

HEARING HEARD IN PUBLIC
SALATKAITE, Jurate
Registration No: 266759
PROFESSIONAL CONDUCT COMMITTEE
NOVEMBER 2019

Outcome: Suspended for 6 months with immediate suspension (with a review)

Jurate SALAKAITE, a dental nurse, National Diploma in Dental Nursing NEBDN 2014, was summoned to appear before the Professional Conduct Committee on 25 November 2019 for an inquiry into the following charge:

Charge

“That being a registered dental care professional:

1. Between January and April 2017, you offered to provide tooth whitening and/or tooth whitening products via the Facebook page ‘Perfect smile by Jurate’.
2. In respect of paragraph 1 above, you acted outside your scope of practice as a dental nurse.
3. Your conduct in relation to paragraph 1 and 2 above was:
 - a. misleading;
 - b. lacking integrity; and
 - c. dishonest, in that you knew tooth whitening was outside your scope of practice as a dental nurse.

AND that by reason of the facts alleged, your fitness to practise is impaired by reason of misconduct.”

On 26 November 2019 the Chairman made the following statement regarding the finding of facts:

“Ms Salatkaite,

Admissions:

At the outset, Mr Sansom, who is not a solicitor or a barrister on your behalf, made admissions to charges 1, 2, 3(a) and 3(b). The admissions were noted by the Committee.

The GDC’s case:

You qualified as a Dental Nurse in 2014 and you were registered with the GDC in that capacity in September 2016.

By way of background, in April 2017 the GDC received information from an anonymous caller who advised that you were offering tooth whitening services and/or tooth whitening products via your business “Perfect Smile by Jurate” (your Business) and that you were advertising this service on Facebook. The GDC’s position is that by providing such products without a prescription, or being under the direction, of a Dentist, you acted outside the scope of your practice when you were not qualified or legally entitled to do so.

The Committee's Findings of Fact:

In reaching its decisions on the facts, the Committee considered all the evidence adduced in this case. The Committee had regard to the submissions made by Mr Tom Middleton, on behalf of the GDC and those from Mr Sansom, on your behalf. It accepted the advice of the Legal Adviser. In accordance with that advice, notwithstanding your admissions, it has considered each charge separately, bearing in mind that the burden of proof rests with the GDC and the standard of proof is the civil standard, that is, whether the alleged matters are proved on the balance of probabilities.

The Committee has been provided with documentary material in relation to the allegations that you face, including witness statements and documentary exhibits from the witnesses in this case. It also received the Expert report and heard the oral evidence of Mr Nigel Entwistle, an expert witness instructed by the GDC. With regard to the expert evidence of Mr Entwistle, the Committee was satisfied it could rely on his opinion. It found he was a knowledgeable and credible witness who gave evidence in a measured and balanced way. The Committee was particularly assisted by his oral evidence.

In addition, the Committee has been provided with a bundle of documents submitted on your behalf. These documents include your certificates in relation to Continuing Professional Development (CPD) that you have undertaken and courses that you intend to take and testimonial references. You also provided information regarding the company you purchased a tooth whitening training course pack from.

The Committee did not hear oral evidence from you at this stage.

The Committee's findings in relation to each head of charge are as follows:

1.	<p><i>Between January and April 2017, you offered to provide tooth whitening and/or tooth whitening products via the Facebook page 'Perfect smile by Jurate'.</i></p> <p>Admitted and found proved.</p> <p>The Committee found this charge proved based on your admission and the evidence before it, including the screen shots of your Facebook page outlining the services being offered.</p>
2.	<p><i>In respect of paragraph 1 above, you acted outside your scope of practice as a dental nurse.</i></p> <p>Admitted and found proved.</p> <p>The Committee found this charge proved based on your admission and the evidence before it, including the screen shots of your Facebook page outlining the services being offered, and the expert evidence of Mr Entwistle. He stated that, in his opinion the offering of tooth whitening procedures and/or products and/or construction of customised trays is not within the scope of practice of a Dental Nurse.</p>
3.	<p><i>Your conduct in relation to paragraph 1 and 2 above was:</i></p>
3(a)	<p><i>misleading;</i></p> <p>Admitted and found proved.</p> <p>The Committee found this charge proved based on your admission and the evidence before it, including the screen shots of your Facebook page outlining the services being offered and a copy of your certificate for a National Diploma in</p>

