

HEARING HEARD IN PUBLIC

MACHITA, Cornel

Registration No: 115883

PROFESSIONAL CONDUCT COMMITTEE

October 2015 – January 2016

Outcome: Fitness to practise impaired – erasure & immediate order of suspension

Cornel MACHITA, a dentist, Registered under s16(2A) Dentists Act 1984; was summoned to appear before the Professional Conduct Committee on 7 October 2015 for an inquiry into the following charge:

Charge (as amended)

“That, being a registered dentist:

Indemnity cover

1. [withdrawn by the GDC]
2. You provided dental advice and treatment to patients when you were not in possession of indemnity cover for some or all of the following periods:
 - (a) 17 August 2013 – 14 October 2013;
 - (b) 15 October 2013 – 21 December 2013;
 - (c) 10 January 2014 – 15 February 2014.
3. In an application for indemnity cover dated 4 February 2014, you:
 - (a) responded to the question *‘have you ever had conditions to practice, been suspended from practice or dismissed from practice’* by circling the word *‘no’*;
 - (b) signed a declaration stating *‘I declare that the statements and particulars contained in the proposal are true and that I/we have not mis-stated or suppressed any material facts’*.
4. Your conduct at paragraphs 3(a) and/or (b) above was:
 - (a) misleading;
 - (b) dishonest, in that you knew that your inclusion on the Performers List of Sussex and Weald Primary Care Trust was made subject to a period of conditions on around 5 June 2009 (“the conditions”).

Submissions to NHS England

5. At an NHS England Oral Hearing on 11 July 2014 you informed the Panel that you practised dentistry without indemnity cover between 16 January 2014 and 17 February 2014 or words to that effect.

6. Your conduct at paragraph 5 was:
- (a) misleading;
 - (b) dishonest, in that you knew that this was not the full extent of the period that you practised dentistry without indemnity cover.

Indemnity cover

7. Your conduct at paragraphs 2(a), (b) and/or (c) was dishonest, in that you provided dental advice and treatment to patients when you knew that you:
- (a) were required to have appropriate professional indemnity cover (“indemnity cover”) in place if you were to practise dentistry;
 - (b) did not have appropriate indemnity cover in place.

Submissions to NHS England

8. At an NHS England Oral Hearing on 30 July 2014 you told the Panel words to the effect that you had:
- (a) practised dentistry without indemnity cover between August 2013 and February 2014;
 - (b) been informed by All Med Pro that the conditions did not affect the validity of your indemnity cover.
9. Your conduct at paragraph 8(a) was:
- (a) misleading;
 - (b) dishonest, in that you knew that:
 - i. your indemnity cover had been retrospectively terminated and you were without cover from 5 January 2013;
 - ii. your representation at 8(a) above was false.
10. Your conduct at paragraph 8(b) was:
- (a) misleading;
 - (b) dishonest, in that you knew that:
 - i. your representation to the Panel was a false account of what you had been informed by All Med Pro;
 - ii. All Med Pro had informed you that your provider of indemnity cover would likely refuse a claim or words to that effect.

And that in relation to the matters set out above, your fitness to practise is impaired by reason of your misconduct.”

On 8 October 2015 Chairman made the following statement regarding the decision to proceed with the hearing:

“Mr Machita: The Professional Conduct Committee (PCC) hearing of your case commenced yesterday. It is scheduled to last for three days. You are representing yourself at these proceedings and you are participating via skype from Italy. The General Dental Council

(GDC) has made available to you a Romanian interpreter to assist you throughout the hearing. The Romanian interpreter is in attendance at the hearing in London. Ms Bruce, Counsel, you are representing the GDC.

At the outset of this hearing, the Committee Secretary began reading out the charges against you, during the course of which you made some admissions. However, during the course of this exercise, the Committee was concerned that that you did not have before you all of the charges against you. The Committee decided to adjourn the hearing for a short break so that the GDC could email you a copy of all the charges. Following a further adjournment you confirmed that you had received the email containing all of the charges. Thereafter, the Committee, of its own volition, invited submissions from both parties as to whether to proceed with this hearing, given that it had concerns as to whether you had been served notice of all of the charges against you. It also asked whether it was fair to proceed on the basis of you continuing to participate via skype, with the assistance of an interpreter in the hearing room, or whether it was appropriate to adjourn with a view to investigating alternative options.

Ms Bruce outlined the background history of your case and the allegations that this PCC is due to consider. By way of a letter dated 29 April 2015 the GDC placed you on notice that it was intending to make made an application under Rule 25 of the GDC (Fitness to Practise) Rules 2006 (the 'Rules') to join an additional four heads of charge to the existing six heads of charge at the PCC hearing of your case. That hearing was scheduled to commence on 30 July 2015. On that occasion you represented yourself and you participated via skype from Italy. However, there were technical difficulties with the sound on skype and that PCC decided to adjourn the hearing, without having made a decision in respect of Rule 25.

