

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

GENERAL OPTICAL COUNCIL

F(22)06

AND

NIRMAL KOASHA (01-21288)

**DETERMINATION OF A SUBSTANTIVE REVIEW
4 AND 13 MARCH 2024**

Committee Members:	Jayne Wheat (Chair/Lay) Vivienne Geary (Lay) Miriam Karp (Lay) Caroline Clark (Optometrist) Sanna Nasrullah (Optometrist)
Legal adviser:	Aaminah Khan
GOC Presenting Officer:	Alex Lawson
Registrant:	Present
Registrant representative:	Not represented
Hearings Officer:	Terence Yates
Outcome:	Fitness to practise remains impaired Sanction 6 months Suspension (With Review)

DETERMINATION

Background

1. The Registrant had failed to meet her 2016 - 2018 Continuing Education and Training (“CET”) requirements. She was advised by the General Optical Council (‘the Council’) that she had not met the CET requirements and was, therefore, not permitted to undertake the activities which are restricted to registered Optometrists. This was reiterated to the Registrant on a number of occasions.
2. The Registrant did not attend the substantive hearing, which proceeded in her absence. However, she did submit written representations. The Committee dealing with the substantive hearing found it proved that between 10 April 2019 and 30 September 2019 the Registrant nevertheless conducted around 353 sight tests, a restricted activity.
3. In addition, the substantive hearing Committee also found it proved that the Registrant had dishonestly informed the Council in an email to a Senior Investigations Officer Person A, dated 29 November 2019, that she had “*probably conducted about 20 eye tests earlier in the year*”.
4. In relation to the Registrant’s clinical practice, the substantive hearing Committee found it proved that she had failed sufficiently, or at all, to maintain records relating to aspects of the treatment provided to and assessments undertaken in relation to multiple patients.
5. The substantive hearing Committee found misconduct and that the Registrant’s fitness to practise was impaired on public protection and public interest grounds.
6. The Registrant’s registration was suspended for 12 months following the substantive hearing which concluded on 27 February 2023. The order is due to expire on 26 March 2024 and a Review hearing was directed to take place before the end of the order.
7. The substantive hearing Committee considered that the maximum suspension of 12 months was required in this case to mark the seriousness of the misconduct, and to declare and uphold the standards of the profession and maintain public confidence in the profession.
8. The substantive hearing Committee had determined that the Registrant needed to develop her insight and to undertake CPD to maintain her skill set. This training was to include courses targeted at the concerns arising in this case, namely on honesty, integrity and probity, as well as recordkeeping.

9. The substantive hearing Committee considered that the Committee at the Review hearing may be assisted by the Registrant supplying it with:
- (i) Evidence of training undertaken to show development of honesty, integrity, probity, recognition of the importance of the role of the regulator and proper record keeping. Evidence of certificates of courses undertaken and detailed written personal reflections on the insight gained and how the Registrant will use this to improve her standard of practice.
 - (ii) Testimonials from friends and colleagues who are aware of the circumstances.
 - (iii) Written reflections on the misconduct, on how that has impacted on the reputation of the profession in the eyes of members of the public and of fellow professionals, as well as reflections on the importance of maintaining the standards of the profession.
 - (iv) Evidence of practical experience to keep up to date with optometric environment, this could be for example; volunteering or undertaking a non-clinical role that gives the opportunity to observe the practice of other optometry professionals.

The hearing

10. This is a resumed Review hearing, the initial hearing having been adjourned from 21 February 2024, in order for the Registrant to return from abroad so that she could give evidence and participate fully in these proceedings.
11. At the outset of the hearing, the Chair of the Committee raised the issue of privacy and whether the Committee ought to sit in private if the Registrant wished to discuss the personal matters set out in her most recent statement. The Registrant indicated that she would wish these matters to be heard in private, to which Mr Lawson, on behalf of the Council, had no objection.
12. In the circumstances, given the sensitive nature of these personal matters, relating to the Registrant and her [redacted] circumstances, the Committee determined that it would be appropriate for the Committee to sit in private, under Rule 25(2) and (3) of the General Optical Council (Fitness to Practise) Rules Order of Council 2013 ('the Rules') at any stage of the hearing where these were to be raised.
13. The Committee had before it a bundle produced by the Council, which included but was not limited to, some evidence from the substantive hearing, the substantive hearing determination, and the Council's statement of facts (initial version and an updated version).
14. The Committee also had before it documents produced by the Registrant, which included several written reflective pieces covering the period from July 2023 to February 2024, CET and CPD statements, a list of articles read, two references

from work colleagues and a certificate from [redacted] for a course on integrity and honesty completed in February 2024.

