BEFORE THE FITNESS TO PRACTISE COMMITTEE
OF THE GENERAL OPTICAL COUNCIL

GENERAL OPTICAL COUNCIL

AND

FAZEELA MAKDA (01-25045)

DETERMINATION OF A SUBSTANTIVE HEARING
18-20, 23-24 NOVEMBER 2020 and 12 - 13 APRIL 2021

| Committee Members: | Ms J Wortley (Chair/Lay) |
| - | Ms S Hamilton (Lay) |
| - | Ms S Bradford (Lay) |
| - | Dr E MacMillan (Optometrist) |
| - | Ms A Barrett (Optometrist) |
| Legal adviser: | Ms L Whittle-Martin |
| GOC Presenting Officer: | Mr C Geering |
| Registrant present/represented: | Yes |
| Registrant representative: | Mr S Thomas (Counsel) |
| Hearings Officer: | Mr T Yates (November 2020) |
| - | Ms A Shabani (April 2021) |
| Facts found proved: | 1, 2 (except 2(b) in relation to 1(a)), 3, 4 |
| Facts not found proved: | 2(b) in relation to 1(a) |
| Misconduct: | Found |
Impairment: Found
Sanction: Suspension Order 6 months without Review
Immediate order: None

ALLEGATION (as amended)

The Council alleges that in relation to you, Ms Fazeela Makda, an Optometrist:

1. Between April and December 2016, you:
   a. Accessed some or all of the records for the Patients listed in Schedule A without authorisation and/or clinical justification for doing so:
      (i) With your login details, and/or
      (ii) With Mr B’s login details;
   b. Made amendments and/or additions to some or all of the records listed in Schedule A although you had not examined the Patients:
      (i) With your login details, and/or
      (ii) With Mr B’s login details;
   c. Made amendments relating to clinical and/or anatomical observations within the records for Patient 2 and/or Patient 14 and/or Patient 36 although you had not examined these Patients;

2. Your actions at paragraphs 1(a) and/or 1(b) and/or 1(c):
   a. Were motivated by a desire to conceal Mr B’s record keeping deficiencies for all or some of the Patients listed in Schedule A,
b. Caused a potential risk of harm to Patient(s) and/or continued Patient care,

c. Were misleading,

d. Was dishonest in respect of 1(a) in that:
   (i) You knew you should not access Patient records without clinical justification;
   (ii) You knew you should not use another member of staff’s login to access Patient records

e. Was dishonest in respect of 1(b) and (c) in that:
   (i) You knew you should not amend an entry for Patient(s) you had not seen;
   (ii) By using Mr B’s login you knew those amendments would appear to have been made by Mr B, not you;
   (iii) You knew your amendments did not make clear in the records that they were made retrospectively and/or by you, not the clinician who saw the Patient;
   (iv) In respect of those Patients in Schedule B, you entered findings/information/advice which you did not know or believe was accurate.

3. On or around 5 December 2016, Tesco Opticians carried out an investigation to find out if you made any amendments to some or all of records listed in Schedule A, during which on one or more occasions, you falsely:

   • Denied changing Patient records,
   • Claimed you had only looked at visual fields and pressures on Patient records,
   • Stated Mr B had access to your login details and/or implied he may have used this to change Patient records;

4. Your actions at paragraph 3 were:

   a. Misleading,
b. Was dishonest in that you knew the statement(s) were untrue and/or misleading.

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

**DETERMINATION**

**Amendment**

1. Mr Geering applied to amend the allegation by deleting Particular 1(d), and particularising the dishonesty alleged in Particulars 2 and 4.

2. Mr Thomas did not oppose these applications.

3. The Committee accepted the advice of the Legal Adviser, who advised the Committee to consider whether it was in the interests of justice to allow the applications, in whole or part, in accordance with Rule 46(20) of the General Optical Council (Fitness to Practise) Rules Order of Council 2013 (“the Rules”).

4. The Committee decided to allow the application to delete Particular 1(d), on the basis that the evidence did not support the allegation, and to allow the application to particularise the dishonesty alleged in Particulars 2 and 4, to provide greater clarity.

5. Accordingly the applications to delete Particular 1(d), and amend Particulars 2 and 4, were granted.

**Admissions**

6. At the commencement of the hearing the Registrant entered the following Admissions:

   1(a)(i); 1(a)(ii); 1(b)(i); 1(b)(ii); 1(c) in relation to Patient 14 and Patient 36 but not Patient 2;

   2(b) in relation to 1(c) in relation to Patient 14 and Patient 36 but not Patient 2;

   2(c); 2(d)(i); 2(d)(ii); 2(e)(i); 2(e)(ii); 2(e)(iii); 2(e)(iv) but not in relation to the following entries: Patient 2, Patient 8 general health, Patient 29 recall code and final prescription, Patient 31 reasons for visit and Patient 32 reasons for visit.
3(a); 3(b);

4(a) in relation to 3(a) and 3(b) but not 3(c).

Witnesses

7. The following witnesses provided oral evidence on behalf of the GOC:
   - Witness A, Optical Compliance Manager, Tesco Opticians;
   - Paul Hutchence, expert witness.

8. The GOC relied on the witness statement of:
   - Witness B, Regional Manager, Tesco Opticians
     which was admitted into evidence by consent, on the understanding this was partly challenged, hearsay evidence.

9. The GOC relied on the following agreed witness statements:
   - Witness C, Superintendent Pharmacist, Tesco Opticians;
   - Witness D, Store Manager, Tesco Opticians.

10. The GOC relied on a bundle of documentation which included patient optical records, an audit trail, material from the internal investigation, the Registrant’s self-referral, a transcript of GOC interim order proceedings attended by the Registrant, a statement written by the Registrant and a copy of Paul Hutchence’s expert report.