As the PCC hearing of July 2015 was adjourned, the GDC's application under Rule 25 was considered at a preliminary meeting before a Committee on 8 September 2015. You participated at this hearing via skype. That Committee acceded to the application made by the GDC to allow the new allegations (the "Rule 25 allegations") to be joined to the existing charges in the notice of hearing. The GDC notified you of this decision by letter dated 8 September 2015, which you acknowledged you had received. This Committee has also noted the schedule of your admissions in relation to the "Rule 25 allegations", which you signed and dated on 21 July 2015.

Ms Bruce submitted that it is fair to proceed with the hearing with the current arrangements. She confirmed that the GDC has served on you the original allegations and the "Rule 25 allegations, in accordance with the Rules. Further, she drew the attention of the Committee to the documents which demonstrates that you made representations in connections with them. In respect of arrangements for your attendance at the hearing, Ms Bruce made the point that you had indicated to the GDC that you would not be attending this hearing in person and that you had chosen to participate via skype. She also submitted that the hearing of your case has already been adjourned on one occasion on 30 July 2015 and that there is a clear public interest in proceeding with this hearing. In addition, Ms Bruce reminded the Committee that in considering whether to proceed with the hearing, it should have regard to the issue of fairness to both parties. This includes the fact that Ms Copage, Assistant Director of Revalidation for the Wessex Sub-Regional Team, one of the GDC's witnesses, has attended the hearing for a second time, having already been present for the hearing on 30 July 2015. Finally, Ms Bruce submitted that throughout the hearing she has a duty to ensure that the GDC acts in a fair and reasonable way. Ms Bruce assured the Committee that were she to have any concerns in this regard, she would raise them promptly.

Following the luncheon adjournment, Ms Bruce made further submissions to support her contention that the GDC has notified you of the original allegations against you, as well as the "Rule 25 allegations", including an amendment to one of those allegations, in accordance with the Rules. She referred the Committee to a number of documents from the GDC to you regarding this matter.

You acknowledge that you have received some of documents referred to by Ms Bruce, but not all of them. However, you say that you found it confusing receiving a number of letters that appeared to contain duplicate information. Nevertheless, your position is that you are content to participate in your hearing via skype and that you wish matters to proceed quickly.

The Committee has considered carefully the submissions made. It has accepted the advice of the Legal Adviser. It is aware that in considering whether to proceed at this stage it must be satisfied that it is fair for both parties to do so. Both parties have confirmed that they wish the hearing to proceed without any postponement or adjournment.

The Committee first considered whether you have been properly notified of the allegations against you in accordance with the GDC's Rules. Having regard to all the documents before it, and in particular, the letter dated 8 September 2015, which notifies you of the original allegations, as well as the "Rule 25 allegations", and that they will be both considered at this hearing, the Committee is satisfied that you are aware of the allegations against you. It also notes that you have also made some admissions in respect of the "Rule 25 allegations".

The Committee then went on to consider whether it was fair to proceed with this hearing. It notes that both parties wished the hearing to proceed. Furthermore, you have indicated that you are content to participate at this hearing via skype. The Committee considers that there is a clear public interest in proceeding with the hearing, particularly given that it has already been adjourned on a previous occasion on 30 July 2015. No purpose would be achieved by adjourning again. Ms Copage has attended the hearing for the second time to give evidence. Taking all these factors into account, the Committee is satisfied that it is fair to continue with this hearing, but will review the situation, should the need arise."

On 9 October 2015 the hearing adjourned part heard. On 5 January 2016 the hearing resumed in camera.

On 6 January 2016 Mr Machita did not attend and was not represented at the hearing, the Chairman made the following statement regarding the decision to proceed in Mr Machita's absence. He addressed this to the Counsel for the GDC.

"Mr Mulchrone: Mr Machita is not present or represented at today's resumed hearing of his case. You are representing the General Dental Council (GDC). Mr Machita participated at the hearing of his case via Skype link from Italy, which began on 7 October 2015 and went part heard on 9 October 2015. Ms Bruce, Counsel, represented the GDC on that occasion. On 9 October 2015 Mr Machita was advised that the hearing would be resuming on 5 January 2016 for three days, and that he would not be needed on the first day as the Committee would be making decisions on the facts in camera. Mr Machita was further advised that the GDC Office would notify parties by 4:30 London time, on 5 January 2016, regarding progress, with a review to resuming in public on 6 January 2016. Mr Machita indicated on 9 October 2015 and 13 October 2015 that he would be attending the hearing via Sykpe on 6 January 2016.

