

## HEARING PARTLY HEARD IN PRIVATE

The Committee has made a determination in this case that includes some private information. That information has been omitted from this text.

**GARNETT, Dean Andrew**

**Registration No: 132082**

## PROFESSIONAL CONDUCT COMMITTEE

**August 2017**

### **Outcome: Erased with Immediate Suspension**

Dean Andrew GARNETT, a dental technician, verified experience in Dental Technology, was summoned to appear before the Professional Conduct Committee on 14 August 2017 for an inquiry into the following charge:

#### **Charge**

“That being a registered dental technician:

1. You have an adverse health condition as specified in Schedule A<sup>1</sup>.
2. Between 06 September 2016 and 08 May 2017, you failed to adequately cooperate with an investigation conducted by the General Dental Council into your health, in that:
  - a. you did not attend a medical assessment appointment on 06 September 2016,
  - b. you did not attend a medical assessment appointment on 08 March 2017,
  - c. between 03 April 2017 and 08 May 2017, you did not [*private material redacted*]
3. On 28 November 2014, you were convicted at Leeds Magistrates’ Court of driving a motor vehicle, after consuming so much alcohol that the proportion of it in your breath, namely 80 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limit, contrary to section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988.
4. On 09 December 2014, you signed the application form for registration with the General Dental Council and ticked the box “No” in response to the question: “Have you been convicted of a criminal offence and/or cautioned (other than a protected conviction or caution) and/or are you currently the subject of any police investigations which might lead to a conviction or a caution in the UK or any other country?”
5. Your conduct in relation to allegation 4 was:
  - a. misleading,
  - b. dishonest.

And that, by reason of the matters alleged above, your fitness to practise is impaired by reason of your health condition and/or conviction and/or misconduct.”

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<sup>1</sup> Please note that the schedule is a private document and cannot be disclosed

On 14 August 2017 the Chairman made the following statement regarding the finding of facts:

Mr Garnett is not present at this hearing of the Professional Conduct Committee (PCC) and is not represented in his absence. Mr Tom Stevens of Counsel appears for the General Dental Council (GDC).

#### **Service of notice**

On behalf of the GDC Mr Stevens submitted that service of notice of this hearing has been properly effected in accordance with Rules 13 and 65 of the General Dental Council (Fitness to Practise) Rules 2006 ('the Rules'). On 13 July 2017 a notice of hearing was sent to the address that Mr Garnett has registered with the GDC, setting out the date, time and location of this hearing. The notice was sent to Mr Garnett's registered address using the Royal Mail's Special Delivery postal service. The Royal Mail's track and trace service shows that the notice was delivered on the morning of 14 July 2017 and was signed for by an individual with the name of Garnett. A copy of the notice was sent by email to Mr Garnett's other known address on 13 July 2017, and was also sent by email to his known email address on that same date.

Mr Stevens drew the Committee's attention to a telephone attendance note made by the GDC solicitor with conduct of the Council's investigation which records that on 26 July 2017 Mr Garnett confirmed that he had received the notice of hearing.

The Committee accepted the advice of the Legal Adviser. The Committee was satisfied that service has been properly effected in accordance with the Rules.

#### **Proceeding in absence**

The Committee then went on to consider whether to exercise its discretion to proceed in the absence of Mr Garnett in accordance with Rule 54 of the Rules. Mr Stevens invited the Committee to do so on the basis that the GDC had made all reasonable efforts to notify the registrant of this hearing, that he has voluntarily absented himself, and that it would be appropriate to proceed in his absence.

The Committee accepted the advice provided by the Legal Adviser. The Committee was mindful that its discretion to conduct a hearing in the absence of a registrant should be exercised with the utmost care and caution.