11. The Registrant gave evidence at the fact finding stage.

12. The Defence relied on a bundle of documentation which included, for the purpose of the fact finding stage, an expert report produced by JMC, which had been obtained at the request of the GOC, and a copy of guidance provided by the College of Optometrists.

Background

13. At the material time the Registrant worked as a resident Optometrist for Tesco Opticians in [redacted] ("the Practice").
14. Mr B was a fellow Optometrist who had worked alongside the Registrant at the Practice as a full time member of staff until December 2015, when Mr B travelled abroad. Mr B returned in 2016 to work at the Practice as a locum. However, in July 2016 the Practice ceased using Mr B’s services, having conducted audits on Mr B’s work, the results of which were deemed by the Practice to be unsatisfactory.

15. The Registrant was unhappy with the stance taken by the Practice. It was the Registrant’s belief that Mr B had been treated unfairly. The Registrant requested further audits of Mr B’s records.

16. Subsequent analysis of the records revealed that retrospective amendments had been made to Mr B’s patient records in relation to 48 patients on multiple occasions on six days, namely 21 May 2016, 19 July 2016, 20 July 2016, 2 August 2016, 16 November 2016 and 18 November 2016.

17. An internal investigation was commenced and the Registrant was interviewed. It was suggested that the Registrant had made the amendments. The Registrant initially denied this, but after a break in the interview the Registrant admitted that the Registrant had, without justification, made the majority of them.

18. The Registrant self-referred to the GOC on 16 December 2016, saying:

“I regret to advise that during the course of my employment I accessed a colleague’s records of various patients and amended certain fields within the records to improve the quality of those records to assist that colleague.

I bitterly regret my actions and recognise my actions were wholly inappropriate. I admitted my actions to my employers and tendered my resignation shortly thereafter. I believe this is a matter that should be reported to my regulator and accordingly am now doing so.”

19. The GOC commenced an investigation, which included instructing an expert, Paul Hutchence, to examine the patient records. The results of the investigation led to the current proceedings.

20. In admitting Particulars 1(a) and 1(b) of the GOC Allegation, the Registrant accepted that the Registrant had accessed the records of some or all of Mr B’s patients, listed in Schedule A, without authorisation and without clinical justification, by using the Registrant’s login details and Mr B’s login details. The Registrant accepted that the Registrant had made these amendments/additions when the Registrant had not in fact examined the patients.
21. The Registrant said in evidence that the Registrant had done this because in the Registrant’s view Mr B was a good practitioner, and the Registrant had been trying to help Mr B to overcome the unfair audit requirements that had been imposed on Mr B by the Practice, and thereby retain Mr B’s employment. The Registrant now accepted, in relation to the majority of the Registrant’s conduct, that this had been dishonest behaviour on the Registrant’s part. The Registrant said that Mr B had been like a brother to the Registrant and had helped the Registrant out in the past in the Registrant’s hour of need. The Registrant said that Mr B asked repeatedly for help, and the Registrant had agreed to give it. The Registrant said that the Practice had been continuously altering the audit requirements of Mr B’s work, to make it increasingly difficult for Mr B’s records to meet their audit standards.

22. It was accepted by the GOC that some of the amendments made by the Registrant involved inserting clinical information that was based on genuine information that could be found elsewhere in the records.

23. It was also accepted by the GOC that some amendments included material which may not have had a clinical impact on the management of the patient.

24. However, in other instances it was alleged, and was accepted by the Registrant, that the Registrant had made entries which suggested that advice had been given to the patient, when the Registrant had no reason for supposing that any such advice had been given. For example:

- Patient 24 – the Registrant made an entry stating that this patient had been advised that they would be contacted when the Visual Fields (vf) machine was working and that they should “return sooner for eye test if any probs”;

- Patient 29 – the Registrant made an entry stating “vf not done as machine not working”, and that the Patient had been referred to the hospital, and had been “advised to have it done in appt there”.

25. It was alleged further, in Particular 1 (c), that in relation to Patients 2, 14 and 36, the amendments made by the Registrant, without having examined the patients, included clinical and/or anatomical observations, as follows:
26. The Registrant admitted making the amendments to the records of Patients 14 and 36 but denied making the amendments to Patient 2. It was the Registrant’s contention that Mr B must have made these amendments under the Registrant’s login details.

27. It was alleged by the GOC, in Particular 2(a), that the Registrant’s actions had been motivated by the registrant’s desire to conceal Mr B’s record keeping deficiencies for all or some of the 48 patients listed in Schedule A. This was challenged on the basis that Mr B’s records had not been deficient.

28. The GOC alleged, in Particular 2(b), that the Registrant’s actions had caused a potential risk of harm to patients and/or continued patient care, which was denied by the Registrant, save in relation to Patients 14 and 36, which was accepted.

29. The GOC alleged, in Particulars 2(c), 2(d) and 2(e) that the Registrant’s actions were misleading and dishonest, in that the Registrant had:

- accessed patient records without authorisation or clinical justification;
- accessed records using another person’s login details;
- amended records of patients the Registrant had not seen;
- made alterations which gave the impression of being contemporaneous entries made by the person who was consulting with the patient, whereas in reality they were made later, by a person who had not examined the patient; and
- entered findings/information/advice in relation to certain patients, namely those listed on Schedule B, which the Registrant did not know or believe to be accurate, which included, in respect of Patients 2, 14 and 36, clinical findings which had no basis.
30. The Registrant accepted that the Registrant had misled and acted dishonestly as alleged, save that in relation to Particular 2(e) the Registrant did not accept that the Registrant had done so for Patients 2, 8, 29, 31 and 32.

31. It was alleged by the GOC, in Particular 3, that in the course of the internal interview conducted by the Practice, the Registrant initially denied making the amendments and implied that Mr B had done so. The Registrant admitted Particular 3(a), namely that in the interview the Registrant had falsely denied changing patient records, and admitted Particular 3(b), namely that in interview the Registrant had falsely claimed that the Registrant had only looked at visual fields and pressures on patient records. The Registrant admitted that the Registrant “stated Mr B had access to your login details and/or implied he may have used this to change patient records”. However, the Registrant denied Particular 3(c), on the basis that although the Registrant accepted that the Registrant had stated that Mr B had access to the Registrant’s login details and/or implied that Mr B may have used this to change patient records, the Registrant did not accept that the Registrant had done so falsely.