You have provided the Committee with a bundle of documents which contains a number of letters from Capsticks Solicitors (acting on behalf of the GDC) regarding arrangements for today's hearing. This includes a letter dated 13 October 2015 from Capsticks to Mr Machita concerning today's hearing and a formal notice of today's hearing dated 10 December 2015, confirming its date, time and location. The Royal mail track and trace receipt confirms that the letter was delivered to Mr Machita's registered address in Italy on 15 December 2015. You have also drawn the Committee's attention to Mr Machita's responses to AH (Senior Lawyer at Capsticks Solicitors) in respect of arrangements for today's hearing. In particular, you referred the Committee to AH's detailed telephone attendance note of a conversation that took place between AH and Mr Machita yesterday. AH had telephoned Mr Machita to confirm whether Mr Machita proposed to attend this hearing via Skype or in person. The telephone attendance note records as follows: "Mr Machita said he has nothing to say, and has told us before that he does not want to hear from us ... Mr Machita said that he doesn't want to be disturbed anymore. AH asked him again if he will attend by Skype tomorrow. Mr Machita said that he has a day off tomorrow, but will not attend the hearing (by Skype). He asked that we do not write to him anymore ... ". The Committee notes from that telephone note that AH has explained to Mr Machita the matters that the Committee will consider at the second stage of the hearing, following its announcement on their findings of fact. It is also clear from that note that AH advised Mr Machita that if he does not attend the hearing, the Committee "will not have the opportunity to hear any comments he wishes to make about this before reaching their decision (which could impact on his GDC registration)." The note records that "... Mr Machita reiterated that he will not attend the remainder of the hearing. He does not want the Committee to contact him on Skype ...".

On 5 January 2016 the Committee Secretary sent an email to Mr Machita confirming that the Committee would be resuming the following day at 09.30 am. Mr Machita was also informed that a Skype link would be set up at 09.15 am (GMT) and that a Romanian interpreter had been booked. No response had been received to that email.

The Committee has accepted the advice of the Legal Adviser. It has borne in mind that the discretion to proceed in the absence of the respondent should be exercised with the utmost care and caution and that it must have in mind the fairness to Mr Machita as well as to the GDC. It has also had regard to the public interest and Mr Machita's own interests in the expeditious conclusion of his case.

Having regard in particular to the telephone attendance note, from which it is clear that Mr Machita has stated repeatedly that he will not attend the remainder of the hearing, the Committee has concluded that Mr Machita has voluntarily absented himself from these proceedings. It considers that no useful purpose would be served by adjourning this hearing, given his indication that he no longer wishes to participate in these proceedings. Further, Mr Machita has not sought an adjournment of this hearing nor indicated that he would attend on a future date. In all of the circumstances, the Committee is satisfied that it is in the public interest to proceed with this part heard hearing in Mr Machita's absence."

On 6 January 2016 the Chairman made the following statement regarding the finding of facts:

“Mr Machita:

The General Dental Council’s (GDC) case

The GDC’s case against you relates to allegations concerning you providing dental advice and treatment to patients at various dates between August 2013 and February 2014 when you were not in possession of appropriate professional indemnity cover. It also alleges that your submissions to NHS England at oral hearings on 11 July 2014 and 30 July 2014 in relation to the issue of your indemnity cover were misleading and dishonest. It is alleged that you knew that you did not have appropriate indemnity cover in place and that your conduct in this regard was misleading and dishonest. It is also alleged that in respect of your application for indemnity cover with Marketform Ltd, dated 4 February 2014, in response to the question: ‘have you ever had conditions to practice, been suspended from practice or dismissed from practice’, you circled the word ‘no’, which was misleading and dishonest in that you knew that your inclusion on the Performers List of Sussex and Weald Primary Care Trust (the PCT) had been made subject to a period of conditions on or around 5 June 2009.

The background to this case is that you were a member of the Medical Protection Society (MPS) from 12 October 2007 up until and including 4 January 2013. This meant that you were entitled to the full benefits of membership of the MPS, including the right to request assistance or indemnity in the event of a patient claim arising out of your professional practice as a dental practitioner. Your membership with the MPS was terminated on 16 August 2013 due to non-payment of your fees. You re-applied to MPS on 24 October 2013. Your application for membership was denied and the MPS notified you of this by way of letter dated 9 December 2013. You then applied to the Medical Defence Union (MDU), who gave you a period of canditure between 22 December 2013 and 9 January 2014, whilst it decided on your membership, before confirming its decision not to offer membership on 10 January 2014.

NHS Commissioning Board (NHS England) carried out an investigation into your indemnity cover following receipt of an email dated 16 April 2014 from Integrated Dental Holdings Limited (IDH), your then employer. IDH notified NHS England that it had terminated your contract of employment on 11 April 2014 because you failed to provide evidence of your indemnity cover between 16 January 2014 and 17 February 2014. In an email dated 25 April 2014 IDH advised NHS England that a meeting took place between IDH and you on 11 April 2014 so as to give you an opportunity to provide it with the relevant documents of your indemnity cover. The email states that during that meeting you admitted to IDH that you had not been covered with indemnity insurance between 16 January 2014 and 17 February 2014.

NHS England wrote to you on 27 May 2014, explaining the background to the complaint and requesting that you provide a copy of your indemnity cover certificate within seven days. NHS England received no response to that request. On 9 July 2014 a Performance Screening Group (the Group) met to consider your case. It was concerned that you had potentially worked without indemnity cover. The Group referred your case to a Performers List Decision Panel (the Panel) for consideration of suspension under the NHS (Performers Lists)(England) Regulations 2013. NHS England notified you that day of the Group’s decision and invited you to attend an oral hearing on 11 July 2014. You were asked to bring copies of your current and previous indemnity cover certificates to that hearing.

