BEFORE THE FITNESS TO PRACTISE COMMITTEE
OF THE GENERAL OPTICAL COUNCIL

GENERAL OPTICAL COUNCIL

F(21)14

AND

AMARDIP NANDRA (01-22798)

DETERMINATION OF A SUBSTANTIVE HEARING
1 – 5 November 2021

Committee Members:	Ms Anne Johnstone (Chair/Lay) Mr Ian Hanson (Lay) Ms Miriam Karp (Lay) Dr Ewen MacMillan (Optometrist) Ms Denise Connor (Optometrist)
Clinical adviser:	N/A
Legal adviser:	Ms Helen Gower
GOC Presenting Officer:	Mr Dean Taylor
Registrant present/represented:	Yes and represented
Registrant representative:	Mr Christopher Saad – Counsel
Hearings Officer:	Ms Arjeta Shabani
Facts found proved:	1(a), 1(b) in relation to visual fields), 2(a), 2(b), 3(c)
Facts not found proved:	1(b) in relation to tonometry, 1(c), 1(d), 3(a), 3(b)
Misconduct:	Found
Impairment:	Impaired
Sanction:	No further action

Preliminary matters

On 1 November 2021 Mr Saad made an application for the Committee to adjourn until 2 pm. [redacted] He outlined other options which might be open to the Committee, including adjourning the hearing, or adjourning the hearing until 2 November 2021. Mr Taylor did not oppose the proposal that there should be an adjournment to [redacted]. On behalf of the Council, he invited the Committee not to adjourn the hearing and to choose an option which would permit Person A to complete her evidence.

The Committee accepted the advice of the Legal Adviser. She advised that the Committee should consider factors including the public interest in expedition, the interests of the Registrant, the interests of other participants in the hearing, including witnesses, and the potential consequences of the proposed adjournment.

The Committee decided that it was fair and appropriate to adjourn the hearing until 2 pm to allow Mr Saad to address the [redacted]. The Committee decided that an adjournment was the fair and proportionate case management step. The Committee considered other case management options, but decided that the proposal for a short adjournment was the better option. It would permit the Committee to hear Person A's evidence and to progress the hearing as expeditiously as possible in the circumstances.

ALLEGATION

1. On or around 11 January 2018, you carried out a sight test on Patient A and you:

a. Did not question Patient A about her symptoms of headaches and blurry vision in any, or any sufficient detail;

b. Did not perform a visual field assessment and tonometry despite it being clinically indicated;

c. Did not provide appropriate advice to Patient A about managing her condition in that you failed to:

    i. Advise Patient A how to manage deterioration of symptoms; and/or

d. Did not make an onwards referral despite it being clinically indicated.

2. On or around 5 February 2019, you amended Patient A's record of the test you conducted on 11 January 2018 and added:

    a. "VH"; and/or

    b. "return or GP if symptoms worsen."

3. Your actions as set out in 2b above were dishonest in that you:

    a. Amended Patient A's records after speaking with Person A on or around 5 February 2019, in order to hide your failure to diagnose the glaucoma of Patient A;

    b. Added "return or GP if symptoms worsen" when you did not provide this advice during Patient A's sight test on 11 January 2018; and/or

    c. Did not indicate on the record that the amendments were made retrospectively in order to give the impression that the amendments were made contemporaneously.

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

DETERMINATION

Admissions in relation to the particulars of the allegation

The Registrant admitted particulars1(a), 1(b) – visual fields but not tonometry, 2(a) and 2(b). The Committee found these particulars proved to the extent they were admitted.

Background to the allegations

The Registrant qualified as an Optometrist in 2006 and for most of his career has worked full time in locum positions.

On 11 January 2018, Patient A, who was reported to have [redacted], attended an eye test at Specsavers in [redacted] which was completed by the Registrant. Person A, Patient A's mother, accompanied Patient A. Retinal photographs of Patient A's optic nerve heads were taken at the examination.

Patient A had been experiencing headaches and blurry vision and this was reported to the Registrant. The Registrant did not raise concerns about Patient A's eyes during the eye examination.

In January 2019, Person A took Patient A to their GP due to Patient A's health issues. The GP advised Patient A to complete a further eye examination due to medication prescribed which had the potential to affect her eyes.

Person A could not arrange an appointment with Specsavers in [redacted] as there were no appointments available, so Patient A had an eye test at another opticians in her area. The optometrist who completed the eye test referred Patient A to the Hospital Eye Service.