	Dental Nursing. This could lead an individual to believe that you were qualified to provide the services being offered when you were not.
3(b)	<p><i>lacking integrity;</i></p> <p>Admitted and found proved.</p> <p>The Committee found this charge proved based on your admission and the evidence before it. The Committee considered that, as a dental professional registered with the GDC, you had a responsibility to ensure that you were aware of your scope of practice. Advertising tooth whitening services and/or tooth whitening products for a period of four months before removing the offering from your Facebook page, in the Committee's view, demonstrates a lack of integrity.</p>
3(c)	<p><i>dishonest, in that you knew tooth whitening was outside your scope of practice as a dental nurse.</i></p> <p>Not admitted but found proved.</p> <p>You were a registered Dental Nurse having qualified in 2014 and registering with the GDC in that capacity in September 2016. Mr Sansom, on your behalf, stated that at the time you did not know that tooth whitening was outside your scope of practice as a Dental Nurse and therefore your actions cannot be said to be dishonest.</p> <p>Mr Entwistle stated that Dental Nurses are registered dental professionals who provide clinical and other support to registrants and patients. In his report, he set out the range of practice that a competent Dental Nurse may undertake and referred to the Scope of Practice document effective from 30 September 2013 and the GDC's position statement on tooth whitening dated 11 July 2016. In his opinion the scope of practice for a Dental Nurse does not include either offering tooth whitening or the actual provision of tooth whitening materials or customised trays directly to a patient.</p> <p>The Committee was aware that you are of good character but having regard to the nature of this case, gave this no weight.</p> <p>The Committee considered that you knew that tooth whitening was outside your scope of practice as a Dental Nurse. You began advertising tooth whitening services and/or tooth whitening products via your Business Facebook page just two months after registering with the GDC as a Dental Nurse. In light of that fact, the Committee found that it was not credible that you were unaware that tooth whitening was outside your scope of practice as a Dental Nurse.</p> <p>The Committee considered therefore that by the standards of ordinary and reasonable people your actions were dishonest.</p>

We move to Stage Two.”

On 27 November 2019 the Chairman announced the determination as follows:

“Ms Salatkaite,

Having reached its findings on the facts, the Committee's task at this second stage of the hearing was to consider whether your fitness to practise is currently impaired by reason of misconduct.

The Committee noted that if it found current impairment, it would need to go on to consider the issue of sanction. In reaching its decisions, the Committee considered all the evidence presented to it.

In addition to the evidence, the Committee considered the submissions made by Mr Middleton on behalf of the GDC and those made by Mr Sansom on your behalf. The Committee accepted the advice of the Legal Adviser. It reminded itself that misconduct and impairment are matters for its own independent judgement, save that in respect of the factual matters you advanced as mitigation, you bore the burden of proving those matters to the standard of the balance of probabilities.

GDC Submissions:

Mr Middleton, on behalf of the GDC, confirmed to the Committee that you have no prior fitness to practise history. He referred the Committee to the Standards for the Dental Team (September 2013) (the "Standards"). In addition, he invited the Committee to have regard to the Scope of Practice document effective from 30 September 2013 and the GDC's position statement on tooth whitening dated 11 July 2016.

Mr Middleton submitted that your dishonest action in working outside the scope of your practice was a serious breach of the GDC's standards and that your conduct fell far below the expected standards and warranted a finding of misconduct.

With regard to current impairment by reason of misconduct, Mr Middleton submitted that by acting outside the scope of your practice as a Dental Nurse you have breached a fundamental tenet of the profession and you are liable to do so again in the future, particularly considering the Committee's findings of dishonesty and lack of integrity. Further, he submitted that a finding of no current impairment would undermine public confidence in the dental profession and its regulator.

If it found that your fitness to practise is currently impaired, Mr Middleton submitted that it would be appropriate for the Committee to dispose of the case with a suspension order for a period of six months with a review. He submitted that a reprimand would be inappropriate in the circumstances of this case, equally, it would be difficult to see what conditions could be imposed addressing the element of dishonesty found. He submitted that whilst erasure was open to the Committee, it was not the GDC's primary submission.

Submissions on your behalf:

Mr Sansom submitted that since the matters in 2017, you have educated yourself on your scope of practice and have reflected on your actions. He stated that you are a currently employed and that you are a valued member of the dental team.

Mr Sansom informed the Committee that you are a single mother and stated that the imposition of a suspension order or erasure would have a severe impact on you and your family. He stated that were you given the opportunity; you would ensure that you do not repeat such conduct which brought you before your regulator.