15. After Mr Lawson outlined the background to the case, the Registrant gave evidence and was questioned by Mr Lawson and the Committee.
16. The Registrant gave oral evidence and in summary she referred the Committee to the documentation that she had provided, including her reflective statements. She apologised for her conduct and explained that the misconduct was out of character. She had since taken steps to improve herself both personally and professionally.
17. In answer to questions from Mr Lawson and the Committee, the Registrant explained her understanding of why honesty and integrity were important in the profession. She stated that she had lied about the number of sight tests conducted as when she took the call from the Council she panicked, was worried about the repercussions and buried her head in the sand. The Registrant stated that she did not think to correct this mistake as she did not know the right thing to say or do.
18. However, the Registrant gave evidence that she would not act in that manner again, as she had been going through a difficult time when that occurred and those difficult personal circumstances had improved, as she now [redacted]. She stated that she had used the time of suspension to focus upon herself and improving her character.
19. The Registrant explained that she had undertaken different courses, reading articles, listening to podcasts, was having discussions with different colleagues to keep in touch with the profession and had been shadowing dispensing in a practice once or twice a month over an 8 month period. Furthermore, she had focused upon her [redacted] and listened to [redacted] talks, which helped her to rationalise between what is right and wrong and build her character.
20. The Registrant gave evidence that she had a better support network than previously, and she had two supportive colleagues who were willing to mentor her back into practice.
21. The Registrant gave evidence regarding the importance of accurate record keeping, particularly when dealing with vulnerable patients, such as those with cognitive difficulties. She explained the steps she had taken to improve her record keeping, which included reading articles and guidance from the College of Optometrists.
22. When asked about the impact that dishonesty could have on public confidence in the profession the Registrant explained that this could have knock on effects, such as patients doubting the advice given and not following it.
23. The Registrant also gave evidence regarding the charity work that she had undertaken, which she stated was relevant to the concerns in this case, as people within the community had trusted her with their belongings and that she would take them where required. She accepted that she had not produced any documentary evidence to support that she had undertaken this charity work, as she had volunteered informally, but that she could obtain a reference if required.

24. When asked by Mr Lawson regarding the length of her reflections and whether they were '*a bit short*', the Registrant stated that as she was unrepresented she did not know the level of detail that was required. She also accepted that she had not produced any supporting evidence regarding the shadowing that she had undertaken.
25. When asked whether she would be able to return safely to unrestricted practise if allowed, given the long absence from practice, the Registrant stated that she would want to shadow an Optometrist or do so under supervision '*to get her confidence back*'.
26. In response to questions from the Committee as to what she would do differently if faced with similar situations again, the Registrant stated that she now understood the importance of seeking advice and guidance and would remove herself from practice, so that she could focus on one matter at a time.
27. When asked about whether she felt that her reading on record keeping was sufficient to address the concerns, the Registrant stated that she felt this required continual improvement and reference to resources, which she was willing to do. Furthermore, she would not rely upon computerised records as much, and would check records were completed properly at the end of each test.
28. The Committee heard submissions on the issue of current impairment from Mr Lawson on behalf of the Council and from the Registrant, who was unrepresented.
29. Mr Lawson submitted that that the Council's position on current impairment was that the Registrant remained currently impaired, although he recognised that it was a matter for the independent judgement of the Committee.
30. Mr Lawson acknowledged that the Registrant had taken some steps to remediate the misconduct. However, Mr Lawson submitted that the central question for the Committee was whether the Registrant had taken sufficient steps to indicate that she had remediated the misconduct. He suggested that there were omissions, in that she could have provided more documentary evidence and detail of what she had undertaken.
31. Mr Lawson reminded the Committee that there was a persuasive burden upon the Registrant to show that she was safe to return to practice without restriction and that whilst the Registrant was unrepresented, every Registrant was responsible for their own practice and for discharging that burden.
32. Mr Lawson accepted that the Registrant had shown some awareness of her regulatory failings, but submitted that there was more to be done, which to her credit she had accepted. Mr Lawson submitted that as the records were somewhat lacking in what remediation the Registrant had undertaken, this was indicative that there may still be record keeping issues. In relation to the CPD course on dishonesty, Mr Lawson highlighted that the certificate itself did not contain detail of how long this course was or its content and it was also completed very recently.
33. Mr Lawson submitted that the Registrant's reflections were somewhat brief and although the Registrant had shown she understood the impact of her conduct, this

had to be teased out in her oral evidence. In addition, there was little evidence of what practical experience had been undertaken, other than the Registrant's own evidence that she had shadowed a colleague.