After careful consideration the Committee was satisfied that it would be appropriate and fair to proceed in Mr Garnett's absence. The Committee notes that the GDC has made considerable and repeated efforts to encourage Mr Garnett to engage with these proceedings. The Committee is mindful that Mr Garnett has not requested an adjournment. In the circumstances the Committee considered that Mr Garnett has voluntarily absented himself from this hearing and that an adjournment would serve no purpose, as it would be unlikely to secure his attendance. The Committee also considered that there is a clear public interest in proceeding with today's hearing for the purposes of securing an expeditious disposal of this matter.

#### **Preliminary matters**

Mr Stevens made an application for the case to be part-heard in private in accordance with Rule 53 of the Rules. The Committee, having accepted the advice of the Legal Adviser, acceded to the application in relation to the matters that relate to Mr Garnett's health.

### **Background to the case and summary of allegations**

The case giving rise to this hearing relates to two particular areas of concern.

It is first alleged that Mr Garnett suffers from a health condition.

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It is also alleged that Mr Garnett has been convicted for an offence of drink driving, and that he failed to declare that conviction to the GDC at the appropriate time.

On 28 November 2014 Mr Garnett was convicted at Leeds Magistrates' Court for an offence of driving a motor vehicle with excess alcohol, more particularly 80 microgrammes of alcohol in 100 millilitres of breath. Mr Garnett, having pleaded guilty to the offence for which he was then convicted, was sentenced to pay a fine in the sum of £300.00 and was disqualified from driving for a period of 16 months.

The GDC contends that Mr Garnett failed to declare this conviction to the GDC when seeking readmission to the register as a dental technician. It is specifically alleged that, on 9 December 2014, he submitted an application form for registration and declared on that form that he had not been convicted of a criminal offence. The GDC alleges that such conduct was misleading and dishonest.

### **Evidence**

The Committee has heard oral evidence via Skype from the GDC's expert witness, namely Dr Timothy Garvey, who previously provided reports to the GDC about Mr Garnett's health.

The Committee has also been provided with documentary evidence in relation to the heads of charge that Mr Garnett faces, including copies of Dr Garvey's two medical reports, copies of Mr Garnett's GP medical records; a copy of a certified Memorandum of Conviction relating to Mr Garnett's court appearance; witness statements and documentary exhibits provided by those involved in attempting to arrange medical assessment appointments for Mr Garnett, including details of communications with Mr Garnett; and a witness statement and documentary exhibits prepared by a GDC officer with knowledge of Mr Garnett's application for registration.

### **Committee's findings of fact**

The Committee has taken into account all the evidence presented to it, both written and oral. It has considered the submissions made by Mr Stevens on behalf of the GDC.

The Committee has accepted the advice of the Legal Adviser and the Medical Adviser. The Committee is mindful that the burden of proof lies with the GDC, and has considered the heads of charge against the civil standard of proof, that is to say, the balance of probabilities. The Committee has considered each head of charge separately, although in respect of some heads of charge its findings will be announced together.

The Committee will deliver the reasons for its findings in respect of heads of charge 1, 2 (a), 2 (b) and 2 (c) in private.

I will now announce the Committee's findings in relation to each head of charge:

1.	Proved
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	<p>The Committee finds the facts alleged at head of charge 1 proved.</p> <p>IN PRIVATE</p> <p>[text redacted]</p> <p>IN PUBLIC</p> <p>The Committee therefore finds the facts alleged at head of charge 1 proved.</p>
2.(a)	<p>Proved</p>
	<p>The Committee finds the facts alleged at head of charge 2 (a) proved.</p> <p>IN PRIVATE</p> <p>[text omitted]</p> <p>IN PUBLIC</p> <p>Accordingly, the Committee finds the facts alleged at head of charge 2 (a) proved.</p>
2.(b)	<p>Proved</p>
	<p>The Committee finds the facts alleged at head of charge 2 (b) proved.</p> <p>IN PRIVATE</p> <p>[text omitted]</p> <p>IN PUBLIC</p> <p>For these reasons, the Committee finds the facts alleged at head of charge 2 (b) proved.</p>
2.(c)	<p>Proved</p>
	<p>The Committee finds the facts alleged at head of charge 2 (c) proved.</p> <p>IN PRIVATE</p> <p>[text omitted]</p> <p>IN PUBLIC</p> <p>Accordingly, the Committee finds the facts alleged at head of charge 2 (C) proved.</p>
3.	<p>Proved</p>
	<p>The Committee finds the facts alleged at head of charge 3 proved.</p> <p>The Committee had regard to Rule 57 (5) of the Rules and determined that the certified copy of the Memorandum of Conviction placed before it provides conclusive proof of both the fact of conviction and also of the offence which gave rise to that conviction. The Committee notes that the facts upon which the conviction was based have been found proven beyond reasonable doubt, which is an evidential standard that is higher than that employed by this Committee for the purpose of its proceedings. The Committee accepted that it cannot go behind the facts on which that conviction was made. It notes that Mr Garnett pleaded guilty to the offence of which he was convicted.</p> <p>The Committee is therefore satisfied that the facts alleged at head of charge 3</p>

	have been properly made out to the required standard, and it therefore finds those facts proved.
4.	Proved
	<p>The Committee finds the facts alleged at head of charge 4 proved.</p> <p>The Committee has been provided with a copy of the application form pursuant to registration with the GDC which Mr Garnett signed on 9 December 2014. On that form he declared that he had not been convicted, or cautioned, for a criminal offence, whereas in fact he had been convicted as recently as 28 November 2014. The Committee is satisfied that Mr Garnett signed and submitted this form pursuant to his application to be readmitted on to the GDC's register as a dental technician.</p> <p>The Committee therefore finds the facts alleged at head of charge 4 proved.</p>
5.(a)	Proved
	<p>The Committee finds the facts alleged at head of charge 5 (a) proved.</p> <p>The Committee finds that, by signing an application form which stated that he had not been convicted of a criminal offence when that was not the case, Mr Garnett's actions misled the GDC into believing that he had no such criminal convictions. The Committee has no difficulty in finding that this constitutes misleading conduct, and accordingly it finds the facts alleged at head of charge 5 (a) proved.</p>
5.(b)	Proved
	<p>The Committee finds the facts alleged at head of charge 5 (b) proved.</p> <p>The Committee finds that, by declaring to the GDC that he had not been convicted of a criminal offence when he had in fact been convicted of an offence of drink driving around a fortnight earlier, Mr Garnett's false declaration would be considered to have been dishonest by the standards of reasonable and honest dental technicians. It also finds that, given the proximity in time between this declaration and the conviction that he should have disclosed, it is more likely than not that Mr Garnett knew that his actions would have been considered to be dishonest by those standards. The Committee considers that Mr Garnett's false declaration was a deliberate and direct attempt to mislead the GDC for the purposes of avoiding any difficulties that may arise from a truthful and honest declaration in respect of his GDC registration.</p> <p>The Committee finds that Mr Garnett's actions constitute dishonest conduct, and that accordingly the facts alleged at head of charge 5 (b) are proved.</p>

We move to stage two.”

On 15 August 2017 the Chairman announced the determination as follows:

“The Committee has considered all the evidence presented to it, both written and oral. It has also taken into account the submissions made by Mr Stevens on behalf of the General Dental Council (GDC).

The Committee has accepted the advice of the Medical Adviser and the Legal Adviser.

In its deliberations the Committee has had regard to the GDC's *Guidance for the Practice Committees, including Indicative Sanctions Guidance* (October 2016).

### **Fitness to practise history**

On behalf of the GDC Mr Stevens confirmed that Mr Garnett has no other fitness to practise history.

### **Misconduct**

The Committee first considered whether the facts that it has found proved at heads of charge 2 (a), 2 (b), 2 (c), 4, 5 (a) and 5 (b) constitute misconduct. In addressing this question the Committee exercised its own independent judgement.