You sent an email to NHS England dated 9 July 2014 in which you explained that you did not inform IDH about your lack of indemnity cover for fear of losing your job. You also stated that you were unable to find copies of your indemnity certificates but that you were hoping to be able to provide them at the forthcoming hearing. You sent a further email to NHS England on 9 July 2014, attaching a scanned copy of your certificate of insurance from Marketform Ltd. You also provided NHS England with three copies of indemnity certificates issued by Dental Protection.

You attended the First Oral Hearing on 11 July 2014. During the hearing you informed that Panel that you knowingly practised dentistry without indemnity cover between 16 January 2014 and 17 February 2014. You confirmed that you currently held indemnity cover with Marketform Ltd.

That Panel also heard that you had been included on the Dental Performers Lists in Lincoln, Sussex and Weald, City and Hackney, Kent and Medway. In respect of the Sussex and Weald Primary Care Trust (the PCT), conditions were imposed on your inclusion. You advised that Panel that you had fulfilled all the conditions imposed by the PCT.

That Panel agreed to dispose of the proposal to suspend your registration on condition that you provided evidence that your current indemnity policy covered the liabilities appropriate for your type of dental work. That Panel's decision was confirmed to you by letter dated 14 July 2014.

On 14 July 2014 you provided NHS England with a copy of your application for indemnity cover with Marketform Ltd. That documentation stated that your previous indemnity cover had been cancelled in August 2013.

On 16 July 2014 NHS England wrote to you, asking you to provide evidence that your current indemnity policy was appropriate for your type of dental work, as well as to request your attendance at a further meeting on 18 July 2014. At that meeting you confirmed that you were only without indemnity cover between 16 January 2014 and 17 February 2014. That Panel agreed that you should be suspended from the NHS Dental Performers List (the List) with immediate effect. You were notified of the Panel's decision on 18 July 2014. On 20 July 2014 you sent an email to NHS England in which you made some observations about the meeting. On 22 July 2014 NHS England wrote to you, advising you that a Panel had reviewed the decision to suspend you immediately on 18 July 2014 and had confirmed that the suspension should remain in place.

You were offered an opportunity for a Second Oral Hearing to enable you to put your case against your prospective removal from the NHS Dental Performers List. You confirmed that you wished to attend. The Second Oral Hearing took place on 30 July 2014. At that hearing you produced copies of a number of documents, including a letter from MPS dated 9 December 2013, declining membership with you. During that hearing you made a number of representations to that Panel, including the fact that you had worked without indemnity from August 2013 until February 2014 and that you had cancelled your direct debit payments to MPS due to your inability to make the payments. You also explained that during a telephone conversation with All Med Pro (brokers for Marketform) you had declared the conditions put in place by the PCT and all previous complaints made against you, and Marketform had advised you that it did not affect your indemnity cover with them. That Panel agreed that your suspension for six months should remain in place while the Board decided whether or not to remove you from the List. NHS England sent you a letter following the Second Oral Hearing, dated 4 August 2014.

Your case

You have accepted that you practised dentistry without indemnity cover between August 2013 and February 2014. However, you say that you were not aware that you were practising without indemnity cover until after 15 October 2013, you found out by telephone when you spoke to the MPS and they informed you that they had cancelled your indemnity insurance. You say that you never received the letter from MPS to you dated 16 August 2013, which informed you that your membership had been terminated. In respect of your answers on your application to Marketform for indemnity cover dated 4 February 2014, you say that you knew your registration had been subject to conditions up until February 2012 but that it was your understanding that the question related to whether your registration was currently subject to conditions. You say that you made a mistake in circling the word 'no' on the form, but that you did not intend to mislead or to be dishonest. During the course of your evidence you accepted that you had misled NHS England.

Admissions and withdrawals of the charges

At the outset of the hearing in October 2015 Ms Bruce confirmed that the GDC was no longer pursuing charge 1. In her closing submissions on the facts, Ms Bruce confirmed that in respect of charge 7, the GDC was not able to discharge its burden in relation to charge 2(a). In the light of that indication, the Committee agreed to formally withdraw charge 1 and charge 7 insofar as it relates to charge 2(a).

You made admissions to the following charges: 2(b), 2(c), 3(a), 3(b), 5 and 8(a). The Committee noted these admissions but decided to defer its decision on these charges until it had received all the evidence.

Evidence received and findings of facts

The Committee has considered carefully all the evidence in this case. This includes the hearing bundle provided by the GDC which contains a number of documents, including the witness statements of MC (Assistant Director of Revalidation for the Wessex Sub-Regional Team), with accompanying exhibits; a letter dated 23 March 2015 from the MPS; a signed witness statement from TC (Company Director of All Med Pro), as well as a signed witness statement from DC (Head of Operations at MDU Ltd). The Committee received oral evidence from MC. She confirmed the content of her witness statement as a true and accurate record. The Committee found her to be a consistent and credible witness.

The Committee has also had regard to your own evidence, as well as your written submissions dated 13 May 2015, 18 May 2015, 22 July 2015 and 11 October 2015. The Committee considered that you sought to blame others and failed to take full responsibility for your own actions. It found your evidence to be inconsistent and considered that you were not a reliable witness.