34. The Registrant submitted that whilst she appreciated what the Council had said, as she was unrepresented she had not fully understood what was required of her. She stated that she was happy to work on recommendations, for example to do more courses or carry out more shadowing. The Registrant submitted that she had not worked as an Optometrist for over twelve months but her desire to practice was still there and with extra support she wanted to get back to the regulatory standards required.
35. The Committee heard and accepted the advice of the Legal Adviser, who referred the Committee to the relevant sections of the Hearings and Indicative Sanctions Guidance 2021. The Legal Adviser referred the Committee to the cases of *Abrahaem v GMC* EWHC 183 (Admin) and *Khan v GPhc* [2016] UKSC 64 and advised that there is a persuasive burden upon a Registrant to demonstrate that they are fit to resume unrestricted practice. Further, the focus of a review hearing is upon the current fitness of the registrant to resume practice, judged in light of what they have, or have not, done since the substantive hearing and whether they remain impaired.

Findings regarding impairment

36. The Committee considered the documentary evidence that was before it, the evidence of the Registrant and the submissions from the parties, including Mr Lawson's skeleton argument.
37. The Committee noted that the misconduct that was found proved was a mix of recordkeeping concerns, practising when restricted and a finding of dishonesty in respect of lying to the Council's investigations officer regarding the number of sight tests carried out. The Committee considered that all of the misconduct was capable of remediation.
38. The Committee took account of the substantive hearing determination and the findings of the previous Committee, as well as the steps which had been recommended to assist at a Review hearing, as set out above. However, the Committee was mindful that it was not bound by the views of the earlier Committee and it had to come to its own independent judgement on whether or not the Registrant was currently impaired.
39. The Committee considered the steps that the Registrant has taken since the substantive hearing and was of the view that she had started to take some steps to remediate, including starting to reflect, reading guidance and listening to podcasts. The Committee noted that the Registrant had produced her CET and CPD statements for the previous and current cycle and that she had undertaken a significant number of CPD hours. However, the Committee were concerned that

the vast majority of the courses were not targeted to address the misconduct in this case, of dishonesty and recordkeeping.

40. The Committee noted that the Registrant had only undertaken one course relevant to dishonesty, which was not specific to the issues in the healthcare sector. Furthermore, the Committee noted that although the misconduct occurred a considerable time ago in 2019, the courses undertaken by the Registrant were undertaken relatively recently. In particular, the Committee noted that the dishonesty course was only completed in February 2024, shortly before the originally listed Review hearing.
41. The Committee noted that the Registrant has provided written reflections from July 2023 to recently, in which she had apologised and accepted responsibility for her actions. However, the Committee considered that the written reflections did not focus adequately upon the concerns arising from the misconduct, namely dishonesty and record keeping.
42. The Committee also considered the Registrant's oral evidence, which it found helpful. The Committee found that the Registrant, when questioned, was able to demonstrate that she had gained an understanding of the impact of her misconduct on the wider profession and the public. However, this was relatively recently expressed and required some prompting from questioning. The Committee considered that whilst positive, these reflections showed that the Registrant was starting the process of developing insight into her misconduct, but that she still had work to do to complete this process. The Committee also noted the Registrant's acceptance in her evidence that she would welcome support to return to practice.
43. The Committee was mindful that the Registrant is unrepresented and may be more restricted in understanding what is required of her. However, the Committee also considered that the determination of the substantive hearing did set out in a prescriptive way, what the Reviewing Committee would be assisted by (set out in paragraph 9 above and at paragraph 131 in the original substantive determination).
44. The Committee was of the view that the Registrant had gone some way towards following these suggestions, but agreed with the submission of the Council that there were some omissions in the evidence and there was more that could be provided. For example, the Committee would have expected to have had more detail regarding the shadowing undertaken and how this addressed the issues in the case. In addition, the Committee would have expected to have seen more remediation addressed at record keeping failures given the significant role that had in the misconduct found proved.
45. The Committee was mindful that the Registrant had been absent from practice for a considerable period and it was not reassured by the evidence before it, that the Registrant had sufficiently addressed the concerns in the case, had maintained her clinical skills and was safe to return to unrestricted practice.
46. Accordingly, the Committee was not satisfied, based on the evidence before it, including the oral evidence of the Registrant, that she has sufficiently reflected and

remediated her conduct. The Committee noted that there had been no repetition of the conduct since 2019. However, it was the view of the Committee that as the Registrant had further reflection and remediation to undertake, were she to return to unrestricted practice, this would pose a risk to patient safety.

