

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

GENERAL OPTICAL COUNCIL

F(23)11

AND

ANDREW MAYNARD (01-32510)

**DETERMINATION OF A SUBSTANTIVE REVIEW
15 MARCH 2024**

Committee Members: Julia Wortley (Chair/Lay)
David Abbott (Lay)
Mark McLaren (Lay)
Kamlesh Gohil (Optometrist)
Amit Jinabhai (Optometrist)

Legal adviser: Lara Akande

GOC Presenting Officer: Jerome Burch

Registrant: Present and represented

Registrant representative: Stephen George Smith

Hearings Officer: Terence Yates

Outcome: 18 months Conditional Registration Order



DETERMINATION

Factual Allegation as found proved

Patient A

- 1) *On or around 23 July 2021 you examined Patient A and you failed to keep an adequate record of your consultation with Patient A in that you did not record:*
 - a. *the number of times per day the chloramphenicol was to be administered by Patient A, and / or*
 - b. *the duration of use of the chloramphenicol by Patient A, and / or*
 - c. *to which eye the chloramphenicol should have been administered;*

Patient B

- 2) *On or around 18 July 2021 you examined Patient B and you failed to:*
 - a. *carry out an adequate examination and/or assessment of Patient B in that you did not:*
 - i. *check for staining with fluorescein, and / or*
 - ii. *make any or sufficient enquiries about Patient B's:*
 1. *care system, and / or*
 2. *compliance with the cleaning regimen, and/or*
 3. *poor comfort,*
 - iii. *establish contact lens age and / or condition,*
 - b. *keep an adequate record of your consultation with Patient B in that you did not record:*
 - i. *which eye the symptoms of dryness and / or stickiness occurred in, and / or*
 - ii. *details regarding the 'poor comfort', and / or*
 - iii. *whether the problem occurred when the contact lenses were new as well as old, and / or*
 - iv. *the number of days per week or month the contact lenses were worn, and / or*
 - v. *details of Patient B's care system, and / or*
 - vi. *details of Patient B's compliance with the cleaning regimen, and / or*
 - vii. *contact lens age, and / or*
 - viii. *contact lens condition;*

Patient F

- 3) *On or around 25 June 2021 you examined Patient F who present with signs and symptoms suggestive of neurological disease, including but not limited to:*
 - a. *headaches, and/or*
 - b. *patchy vision, and/or*
 - c. *swollen right optic disc, and / or*
 - d. *reduced visual acuity in the left eye, and / or*
 - e. *hemianopic visual field defect;*

- 4) *You sent Patient F home without discussing with and / or advising them that a very prompt referral was necessary to investigate the signs and symptoms.*
- 5) *You failed to appreciate that Patient F's presentation required an emergency referral.*
- 6) *As a result of 4 and 5 above you exposed Patient F to the risk that the specialist assessment of their condition would be inappropriately delayed.*

Patient G

- 7) *On or around 17 August 2021 you examined Patient G and you failed to:*
 - a. *keep an adequate record of your consultation with Patient G in that you did not record details in respect of the action plan, and / or*
 - b. *make an urgent referral regarding Patient G's:*
 - i. *presenting intra-ocular pressures, and / or*
 - ii. *reduced acuity, and / or*
 - iii. *deteriorated visual fields*

Background

1. The Registrant was first registered as an Optometrist in February 1985. At the time of the events, the Registrant was working as an Optometrist in the [redacted] practice of Boots Opticians, which was a role that he commenced in June 2021. Prior to starting with Boots Opticians, the Registrant had been on a break from practice for over a year. The Registrant has no past fitness to practise history.
2. The allegations relate to the Registrant's failings in relation to four patients (A, B, F, G) whom he examined between 25 June 2021 and 17 August 2021.