32. It was alleged further by the Council, in Particular 4, that the Registrant’s response in interview had been both misleading and dishonest, in that the Registrant had known that what the Registrant had said was untrue. The Registrant accepted that the Registrant’s response had been misleading, but did not accept that the Registrant had been dishonest; The Registrant claimed that the Registrant had been in a state of acute anxiety, fear and panic at the time.

Legal Advice

33. The Committee accepted the legal advice of the Legal Adviser who reminded the Committee that the burden rested on the GOC to prove the case on the balance of probabilities. The Legal Adviser advised on the weight to be attached to hearsay evidence. The Legal Adviser advised that the relevant test for dishonesty was set out in *Ivey v Genting Casinos [2017] UKSC 67*, namely:

“When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest
or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”

34. In accordance with Rule 46(6) the Chair announced that the Particulars which had been admitted by the Registrant were found proved by way of admission.

35. The Committee then went on to consider the disputed Particulars. In so doing it took into account the witness statements and exhibits produced by the GOC, the witness evidence called by them, the Registrant’s oral evidence, and the documentation produced on the Registrant’s behalf. It accepted the advice of the Legal Adviser.

**Particular 1(c)**

36. The Registrant admitted this Particular in relation to Patients 14 and 36 but not in relation to Patient 2.

37. The Registrant gave evidence that the Registrant had no recollection of Patient 2 or of making amendments to Patient 2’s records. The Registrant said that the relevant entries had been made in May 2016, when Mr B was still employed at the Practice. It was the Registrant’s contention that the entries must have been made by Mr B, using the Registrant’s log in details, at a time when Mr B consulted the Registrant in the Registrant’s room, which the Registrant said Mr B often did.

**GOC submissions**

38. Mr Geering submitted that the records suggested that Patient 2 was seen by Mr B, and not the Registrant. It was clear from the records that Mr B had inputted the majority of the information.

39. It was also clear that the Registrant’s login had been used to insert additional clinical information concerning Patient 2’s ophthalmoscopy results in the middle of the record. These additions were made at 10.05 on the same day that Patient 2 was seen, 21 May 2016.

40. The record did not clarify that these additions were made by anyone other than the examining optometrist. Without the benefit of an auditing tool, it would have
appeared on the face of the notes that they had been completed by Mr B, whereas in reality they had been added using the Registrant’s login.

Registrant’s submissions:

41. Mr Thomas submitted that with the exception of an amendment to Patient 16’s and Patient 29’s records, the amendments to Patient 2’s record were the only ones to have been made on the same day as the original appointment. The original appointment was with Mr B. Witness A had stated in evidence that the earliest possible appointment at the Practice was at 9:00. Witness A had suggested that there was 20 minutes allocated for each appointment. Paul Hutchence had said that the standard appointment for a reasonable and competent optometrist would be between 20-30 minutes. The amendments to Patient 2’s record were made at 10:05. It was inconceivable that the appointment was completed at 9:20, and that the Registrant, without any intervention from Mr B, accessed and amended the record at 10:05.

42. Mr Thomas submitted that the Registrant had said in evidence that the Registrant could not remember 21 May 2016 other than that it was a Saturday and that the Registrant worked with Mr B on Saturdays. The Registrant had stated in their evidence that Mr B would often approach the Registrant in the Registrant’s room for a second opinion and advice.

43. Mr Thomas submitted that on the known facts, it was more likely than not that Mr B approached the Registrant in relation to Patient 2, and that Mr B made the amendments to the patient record after the Registrant had accessed it, using the Registrant’s log-in details. The additions were, on the balance of probabilities, based upon Mr B’s immediate recollection from the sight-test, which was conducted within, at most, 45 minutes of the changes.

Committee Decision

44. The Committee took account of the Registrant’s evidence that the Registrant had no recollection of Patient 2. The Registrant said in evidence that the Registrant was sometimes asked for second opinions by Mr B. It was the Registrant’s case that Mr B must have made the amendments using the Registrant’s log in. It was the Registrant’s case that prior to July 2016, when Mr B had access to the system, the Registrant had no recollection of altering any records.
45. However, on the basis of the evidence before it, the Committee concluded that it was more likely than not that it was the Registrant who made the amendments to Patient 2’s record, despite the fact that the Registrant had not seen the patient. The records for Patient 2 indicated that Patient 2 was seen by Mr B. There was no indication that Patient 2 ever saw the Registrant. However, it is clear that the Registrant’s login was used to insert the additional clinical information relating to Patient 2. In those circumstances the record suggested that it was the Registrant who made the changes. That was supported by the fact that Mr B’s records had been audited in December 2015 and May 2016 and had been found wanting. Whilst Mr B had not yet lost his locum position, Mr B’s record keeping was being criticised and was under scrutiny by the date of the amendments made to Patient 2’s records. There was no evidence that Mr B had made any amendments under the Registrant’s login details in this case. The Registrant’s primary evidence was that the Registrant had no recollection at all of Patient 2; the Registrant did not say that the Registrant had a clear recollection of the fact that the Registrant had not carried out these amendments; the Registrant merely said that the Registrant “would not have done this”. In those circumstances, on the basis of the objective evidence available, the Committee concluded that it was more likely than not that it was the Registrant who made the amendments and not Mr B.

46. On that basis the Committee found Particular 1(c) in relation to Patient 2 proved.

**Particular 2(a)**

47. In examination in chief the Registrant claimed that Mr B’s records were not deficient. In cross-examination the Registrant accepted that they were.

