaters couple of days Le misty eye in Le no flashes*"

It was accepted that prior to seeing Patient A the Registrant reviewed Patient A's Socrates computer record and had access to a triage form which would have been completed by a colleague (which was not uploaded to the Patient's record and cannot now be found). Patient A also had a visual field test and an intraocular pressure check prior to seeing the Registrant.

The Registrant then conducted a series of tests and examinations on Patient A, including ophthalmoscopy to rule out a retinal tear or detachment. The Registrant did not identify any vitreoretinal abnormalities and concluded Patient A's issues might reflect a neurological issue. The Registrant sent an urgent referral to the Neuro-ophthalmology team at REDACTED Hospital.

Patient A had still not heard from the hospital by 29 April 2019 and the vision in Patient A's left eye had deteriorated further. Patient A went to another optician, REDACTED, for a second opinion. REDACTED diagnosed a "*temporal retinal detachment with a horse shoe tear*" and referred Patient A for emergency assessment and treatment at Moorfields Eye Hospital. Moorfields confirmed the diagnosis of retinal detachment in the left eye and operated on Patient A on 30 April 2019.

On 9 May 2019, Patient A went to Specsavers to cancel her contact lens contract because of her diagnosis and surgery. At which point the Registrant became aware that Patient A had suffered a serious problem with her left eye following the appointment on 19 April 2019.

The Registrant accepted that "*adv on f+r*" was added to the Additional Tests section of Patient A's records on 9 May 2019 and that the words "*intermittent*" and "*no curtain drop in vision*" were added to the Reason for Visit section of Patient A's records on 10 May 2019. The issue in dispute was whether the additions were a dishonest attempt to cover up, or mitigate, the Registrant's failure to identify a retinal tear or detachment and/or refer Patient A for assessment for potential retinal tear or detachment, or whether they were honest clarifications to ensure the record was complete.

The allegations against the Registrant were as follows:

- 1) On or around 19 April 2019, you conducted a MECS examination on Patient A and you:
 - a. Failed to conduct an adequate assessment of Patient A's eyes in that you failed to identify signs of a vitreoretinal abnormality in her left eye, despite the patient presenting with 'black floaters, fog/mist and blurry vision'; and/or
 - b. Failed to adequately and/or appropriately refer Patient A, for further investigation and/or treatment of retinal tear/detachment; and/or
 - c. Wrongly referred Patient A to neuro-ophthalmology, despite the patient presenting with 'black floaters, fog/mist and blurry vision'; and/or
 - d. Failed to adequately and/or appropriately advise Patient A regarding any deterioration of her symptoms and the treatment options available to her.

- 2) On or around the 9 and 10 May 2019, using the staff ID of Registrant A **REDACTED**, you amended Patient A's record of the test you conducted on 19 April 2019 in that you:
- a. At the 'Additional Tests' section, added "adv on f+f "; and/or b. At the 'Reason For Visit' section, added the word(s) "intermittent" and/or "no curtain drop in vision".
- 3) Your action at 2a and/or 2b above were dishonest in that you amended Patient A's record retrospectively to justify your actions and in particular: a. Added "Adv on f+f" when you had not advised on flashes and floaters on the date of the examination; and/or b. Added the word "intermittent" when Patient A had not reported that her misty vision was intermittent; and/or c. Added "no curtain drop in vision" when that information had not been elicited from Patient A on the date of the examination; and/or d. Failed to indicate on the record that these amendments were made retrospectively.

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

At the Substantive Hearing, on 4 to 13 October 2021 and 10 to 12 January 2022, the Committee found all allegations proved except sub-particular 1(a) and, in so doing, found that the registrant had breached the following GOC Standards of Practice for Optometrists and Dispensing Opticians:

"7 Conduct appropriate assessments, examinations, treatments and referrals

6.2 Be able to identify when you need to refer a patient in the interests of the patient's health and safety, and make appropriate referrals

16 Be honest and trustworthy
17 Do not damage the reputation of your profession through your conduct. 19 Be candid when things have gone wrong."

The Committee considered misconduct and concluded that the facts proved in relation to sub-particulars 1(b), 1(c) and 1(d) amounted to misconduct, noting that the Registrant's actions "were more than merely negligent and amounted to a serious failure to use all the information that had been available to her to make an appropriate diagnosis in an area with potentially serious consequences for the patient."

In relation to dishonesty, the Committee concluded that, "the Registrant's dishonesty was clearly serious and would be regarded as deplorable by fellow practitioners. The

Committee had no hesitation in concluding that Particulars 2 and 3 amounted to misconduct.”