Patient F

3. On 25 June 2021, the Registrant carried out an eye examination on Patient F who presented with signs and symptoms of neurological disease, which included headaches and patchy vision for some six weeks previously. The examination revealed that Patient F had swollen optic discs (the right severely swollen), reduced visual acuity in the left eye and a bilateral visual field defect. These symptoms were indicative of a serious diagnosis such as a brain tumour or stroke and Patient F was subsequently diagnosed with a brain tumour.
4. The Registrant had examined Patient F in the morning and after the examination allowed Patient F to leave the practice, informing her that there would need to be a hospital referral. The Registrant failed to appreciate that Patient F's presentation required an emergency (i.e. within 24 hours) referral. The Registrant failed to discuss with and/or advise Patient F that a very prompt referral was necessary to investigate the serious clinical signs and symptoms that had been detected.
5. The Registrant sought advice from a colleague, Ms A, at lunchtime as to the correct referral tab to use on the SCI Gateway, the electronic referral system,



which has options for routine or urgent referrals. This prompted that colleague to review the patient record of Patient F and advise that the hospital needed to be telephoned for an appointment that day, as an electronic referral on the SCI Gateway could take up to seven days even when marked as urgent. It was the opinion of Dr Kwartz that the Registrant did not heed a very strong combination of clinical signs strongly suggestive of an abnormality and that Patient F should not have left the practice without being informed of the seriousness of the concerns and the potential implications of the same.

Patient B

6. On 18 July 2021, the Registrant carried out a contact lens aftercare on Patient B, who attended for a contact lens appointment. The Registrant's examination of Patient B was incomplete, as he did not use fluorescein, in order to conduct an examination of the cornea. Further, the Registrant did not make any or sufficient enquiries about Patient B's: care system, and/or compliance with the cleaning regimen, and/or poor comfort, establish contact lens age and/or condition, as these matters were not recorded within Patient B's patient record.
7. There were further failings in relation to the standard of the Registrant's record keeping, with there being a number of omissions identified by Dr Kwartz, for example in relation to the scant history of the dryness and stickiness experienced by Patient B and their lens fitting characteristics.

Patient A

8. On 23 July 2021, the Registrant carried out an eye examination on Patient A, who had injured his right eye on a tree branch when running several weeks earlier. The Registrant had examined Patient A at an earlier examination on 19 July, when he recommended that Patient A be re-examined in 5 days. At the follow up examination on 23 July, the Registrant advised the use of an antibiotic, chloramphenicol.
9. There were failings in the Registrant's record keeping, by not keeping an adequate record of his consultation with Patient A. He failed to record the number of times per day the chloramphenicol was to be administered by Patient A, and/or the duration of use of the chloramphenicol by Patient A, and/or to which eye the chloramphenicol should have been administered. When the Registrant's colleague, Ms B, examined Patient A in a further follow up appointment on 27 July 2021, she struggled to decipher the Registrant's notes.

Patient G

10. On 17 August 2021, the Registrant carried out an eye examination on Patient G. Patient G had been previously diagnosed with glaucoma, which had been initially difficult to manage. Patient G attended on 17 August for a community glaucoma check, which at that time, due to COVID, was being carried out by Boots Opticians. The Registrant's examination of Patient G identified significantly elevated intra-ocular pressures ('IOPs') at a level very likely to cause damage to the eye (34mmHg), reduced acuities and a deterioration in her visual fields, which could indicate advancing glaucoma which warranted referral back to the glaucoma clinic in the hospital.
11. The Registrant's assessment and record keeping in respect of Patient G was inadequate in that an inadequate history was recorded, it did not record whether

the patient was compliant with her eye drops and no action plan was stated. Further, there was no urgent referral of Patient G to the Hospital Eye Service (HES), which was required. Whilst a referral appears to have been drafted by the Registrant on the practice's electronic referral system, this was 'parked' as a draft referral and not sent until 29 September 2021, when it was picked up and sent by the Registrant's colleague.