**GOC submissions**

48. Mr Geering submitted that that the GOC did not need to satisfy the Committee that Mr B’s records were so poor that a regulator would take action, but only that there were instances when they fell below the relevant standard, and that the Registrant tried to conceal this. Mr Geering submitted that whilst some of the omissions in the notes were minor, there were clearly instances where Mr B made material omissions. Mr Geering also submitted that the Registrant had accepted this allegation in cross-examination without equivocation.

**Registrant’s submissions**
49. Mr Thomas relied on the Registrant’s evidence in chief that Mr B’s records were not deficient and that the Registrant’s motivation for amending the records had been that the audits were unfair and biased. Mr Thomas also relied on the expert report of JMC which concluded that Mr B’s records were adequate. Mr Thomas submitted that, on the balance of probabilities, the Registrant’s primary motive was not to conceal Mr B’s record keeping deficiencies, but to correct an unfairness.

Committee Decision

50. In evidence the Registrant initially denied this allegation on the basis that the Registrant’s motivation was to defeat the audits of Mr B’s work. However, the Registrant accepted in cross examination that Mr B’s work had been deficient, and that the Registrant was trying to conceal this deficiency, thereby enabling a positive audit outcome for Mr B. The Committee did not accept the argument mounted by Mr Thomas that the evidence suggested that the records were not deficient. The expert report compiled by JMC concluded that Mr B’s records were adequate, but did not conclude that they contained no deficiencies. It was clear that the Registrant’s actions had been designed to conceal deficiencies in Mr B’s records.

51. For those reasons, the Committee found Particular 2(a) proved.

Particular 2(b) in relation to 1(a)

52. On behalf of the GOC, Mr Geering conceded that the mere accessing of records was not capable of causing a potential risk of harm to patients and/or continued patient care.

53. The Committee accepted that stance, and found Particular 2(b) in relation to 1(a) not proved.

Particular 2(b) in relation to 1(b) and 1(c)

54. These Particulars were admitted in respect of alterations made to Patient 14 and Patient 36’s record, but were otherwise denied.

GOC submissions
55. Mr Geering submitted that in planning future care, a practitioner is likely to have regard to the record of previous consultations. If the records are inaccurate, and do not reflect what the patient said or what was found, there is a potential risk to patients. In this case, the Registrant had put words into the mouth of patients in the way the Registrant completed the “reason for visit” box. Given that information was invented, and may not have reflected how the patient felt at all, it had the potential to cause confusion, inconsistency and impact on patient care. Mr Geering submitted that this had been accepted by the Registrant when the Registrant was asked in cross-examination: “if you invent information from a Patient, that could impact on future Patient care?”, to which the Registrant answered “yes”.

56. Mr Geering relied, by way of example, on the occasions when the Registrant had admitted amending the “reason for visit” section for Patients 5, 7, 8, 19, 20, 30, 31, 32, 33, 34, 40, 47. For example in relation to Patient 31 the record stated in the “reason for visit” that the patient reported that their near vision and distance vision were “ok”. That was inconsistent with the comment entered elsewhere in the record that Patient 31 was struggling with distance reading. The “reason for visit” information had been invented by the Registrant, and such the Registrant had created an inconsistency in the patient’s history. The Registrant had asserted the patient thought their distance vision was “ok” when the patient may well not have thought any such thing.

Registrant’s submissions

57. Mr Thomas submitted that the changes in relation to Schedule A were not clinical or anatomical changes. Consequently, Mr Thomas did not accept that these “caused a potential risk of harm to patient(s) and/or continued patient care”. Mr Thomas submitted that this was consistent with the expert opinion of Paul Hutchence who was asked: “With the exception of some very specific examples, Patients 2, 14 and 36, there is a low risk to patient safety, if any, of the amendments made by the Registrant?” to which Paul Hutchence replied: “I think that you are right about the risk. But it is the fact of the additions”. Mr Thomas submitted that the Council had sought to prove this allegation via a generality, and had failed.

Committee Decision

58. The Committee found this Particular proved. It accepted the reasoning put forward by Mr Geering, as summarised above. The allegation was not that the
Registrant’s behaviour had in fact caused harm to patients and/or continued patient care, but that the Registrant’s actions had caused a potential risk of harm.

59. The Committee did not accept Mr Thomas’s argument that the expert evidence ran contrary to such a finding. Both experts, Paul Hutchence and JMC, had said that the Registrant’s actions had caused a potential risk.

60. Paul Hutchence had stated at paragraph 98 of his report:

“My opinion is that any additions or alterations to the clinical notes, which were made to give the impression that they were contemporaneous, do pose a potential risk to patients for their further care. When future optometrists look back at the future notes they will not be seeing a true representation of the state of the patient’s eyes at that time but a semi-fictitious one created by the Registrant who admits to having altered the notes to try and bolster Mr B’s reputation at record keeping”.

61. JMC had stated at Page 12 of their report in relation to Patient 14:

“In my further opinion the change made by the Registrant on 20/07/2016 to the record was not necessary. C/D ratios are used when assessing or monitoring a patient particularly for glaucoma. The registrant did not see the patient and had no basis on which to make the record amendment. This record is therefore not an accurate source of the patient history, and the benefit for continuity of care for this patient is reduced”.

62. Accordingly, the Committee found Particular 2(b) in relation to 1(b) and 1(c), Patient 2, proved.

**Allegation 2e**

63. The Registrant formally admitted this Particular at the start of the hearing, with the exception of:

- Patient 8 in relation to the amendment regarding general health
- Patient 29 in relation to the amendment regarding final prescription
- Patient 29 in relation to the amendment regarding recall code
- Patient 31 in relation to the amendment regarding reason for visit
- Patient 32 in relation to the amendment regarding reason for visit.
64. Following the evidence of Paul Hutchence, Mr Geering accepted that this allegation could no longer be levelled against the Registrant in relation to Patient 8 “general health”, or Patient 29 “recall code”, because it could be inferred from the record that Patient 8 had diabetes and the recall code for Patient 29 could also be inferred from the record.