Patient A was seen in a private hospital in February 2019. In the course of 2019 different Ophthalmologists expressed uncertain and differing opinions on the diagnosis for Patient A. There was a possibility of a diagnosis of juvenile glaucoma, a progressive optic neuropathy, but also a possibility that the appearance of the optic nerve heads was due to physiological cupping, a non-pathological appearance of the optic nerve heads.

Person A requested Patient A's records from Specsavers which were provided to her and this included the records of the appointment with the Registrant on 11 January 2018.

On 18 April 2019, the Council received a complaint from Person A which included concerns about the eye test appointment conducted by the Registrant on 11 January 2018.

The Council investigated the case and instructed an expert, Dr Shah, to examine the records and other documents and provide an opinion on matters relating to the Patient A's appointment with the Registrant. During Dr Shah's consideration of the records, the Council was made aware that on 5 February 2019, the Registrant amended the records for Patient A's appointment by adding the words "VH" and "return or GP if symptoms worsen". The Registrant states that these were honest clarifications and additions made to ensure that the record was more complete. It is the Council's case that these were dishonest additions designed to cover up, or mitigate, the Registrant's failure to diagnose glaucoma.

Findings in relation to the facts

The Committee considered the following documentary evidence:

(a). GOC bundle including Patient A's Optical Records from Specsavers [redacted]; Audit Trail from Specsavers [redacted]; Patient A's Optical Records from Eye Deal Opticians, Patient A's Optical Records from Spire Hull and East Riding Hospital, Patient A's Optical Records from the Bartholomew Medical Group and Person A's complaint to the Council.

(b). Defence bundle including exhibits to Registrant's statement and references.

(c). Expert report of Dr Shah for the Council dated 6 October 2020

(d). Expert report of Mr Taylor for the Registrant dated 10 October 2021

The Committee heard oral evidence from Person A, Dr Shah, the Registrant and Mr L Taylor.

The Committee heard submissions from Mr D Taylor and from Mr Saad in relation to the facts.

The Committee accepted the advice of the Legal Adviser who advised the Committee on the burden and standard of proof, the approach to witness and expert evidence, and the legal test for dishonesty.

The Committee noted that the Registrant is of good character with no fitness to practise history and took this into account as part its assessment of the Registrant's credibility and whether he had a natural tendency to act as alleged by the Council.

Particular 1(b)

The Committee was aware that if it departs from the opinion of the expert witnesses it must give clear and cogent reasons for doing so.

In relation to tonometry (measurement of pressure in the eye) the Council relied on the expert evidence of Dr Shah. In her report Dr Shah states at paragraph 4.3 of her report:

"*A visual field assessment would be indicated based on Patient A's symptoms of headaches and suspicious appearance of the optic nerve heads. It is not usual practice to conduct tonometry to measure intraocular pressures (IOPs) on a Caucasian patient aged [redacted] years with no family history of glaucoma though Patient A's ophthalmoscopy findings and visual field assessment findings would have indicated a need to conduct this test*".

In paragraph 6.1 Dr Shah stated:

"*Based on the retinal photos available from the eye examination conducted on 11 January 2018, the optic discs look suspicious with the left optic disc looking more suspicious than the right optic disc. There appears to asymmetry in the size of the optic discs (LE disc larger than RE), asymmetry in the C:D ratios (RE 0.5, LE 0.75), a thin superior neuroretinal rim (LE more than RE) therefore not obeying the ISNT rule and an odd appearance of the blood vessels in the 12 o'clock position in both eyes (LE more than RE). These ophthalmoscopy findings would have indicated the need for a visual field assessment and most likely tonometry".*

In her report and in her oral evidence to the Committee Dr Shah was firmer in relation to the need for visual field assessment than the need for tonometry, but she considered that it was "likely" that tonometry was required. In her oral evidence Dr Shah explained that the appearance of the left optic disc was suspicious of glaucoma. There was a need for a battery of tests to investigate the suspicious optic disc appearance and for this to include tonometry because of the associated risk that raised eye pressure has on the development of glaucoma. She stated that age and raised eye pressure were the main risk factors for glaucoma development.

Dr Shah confirmed that juvenile glaucoma is extremely rare, with a prevalence of 0.01%.

Dr Shah was asked about the records of eye examinations which had been conducted by different Specsavers optometrists in 2010 and 2011. On two previous occasions it had been recorded that there was a lack of symmetry in the optic discs. Dr Shah stated that she remained of the opinion that there was a need for tests, including tonometry, because of the time lapse of seven years since the last eye examination.