In respect of the charges alleging that your conduct was dishonest, the Committee has been advised by the Legal Adviser that it must consider as follows:

- First, whether the registrant acted in the way alleged;
- Secondly, if, having acted in that way, whether that was dishonest according to the ordinary standards of reasonable and honest registrants.
- Thirdly, if it was dishonest by those standards, whether you must have realised that what you were doing was by those standards dishonest.

You admitted the factual basis of the charges relating to dishonesty, although you did not accept that your actions were dishonest. The Committee has noted that you are to be considered of good character in that you have no previous history before the GDC.

During the course of Ms Bruce's submissions, the Committee's attention was drawn to the case of *Twinsectra Ltd v Yardley and others* [2002] ULHL 12 regarding the test for dishonesty and the *Professional Standards Authority v (1) General Chiropractic Council (2) Briggs* (2014) [2014 EWHC 2190] (Admin) in relation to indemnity insurance.

The Committee has taken into account all the evidence presented to it. It has accepted the advice of the Legal Adviser. The Committee has borne in mind that the burden of proof is on the GDC and that it must decide the facts according to the civil standard of proof, on the balance of probabilities. In accordance with that advice the Committee has considered each charge separately. I will now announce the Committee's findings in relation to each of the charges:

2. a)	<p>Found proved</p> <p>The Committee has had regard to the letter dated 23 March 2015 from the MPS to the GDC which states: "Mr Machita's membership was terminated on 16 August 2013 due to non-payment of subscription ... Mr Machita was informed by MPS that his membership had been terminated by way of an automatically generated letter dated 16 August 2013. ... Mr Machita applied to MPS to re-join the membership on 24 October 2013. Mr Machita's application for membership was denied and Mr Machita was informed of this by way of letter dated 9 December 2013." Your case is that you never received the letter from MPS dated 16 August 2013, informing you that it had cancelled your cover. In your letter to Capsticks Solicitors dated 13 May 2015 you stated that on 15 October 2013 you found out by telephone that your insurance with MPS had been cancelled. You further stated that "Working without insurance was wrong and I shouldn't have done it. I regret and apologise for this." In addition, the Committee has received a copy of an NHS payment of schedules which confirms that you were providing dental services covering the period from August 2013 to February 2014. Accordingly, the Committee finds this charge proved.</p>
2. b)	<p>Found proved</p> <p>You accepted this charge at the outset.</p>
2. c)	<p>Found proved</p> <p>You accepted this charge at the outset.</p>
3. a)	<p>Found proved</p> <p>You accepted this charge at the outset. The Committee has also seen a copy of your application form for indemnity cover with Market Form in which you circled "No" in relation to whether you ever had conditions of practice.</p>
3. b)	<p>Found proved</p> <p>You have accepted that you signed a declaration at the end of the form, stating that the contents were true and that you had not mis-stated or suppressed any material facts.</p>

4. a)	<p>Found proved in relation to paragraphs 3(a) and 3(b)</p> <p>The Committee has seen a copy of the letter from the Trust to you dated 5 June 2009, which makes it clear that your inclusion on its Dental Performers' List is subject to your compliance with conditions, the details of which were set out in the letter. You referred to these conditions in your letter to Capsticks Solicitors dated 18 May 2015. In the light of this evidence, the Committee is satisfied that at the time when you applied for indemnity cover in February 2014, you must have been aware that you had been subject to conditions. By circling 'No' to the question 'have you ever had conditions to practice, been suspended from practice or dismissed from practice' in the application form, the Committee is satisfied that you gave a deliberately misleading impression to the insurers that you had never had conditions of practice, when in fact you knew that they had been in place since June 2009. It is further satisfied that your conduct was misleading in signing a declaration form, to the effect confirming that the contents are true and have not been mis-stated, when this was not the case.</p>
4. b)	<p>Found proved in relation to paragraphs 3(a) and 3(b)</p> <p>The Committee considers that the form is written in plain language and that as an educated professional, you would have been aware of its meaning. It did not accept your explanation that you made a mistake in circling the word 'No'. Indeed, in your email to the NHS dated 5 August 2014, you accepted that your actions in this regard was "wrong". Taking all these factors into account, the Committee is satisfied that, in applying the objective and the subjective test, your conduct in relation to paragraphs 3(a) and 3(b) was dishonest.</p>
5.	<p>Found proved</p> <p>You accepted this at the outset of the hearing.</p>
6. a)	<p>Found proved</p> <p>In your evidence at this hearing you have accepted that at the meeting of 11 July 2014 you did not say "the whole truth" in that you omitted to inform NHS England of the full extent of the period when you practised dentistry without indemnity cover.</p>
6. b)	<p>Found proved</p> <p>The Committee is satisfied that, in applying the objective and the subjective test, your conduct was dishonest in that you knew that the lack of indemnity cover covered a longer period than between 16 January 2014 and 17 February 2014, which you told NHS England at the hearing on 11 July 2014.</p>
7. a) and 7. b)	<p>Found proved in relation to paragraphs 2(b) and 2(c)</p> <p>During the course of your evidence you have accepted that you knew that you should have had indemnity cover for the periods set out in these paragraphs. In your email to NHS England dated 20 July 2014, you apologised for working without cover and stated that you were "forced in this situation by the amount of money to pay", that you had made a "big mistake" and that you regretted what you had done. The Committee also notes from the evidence before it that during the periods set out in these paragraphs you approached other insurers for quotes. In your evidence, you told the Committee that you did not think that by</p>