Misconduct:

The Committee considered whether the facts found proved amounted to misconduct. It took into account the relevant authorities to which it was referred, including *Roylance v General Medical Council (GMC) (no. 2) [2000] 1 A.C. 311*. The Committee took into account that a finding of misconduct in the regulatory context requires a serious falling short of the professional standards expected of a reasonably competent dental professional. In so doing, the Committee has had

regard to all the documentary evidence before it, the expert evidence heard, as well the evidence you put before the Committee at the fact-finding stage of proceedings.

It had regard to the GDC's standards, as contained in the publication '*GDC Standards for the Dental Team (30 September 2013)*' and found that the following standards are engaged in this case:

Standard 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.
- 1.3.3 You must make sure that any advertising, promotional material or other information that you produce is accurate and not misleading and complies with the GDC's guidance on ethical advertising.

Standard 7.2

You must work within your knowledge, skills, professional competence and abilities

- 7.2.1 You must only carry out a task or a type of treatment if you are appropriately trained, competent, confident and indemnified. Training can take many different forms. You must be sure that you have undertaken training which is appropriate for you and equips you with the appropriate knowledge and skills to perform a task safely.
- 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.

The Committee took account of your admissions. It accepted the evidence of the GDC expert witness that your conduct was far below the standard expected of a reasonably competent dental nurse. The Committee considered that your actions in dishonestly offering to provide tooth whitening and/or tooth whitening products when you were aware that this was outside your scope of practice as a Dental Nurse, breaches the GDC's standards and crosses the threshold of seriousness required for a finding of misconduct. Accordingly, the Committee determined that the facts found proved amount to misconduct.

Impairment:

The Committee next considered whether your fitness to practise is currently impaired by reason of your misconduct. In reaching its decision, the Committee exercised its independent judgement. It had regard to the over-arching objectives of the GDC, which involve: the protection, promotion and maintenance of the health, safety and well-being of the public; the promotion and maintenance of public confidence in the dental profession; and the promotion and maintenance of proper professional standards and conduct for the members of the dental profession.

Whilst the Committee considered that the dishonesty and lack of integrity found in this case breaches fundamental tenets of the profession and are difficult to be remedied, they are capable of being remedied.

In considering whether your identified failings have in fact been remedied, the Committee had regard to the evidence before it. Whilst the Committee noted that you had undertaken some training, there was no evidence of training in the areas relating to your knowledge and

understanding of the Standards or your scope of practice as a Dental Nurse. Further, there was no evidence of how you would actually use any learning to address the fundamental issues arising in this case or that you have fully reflected on what you have learned and the impact of your misconduct on patient safety and the reputation of the profession. The Committee has therefore been unable to assure itself regarding the current standard of your knowledge and understanding as it relates to your practice.

The Committee took into account the admissions you made at the outset of the hearing. Mr Sansom submitted that you have reflected on your actions and apologised for your lack of understanding. However, in the Committee's view, the evidence demonstrates that the process of your remediation is still in its very early stages. The Committee was not satisfied that you have sufficient insight. In the absence of sufficient remediation, the Committee could not be satisfied that you would not repeat your misconduct. The Committee therefore concluded that there is a remaining risk to the safety of patients and that a finding of impairment is necessary in the circumstances.

The Committee also had regard to the wider public interest. It took into account its duty to uphold standards, to safeguard the reputation of the dental profession and the public's confidence in it. The Committee considered that your actions had brought the dental profession into disrepute. In the light of your limited insight, the Committee decided that public confidence in the dental profession would be undermined if a finding of impairment were not made in the circumstances of this case.

Accordingly, the Committee has determined that your fitness to practise is impaired by reason of misconduct.

Sanction:

The Committee considered what sanction, if any, to impose on your registration. It noted that the purpose of a sanction is not to be punitive, although it may have that effect, but is to protect patients and the wider public interest.

In reaching its decision, the Committee took into account the 'Guidance for the Practice Committees including Indicative Sanctions Guidance (effective from October 2016)'. It considered the range of sanctions available to it, starting with the least serious. The Committee applied the principle of proportionality, balancing the public interest with your own interests.

The Committee found the following aggravating and mitigating factors in this case:

Aggravating:

- Risk of patient harm;
- Dishonesty;
- The actions were premeditated;
- Financial gain;
- The actions demonstrated a breach of trust;
- The misconduct continued over a period of four months;
- A lack of understanding of your duty to comply with GDC Standards and incorporate them into your practice; and
- Lack of insight.

Mitigating:

- Admissions at the outset to most of the allegations;
- No previous fitness to practice history; and
- Testimonials provided on your behalf.