In his expert report at paragraphs 25-30 Mr L Taylor confirmed some aspects of Dr Shah's opinion, but he also raised points that the Committee considered to be material:

"*There is much more substance to the allegation that such tests may be required due to the appearance of the optic nerve head. Both IOP (tonometry) and visual field tests are necessary in deciding if a patient may have glaucoma. The question however is – would an RCO (reasonably competent optometrist) actually consider glaucoma a realistic diagnosis that required further investigation for an [redacted]?*

I agree with Dr Shah that in an ideal world an RCO would have performed these tests in this case. However, this statement is based to at least some extent on the knowledge in hindsight of what the cause of the disc appearance was.

I agree with Dr Shah that once again Mr Nandra's performance fell below the standard expected of an RCO-but again, not at all far below that standard. In my opinion, a significant percentage of Mr Nandra's peers would have followed exactly the same course of action as he did in this case.

The reasons for my opinion are as follows:

Dr Shah makes the case that the disc is glaucomatous in appearance. However, there is clear evidence that 2 ophthalmologists did not agree with this assessment.

a. *On p 278 (Feb 2019 Mr Vize says*

   The left disc is tilted with a temporal pigment crescent. There is a resulting increased cup:disc ratio which may well be physiological

b. *On p 259 (May 2019) Mr Vize says*

   I am struggling to ascertain whether or not this is physiological or acquired entity

   In this instance the term "acquired" relates to the disc anomaly being related to glaucomatous damage vs being "physiological" i.e. a non-pathological finding

c. *On p 260/1 (June 2019) Mr Burnett, a specialist in glaucoma says*

   A fairly symmetrical neuroretinal rim except some slight thinning superiorly. However, my immediate reaction was that this looked "like physiological cupping"

Given the uncertainty in assessing the disc as glaucomatous by these two ophthalmologists (who were also in possession of the IOP and fields results", it is unreasonable in my opinion to criticise an optometrist for failing to decide that the disc was glaucomatous."

In his witness statement the Registrant explained his clinical reasoning:

"*I noted optic disc asymmetry but as this was longstanding when comparing my tests results to previous examinations I could see that it didn't represent a change based on previous fundus recordings and I therefore concluded that the optic nerve head appearance was simply a physiological characteristic. This, in conjunction with the*

patient's age, and no further obvious risk factors (family history, race, diabetes, blood pressure, steroid use) meant that I did not consider the potential for chronic glaucoma".

The Registrant's reasoning is consistent with his contemporaneous clinical records.

The Committee considered that the key question was whether the optic disc appearance on 11 January 2018 was suspicious of glaucoma. If it was suspicious of glaucoma, both experts confirmed that tonometry was clinically indicated.

There was a difference of opinion between Dr Shah and Mr L Taylor on whether the disc appearance, by itself, was suspicious of glaucoma. Dr Shah's opinion was that the disc appearance was suspicious of glaucoma, but Mr L Taylor's opinion was that there was uncertainty in assessing the disc as glaucomatous and that it was unreasonable to criticise an optometrist for failing to decide that the disc was glaucomatous.

Where there was a difference between Dr Shah and Mr L Taylor, the Committee preferred Mr Taylor's opinion. The Committee decided that weight should be given to the patient outcome letters from the ophthalmologists who saw Patient A in 2019. The Committee took into account that the ophthalmologists are glaucoma experts who had access to relevant tests to consider the diagnosis. Even after ophthalmological investigations, both Mr Vize and Mr Burnett highlighted complexities in Patient A's case and the uncertainty in assessing whether the optic disc appearance was a physiological characteristic or due to juvenile glaucoma. The Committee also took into account the extremely rare nature of juvenile glaucoma, the absence of other risk factors for glaucoma, and the fact that the Registrant had reviewed the records of previous eye examinations where similar optic nerve head asymmetry had been recorded and did not show progressive change over a seven year period. The Committee also considered that hindsight and knowledge of the later events may have had some bearing on Dr Shah's opinion that the appearance of the disc was suspicious of glaucoma so that tonometry was thereby clinically indicated.

The Committee therefore accepted Mr L Taylor's opinion that it was unreasonable to criticise the Registrant for failing to decide that the disc appearance was suspicious of glaucoma. In the absence of any other risk factors of glaucoma, or change in the optic nerve appearance over a significant period of time, the Council has not proved that tonometry was clinically indicated.