	<p>holding yourself out to be able to practise dentistry in the knowledge that you did not have indemnity cover, your conduct was dishonest. This was on the basis that you offered to pay for any claims that might have appeared during the periods set out in these paragraphs. This explanation is not a defence to being dishonest. You sought to mitigate your lack of indemnity cover as being an “error, a mistake.” The Committee considered that as a registered dentist, you would have been aware of your professional responsibility to ensure that you had indemnity cover before providing dental advice and treatment to patients. You chose to continue to practise as a dentist in the knowledge that you did not have appropriate indemnity cover in place. It is satisfied that in applying the objective and the subjective test, your conduct was dishonest.</p>
8. a)	<p>Found proved</p> <p>You accepted this at the outset of the hearing. The Committee has also had regard to the evidence of MC, which it has accepted, in relation to this charge.</p>
8. b)	<p>Found proved</p> <p>The Committee has accepted the evidence of MC in relation to this charge. In your evidence you also agreed that you told NHS England at the hearing on 30 July 2014 that you had been informed by All Med Pro that the conditions did not affect the validity of your indemnity cover.</p>
9. a)	<p>Found proved</p> <p>You have accepted that you became aware on 15 October 2013 that you did not have indemnity cover. The Committee has had regard to the email dated 21 July 2014 from TC to you. In that email TC states: “it does look as though you have been uninsured since 2013 and not January 2014. I have a letter of good standing from MPS which was issued on 5 February 2014 showing your membership lapsed on 4 January 2013, not August.” TC goes on to state; “So, in actual fact it is probable that you were without cover for 13 months and not 8 which if the NHS investigate further will address further concerns.” You agreed that you had received this email. The Committee is satisfied that your conduct in this regard was misleading in that you failed to inform NHS England at the hearing on 30 July 2014 of the full extent of your lack of indemnity cover, as informed by TC in his email dated 21 July 2014.</p>
9. b)(i)	<p>Found not proved</p> <p>The Committee had regard to the wording of the charge and was not satisfied that your indemnity cover “had been” retrospectively terminated, given that in TC’s email dated 21 July 2014, he refers to it being “probable” (ie not actually).</p>
9. b)(ii)	<p>Found not proved</p> <p>The Committee was satisfied that as a matter of fact you did practise dentistry without indemnity cover between August 2013 and February 2014 and therefore this representation was not false.</p>
10. a), 10. b)i) &	<p>Found not proved</p> <p>The Committee had regard to the un-redacted witness statement of TC in which he states that: “To the best of my knowledge, a conclusion was never reached</p>

10. b) ii)	by Marketform as to whether the apparent non-disclosures referred to above invalidated the Marketform Policy, because it was superseded by the cancellation of the Policy.” Accordingly, the Committee concluded that it was not proved to the requisite standard that your conduct as set out in 8(b) was either misleading or dishonest.
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We move to Stage Two.”

On 6 January 2016 the Chairman announced the determination as follows:

“Mr Mulchrone: In accordance with Rule 20 of the General Dental Council (Fitness to Practise) Rules Order of Council 2006, the Committee has considered the submissions you have made on behalf of the General Dental Council (GDC) at this stage of the proceedings. It is aware that Mr Machita has no previous history before the GDC.

Misconduct

The Committee first considered whether the facts found proved amount to misconduct. You have submitted that the findings against Mr Machita, whether taken individually or collectively, are serious and amount to misconduct. During the course of your submissions you referred the Committee to the relevant standards contained in the GDC’s ‘Standards for Dental Professionals’ (May 2005 and September 2013), which, you say, Mr Machita has breached. The Committee has accepted the advice of the Legal Adviser.

In brief, this case concerns Mr Machita’s failure to hold indemnity cover, his application for indemnity cover and his submissions to NHS England at Oral Hearings in relation to its investigations into his lack of indemnity cover.

The Committee has found that Mr Machita provided dental advice and treatment to patients when he was not in possession of indemnity cover for some or all of the following periods: 17 August 2013 – 14 October 2013; 15 October 2013 – 21 December 2013 and 10 January 2014 – 15 February 2014. Mr Machita’s conduct in relation to the last two periods was dishonest because he knew that he was required to have appropriate professional indemnity cover in place.

Mr Machita applied to Marketform for indemnity cover by a form dated 4 February 2014. In response to the question *‘have you ever had conditions to practice, been suspended from practice or dismissed from practice’* Mr Machita circled the word *‘no’*. He signed the form stating: *‘I declare that the statements and particulars contained in the proposal are true and that I/we have not mis-stated or suppressed any material facts’*. Mr Machita’s conduct in this regard was misleading and dishonest in that at the time of the application he knew that his registration on the Performers List of Sussex and Weald Primary Care Trust (the PCT) was made subject to a period of conditions on around 5 June 2009.