Given your insufficient remediation and the wider public interest, the Committee decided that it would be wholly disproportionate to conclude this case without taking any action in respect of your registration. The Committee also concluded that the issue of a reprimand would be inadequate to mark the severity of your conduct. It considered that the sanction of a reprimand would not uphold public confidence, given the lack of knowledge and understanding around scope of practice, which you have yet to fully address. The Committee had particular regard to the guidance as to whether a reprimand would be suitable and considered that it would not be sufficient in the circumstances of this case. Further, the Committee determined that taking no further action or issuing a reprimand would not mark the seriousness of the finding of dishonesty or address the public interest concerns in this case.

The Committee next considered whether a period of conditional registration would be appropriate in this case. The Committee was mindful that any conditions imposed must be proportionate, measurable and workable. The Committee considered that there are no conditions that could be formulated to adequately address the misconduct found in this case as all dental professionals are required to comply with the GDC's standards and guidance. In any event, the Committee considers that a period of conditional registration would not sufficiently declare and uphold proper professional standards and maintain trust and confidence in the profession in light of the Committee's finding of dishonesty. The Committee therefore concluded that conditions would not be appropriate, workable or proportionate in all the circumstances.

The Committee went on to consider whether to suspend your registration. In doing so, it had regard to paragraph 7.28 of the Guidance which deals with the sanction of suspension. The Committee was satisfied, taking into account the relevant factors listed in this paragraph, that the suspension of your registration would be appropriate and proportionate. In particular, the Committee noted the lack of any evidence regarding your insight and remediation, and the identified risk of repetition. The Committee was satisfied that a period of suspension would be sufficient to mark the seriousness of the misconduct found. It was also satisfied that patients' interests would be sufficiently protected by a suspension and that the public's confidence in the dental profession would be maintained.

In deciding to suspend your registration, the Committee took into account that the sanction of erasure was open to it. It concluded, however, that the sanction of erasure would be disproportionate. It has determined that your failings, are capable of being remedied, although the Committee has no evidence that you have remedied them. Further, it received no evidence of any deep-seated personal or professional attitudinal problems that would render you incompatible with continued registration.

In all the circumstances, the Committee has determined to suspend your registration for a period of six months. It decided that a six-month period is sufficient, given the nature of this case. The Committee considered that a reasonable and informed observer would be satisfied that the sanction of suspension represents a suitable disposal of this matter and that a suspension is sufficient to mark the seriousness of dishonest conduct found and will meet the public interest considerations that arise whilst maintaining the possibility of the public being served by your skills as a dental care professional in the future.

The Committee hereby directs that your registration be suspended for a period of six months, with a review hearing to take place prior to the expiry of the suspension. That Committee will consider what action to take in relation to your registration. you will be informed of the date and time of that resumed hearing, with which you will be invited to fully engage.

Although this Committee in no way wishes to bind or fetter the committee which will review your suspension in approximately six months, that Committee may be assisted by being provided with a reflective statement, evidence of relevant CPD targeted to the shortcomings in this case and any other evidence you consider the Committee may find useful. The reviewing Committee may also be assisted by your attendance at that hearing to evidence your reflection on the Committee's findings as set out above.

Unless you exercise your right of appeal, your registration will be suspended 28 days from the date when notice is deemed to have been served upon you.

The Committee now invites submissions from Mr Middleton and then from Mr Sansom, as to whether the suspension should be imposed on your registration immediately, pending its substantive determination coming into effect."

Decision on immediate order

"Ms Salatkaite,

Having directed that your name be suspended from the Register, the Committee has considered whether to impose an order for immediate suspension in accordance with section 36U of the Dentists Act 1984 (as amended).

The Committee considered the submissions made by Mr Middleton on behalf of the GDC. He submitted that an immediate order is necessary for the protection of the public and is otherwise in the public interest. Mr Sansom, on your behalf, opposed the application for an immediate order on the basis that you would need to liaise with your employer, and that there was zero risk of repetition.

The Committee accepted the advice of the Legal Adviser.

In the circumstances, the Committee has determined that an immediate order is necessary to protect the public and is otherwise in the public interest. The Committee has decided that, given its findings on remediation and impairment, in a matter involving dishonesty and lack of integrity, it would not be appropriate to allow you to practise until the substantive direction of suspension takes effect. The Committee considers that an immediate order for suspension is proportionate and is consistent with the findings that it has set out in its determination.

The effect of the foregoing determination and this immediate order is that your registration will be suspended from the date on which notice of this decision is deemed served upon you. Unless you exercise your right of appeal, the substantive direction of suspension, as already announced will take effect 28 days from the date of deemed service. Should you decide to exercise your right of appeal, this immediate order of suspension will remain in place until the resolution of any appeal.

That concludes this case."