47. The Committee was mindful that there was in effect a persuasive burden on the Registrant to demonstrate that she is fit to resume unrestricted practice and was not satisfied in the circumstances, that the Registrant had demonstrated she was safe to do so.
48. The Committee considered whether the public interest required a finding of impairment to be made, in order to maintain public confidence in the profession and/or to declare and uphold standards in the profession. The Committee was of the view that the original suspension for a period of twelve months had served the purpose of upholding public confidence and maintaining standards of the profession, which appropriately marked the misconduct. Therefore the Committee determined that it was neither necessary, nor proportionate, to make a finding of impairment on wider public interest grounds.
49. Accordingly, the Committee found that the fitness of the Registrant to practise as an optometrist remains impaired on the grounds of public protection.

Sanction

50. The Committee heard submissions from Mr Lawson on behalf of the Council and from the Registrant.
51. Mr Lawson reminded the Committee of its powers in relation to sanction and referred the Committee to the Indicative Sanctions Guidance ('ISG'). Mr Lawson acknowledged that sanction was entirely a matter for the Committee. However, he submitted that the Council's position was that the appropriate sanction in this case was a further period of suspension.
52. In relation to the length of suspension, Mr Lawson submitted that a shorter period of perhaps 6 months with an earlier Review, may be appropriate given the progress that the Registrant had made.
53. Mr Lawson submitted that taking no further action would not be appropriate given the Committee's findings at the impairment stage and in view of the Registrant's developing insight.
54. In relation to conditions of practice, Mr Lawson acknowledged that the Registrant had suggested what could be framed as conditions, such as workplace supervision. However, Mr Lawson submitted that at this stage conditions would not be workable and appropriate, as there was currently very little detail as to how they would work in practice.
55. Mr Lawson referred the Committee to paragraph 21.29 of the ISG, which sets out the factors which may be present when a period of suspension would be appropriate. Mr Lawson acknowledged that there had not been, and was unlikely

to be, any repetition of the conduct by the Registrant. However, he submitted that the dishonesty has not really been addressed by the Registrant and she only had developing insight.

56. Mr Lawson submitted that it was accepted by the Council that the Registrant was making progress, but we were not yet at the stage when the Committee could be looking further down the list of sanctions from the existing one of suspension. Mr Lawson invited the Committee to direct a Review hearing and suggested that the list of recommendations for the reviewing Committee could be developed further.
57. The Registrant submitted that she was extremely remorseful and she apologised again for her conduct. She submitted that she could arrange for a mentor and she was prepared to do what it takes to restore her relationship with the Council. The Registrant stated that she was glad that it had been acknowledged that she was improving and she accepted that she needed to do further work on the dishonesty and record keeping issues arising in the case.
58. The Registrant submitted that she was open to any conditions that were considered suitable and would undertake any further training or educational courses required.
59. The Committee Chair invited the Registrant to provide the Committee with further detail regarding how she planned to return to work after her long absence, if she was permitted to practice under conditions. At this stage, as requested by the Chair, the Legal Adviser in the presence of Mr Lawson, spoke to the Registrant to explain the framework of conditions, referring the Registrant to the ISG and the bank of conditions.
60. The Registrant then addressed the Committee further on conditions, submitting that she was willing to work under workplace supervision and would be able to produce sample records for assessment. In addition, the Registrant suggested that a Personal Development Plan ('PDP') would be appropriate and she would greatly appreciate it if she was allowed the opportunity to work under conditions of practice. The Registrant stated that she would be willing to do so for whatever period the Committee considered was suitable.
61. The Committee heard and accepted the advice of the Legal Adviser. She advised that the Committee should impose the least onerous sanction sufficient to meet the risks, having regard to the principle of proportionality and the public interest. The Committee had regard to the Indicative Sanctions Guidance ('ISG').
62. The Committee considered the sanctions available to it from the least restrictive to the most severe, as set out in the ISG. The Committee was mindful that the purpose of imposing a sanction is not to punish the Registrant but to protect patients and the wider public interest. The Committee applied the principle of proportionality by weighing the Registrant's interests against the wider public interest.
63. The Committee was of the view that given the lack of material remediation and insight, it would neither be appropriate nor proportionate to make no order. Furthermore, there were no exceptional circumstances that would justify taking no

action. The Committee was of the view that a financial penalty order was not appropriate given the serious nature of the misconduct found.