<u>Particular 1(c)</u>

The Registrant recorded in his contemporaneous clinical notes the following advice for Patient A:

"*rx small if wanting to try otherwise a review in 2 yrs."*

This advice relates to a small prescription for Patient A which might assist with her symptoms of headaches and blurry vision.

Person A did not recollect that the Registrant gave any advice. In her oral evidence she said that she would have remembered something significant.

The Registrant had no specific recollection of advising Patient A, but he stated that it was his habitual practice for patients with symptoms such as headaches to advise that the patient should see the GP or return if symptoms worsen. In oral evidence he explained that he would commonly see about two patients every day with headaches and that it is second nature for him to give this advice. He explained that it was inconceivable that he would have said nothing in relation to the symptoms because his job was to address the reason for the visit.

Mr L Taylor told the Committee that it is standard practice for optometrists to give a "goodbye statement" to a patient including such advice and that the advice is not always recorded.

The Committee found that Person A did not have a good recollection of the details of the appointment with the Registrant. For example, she did not recollect that glasses were prescribed for her daughter. She also could not remember whether Patient A continued to suffer symptoms of headaches or blurry vision after the appointment on 11 January 2018. This is not a criticism of Person A; she gave her evidence to the best of her recollection. Person A told the Committee that she would have remembered anything significant that the Registrant told her. The Committee was satisfied that there was nothing particularly significant in the appointment on 11 January 2018 that was likely to be memorable for Person A. Therefore, the routine advice that Patient A should see the GP or return if symptoms worsen would not be likely to be something significant or concerning for her. The Committee accepted the Registrant's evidence that giving this advice was his usual practice.

The contemporaneous notes demonstrate that the Registrant gave some advice to Person A, albeit that she does not recollect the advice. The Committee decided that it is more likely than not that the Registrant mentioned Patient A's symptoms and advised her to see her GP or to return if symptoms worsened.

The Committee therefore found particular 1(c) not proved.

Particular 1(d)

In its decision on particular 1(b) the Committee decided that it was unreasonable to criticise the Registrant for failing to decide that the disc appearance was suspicious of glaucoma.

Therefore, the Council has not proved that an onwards referral was clinically indicated.

Particular 3

The Committee applied the test for dishonesty in *Ivey v Genting Casinos* [2017] UKSC 67 and considered two questions:

1. What did the Registrant know or believe as to the facts and circumstances at the time of the alleged dishonest act?

2. In the context of the Registrant's knowledge or belief as to the circumstances, was the Registrant's conduct dishonest by the standards of an "ordinary decent person". This is an objective test and the Registrant's own standards of honesty are not relevant.

On 5 February 2019, when the Registrant made the amendment to add the words "return or GP if symptoms worsen" to the clinical record for 11 January 2018, the Registrant had no specific recollection of advising Person A, but he believed that he had given this advice because it was his habitual practice, something he would invariably do.

The Registrant had spoken to Person A on 5 February 2019 before he amended the record. He knew from that call that Person A was worried and was seeking a private opinion. He knew that the optometrist who had seen Patient A had identified the possibility of glaucoma, had referred Patient A, and that the optometrist had said that this should have been picked up in the 2018 eye test. The Registrant therefore knew that there was a potential that the eye test he had conducted on 11 January 2018 might be investigated and possibly subject to criticism. In a calm conversation with Person A the Registrant explained that glaucoma is extremely rare in children and that Person A should wait for specialist opinion.

The Registrant told the Committee that at the time of his conversation with Person A, he was sceptical as to the possibility of juvenile glaucoma diagnosis for Patient A. This is consistent with his contemporaneous written note.

The amendment made by the Registrant was limited to his advice about Patient A's symptoms of headaches and blurry vision. Those symptoms had no relationship to signs that might have indicated juvenile glaucoma. In the eye examination on 11 January 2018 the Registrant had carried out tests which ruled out the possibility of any type of glaucoma connected to headaches, as confirmed by the two experts. The amendment did not hide any failure to detect glaucoma and the panel did not infer that the Registrant so intended.

The Registrant also made another amendment to the record, which is not alleged to be dishonest. He added "VH" standing for "Van Herricks", explaining in more detail the type of test he used. The Committee decided that both amendments were made with the same state of mind. The Registrant intended to add details so that his clinical notes were more comprehensive, merely tidying up his original record.