The Committee has paid careful regard to the GDC's *Standards for the Dental Team* (September 2013) in place at the time of the incidents giving rise to the facts at the heads of charge referred to above. The following paragraphs state that as a dentist:

- 1.3 You must be honest and act with integrity.
- 9.1 You must ensure that your conduct, both at work and in your personal life, justifies patients' trust in you and the public's trust in the dental profession.
- 9.3 You must inform the GDC if you are subject to criminal proceedings or a regulatory finding is made against you, anywhere in the world.
- 9.4 You must co-operate with any relevant formal or informal inquiry and give full and truthful information.

The Committee has determined that the facts that it has found proved at heads of charge 2 (a), 2 (b), 2 (c), 4, 5 (a) and 5 (b), both individually and collectively, amount to misconduct. The Committee considers that Mr Garnett's failure to co-operate with the GDC's investigation into concerns about his health was serious. This conduct was repeated and sustained over a period of some months. In so doing Mr Garnett failed to comply with the requirements of his regulator in relation to an important matter concerning his fitness to practise, and displayed an unhelpful, obstructive and unprofessional approach towards his responsibilities as a dental professional. The Committee is in no doubt that fellow professionals would consider such conduct to be deplorable.

The Committee is similarly in no doubt that Mr Garnett's false declaration to the GDC of him not having been convicted of a criminal offence fell far below the standards reasonably expected of a dental professional, and that his misleading and dishonest conduct would again be considered to be deplorable by his fellow professionals. Mr Garnett was under a clear duty to respond truthfully to an unambiguous question that was put to him in connection with his application to re-join the GDC's register. Mr Garnett again displayed a wilful disregard for the systems governing his profession by making a false declaration concerning a conviction that he had received less than a fortnight earlier. Regulatory systems rely on the provision of accurate and truthful declarations; the regulatory process, and the trust and confidence that the public has in the profession and the GDC, was placed at serious risk of being undermined because of Mr Garnett's dishonesty. The Committee finds that this deceitful and disreputable conduct breached a fundamental tenet of the profession, namely the requirement to act in an honest and trustworthy manner.

Accordingly the Committee has no difficulty in finding that the facts that it has found proved at heads of charge 2 (a), 2 (b), 2 (c), 4, 5 (a) and 5 (b) amount to misconduct.

**Impairment**

The Committee next considered whether Mr Garnett's fitness to practise is currently impaired. The Committee was mindful that it must determine whether Mr Garnett's fitness to practise is impaired by reason of the misconduct that it has found, or by reason of his criminal conviction, or by reason of his adverse health, or because of a combination or two or more of these grounds. In doing so, the Committee exercised its independent judgement. Throughout its deliberations, the Committee has borne in mind that its primary duty is to address the public interest, which includes the protection of patients, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour.

Impairment by reason of misconduct

The Committee has determined that Mr Garnett's fitness to practise is currently impaired by reason of his misconduct.

In reaching this decision the Committee first considered whether the misconduct that it has found is capable of being remedied. The Committee considers that Mr Garnett's misconduct arises from serious, sustained and repeated failures to co-operate with the GDC, and from an instance of him dishonestly concealing his criminal conviction from his regulator when pursuing an application to re-register as a dental technician. This connotes a behavioural or attitudinal deficiency which might be more difficult for Mr Garnett to remedy than specific and identifiable clinical shortcomings.

The Committee then went on to consider whether this behavioural or attitudinal deficiency has been remedied. The Committee has not been provided with any evidence or information to suggest that Mr Garnett has taken any steps to identify, acknowledge, reflect on and remedy the matters that have given rise to the Committee's finding of misconduct. Mr Garnett has had a significant period of time in which to demonstrate that he has developed some insight into these matters, and has had a considerable number of opportunities to provide evidence of him having done so. Instead, the limited contact that Mr Garnett has had with the GDC in relation to these proceedings suggests that, on the contrary, he blames others for the difficulties that he has experienced. Mr Garnett has shown little understanding of the serious failings that have precipitated these proceedings. Mr Garnett's response to the issues that have been identified in relation to his conduct, health and conviction has been characterised by an ongoing lack of commitment and co-operation. Although the Committee draws no adverse inference from Mr Garnett's decision not to attend this hearing, his lack of attendance or the provision of written submissions or documentary evidence means that the Committee has been provided with no information at all to suggest that he has developed insight or taken practical steps to remedy his misconduct. The Committee therefore finds that there is a real and significant risk of the misconduct that it has identified being repeated.