GOC submissions

65. Mr Geering submitted that in respect of Patient 29, the prescription had been changed. The Registrant had accepted there was no basis in the notes for making such a correction. The Registrant had asserted that the Registrant did not make this change. However, it was clear that the amendment occurred when the Registrant was making other amendments to the records, which are not in dispute. Mr Geering submitted that it was inherently unlikely that in the midst of making certain changes, the computer system inadvertently changed the prescription, or reverted to old data inserted by Mr B months earlier, as had been mooted by the Defence.

66. Mr Geering submitted in relation to Patients 31 and 32 that the Registrant had admitted dishonestly making these admissions in cross-examination. The Registrant had accepted that the Registrant entered information in the “reason for visit” box. The Registrant accepted in cross-examination that the Registrant did not know whether that was what the patient reported. The Registrant did not know or believe these additions were accurate.

Registrant’s submissions

67. Mr Thomas submitted that Paul Hutchence had accepted in cross-examination that Patient 31, who had an unaided vision of 6/6, could be described as having ‘DV Okay’. The same point had been accepted by Paul Hutchence in relation to Patient 32, who had unaided vision of 6/5, which was better than Patient 31. It had been accepted by Paul Hutchence that Patient 32’s near vision could be described as “Okay” (‘NV Okay’). Mr Thomas submitted that the Registrant could not accept that the Registrant’s entries were dishonest when it could be inferred that they were not inaccurate. Mr Thomas submitted that the Registrant could not explain the change in prescription for Patient 29 and Paul Hutchence could not explain why anyone would change the prescription.

Committee Decision
68. The Committee accepted the reasoning advocated by Mr Geering. The Committee concluded in relation to Patient 2, Patient 29 “final prescription” and Patients 31 and 32 “reason for visit”, the Registrant knew that what the Registrant was entering on the record was untrue because the Registrant had not seen the patient. The Committee concluded that to make entries on patient records in the knowledge that they were untrue was clearly dishonest by the standards of ordinary decent people.

Particular 3(c)

GOC submissions

69. Mr Geering submitted that the Registrant accepted that the Registrant had claimed in the course of the investigation interview that Mr B had access to the Registrant’s login and/or implied that Mr B may have used this to change patient records. However, the Registrant denied that this was a false statement. The Registrant had admitted this particular in their earlier response to the Council, on the Hearing Questionnaire. The Registrant had also accepted this statement was misleading.

Registrant’s submissions

70. Mr Thomas submitted that the Registrant accepted that the Registrant stated in interview that Mr B had access to the Registrant’s login details and/or implied Mr B may have used this to change patient records. Mr Thomas accepted that this was captured within the interview notes in the following passages:

Q “Who would have your user name [and] password?”
A “Mr B did have it”.
Q “Why”
A “I gave it to him some time ago, I don’t know when but he did have it.”

71. However, the Registrant had given evidence that the Registrant’s username was the Registrant’s first name and that the Registrant password was the same as their phone password. The Registrant had explained that the Registrant gave this to Mr B when Mr B was in the Registrant’s room in the Practice and wanted to access the internet. Mr Thomas submitted that there was nothing to suggest that the Registrant’s acceptance that the Registrant provided Mr B with the Registrant’s username and password was untrue. Mr Thomas informed the
Committee that the entry made on the Hearing Questionnaire had been made by the Registrant’s legal team in error.

Committee Decision

72. The Committee accepted that the Registrant’s stance was that Mr B had the Registrant’s login details. The Committee noted the following passage in the Registrant’s interview:

Q: “So who would have made those changes if not you? These changes – any changes made after the fact is fraud isn’t it?”
A “yes”
Q “Who would have done this?”
A “I wouldn’t risk my professional reputation”

73. The Committee concluded from this that the Registrant implied in their internal investigation interview that Mr B may have used the Registrant’s login details to change patient records. The Committee had been provided with evidence, which had not been challenged, that Mr B had been unable to access the system after he had ceased working for the Practice in June 2016. It followed that the implication made by the Registrant in their internal interview had been false.

74. In those circumstances the Committee found Particular 3(c) proved on the basis that the Registrant falsely implied that Mr B may have used the Registrant’s login details to change patient records.

Particular 4(b)

75. The Registrant accepted that the Registrant had told untruths in interview. However, the Registrant claimed that the Registrant had been shocked and scared and had felt very unwell at the time.

GOC submissions

76. Mr Geering submitted that the Registrant had not disputed that the Registrant had made misleading statements in interview. The Registrant had admitted in evidence that the Registrant knew that the statements made by the Registrant in interview were lies. Mr Geering submitted that in those circumstances the Registrant’s behaviour had been dishonest. Mr Geering submitted that being scared or stressed might be considered as mitigation but did not undermine the Particular itself.
Registrant’s submissions

77. Mr Thomas submitted that the Registrant had felt shocked, terrified and faint, with a shortness of breath. In those circumstances the Registrant’s answers to questions asked of the Registrant should be seen as “white lies”.

Committee Decision

78. The Registrant had accepted that what the Registrant said in interview was untrue, and that the Registrant knew this at the time. The Registrant claimed that they had been scared and unwell. The Committee accepted that the Registrant may well have felt scared at the time, due to the seriousness of what they had done. The Registrant accepted that the Registrant had knowingly provided an untruthful account. The Committee concluded that to knowingly provide an untruthful account in the context of an investigation interview was clearly dishonest by the standards of ordinary decent people.

79. Accordingly, the Committee found Particular 4(b) proved.

Misconduct

80. Mr Geering submitted that dishonestly altering patient records, and lying in the course of a formal investigation interview, is clearly behaviour that breaches the relevant GOC Standards of Practice for Optometrists and Dispensing Opticians (April 2016), is serious and amounts to misconduct.