12. Concerns were raised by the Registrant's colleagues and the Registrant was suspended by Boots Opticians on 28 September 2021, whilst the concerns were investigated further. Following an investigation meeting on 7 October 2021 and a disciplinary meeting on 21 October 2021, the Registrant was dismissed from his employment. On 2 December 2021, Boots Opticians made a referral to the Council regarding the Registrant.
13. Between 16-19, 24-26, 30 October – 1 and 7 November 2023, a substantive hearing was held, for which the Registrant attended and was represented. The Committee found all facts proved save for 7(c), and found that those facts found proved amounted to misconduct. It went on to find that his fitness to practise was impaired by reason of that misconduct. The Committee concluded that there was a real risk of repetition of similar conduct, it was of the view that the public would be concerned if no finding of impairment was made, given the lack of remediation and the Registrant's limited insight. The Committee determined that it was also necessary to make a finding of impairment in this case in order to maintain confidence in the profession and in order to uphold proper professional standards, particularly in respect of the Registrant's failings in respect of Patient F.
14. The Registrant's registration was made subject to conditions for 18 months with a review within 3 months.
15. The order is due to expire on 4 June 2025.

1st Sub Review – 15 March 2024

Findings regarding impairment

16. For the purpose of the Review, the Committee has been provided with documentation, including but not limited to, the following:
 - a. The determination from the substantive hearing, dated 7 November 2023;
 - b. Correspondence from the GOC to the Registrant subsequent to the substantive hearing regarding the Registrant's compliance with the conditions imposed;
 - c. A skeleton argument on behalf of the GOC, dated 26 February 2024;
 - d. Correspondence from the Registrant's representative dated 14 March 2024; and
 - e. A bundle of documents submitted on behalf of the Registrant concerning his financial position since the conclusion of the substantive hearing, received on the day of the Review hearing.

17. The Committee heard submissions from Mr Burch, on behalf of the Council, who summarised the background of the case and the findings of the earlier Fitness to Practise Committee. Mr Burch reminded the Committee that it was not bound by the view of the earlier Committee and must make its own independent judgment based upon all of the information before it today.
18. Mr Burch highlighted to the Committee what had happened since the conclusion of the substantive hearing in November 2023. Mr Burch submitted that the Council's position was that the Registrant's clinical and record keeping failures were of serious concern and presented a risk of harm to patients. The conditions, in particular the requirement for the Registrant to complete a personal development plan, were imposed to address the deficiencies in his practice.
19. Mr Burch referred the Committee to multiple chaser emails, dated between November 2023 and March 2024, from the Council to the Registrant requesting evidence of compliance with the conditions, which were not responded to.
20. Mr Burch submitted that the Council's position was that these conditions had not been complied with, and the burden rested with the Registrant to show that he has addressed the issue of impairment, which he had not done. Mr Burch reminded the Committee that insight is just as important at review hearings as it is in the original hearing. Mr Burch submitted that confidence in the profession would be undermined if a finding of impairment were not made in the circumstances.
21. Mr Burch referred the Committee to case law on impairment including the cases of *Cohen v GMC* [2008] EWHC 581 (Admin), *Blakely v GMC* [2019] EWHC 905 (Admin) and the case of *CHRE v NMC & Paula Grant* [2011] EWHC 927 (Admin).
22. The Committee then heard from Mr Smith on behalf of the Registrant. Mr Smith informed the Committee that save for a brief period of 5 weeks working in Specsavers, the Registrant has not practised as an Optometrist since June 2022. Mr Smith submitted that the Registrant was of the view that it would be premature to seek employment prior to undertaking CPD training to bring himself up-to-date. The Committee heard that 2023 had been a difficult year for the Registrant as there had been significant changes in his personal life. The Registrant was also party to [redacted], which, although now concluded, resulted in a large sum of the Registrant's money being held by [redacted] to date. Consequently, coupled with his unemployment, the Registrant has not had access to any funds to pay for, and undertake, the required CPD training identified in the conditions.
23. Mr Smith told the Committee that he anticipates the [redacted] will return the sum of money to the Registrant in the week starting 25 March 2024. At which point, the Registrant will have the funds to undertake the relevant CPD training.
24. The Registrant took the affirmation and gave evidence to the Committee. The Registrant stated that he was unable to complete the required CPD training as he did not have the money. The Registrant said that he had undertaken research on available CPD training and has made "a couple" of telephone calls to the Council enquiring about courses. The Registrant explained that he has also looked into free CPD, but none of those found were relevant to topics outlined in his conditions. He stated that once the [redacted] has released his funds, he intends to get "stuck in", undergo training and look for employment.