64. The Committee next went on to consider whether a conditions of practice order was a sufficient and proportionate response to the risks identified.
65. The Committee had regard to paragraph 21.25 of the ISG, which states:
- 21.25 Conditional registration may be appropriate when most, or all, of the following factors are apparent (this list is not exhaustive):
- a) No evidence of harmful deep-seated personality or attitudinal problems.
 - b) Identifiable areas of registrant's practise in need of assessment or retraining.
 - c) Evidence that registrant has insight into any health problems and is prepared to agree to abide by conditions regarding medical condition, treatment, and supervision.
 - d) Potential and willingness to respond positively to retraining.
 - e) Patients will not be put in danger either directly or indirectly as a result of conditional registration itself.
 - f) The conditions will protect patients during the period they are in force.
 - g) It is possible to formulate appropriate and practical conditions to impose on registration and make provision as to how conditions will be monitored.
66. The Committee noted that the original order of suspension was imposed for record keeping concerns, practising when restricted and dishonesty. In relation to the record keeping concerns, this is an identifiable area of the Registrant's practice where there are shortcomings, which conditions could address.
67. However, the Committee considered that conditions of practice were less apt to address the dishonesty and working whilst restricted aspects of the case. The Committee therefore considered that paragraph 21.25 b) of the ISG was only applicable to the record keeping aspect of the misconduct and paragraph 21.25 g) was not met, as it would be difficult to formulate appropriate and practical conditions in respect of the dishonesty.
68. The Committee agreed with the submission of Mr Lawson that the Registrant has made some progress during the past year whilst suspended from practice and has started to develop insight. Furthermore, the Committee noted that the Registrant had expressed genuine regret and apologised, and it considered that her difficult personal circumstances did mitigate the conduct to a limited extent. As identified in the impairment determination the Registrant is yet to fully remediate and her insight is still developing, therefore a risk to patient safety remains.
69. The Committee had regard to the Registrant's position and noted that she had indicated a willingness to improve further and comply with any conditions of practice imposed.

70. However, the Committee considered that the Registrant needs to develop her insight further, particularly regarding record keeping and dishonesty, for example by the completion of targeted courses and further reflection upon probity, integrity and record keeping in the Optometry and/or health sector. The Committee considered that it may be difficult for the Registrant to focus upon the further reflection and remediation required if she was to return to practice under conditions, particularly after a significant break from practising.
71. Furthermore, the Committee considered that were it to impose conditions of practice at this time, it would have concerns regarding the Registrant working in a domiciliary setting and/or doing locum work, due to the increased difficulty in monitoring such roles. The Committee considered whether this could be addressed by imposing restrictions upon the Registrant's practice, which would make the conditions stringent. The Committee was mindful that conditions would have to be so onerous that they would be tantamount to a suspension.
72. The Committee determined that in the circumstances, considering all of the above matters, the most appropriate and proportionate sanction to impose at this time is a further period of suspension. The Committee bore in mind the impact of this upon the Registrant and her practice. However, it was of the view that conditions of practice at this time are neither workable nor appropriate and the only appropriate and proportionate sanction to adequately protect patients was to impose a further period of suspension.
73. The Committee went on to consider the length of suspension to impose. The Committee bore in mind the length of time that the Registrant has already been suspended and that the minimum order to address the risks in the case ought to be imposed. The Committee determined that an appropriate and proportionate period of suspension was one of six months. In the Committee's view six months was the minimum period required in order to allow the Registrant sufficient time to further reflect, develop her insight and remediate adequately.
74. A review hearing will be held between four and six weeks prior to the expiration of this order. The Review Committee will need to be satisfied that the Registrant:
- has fully appreciated the gravity of the offence;
 - has not re-offended and has maintained her skills and knowledge and
 - that the Registrant's patients will not be placed at risk by resumption of practice or by the imposition of conditional registration.
75. The Committee at the review hearing may be assisted by the Registrant supplying it with:
- (1) Evidence of training undertaken (such as course certificates) relevant to show development of insight into honesty, integrity, probity, recognition of the importance of the role of the regulator, relevant to the Optometry sector;

- (2) Evidence of training undertaken (such as course certificates) relevant to show development of proper record keeping, relevant to the Optometry sector;
- (3) Any further testimonials from friends and colleagues who are aware of the circumstances;
- (4) Detailed written reflections on learnings from the further training undertaken and the misconduct and on the importance of maintaining the standards of the profession;
- (5) Evidence of practical experience to keep up to date with optometric environment, this could be for example; volunteering or undertaking a non-clinical role that gives the opportunity to observe the practice of other optometry professionals. This could include evidence of the shadowing undertaken, and a report or testimonial from any mentor.

76. The Committee determined to extend the order for suspension for a further six months, with a Review prior to the termination of the order.

Chair of the Committee: Jayne Wheat



Signature

Date: 13 March 2024

Registrant: Nirmal Koasha

Signature *present and received via email*

Date: 13 March 2024

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.