At an NHS England Oral Hearing on 11 July 2014 Mr Machita informed the Panel that he had practised dentistry without indemnity cover between 16 January 2014 and 17 February 2014, or words to that effect. Mr Machita’s conduct in this regard was misleading and dishonest in that he knew that this was not the full extent of the period that he practised dentistry without indemnity cover. At a subsequent NHS England Oral Hearing on 30 July 2014 Mr Machita told that Panel words to the effect that he had practised dentistry without indemnity cover between August 2013 and February 2014. Mr Machita’s conduct was misleading in that he did not inform NHS England at the hearing on 30 July 2014 the full

extent of his lack of indemnity which had been notified to him on 21 July 2014 by the Company Director of All Med Pro (brokers for Marketform).

The GDC makes it clear that all dental professionals must have indemnity cover in place so that patients can claim any compensation they may be entitled to. It makes it clear that it is the registrant's responsibility to ensure that such cover is appropriate and is maintained. The Committee is concerned that Mr Machita provided dental advice and treatment to patients over a prolonged period of time when he knew that he was not in possession of indemnity cover. This placed patients at risk of financial harm by leaving them without recourse to compensation if necessary. The Committee considers that Mr Machita's failure to have indemnity cover in place while continuing to practise dentistry was wholly unacceptable and raises significant concerns about his judgement and his sense of professional responsibility.

The Committee also takes a serious view of Mr Machita's dishonest conduct in relation to his application for indemnity cover and his submissions to NHS England, which the Committee found to be misleading and dishonest on 11 July 2014, and misleading on 30 July 2014.

The Committee notes that the dates in this case are covered by the May 2005 and September 2013 GDC standards. However, it considers that the standards set out in the September 2013 encapsulate the themes set out in the May 2005 edition. Therefore, in judging the seriousness of the conduct, the Committee has had regard to the following standards set out in the September 2013 edition:

- 1.3 You must be honest and act with integrity.
 - 1.3.1 You must justify the trust that patients, the public and your colleagues place in you by always acting honestly and fairly in your dealings with them. This applies to any business or education activities in which you are involved as well as to your professional dealings.
 - 1.3.2 You must make sure you do not bring the profession into disrepute.
- 1.7 You must put patients' interests before your own or those of any colleague, business or organisation.
 - 1.7.1 You must always put your patients' interests before any financial, personal or other gain.
- 1.8 You must have appropriate arrangements in place for patients to seek compensation if they suffer harm.
 - 1.8.1 You must have appropriate insurance or indemnity in place to make sure your patients can claim any compensation to which they may be entitled.

The Committee is satisfied that Mr Machita breached these standards which represented a serious falling short of the conduct to be expected of a dental professional. He provided dental advice and treatment when he knew he did not have the appropriate professional indemnity insurance. He also acted dishonestly on three separate occasions. The Committee has concluded that the findings against Mr Machita amount to a falling far below of the appropriate standards. Furthermore, the conduct identified in this case would be considered deplorable by members of the dental profession and indeed by members of the public. Accordingly, the Committee has determined that the findings against Mr Machita amount to misconduct.

Current impairment

The Committee then went on to consider whether Mr Machita's fitness to practise is currently impaired by reason of his misconduct.

You have referred to the serious nature of the findings against Mr Machita and have submitted that his fitness to practise is currently impaired. During the course of your submissions, you drew the Committee's attention to a number of matters that should be considered in determining the issue of current impairment, including the risk of repetition and the practitioner's insight into his conduct. You referred the Committee to the case of CHRE v NMC and Paula Grant [2011] EWHC 927 (Admin), and in particular, the proposition that in determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the Committee is entitled to consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.

The Committee takes a serious view of the findings against Mr Machita. He provided dental advice and treatment to patients when he was not in possession of indemnity cover over a long period of time. This was a clear breach of his professional obligations, in which he placed patients at financial risk in the event that a claim was made. As stated in its findings of fact, the Committee was concerned that Mr Machita sought to blame others and failed to take full responsibility for his own actions. He chose to continue to practise rather than to stop working and secure indemnity cover. The Committee also has grave concerns about Mr Machita's lack of insight into his professional obligations in having appropriate indemnity insurance in place. In the Committee's view, Mr Machita appears to have no understanding of the risks involved to patients by practising without indemnity cover. The Committee is not satisfied that Mr Machita has learnt from his mistakes.

In addition, the Committee has had regard to the three separate findings of dishonesty in this case: Mr Machita continued to provide dental advice and treatment to patients over a long period of time in the knowledge that he did not have indemnity cover; he made false declarations on an application form for indemnity cover and he made submissions to NHS England on 11 July 2014 which were dishonest. The Committee also reached a separate finding that Mr Machita's submissions to NHS England on 30 July 2014 were misleading. It is concerned that the dishonesty was persistent and involved being dishonest to not just his patients but also to his insurance provider and his contracting body. Such conduct calls into question Mr Machita's integrity.

Given Mr Machita's lack of insight, and the absence of any remediation, the Committee has concluded that there is a significant risk of repetition.