The Registrant is an experienced optometrist, and he estimates that he may have conducted approximately 60,000 sight tests over fifteen years of practice. He was aware that if a retrospective change was made to a clinical record the amendment should be dated. The Registrant had previously made amendments to clinical records by adding later documentation, such as fields tests and referrals, which would be dated. The expected practice for optometrists, as confirmed by both expert witnesses, is that optometrists should date and give a reason for any retrospective changes to a clinical record. It would be exceptional not to do so.

The circumstances in which the Registrant made the amendments to the record on 5 February 2019 were not routine. It was unusual for the Registrant to make retrospective amendments. This amendment was made more than one year after the

appointment on 11 January 2018. The Committee did not accept that the Registrant thought he was writing the additions because he was a locum and it would assist any person subsequently reviewing the records. He knew at this time that Person A had gone to an alternative optometrist and was seeking specialist advice. The amendment was made when the Registrant knew that there might be questions about his eye examination on 11 January 2018 and that his records might be investigated.

In these circumstances, the Committee did not consider that the Registrant's explanation that he had overlooked or that he had not thought about the need for his amendment to be dated and explained was credible. The Committee inferred that he intended to give the impression that he had recorded "return or GP if symptoms worsen" contemporaneously.

The Committee next considered whether this conduct was dishonest applying the objective standard of an "ordinary decent person". The additions were not intended to cover up the Registrant's failings; they were intended to provide more detail and the Registrant believed that he had given the advice in question. To that extent the Registrant's conduct was not dishonest. However, the Registrant did intend the amendment to mislead the reader by creating an impression that the entire record was contemporaneous. Given the importance of clinical records and the accuracy of those records, this conduct would be considered dishonest by an ordinary decent person.

The Committee therefore found particular 3 proved, in relation to 3(c), but not in relation to 3(a) or 3(b).

Findings in relation to misconduct

The Committee heard submissions from Mr D Taylor and from Mr Saad. Mr D Taylor submitted that the facts found proved amounted to misconduct. Mr Saad submitted that the clinical failings did not amount to misconduct because the Registrant's conduct did not fall far below the required standard.

The Committee accepted the advice of the Legal Adviser. There is no statutory definition of misconduct, but guidance was given in the case of *Roylance v GMC* that "*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 propriety may often be found by reference to the rules and standards ordinarily required to be followed by a practitioner in the particular circumstances".*

The Committee noted that a breach of the standards is not conclusive, but is part of the Committee's consideration of all the circumstances. It also noted that the falling short must be "serious".

The Committee decided that the clinical failings in particulars 1(a) and 1(b) were not sufficiently serious to amount to misconduct. The opinion of both expert witnesses was that Registrant's conduct was below, but not far below the required standards. The Registrant's clinical failings, as admitted and found proved by the Committee,

are not linked to a failure to identify the optic disc as suspicious of glaucoma. For the reasons explained above, the Committee concluded that it was unreasonable to criticise the Registrant for failing to identify that the disc appearance was suspicious of glaucoma.

The fact that the Registrant made an addition to Patient A's record, as described in particular 2(a) and 2(b) of the Allegation is not, by itself, sufficiently serious to constitute misconduct. The seriousness of the Registrant's conduct is contained in particular 3(c), the finding that he dishonestly retrospectively amended the clinical record to give the impression that the added content was contemporaneous.

The Committee found that this dishonest conduct amounted to a breach of the professional standards "Standards for optometrists and dispensing opticians" (2016):

- Standard 16 Be honest and trustworthy
- Standard 17 Do not damage the reputation of your profession through your conduct

The Committee's view was that the dishonesty was at the lower end of the scale of seriousness of dishonesty. It was a single isolated act. The Committee did not find that there was any material advantage for the Registrant in making the amendment in the way that he did. The amendment involved adding advice to the record that the Committee was satisfied the Registrant had given to Person A on 11 January 2018, rather than covering up failings. Nevertheless, the dishonesty occurred in the performance of the Registrant's professional role and it involved alterations to a clinical record made after a complaint was made about the Registrant's practice. Dishonesty is regarded as a serious matter for all professionals and it is a breach of a fundamental tenet of the profession.

In the Committee's judgment the Registrant's conduct in particular 3(c) fell far below the required standards for optometrists and was sufficiently serious to amount to misconduct.

Findings regarding impairment

The Committee has heard submissions from Mr D Taylor on behalf of the Council and from Mr Saad on behalf the Registrant. Mr D Taylor referred the Committee to relevant case law and submitted that the Registrant's fitness to practise is impaired. Mr Saad submitted that this was an unusual case of dishonesty, that there was no ongoing risk to the public, and that informed members of the public would understand that Registrants might make mistakes.