The Committee considered impairment first in relation to the Registrant's clinical failings as found proved in sub-particulars 1(b), 1(c) and 1(d):

“The Committee regarded Particular 1 as an isolated incident, involving one patient at a single appointment. The Committee took account of the evidence of extensive CET and postgraduate qualifications provided by the Registrant. The Committee also took account of the testimonial evidence attesting to the fact that the Registrant had continued in practice since the time of the allegation without further incident. The Committee concluded from this material that the Registrant had remediated her clinical failings. In the light of this the Committee concluded that it is highly unlikely that the Registrant will repeat her clinical misconduct. The Committee therefore concluded that the Registrant's fitness to practise on grounds of public protection is not impaired by reason of her clinical failings. The Committee also concluded that her clinical failings, as found proved in Particulars 1(b), 1(c) and 1(d), are not of sufficient magnitude of themselves to necessitate a finding of impairment on public interest grounds.”

The Committee went on to consider impairment in relation to the dishonesty as found proved in particulars 2 and 3 and determined that the fitness of the Registrant to practise as an optometrist was currently impaired at the time of the hearing, noting **[106]**:

“...the Committee was concerned that the Registrant's dishonesty arose in the course of her professional work. Further, she had not accepted her dishonesty, and she had provided evidence in the course of this hearing that lacked credibility. The Committee had been provided with no evidence of reflection on her part regarding her dishonesty, nor had she explained what she would do if she were to find herself in the same position in future. She had not demonstrated insight into the consequences for a patient of incorrect records for their subsequent treatment or the reputation of professional colleagues of such behaviour. The Committee accepted that the Registrant's dishonesty was out of character. However, the Committee concluded that if the Registrant were to make a clinical mistake or error of a different nature in the future, there was a risk that the Registrant would revert to dishonesty once more to conceal her mistake. In those circumstances it could not be said that it is highly unlikely that the Registrant will repeat her dishonesty in the future, albeit that the risk of this is low. Accordingly, the Committee concluded that Registrant does present a risk to the public, and that a finding of impairment is required on public protection grounds, by reason of her dishonesty.

Further, in relation to the public interest, the Committee concluded that the Registrant's dishonesty, which breached a fundamental tenet of her profession and had brought her profession into disrepute, demanded a finding of impairment to protect the

confidence held by the public in the profession and its regulator, and also to promote and maintain proper professional standards for Optometrists.”

In relation to sanction, the Committee considered the following mitigating factors to be relevant :

- *“the Registrant’s relative inexperience at the time of the misconduct;*
- *the Registrant’s previous good character;*
- *the positive testimonials provided on the Registrant’s behalf, including one from her current employer, attesting to her ability as a clinician and her character;*
- *the dishonesty had been a one-off incident;*
- *the alteration of patient notes some weeks later had not adversely affected Patient A’s care in the aftermath of her initial examination;*
- *the dishonesty had not been repeated since the date of the incident in May 2019.”*

The Committee regarded the following to be aggravating factors:

- *“the dishonesty was directly related to the Registrant’s profession;*
- *the dishonesty was perpetrated to protect the Registrant’s own interests;*
- *in protecting her own interests the Registrant had shifted the blame onto Patient A, by recording her symptoms inaccurately and saying that she had been advised to act in the way that she had, whereas the Committee found that this was not so;*
- *the Registrant had not told the truth in the course of the hearing in that she had claimed that she had consulted another colleague, thereby demonstrating a lack of insight on her part;*
- *the Registrant’s reflections appeared to focus on the impact that her dishonesty had had on her personal life and her career, whilst ignoring the effect of her behaviour on patients, the wider public and the profession. The reflections also dwelt disproportionately on the quality of the records and the need for them to be contemporaneous.”*

The Committee determined that a six-month suspension was proportionate in the circumstances, noting that:

“In considering the suitability of a Suspension Order the Committee took account of the fact that the Registrant’s dishonest misconduct had amounted to a serious incident. However, it was effectively a single incident and had not been repeated in the 2 1/2 years that the Registrant had spent in practice since then. The Registrant was of previous good character and had provided excellent testimonials in support of

her ability as a clinician and her previous good character. There was no evidence of any deep-seated personality problem. Whilst the Committee had concluded that the Registrant's level of insight was limited, it had also concluded that the risk that she would act dishonestly again was low."

...

"The Committee gave consideration to the length of the order and concluded that 6 months was appropriate. The Committee decided that any lengthier period of time would be disproportionate in the light of the mitigating features in the case and the fact that suspension would deprive patients of the Registrant's services. The Committee considered that any shorter period would not sufficiently mark the seriousness of the misconduct or enable the Registrant to reflect sufficiently on her misconduct and be in a position to demonstrate further insight at a review hearing."