A finding of impairment is also, and especially, required in light of the public interest considerations which are particularly engaged by this case. Although there is no evidence that Mr Garnett has placed patients at the risk of harm, the misconduct that this Committee has identified is highly damaging to the public's trust and confidence in the profession and in the regulatory process. Mr Garnett has acted in such a way as to bring the profession into disrepute, particularly on account of his dishonest conduct. In light of the absence of any insight or remediation, Mr Garnett is likely to bring the profession into disrepute in the future. Mr Garnett has breached fundamental tenets of the profession, and is again likely to do so in the future on account of his lack of insight and remediation. The Committee has no difficulty

in concluding that a finding of impairment is required for the purposes of declaring and upholding proper professional standards of conduct and behaviour, as well as maintaining trust and confidence in the profession and in the regulatory process. Indeed, trust and confidence in the profession, and in the GDC as the regulator, would be seriously undermined if a finding of impairment was not made in the particular circumstances of this case.

#### Impairment by reason of conviction

The Committee next determined that Mr Garnett's fitness to practise is currently impaired by reason of his conviction. Although the Committee notes that Mr Garnett was convicted of a single offence, and that he has no other criminal convictions or cautions, the offence for which he was convicted was serious. Mr Garnett was more than twice over the legal limit for the consumption of alcohol, and he received a significant criminal sentence involving a lengthy period of disqualification from driving. In the circumstances the Committee considers that a finding of impairment is required for the purposes of maintaining public trust and confidence in the profession and declaring and upholding proper professional standards. The fact and nature of Mr Garnett's conviction has undermined the public's trust and confidence in the profession, and that trust and confidence would be further undermined if a finding of impairment were not made. The Committee therefore finds that Mr Garnett's fitness to practise is impaired by reason of his conviction.

#### Impairment by reason of adverse health

The Committee has also determined that Mr Garnett's fitness to practise is impaired because of his adverse health.

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The Committee finds that this health condition means that Mr Garnett's fitness to practise is currently impaired by reason of his adverse health.

Accordingly, for the reasons set out above, the Committee finds that Mr Garnett's fitness to practise is currently impaired by reason of his misconduct, his criminal conviction, and his adverse health.

#### **Sanction**

The Committee then determined what sanction, if any, would be appropriate in light of the findings of facts, misconduct and impairment that it has made. The Committee recognises that the purpose of a sanction is not to be punitive, although it may have that effect, but is instead imposed in order to protect patients and safeguard the wider public interests referred to above.

In reaching its decision the Committee has again taken into account the GDC's *Guidance for the Practice Committees, including Indicative Sanctions Guidance* (October 2016). The Committee has applied the principle of proportionality, balancing the public interest with Mr Garnett's own interests.

The Committee has had regard to the mitigating and aggravating factors in this case. In relation to mitigating features, the Committee notes that there is no evidence that Mr Garnett has harmed patients or placed them at the risk of harm, that he has no previous fitness to

practise history, that there has been no repetition of his criminal behaviour, and that nearly three years have passed since the incident that gave rise to his conviction. In respect of aggravating factors, the Committee has found that Mr Garnett's conduct was dishonest and premeditated, and involved a breach of trust. He displayed a blatant and wilful disregard for the GDC and the regulatory process, and attempted to cover up his criminal conviction. He has also not demonstrated any remorse for, or insight into, his actions.