The Committee accepted the advice of the Legal Adviser. In private session the Committee requested further legal advice on dishonesty, the public interest, and impairment. The Legal Adviser referred the Committee to the cases of *PSA v HCPC and Ghaffar* [2014] 2723 and *PSA v General Medical Council and Uppal* [2015] EWHC 1304. The hearing was reconvened to enable Mr D Taylor and Mr Saad to comment on the legal advice.

The Committee considered whether there is currently a risk to members of the public. It noted the content of the Registrant's statement.

"*I admit that adding to the record to make it more complete was done in completely the wrong manner. ….I should have dated and documented any notes that I added, and a reason given as to why I felt that information was needed. Without doing this I can see that my record reads as contemporaneous, which I am not proud of and extremely regretful for. I can totally understand that this would easily be perceived as being dishonest by fellow professionals and the public. This is not the impression I want to give anybody in life. And it goes against all my morals.*

These actions have really been an eye opener for me to be a lot more conscientious in future…

I can see how my actions would impact the profession negatively. It saddens me to think that I would be responsible for that as I take my profession and ability seriously".

Although dishonesty can be difficult to remedy, the Committee considered that the dishonesty in this case is remediable. The dishonesty is not of an egregious nature. The Committee did not consider this isolated incident involving the Registrant making retrospective addition to clinical records to reflect the advice given was an indicator of a deep-seated attitudinal problem. On the contrary, the Registrant's action appeared to the Committee to be out of character.

The Committee considered that, while the Registrant has not admitted dishonesty, he has acknowledged that his action could easily be perceived as dishonest. He has therefore demonstrated understanding of the seriousness of his conduct, and he has explained how he would act differently in future. In his statement the Registrant also refers to the importance of acting in accordance with professional standards and morality. He recognises the impact of his action on public confidence in the profession. Having heard the Registrant give evidence the Committee considered that he is genuinely self-critical and that the regulatory process has been salutary for him. The Committee did not identify any outstanding issues that the Registrant had not addressed. It considered that the Registrant has demonstrated a sufficient level of insight in the particular circumstances of this case.

The Committee noted that there have been no other incidents of dishonesty either before or subsequent to 5 February 2019. The Registrant has an otherwise unblemished record.

Having considered all the circumstances, the Committee decided that the risk of repetition is low and that a finding of impairment is not required to protect the public from the risk of repetition of dishonesty.

The Committee next considered the wider public interest considerations including the need to maintain public confidence in the profession and to uphold the required standards. The Committee understood that it was not obliged to make a finding of impairment on public interest grounds because it has made a finding of dishonesty.

Informed members of the public would understand that this case does not involve the more serious form of dishonesty which was alleged by the Council. The Registrant

has not covered up wrongdoing, nor has he made an entry in a clinical record, knowing that entry to be false. Instead, he intentionally misled the reader of his record into believing that the entire record was written on 11 January 2018. Nevertheless, the case involves dishonesty which is a breach of a fundamental tenet of the profession. The dishonesty occurred in the course of professional responsibilities and there is no evidence that the Registrant was acting under stress or other pressures. Dishonest conduct by a professional brings the profession into disrepute.

Having carefully reviewed all the circumstances, the Committee decided that it was necessary to make a finding of current impairment to mark the Registrant's misconduct, uphold the required standards for optometrists, and uphold public confidence in the profession. It is important that members of the public have confidence in the integrity of clinical records of their eye examinations. The Committee therefore sends a clear message to members of the profession and members of the public that it is not acceptable for an optometrist to dishonestly amend records, even where that amendment accurately reflected what had taken place.

The Committee therefore decided that the Registrant's fitness to practise is currently impaired.

Sanction

The Committee has heard submissions from Mr D Taylor on behalf of the Council and from Mr Saad on behalf of the Registrant.

Mr D Taylor submitted that the appropriate and proportionate sanction is a suspension order for a minimum period of six months. In his submissions he highlighted case law including *Bolton v Law* Society [1994] 2 All ER 486, *Siddiqui and General Medical Council* [2013] EWHC 1083, *Professional Standards Authority for Health and Social Care v Nursing and Midwifery* Council [2013] EWHC 1083, *Lusigna v Nursing and Midwifery* Council [2017] EWHC and *Professional Standards Authority for Health and Social Care v General Dental* Council [2019] EWHC 2640.