Taking all these factors into account, as well as the seriousness of the findings in this case, the Committee has determined that Mr Machita's fitness to practise is currently impaired by reason of his misconduct. It is satisfied that the matters found proved in this case are sufficiently serious to warrant a finding of current impairment in the wider public interest, which includes the need to maintain public confidence in the profession and to declare and uphold proper standards of conduct and behaviour

Sanction

The Committee next considered what sanction, if any, should be imposed on Mr Machita's registration.

You have submitted that the Committee should consider the sanction of erasure, given the serious nature of the findings against Mr Machita. You drew the Committee's attention to the sections on indemnity and dishonesty as set out in the GDC's 'Guidance for the Professional Conduct Committee, including Indicative Sanctions Guidance' (October 2015).

Throughout its deliberations the Committee has kept in mind the general principles that it must apply in considering what sanction, if any, should be imposed. These include the need to protect patients and the public interest. The Committee has also had regard to the principle of proportionality, weighing the interests of the public with Mr Machita's own interests. It has borne in mind that it should impose the least restrictive sanction which is sufficient for the protection of the public and is in the public interest.

The Committee has had regard to the fact that Mr Machita has no previous fitness to practise history before the GDC. It also notes that English is not his first language. He participated in the first part of the factual enquiry of the hearing in October 2015 via Skype with the assistance of a Romanian interpreter. The Committee has also borne in mind that Mr Machita made some partial admissions to the facts at the outset of the hearing and expressed some remorse about practising without indemnity insurance. Nevertheless, it has also had regard to the serious nature of the misconduct and Mr Machita's lack of insight.

The Committee has considered the range of sanctions available to it, starting with the least serious. It first considered whether it would be sufficient to conclude this case by taking no action against Mr Machita. Given the serious nature of the findings against Mr Machita, including findings of dishonesty, the Committee is satisfied that such a course of action would be wholly insufficient for the protection of patients or in the wider public interest. For the same reasons, the Committee has determined that it would be wholly insufficient to conclude the case with a reprimand.

The Committee next considered whether a period of conditional registration would be appropriate or proportionate. In so doing, it has taken into account the serious nature of the findings against Mr Machita, which encompass the provision of dental advice and treatment to patients over a long period of time, in the knowledge that he did not have indemnity cover. These were serious breaches of the fundamental standards patients are entitled to expect from dentists. Moreover, the Committee has had regard to the serious nature of the multiple findings of dishonesty, which could not be adequately addressed by way of conditions. Mr Machita has shown no real insight into the seriousness of the matters identified in this case. Taking these factors into account, the Committee has concluded that a period of conditional registration would not be sufficient for the protection of patients or for the maintenance of public confidence or for the upholding of proper standards in the profession.

The Committee next considered whether it should impose a period of suspension. Mr Machita provided dental advice and treatment to patients when he knew that he did not have appropriate indemnity cover in place. Mr Machita acted dishonestly on three separate occasions, which was a breach of one of the fundamental tenets of the dental profession, namely to be trustworthy. The Committee has grave concerns about Mr Machita's lack of insight. It is clear from the telephone attendance note dated 5 January 2016 that Mr Machita no longer wishes the GDC to engage with him. Further, the telephone attendance note indicates that he continues to refute the more serious allegations against him. In the Committee's view, Mr Machita's responses to the GDC as recently as yesterday suggest an entrenched position which displays serious attitudinal problems.

In conclusion the Committee is satisfied that to suspend Mr Machita's registration would not be sufficient to protect the public, uphold proper standards and maintain public confidence in the

dental profession. Furthermore, it would serve no useful purpose given Mr Machita's stated intention that he does not wish to participate any further with the GDC.

The Committee has concluded that Mr Machita's misconduct as a whole is so serious that it is fundamentally incompatible with him remaining on the Dentists' Register. Accordingly, the Committee has determined that the appropriate and proportionate sanction in this case is that of erasure. The Committee has taken into account the adverse impact of such a direction on Mr Machita. However, in the light of the serious nature of the findings against Mr Machita, the Committee considers that the need to protect patients and the public interest outweighs his own interests in this matter.

The Committee now invites submissions from you as to whether Mr Machita's registration should be suspended immediately, pending the taking effect of its substantive direction of erasure."

Decision on immediate order

"Mr Mulchrone: Having directed that Mr Machita's name be erased from the Dentists' Register, the Committee has considered whether to impose an order for immediate suspension. You, on behalf of the General Dental Council (GDC), have submitted that such an order is necessary given the seriousness of the Committee's findings.

In accordance with Section 30 of the Dentists Act 1984, the Committee has determined that it is necessary for the protection of the public and is otherwise in the public interest to order that Mr Machita's registration be suspended forthwith. The Committee is satisfied that Mr Machita poses an ongoing risk to the public and that it would be inconsistent with its previous findings to allow him the opportunity to continue to practise during the intervening appeal period.

The effect of this direction is that Mr Machita's registration will be suspended immediately. Unless Mr Machita exercises his right of appeal, the substantive order of erasure will come into effect in 28 days' time.

The interim order of suspension on Mr Machita's registration is hereby revoked with immediate effect.

That concludes today's hearing."