The Committee has considered the range of sanctions available to it, starting with the least serious. In the light of the findings made against Mr Garnett, the Committee finds that it would be wholly inappropriate to conclude this case with no action or with a reprimand. The serious nature of Mr Garnett's misconduct, conviction and adverse health, means that a more serious sanction must be taken, and that public trust and confidence would be undermined if no action were taken or if a reprimand were imposed. The Committee also considers that a period of conditional registration would undermine public trust and confidence in the profession, and that in any event conditions could not meet the attitudinal deficiencies identified in relation to Mr Garnett's misconduct, particularly as Mr Garnett lacks insight and has not co-operated with these proceedings.

The Committee next considered whether a period of suspended registration would be appropriate. The Committee has determined that suspension would not be sufficient to address the serious nature of the Committee's findings and that the imposition of a suspension would undermine public trust and confidence in the profession and in the regulatory process.

The Committee has determined that the only appropriate and proportionate sanction in this case is that of erasure. The Committee is mindful that the sanction of erasure cannot be imposed solely on the grounds of a finding of adverse health, and has properly taken Mr Garnett's adverse health into account when deciding on the sanction of erasure.

Mr Garnett's conduct and conviction is highly damaging to public trust and confidence in the profession and the standing and reputation of the profession. The Committee considers that Mr Garnett's persistent and protracted failure to comply with the reasonable requirements of his regulator, his premeditated and dishonest declaration to that same body to conceal his criminal conviction, and the fact and nature of his criminal conviction for an offence of drink driving are such serious departures from the standards reasonably to be expected of a dental professional that the only appropriate and proportionate sanction in this case is that of erasure from the register. The Committee considers that Mr Garnett has a deeply harmful attitudinal problem which means that he is not suitable to remain on the register. He has persistently failed to co-operate with the requirements of his regulator, and indeed has been found to have deceived the GDC when seeking registration. The GDC's requirements were made for the specific purpose of determining whether Mr Garnett is fit to practise as a dental technician. The efficacy of the regulatory process relies in no small part on the compliance, co-operation and candour of registered dental professionals. If the regulatory process is undermined, the public's trust and confidence in the profession is at grave risk of being seriously compromised. The Committee considers that Mr Garnett's conduct, when combined with his associated criminal conviction and significant health condition, means that no lesser sanction than that of erasure would be sufficient to reinstate, declare and uphold proper professional standards of conduct and public trust and confidence in the profession.

The Committee therefore determines, and hereby directs, that Mr Garnett's name be erased from the register.

### **Existing interim order**

In accordance with Rule 21 (3) of the General Dental Council (Fitness to Practise) Rules 2006 and section 36P (10) of the Dentists Act 1984 (as amended) the extant interim order of suspension in place on Mr Garnett's registration is hereby revoked. "

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### **"Immediate order of suspension**

Having directed that Mr Garnett's name be erased from the register, the Committee has considered whether to impose an order for his immediate suspension in accordance with section 36U (1) of the Dentists Act 1984 (as amended).

The Committee has considered the submissions made by Mr Stevens on behalf of the GDC that an immediate order of suspension is otherwise in the public interest. The Committee has accepted the advice of the Legal Adviser.

In the circumstances, the Committee has determined that it is otherwise in the public interest to impose an order for immediate suspension on Mr Garnett's registration. An order is needed to declare and uphold proper professional standards of conduct and behaviour and to maintain public trust and confidence in the profession and in the regulatory process pending the substantive direction of erasure taking effect. The Committee considers that an immediate order for suspension is proportionate, and is consistent with the concerns that the Committee has set out in its substantive determination.

The effect of the foregoing determination and this immediate order is that Mr Garnett's registration will be suspended by virtue of this immediate order from the date on which notice of this decision is deemed served upon him. Unless he exercises his right of appeal, the substantive erasure order will be recorded in the Dental Care Professionals' Register 28 days from the date of deemed service. Should he so decide to exercise his right of appeal, this immediate order of suspension will remain in place until the resolution of any appeal.

That concludes this case."