Mr Saad outlined the Registrant's personal circumstances at the time the misconduct occurred in February 2019 and currently. He highlighted mitigating features and submitted that the Committee should consider taking no further action, imposing a financial penalty, or imposing conditions.

The Committee has accepted the advice of the Legal Adviser. She referred the Committee to case law including *Khan v General Medical* Council [2015] EWHC 301. It noted the guidance in the Council's "Fitness to Practise Panels Hearings Guidance and Indicative Sanctions" (ISG). The purpose of any sanction is not to punish the Registrant, but to protect the public and the wider public interest. The Committee applied the principle of proportionality balancing the Registrant's interests against the need to protect the wider public interest.

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

The Committee identified the following aggravating feature: the incident involved dishonesty in a professional role.

The Committee identified the following mitigating features: an isolated and out of character incident; no dishonesty either before or after the incident; the dishonesty involved no material advantage for the Registrant; the positive testimonials; the Registrant's expression of regret and insight.

The Committee also noted the personal circumstances outlined by Mr Saad. These were not put forward as mitigating features, but as relevant to the proportionality of any sanction. The Registrant faced difficult and stressful circumstances in 2018-2019. He is the main breadwinner for the family and he is currently financing ongoing treatment for his wife and son.

The Committee noted the guidance in the ISG on dishonesty:

"*There is no blanket rule or presumption that erasure is the appropriate sanction in all cases of dishonesty. The Committee must balance the relevant issues in a proportionate manner whilst putting proper emphasis on the effect the finding of dishonesty has on public confidence in the profession. R(on the application of Hassan v GOC [2013] EWCA 1887and Siddiqui v General Medical Council [2013] EWHC 1883"*

The Committee also understood from the case law highlighted by Mr D Taylor and the Legal Adviser that the more serious sanctions of a suspension order or a removal order will usually be appropriate in cases involving a finding of dishonesty.

The Committee considered that this case differed from other dishonesty cases so far as the impact of the dishonesty on public confidence in the profession. It considered that in the majority of dishonesty cases there will be a material advantage for the Registrant, and that the absence of such advantage is a unusual feature of the dishonesty in this case. It considered that members of the public would understand that the dishonesty in this case undermined the public's trust to only a limited extent. This was because the dishonesty was the addition of details which the Registrant believed and the Committee found to be true, rather than covering up any wrongdoing. Members of the public would also be reassured by the Committee's decision that the Registrant has demonstrated remorse and insight and that the risk of repetition is low.

The Committee considered the options open to it in ascending order of severity. The Committee noted the guidance in the ISG on taking no further action.

"31.1*Where a registrant's fitness to practise is impaired, the Fitness to Practise Committee would usually take action in order to protect the public interest (protection of the public, maintenance of public confidence in the profession and declaring and upholding proper standards of conduct and behaviour).*

31.2There may, however, be exceptional circumstances in which a committee might be justified in taking no action. Such cases are likely to be very rare. In order to be "exceptional", circumstances must not be routinely or normally encountered (R v Kelly (Edward) [2000] QB 198) and reasons must be given as to what the relevant circumstances are, why they are considered exceptional and why they mitigate against action being taken.

31.3 No action might be appropriate in cases where the registrant has demonstrated considerable insight into their behaviour and has already embarked on, or completed, any remedial action the Committee would otherwise require him/her to undertake. The Committee may wish to see evidence to show that the registrant has taken steps to mitigate his/her actions.

31.4 In such cases it is particularly important that the Committee's determination sets out very clearly the reasons why it considered it appropriate to take no action, notwithstanding the fact that the registrant's fitness to practise was found to be impaired"

The Committee considered that paragraph 31.3 of the guidance applied. In its decision on current impairment the Committee found that the Registrant had demonstrated sufficient insight and that the Committee could not identify any issues that he had not addressed.

The Committee considered paragraph 31.2 of the guidance. The Committee would not describe the circumstances in this case as "exceptional" in the sense described in 31.2., but there were unusual features. The Committee was aware that if it departed from the ISG it must give clear, cogent, and case specific reasons for doing so.