25. The Registrant accepted that he had received emails from the Council chasing for updates regarding his compliance with the conditions, and stated that he had thought he had replied to the email of 27 November 2023. With respect to the emails of 16 January, 2 February and 3 March 2024, he stated that he had suffered a [redacted] in January and that thereafter, he was either unaware that he had received the emails and/or had no explanation for why he had failed to respond. He stated that prior to November 2023, he had always engaged with correspondence from the Council.
26. The Registrant explained to the Committee that he had thought in great detail about the incidents and the effect of his failings in practice had on the patients concerned, particularly Patient F. He was of the view that his practice had been unsatisfactory and he felt that he had let down the profession as a whole. The Registrant acknowledged that his record keeping had also fallen “*well below*” the requisite standard.
27. Following questioning, the Registrant accepted that he had not drafted a Personal Development Plan (“PDP”), but stated that he has reflected on what he needs to do before securing employment as an optometrist.
28. The Committee heard and accepted the advice of the Legal Adviser who advised that upon Review, the Committee will need to consider impairment afresh *Clarke v GOC* [2017] EWHC 521 (Admin). She advised that the question of impairment was a matter for the Committee’s independent judgement taking into account all of the evidence it has seen and heard so far, and that a finding of impairment does not automatically follow a finding of misconduct - outlining the relevant principles set out in *Cohen v GMC* [2008] EWHC 581 (Admin). The Legal Adviser referred the Committee to the case of *Azzam v GMC* [2008] EWHC 2711 (Admin), and asked it to consider facts material to the practitioner’s fitness to practise looking forward, and for that purpose to take into account evidence as to his present skills or lack thereof and any steps taken, since the conduct criticised, to remedy any defects in skill.
29. The Legal Adviser referred the Committee to the test for considering impairment as set out by Dame Janet Smith in the fifth report of the Shipman Inquiry (para 25.67), and cited with approval in the case of *CHRE v NMC & Paula Grant* [2011] EWHC 927 (Admin).
30. The Committee noted that the focus of a review hearing is upon the current fitness of the Registrant to resume practice, judged in light of what they have, or have not, done since the substantive hearing and whether they remained currently impaired.
31. The Committee identified that the misconduct found proved concerned clinical matters, record keeping and patient management failures. Whilst in principle the Committee considered this conduct easily remediable, there was no evidence from the Registrant to demonstrate that it had been remediated, and therefore the Committee was concerned that a risk of repetition remained.
32. The Committee was mindful that the onus at a Review hearing was on the Registrant to demonstrate that he was no longer impaired and in effect there is a persuasive burden upon him to show that he is currently fit to practise unrestricted. Given the absence of a PDP, lack of evidence regarding the completion of targeted CPD and no work-based experience since June 2022, the

Committee was not satisfied that the Registrant had discharged that persuasive burden and there remained, at this time, a risk of repetition.

33. There has been no change in circumstances since the substantive hearing in November 2023. As such there remains in the Committee's view a risk to the public, and a finding of impairment was required on public protection grounds. Furthermore, the Committee concluded that the public interest required a finding of current impairment on public interest grounds, because if a well-informed member of the public was aware of the facts and history of this case, they would be concerned if no finding of impairment was made.
34. Accordingly, the Committee found that the fitness of the Registrant to practise as an optometrist is currently impaired.