The Committee decided that the suspension order should be subject to a review before it expires. The Committee stated that the Registrant should provide, "...a reflective statement dealing with the effect of her dishonesty on colleagues and patients, and in particular into the damaging effect of altering patient records" to be considered at the review hearing.

The Registrant's registration was suspended for 6 months. The order is due to expire on 8 August 2022.

Findings regarding impairment

The Committee took into the account the written submissions of Ms Birks on behalf of the Council and from Ms Ledward on behalf of the Registrant. It also heard further oral submissions from Ms Birks and Ms Ledward on behalf of the Registrant.

Ms Birks directed the Committee to what she submitted were the relevant sections of the findings of the Committee at the substantive hearing. In particular, Ms Birks referred the Committee to the findings of fact of the Committee at the substantive hearing and its findings in relation to misconduct and its reasoning for its decision in relation to current impairment and sanction. Ms Birks submitted that the Registrant's fitness to practise had been found to be impaired only in relation to the dishonesty charges found proved by the Committee at the substantive hearing. Ms Birks also referred the Committee to its powers under Section 13F of the Opticians Act 1989. Ms Birks submitted that it was for the Committee to conclude whether the Registrant's fitness to practise remained impaired and if so, what sanction was appropriate.

Ms Ledward submitted that the Registrant had demonstrated that her fitness to practise was no longer impaired as a result of her dishonest conduct.

Ms Ledward referred the Committee to the Council's hearings and Indicative Sanctions Guidance as to the approach it should take to assessing whether the Registrant's Fitness to Practise remained impaired.

Ms Ledward submitted that the Registrant's conduct had been marked by a period of suspension that was proportionate to her misconduct and that public interest had been satisfied by the original finding of impairment and the subsequent suspension for six months. Ms Ledward further submitted that the Registrant is not fundamentally unsuited for registration as a healthcare professional.

Ms Ledward referred the Committee to the Registrant's reflective statement, the courses that the Registrant had undertaken and what the Registrant had taken from them and the various testimonials from colleagues. She submitted that the Registrant had shown acceptance of the findings of the Committee at the substantive hearing, reflected on her actions and demonstrated greater insight at the time of the resumed substantive hearing and how she would act differently in the future. Ms Ledward submitted that in relation to the five testimonials, the recent ones were from individuals who had supported the Registrant prior to the findings of fact by the Committee at the substantive hearing and that, following these findings, she had had to admit to them that she had acted as found proved and for her own benefit.

Ms Ledward submitted that there were no concerns regarding the Registrant's clinical practice.

The Committee accepted the advice of the Legal Adviser. He referred the Committee to the case of *CHRE V NMC & Paula Grant [2011] EWHC 927* and *Cohen v GMC [2008] EWHC 581 (Admin)*.

Decision

The Committee carefully considered the submissions of Ms Birks and Ms Ledward and all the documentation before it. The Committee noted the determination of the Committee at the substantive hearing in relation to impairment and sanction.

The Committee considered that in her Reflective piece the Registrant had demonstrated an acceptance and understanding of the findings of the Committee at the substantive hearing. The Committee also considered that in her reflective piece the Registrant had demonstrated insight into her conduct and how it affected Patient A and the effect her actions had on colleagues and the reputation of the profession. The Committee was satisfied that the Registrant had insight into the damaging effect of altering patient records. The Committee was satisfied that the Registrant had demonstrated how she would act differently in the future.

The Committee considered the testimonials produced by the Registrant were positive. It noted the terms of the testimonial from REDACTED who had continued to employ the Registrant following and knowing about the findings of fact of the Committee at the substantive hearing and who spoke positively about her in his most recent testimonial.

In all the circumstances, the Committee was satisfied that the Registrant had addressed all the areas of concern identified by the Committee at the substantive hearing in its determinations on impairment and sanction. The Committee was satisfied that the risk of repetition of the dishonest conduct had been addressed. The Committee also considered there was no concern in relation to the Registrant's clinical skills.

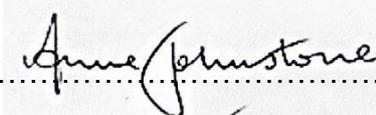
The Committee was further satisfied that the public interest had been met by the original finding of impairment and the imposition of a period of six months suspension.

The Committee determined that the Registrant was not currently impaired and that the current suspension order should be allowed to expire on 8 August 2022.

Declaration (where the committee find no current impairment at the time of the review)

The Committee makes a formal declaration that the Registrant's fitness to practise is no longer impaired for the reasons above.

Chair of the Committee: Ms Anne Johnstone

Signature  Date: 26 July 2022

Registrant: Ms Angelina Bhopal

Signature Date: 26 July 2022

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.