The Committee decided that in the circumstances of this case it was appropriate to depart from the ISG. The Committee considered that, although the circumstances of the case were not "exceptional" in the sense described in paragraph 31.2, they were sufficiently unusual that no further action was a sanction that the Committee could consider. The unusual features of the dishonesty in this case relate to the limited nature of the factual finding, that the Registrant amended the record to reflect what he advised Patient A, but in doing so gave a misleading impression to the reader that he had recorded this contemporaneously. Paragraphs 3(a) and 3(b), the more serious aspects of dishonesty were not proved. Further, the amendment to the record was not made for material gain, but simply to add advice that had been provided, it did not impact on the nature and/or significance of the possible complaint that the Registrant was then aware might be made by Person A, notably the failure to diagnose glaucoma.

In the circumstances the finding of misconduct and current impairment in the public decision was sufficient to uphold the required standards of conduct, to mark the Registrant's breach of fundamental tenets of the profession, and to uphold the reputation of the profession. This was because the public decision and a finding of current impairment sent a sufficiently clear message to the profession and to the public that such dishonest behaviour is unacceptable in the particular circumstances of this case.

The Committee considered the option of a financial penalty. It decided that this was not appropriate in a case involving an individual Registrant and that it would have a punitive effect, without further satisfying the public interest.

The Committee considered that conditions of practice were unnecessary and inappropriate to address the misconduct found proved. Conditions were unnecessary because the Committee has not identified that there is a risk of repetition that could be mitigated by the imposition of conditions. In the judgment of the Committee conditions would not address the wider public interest concerns which are the basis of the Committee's decision on current impairment.

The Committee considered the option of a short period of suspension. In considering this option the Committee noted that some of the criteria set out in the ISG applied. This is a case where there is no evidence of harmful deep-seated personality or attitudinal problems, there is no evidence of repetition of behaviour since the incident, and the Committee is satisfied that the Registrant has insight and does not pose a significant risk of repeating the behaviour.

A suspension order is appropriate where there is a serious instance of misconduct, but where a lesser sanction is not sufficient. Having carefully considered the circumstances, the Committee's view was that the option of taking no further action was sufficient and that a suspension order would be disproportionate. The Committee carefully weighed up the public interest, which includes permitting a very experienced optometrist, with additional specialist qualifications, to continue to practice against those of the Registrant. It took the view that reasonable members of the public, including optometrists, with full knowledge of the circumstances of this case, would consider that the sanction of taking no further action, albeit somewhat unusual, was the appropriate and proportionate sanction. The Committee decided that a suspension order would be disproportionate, taking into account the unusual nature of the dishonesty found, the insight demonstrated by the Registrant, and the Committee's decision that the finding of impairment is sufficient to uphold public confidence in the profession and to uphold the required standards.

The Committee therefore decided that the appropriate and proportionate step is to take no further action.

Chair of the Committee: Anne Johnstone

Signature **Date: 05 November 2021**

Registrant: Amardip Nandra

Signature present via videoconference **Date: 05 November 2021**

FURTHER INFORMATION
Transcript
A full transcript of the hearing will be made available for purchase in due course.
Appeal
Any appeal against an order of the Committee must be lodged with the relevant court within 28 days of the service of this notification. If no appeal is lodged, the order will take effect at the end of that period. The relevant court is shown at section 23G(4)(a)-(c) of the Opticians Act 1989 (as amended).
Professional Standards Authority
This decision will be reported to the Professional Standards Authority (PSA) under the provisions of section 29 of the NHS Reform and Healthcare Professions Act 2002. PSA may refer this case to the High Court of Justice in England and Wales, the Court of Session in Scotland or the High Court of Justice in Northern Ireland as appropriate if they decide that a decision has been insufficient to protect the public and/or should not have been made, and if they consider that referral is desirable for the protection of the public. Where a registrant can appeal against a decision, the Authority has 40 days beginning with the day which is the last day in which you can appeal. Where a registrant cannot appeal against the outcome of a hearing, the Authority's appeal period is 56 days beginning with the day in which notification of the decision was served on you. PSA will notify you promptly of a decision to refer. A letter will be sent by recorded delivery to your registered address (unless PSA has been notified by the GOC of a change of address). Further information about the PSA can be obtained from its website at www.professionalstandards.org.uk or by telephone on 020 7389 8030.
Effect of orders for suspension or erasure
To practise or carry on business as an optometrist or dispensing optician, to take or use a description which implies registration or entitlement to undertake any activity which the law restricts to a registered person, may amount to a criminal offence once an entry in the register has been suspended or erased.
Contact
If you require any further information, please contact the Council's Hearings Manager at 10 Old Bailey, London, EC4M 7NG or, by telephone, on 020 7580 3898.