Sanction

35. Having decided that the Registrant's fitness to practise is impaired, the Committee next considered what direction it should make pursuant to s13F(13) of the Act. The Committee heard submissions from Mr Burch on behalf of the Council and from Mr Smith on behalf of the Registrant.
36. Mr Burch referred the Committee to paragraphs 21.15, 21.19 and 21.20 of the Indicative Sanctions Guidance ("ISG"), and reminded the Committee that, having found the Registrant to be impaired, it had the power to maintain the existing conditions, vary them, or to change the type of order to one of suspension. Mr Burch asked the Committee to consider an order of Suspension due to the Registrant's non-compliance with the original conditions. However, Mr Burch submitted that the Council's position was that a Conditional Registration Order remained the appropriate order in the circumstances.
37. Mr Smith invited the Committee to maintain the Conditional Registration Order and submitted that the passage of time alone was not grounds enough to impose a Suspension Order. He submitted that the Registrant "*was very much looking to take things forward now*" with respect to his practice and had demonstrated a willingness to improve.
38. The Committee heard and accepted the advice of the Legal Adviser. She advised that the Committee should impose the least onerous sanction sufficient to meet the risks, having regard to the principle of proportionality and the public interest.
39. The Committee considered the sanctions available to it from the least restrictive to the most severe, as set out in the ISG. The Committee applied the principle of proportionality by weighing the Registrant's interest with the public interest.
40. The Committee was of the view that given the Registrant's lack of engagement with the Council since the substantive hearing, his failure to evidence compliance with the existing conditions, and the lack of material remediation and insight, it would not be appropriate or proportionate to revoke the order.
41. A financial penalty was not considered appropriate in the circumstances of this case.
42. The Committee next went on to consider whether the Conditional Registration Order remained a sufficient and proportionate response to the risks identified. The Committee noted that the original order was imposed for a period of 18



months on the grounds that there had been serious clinical deficiencies, record keeping deficiencies and patient management failures in the Registrant's practice. The Committee was of the view that four months have passed since the imposition of the conditions with no material action on the Registrant's part and no evidence that conditions had been complied with. However, the Committee was mindful of the Registrant's statement in evidence that he is committed to a return to safe practice. Although he had failed to engage with the conditions originally imposed by the substantive hearing, the Committee accepted that he had not yet had sufficient opportunity to demonstrate full compliance due to his exceptionally difficult personal circumstances which included financial hardship, and the absence of employment within optometric practice since the conclusion of the substantive hearing.

43. The Committee determined that it was proportionate to maintain the current Conditional Registration Order, with variations to condition A4.5. It was considered necessary to include a condition for the Registrant to write a reflective piece; to reflect on his practice and identify any improvements and changes he should implement as a result of what he has learnt from the incidents concerned. The Committee has in addition signposted how the Registrant is to create and implement his Personal Development Plan.
44. The Committee next considered the period for which the conditions ought to be extended (if at all), bearing in mind that the maximum is three years. It concluded that a period of 18 months from today's date is required and proportionate. The Committee considered, given the Registrant's plans for a return to practice, it would take this period for him to be able to demonstrate that he had gained the relevant CPD and clinical experience necessary. The Committee determined that there should be an earlier than usual review hearing so that the Registrant's progress in complying with these conditions could be monitored.
45. The Committee is of the view that it will be necessary to review the order within six months to assess the Registrant's compliance to date with these conditions, particularly in respect of the formulation and implementation of his PDP, completion of his CPD and engagement with the Council.
46. It is anticipated that there may need to be a further review hearing, at a period to be set at the six-month review, so that a future Review Committee can be reassured that the Registrant is fit in due course to resume unrestricted practice, or, to practise with less stringent conditions.
47. The Committee therefore imposed a Conditional Registration Order for a period of 18 months from today's date, with a review hearing to take place within six months.