81. Mr Thomas submitted that the Registrant accepts that many of the acts found proved are serious. The Registrant accepts that their dishonest behaviour breached Standards of Practice 16 and 17. However Mr Thomas submitted that the Registrant had shown candour in that they had offered to be a witness for the GOC in relation to Mr B. Mr Thomas also submitted that it would be unfair to suggest that the Registrant had not been candid in the course of the Registrant’s interview because the Registrant had been in fear at the time.

Advice and Finding on Misconduct

82. The Committee accepted the advice of the Legal Adviser, who advised that in considering misconduct the Committee should ask whether, in its judgement, the Registrant’s behaviour had fallen seriously below the standards required of a registered Optometrist in the circumstances, and whether the Registrant’s behaviour would be regarded as deplorable by fellow practitioners. The Legal
Adviser took the Committee to the cases of Roylance –v- General Medical Council No 2 [2001] 1 AC 311 and Nandi v GMC [2004] EWHC 2317.

83. The Committee concluded that the Registrant had breached the following GOC Standards of Practice for Optometrists and Dispensing Opticians (April 2016):

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

17.1 Ensure your conduct, whether or not connected to your professional practice, does not damage public confidence in you or your profession.

19.2 Be open and honest with your colleagues, employers and relevant organisations, and take part in reviews and investigations when requested and with the General Optical Council, raising concerns where appropriate. Support and encourage your colleagues to be open and honest, and not stop someone from raising concerns.

84. The Committee concluded that the Registrant’s behaviour had clearly fallen far below the standards expected of a registered Optometrist in the circumstances and would be regarded as deplorable by other members of the profession.

85. The Registrant had dishonestly interfered with the records of 48 patients. The Registrant had made numerous, detailed amendments in relation to those individual patients. The Registrant’s actions had taken place on six separate days, over a period of time that stretched from 21 May 2016 through to 18 November 2016. On the vast majority of dates the Registrant had made multiple entries, which must have taken considerable time to achieve. These amendments were made to the records of a fellow practitioner, and were not based on the Registrant’s own clinical assessment of the patients to which the amended records pertained. Some of the amendments related to clinical observations. The Registrant’s actions had been premeditated; the Registrant had deliberately amended the deficient records of a fellow practitioner with the aim of helping Mr B to defeat a valid audit process. In so doing the Registrant was aiding a practitioner who was failing to achieve the standards expected of them. The Committee had heard that the Registrant was a highly capable Optometrist. It was therefore clear to the Committee that the Registrant must have understood how serious the Registrant’s actions were, and yet the Registrant continued to repeat their actions on multiple occasions.
86. The Registrant’s dishonest interference with patient records was compounded by the fact that when their behaviour had come to light, the Registrant lied to their employers in a formal investigation interview, thereby defying their obligation of candour to their employers. The Registrant did so by implicating the very practitioner whose deficiencies the Registrant had sought to conceal. The fact that the Registrant was frightened did nothing to reduce the seriousness of the Registrant’s actions in lying to their employer; it merely confirmed that the Registrant understood the serious nature of their past behaviour in dishonestly amending patient records.

87. For those reasons the Committee concluded that the facts found proved amounted to misconduct.

Impairment

88. The Registrant called three witnesses to speak on the Registrant’s behalf. The Registrant also produced a bundle of documentation which contained further professional references, CET statements for 2019, 2020 and 2021, and a reflective statement, written by the Registrant following the Committee’s finding of misconduct.

89. The Registrant’s reflective statement read as follows:

“On 24th November 2020, you, the Fitness to Practise Committee, found proved a number of allegations which I had previously not admitted. Please can I begin by indicating that I respect the decision of the Committee and the important role that the fitness to practise process has in upholding and maintaining the public confidence in the profession. I hope that the Committee does not consider it unreasonable to have put the Council to proof on a number of the allegations, and I appreciate the time and effort of all those involved. Through the questions of the Committee and the cross-examination of Mr Gearing I learnt a great deal, and have continued to reflect on both the hearing and the determination since November 2020.

While exploring the evidence in the hearing I agreed that there were deficiencies in Mr B’s work and that I was trying to conceal those deficiencies to achieve a positive audit outcome. I have always accepted that this action was dishonest, and constituted misconduct, but now understand more clearly the potential adverse consequences for both the patients and the profession more generally. In planning future care, a practitioner is likely to have regard to the record of previous consultations. There is a potential risk to patients if the records are inaccurate and do not reflect the reasons for attendance reported by the patient.
Confusion and inconsistency can impact on patient care, and I accepted this during the hearing.

While my behaviour has not directly caused harm to patients or continued patient care, my actions had caused a potential risk of harm, which, in turn, undermines public confidence in the profession. Fellow professionals expect that a patient record is an accurate reflection of the interaction between an optometrist and a patient. Dishonesty undermines that trust in the patient record, could cause a practitioner to "second guess" a sign or symptom, and in the most extreme example miss a pathology. Further, the public demands that healthcare practitioners act with the utmost honesty and integrity. Lies, whether big or small, undermine this confidence and could prevent the public from attending a sight-test; and again in the most severe outcome cause a serious pathology to be missed. I apologise to the Committee, my fellow professionals, and the public for my dishonesty, and I will do everything in my power to rebuild their confidence.

Looking back it would be disingenuous to suggest that this had been a mistake. I acted deliberately in a misguided attempt to help another. It was stupid and I truly regret my actions, not because I was caught but because I have let down so many people; my peers and my patients. I wish that I had acted with greater candour when I was first confronted with my misconduct and, in hindsight, accept that it was dishonest to have not confessed to everything immediately. Anxiety at the time was not an excuse. I should have been braver and admitted that I had done wrong. I have been through the Standards for Optometrists and Dispensing Optometrist a number of times since the determination, and going forward will ensure that I abide by every single one, to the letter. Standards 17 and 19 have particularly resonated with me, specifically the duty to act with candour, and to ensure that my actions do not damage the reputation of my profession. I have also reflected on Standards 16. I understand that the promise of a person found to have acted dishonestly carries little weight but I swear on everything which I hold dear that I will never act in this way again.