Chairman of the Committee: Julia Wortley



Signature

Date: 15 March 2024

Registrant: Andrew Maynard

Signature present and received via email

Date: 15 March 2024

List of conditions

<p>A1.1 Informing others</p>	<p>You must inform the following parties that your registration is subject to conditions. You should do this within two weeks of the date this order takes effect (or within two weeks of obtaining employment, if later).</p> <ul style="list-style-type: none"> a. Any organisation or person employing or contracting with you to provide paid or unpaid optical services, whether or not in the UK (to include any locum agency). b. Any prospective employer or contractor where you have applied to provide optical services, whether or not in the UK. c. Chairman of the Local Optometric Committee for the area where you provide optometric services. d. The NHS body in whose ophthalmic performer or contractor list you are included or are seeking inclusion.
<p>A1.2 Employment and work</p>	<p>You must inform the GOC if:</p> <ul style="list-style-type: none"> a. You accept any paid or unpaid employment or contract, whether or not in the UK, to provide optical services. b. You apply for any paid or unpaid employment or contract to provide optical services outside the UK. c. You cease working. <p>This information must include the contact details of your prospective employer/ contractor and (if the role includes providing NHS ophthalmic services) the relevant NHS body.</p>



<p>A1.3 Supervision of Conditions</p>	<p>You must:</p> <ol style="list-style-type: none"> a. Identify a workplace supervisor who would be prepared to monitor your compliance with numbers 4.4 and 4.5 of these conditions. b. Ask the GOC to approve your workplace supervisor/learning supervisor within two weeks of the date this order takes effect. If you are not employed, you must ask us to approve your workplace supervisor before you start work. c. Identify another supervisor if the GOC does not agree to your being monitored by the proposed supervisor. d. Place yourself under the supervision of the supervisor and remain under his/her supervision for the duration of these conditions. e. At least once a month meet your supervisor to review compliance with your conditions and your progress with any personal development plan. f. At least every three months or upon request of the GOC, request a written report from your supervisor to be provided to the GOC, detailing how you have complied with the conditions he/she is monitoring. <p>Inform the GOC of any proposed change to your supervisor and again place yourself under the supervision of someone who has been agreed by the GOC.</p>
<p>A1.4 Other proceedings</p>	<p>You must inform the GOC within 14 days if you become aware of any criminal investigation or formal disciplinary investigation against you.</p>
<p>A1.5 Registration requirements</p>	<p>You must continue to comply with all legal and professional requirements of registration with the GOC.</p> <ol style="list-style-type: none"> a. A review hearing will be arranged at the earliest opportunity if you fail to:- b. Fulfil all CPD requirements; or <p>Renew your registration annually.</p>
<p>A4.4 Assessment of records</p>	<p>You must:</p> <ol style="list-style-type: none"> a. In consultation with the Chairman of your Local Optometric Committee or your workplace supervisor, identify an independent assessor, who may be your workplace supervisor, willing to review a random selection of your patient records.



	<p>b. Arrange for the assessor to review 10 randomly selected patient records within one month of starting employment and monthly thereafter.</p> <p>At least two weeks before the next review hearing, provide the GOC with a written report from the independent assessor (if appointed at that stage), setting out his/her views on the quality of the records reviewed.</p>
<p>A4.5 Personal development</p>	<p>a. You must write a reflective piece for the next Review Committee, reflecting on your clinical practice and identify any improvements and changes you should implement as a result of what you have learnt from the incidents with Patients B, F and G.</p> <p>b. You must write a Personal Development Plan (“PDP”) and submit a copy of your PDP to the GOC for approval within one month of these conditions taking effect.</p> <p>c. Once you have identified your workplace supervisor, you must work with them to update and monitor continuing progress with your PDP.</p> <p>d. You must complete CPD, which should be specifically designed to address deficiencies in the following areas of your practice:</p> <ul style="list-style-type: none"> i) Record-keeping; ii) Contact lens aftercare; iii) IT skills and in particular in relation to online referrals; iv) How to deal with emergency cases; v) Communication skills, including how to deliver bad news; vi) Glaucoma; vii) Returning to practice after a break.