I accept that my past conduct constitutes misconduct. I am aware that my conduct has impacted upon the profession and also the public’s confidence in the profession. They would be disappointed in my actions but hopefully they would see that I have learn from my mistakes and taken the relevant training to ensure that it does not happen again. I have worked hard through the work I have done with VISTA and the professional training I have undergone, to prove how dedicated I am to this profession, how much I love this job and how much I want to do what is best for the profession and the patients”.

90. The references relied on by the Registrant came from:
• Witness E, Senior Optometrist at Specsavers, [redacted], who confirmed that the Registrant had worked for their branch as a locum optometrist since 2016 and that despite numerous audits of the Registrant’s work, no concerns had emerged. Witness E described the Registrant as an exceptional Optometrist with excellent communication skills, who maintains “high clinical standards” with “a high degree of integrity”. Witness E said that the finding of misconduct would not prevent Witness E from employing the Registrant again.

• Witness F, Clinical Director of Specsavers, [redacted], where Registrant worked from 2008 to 2013, described the Registrant as “one of the most able Optometrists I have ever known. The Registrant’s clinical abilities are second to none”. Witness F said: “I felt I could trust the Registrant to give me honest feedback. The Registrant would support colleagues with Integrity. The Registrant would never undermine them”. Witness F explained that the Registrant left their branch due to family commitments. Witness F described the Registrant’s behaviour as out of character.

• Witness G, Optometrist and director of two independent opticians, said they had known the Registrant on a personal and professional footing for the past 9 years. Witness G said that they now hire the Registrant on a regular basis as the Registrant is “one of the best optometrists” that Witness G knows. Witness G described the Registrant’s misconduct as “very very out of character”.

• Witness H, an Optometrist who worked with the Registrant when the Registrant was employed by Tesco’s, described the Registrant’s work ethic as “outstanding and performance was above the base measures that we operated at Tesco”.

• Witness I, Director, Specsavers, [redacted], confirmed that they would continue to offer the Registrant employment.

• Witness J, Optometrist, Specsavers, [redacted], was supervised by the Registrant, and described the Registrant as having “a calm demeanour and positive attitude” “held in high regard” and “reliable and honest”.

• Witness K, Regional Manager of Tesco’s at the time when the Registrant worked there, described the Registrant as “one of the most trusted Optometrists I have ever worked with. The Registrant’s attention to detail is second to none”. She said that the Registrant “was and still is a credit to the optometry profession / industry”.

• Witness L, Lead Optometrist at Specsavers, [redacted], confirmed that the Registrant was “thought of as a very professional and respectable Optometrist by everyone”.

• Witness M, provided evidence of voluntary charity work that the Registrant had undertaken.

91. Mr Geering submitted that all four limbs of Grant applied. Mr Geering accepted that the Registrant did not lack the relevant clinical skills, but submitted that the Registrant’s actions in altering records and inserting information into clinical
records had had the potential to cause harm to patients. Mr Geering submitted that the Registrant’s misconduct amounted to a planned and premeditated course of conduct. Mr Geering submitted that the Registrant had not demonstrated full insight. Mr Geering urged the Committee to ask whether the Registrant would act in the same way if placed in the same position, given that the Registrant had known Mr B for a mere two years. Mr Geering also submitted that the Committee should consider whether the public interest warranted a finding of impairment, in the light of the Registrant’s breach of the fundamental principle of dishonesty.

92. Mr Thomas submitted that through the Registrant’s reflective statement, the Registrant’s references, and the Registrant’s continued practice as an Optometrist without complaint, it was clear that the Registrant was a practitioner of exceptional quality who had learnt their lesson and would not repeat their misconduct.

**Legal Advice on Impairment**

93. The Committee accepted the advice of the Legal Adviser who reminded the Committee of the criteria set out in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Paula Grant [2011] EWHC 927, namely whether the Registrant:

- Has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or

- Has in the past and/or is liable in the future to bring the profession into disrepute; and/or

- Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the profession

- Has in the past acted dishonestly and/or is liable to act dishonestly in the future

94. The Legal Adviser advised the Committee to ask, in accordance with the case of Cohen v General Medical Council [2008] EWHC 581, whether the Registrant’s conduct is easily remediable, whether it has in fact been remedied and whether it is highly unlikely to be repeated. The Legal Adviser advised the Committee to question whether the Registrant has demonstrated insight into their past behaviour. The Legal Adviser also advised the Committee to consider the public interest criteria in accordance with the case of Council for Healthcare Regulatory
Excellence v (1) Nursing and Midwifery Council (2) Paula Grant [2011] EWHC 927.

Decision on Impairment

95. The Committee concluded that it is highly unlikely that the Registrant will repeat their dishonest behaviour. The Committee accepted that the Registrant has shown genuine remorse into their past behaviour, and that the disciplinary process has been a salutary lesson. The Registrant has now admitted the Allegation in full. The Committee concluded that the Registrant has demonstrated genuine insight into the seriousness of their behaviour. The Committee noted that whilst dishonesty is by its nature difficult to remediate, the Registrant has continued in unrestricted practice for over four years since the date of the misconduct and there has been no suggestion that the Registrant has repeated their behaviour in that time. Professional colleagues have provided excellent testimonials on the Registrant’s behalf, describing the standard of the Registrant’s practise as high and saying that in their view the Registrant’s behaviour at the time was out of character.

96. In those circumstances, the Committee concluded that it is highly unlikely that the Registrant will repeat their dishonest behaviour. The Committee concluded that Registrant does not present a risk to the public, and that a finding of impairment is not required on public protection grounds.

97. However, the Committee concluded that the Registrant has acted dishonestly, thereby breaching a fundamental tenet of their profession and bringing their profession into disrepute. The dishonest amendment of clinical records is serious misconduct and demands a finding of impairment to protect the confidence held by the public in the profession and its regulator, and to promote and maintain proper professional standards for Optometrists.

98. Accordingly, the Committee concluded that the Registrant’s fitness to practise is currently impaired on public interest grounds alone.

Sanction

99. Mr Geering submitted that a suspension order for 12 months with no review was the appropriate sanction in the circumstances of the case. Mr Geering submitted that the dishonesty fell at the higher end of the scale. Mr Geering accepted that
erasure would be disproportionate in the light of the relevant mitigating factors, which included the Registrant’s remorse and insight.

100. Mr Thomas submitted that no further action, or failing that conditional registration, was the appropriate sanction. Mr Thomas proposed conditions requiring the Registrant to attend a CET accredited course on dishonesty, and to undertake regular charity work, which, Mr Thomas argued, would help to rebuild public confidence in the Registrant. Mr Thomas submitted that suspension would be disproportionate in that it would punish, rather than remedy, and would cause the Registrant to be removed from the NHS England Ophthalmic Performers List for the period of the suspension.

101. The Committee accepted the advice of the Legal Adviser who advised the Committee to consider the range of available sanctions in ascending order of seriousness; to consider any aggravating and mitigating factors in the case; to act proportionately; and to remember that the purpose of sanction is not to be punitive - rather the Committee should consider, in the circumstances of this case, the maintenance of public confidence in the profession, and the declaring and upholding of proper standards of conduct and behaviour. The Legal Adviser advised the Committee to take into account the factors set out in the GOC’s “Hearings and Indicative Sanctions Guidance”.

102. The Committee took into account the following mitigating factors:

- the Registrant’s previous good character
- the positive testimonials provided on the Registrant’s behalf attesting to the Registrant’s ability as a clinician and to the fact that their behaviour had been wholly out of character
- the lack of repetition since the date of the misconduct in 2016
- the Registrant’s admissions, remorse and insight.

103. The Committee took into account the following aggravating factors:

- the dishonesty had been directly concerned with the business of Optometry; the Registrant had sought to defeat an audit which goes to the heart of ensuring appropriate standards of practice in the Optometry profession
- the risk of harm to patients
- the Registrant’s position of trust
• the seriousness of the dishonesty, in that it was pre-meditated, and had occurred on multiple occasions, involving multiple patients, taking place over a significant period of time.

104. The Committee concluded that there were no exceptional circumstances to justify taking no action. To the contrary, in view of the seriousness of the misconduct, to take no further action would be insufficient to uphold standards and maintain confidence in the profession and the regulatory process.

105. The Committee concluded that a financial penalty would be inappropriate in that the Registrant had made no financial gain from their dishonesty.

106. The Committee concluded that conditional registration would not be appropriate in the light of the nature of the misconduct. It was not possible to identify conditions relevant to the conduct in question. It was accepted by both parties that there were no identifiable areas of the Registrant's practice that were in need of assessment or retraining; it was accepted that the Registrant was an excellent clinician. The misconduct related to dishonest behaviour and lack of professional integrity, which could not be addressed by means of conditions.

107. The Committee considered a Suspension Order.

108. The Committee took account of the seriousness of the dishonesty, which had been premeditated and had involved numerous patients over a lengthy period of time. The Registrant had had time between the dates of their dishonesty in which to reflect and desist; however, the Registrant had chosen to continue. The Registrant had been in a position of trust. The Registrant had been privy to information that had enabled the Registrant to amend the records that would be assessed in the audit, and had used that information to assist a colleague dishonestly. The Committee had heard that prior to the Registrant's misconduct the Registrant had been placed in the position of acting as a pre-registration supervisor. Regardless of that position of knowledge and authority, the Registrant went on to act in a manner that abused the trust that their employer had placed in the Registrant.

109. Nevertheless, the Registrant had made no personal gain from their actions. The Registrant was of previous good character and the Registrant’s references attested to the fact that the Registrant was widely regarded as an excellent clinician and as a person of integrity who had acted out of character. The Registrant had worked in unrestricted practice for over 4 years since the date of
the misconduct, without further complaint. The Registrant had admitted their behaviour, and had shown remorse and genuine insight.

110. Those factors led the Committee to conclude that a reasonable member of the public, in possession of all the facts, would accept that suspension was the proportionate sanction in the circumstances. The Committee concluded that an order of suspension would be sufficient to declare and uphold proper standards of conduct and behaviour and maintain confidence in the profession.

111. The Committee considered erasure but concluded that this would be disproportionate in the light of the mitigating factors of the case. The Committee also took into account the public interest that lies in retaining the services of a committed and talented Optometrist whose contribution to the profession is recognised by their colleagues.

112. The Committee gave consideration to the length of the order and concluded that 6 months was the appropriate length. The Registrant had not made any personal or financial gain, and had demonstrated insight into their actions. A sanction was required purely to mark the public interest. The Committee concluded that any lengthier period of time would be disproportionate in the light of all that the Registrant had undertaken since the misconduct, which included continuing in unrestricted practice and undertaking charitable work in connection with their profession.

113. The Committee therefore imposes a Suspension Order for a period of 6 months.

114. The Committee decided that a review hearing is not required prior to the expiration of this order as this sanction is designed solely to meet the public interest.

**Immediate order**

115. Mr Geering informed the Committee that in light of the Committee’s findings he was not applying for an immediate order.

116. The Committee had based its finding of impairment on public interest considerations alone, and the Committee concluded that it was not necessary to impose an immediate order as the public interest was adequately protected by the final order that had been imposed, which would come into effect in due course.
Chair of the Committee: Julia Wortley

Signature

Date: 13 April 2021

Registrant: Fazeela Makda

Signature ……present via videoconference………… Date: 13 April 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](http://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.