

HEARING HEARD IN PUBLIC

MISTRY, Jayantilal Bhikhabhai

Registration No: 49167

PROFESSIONAL CONDUCT COMMITTEE

JUNE 2016

Outcome: Erased with immediate suspension

Jayantilal Bhikhabhai MISTRY, a dentist, Statutory Exam 1975; was summoned to appear before the Professional Conduct Committee on 21 June 2016 for an inquiry into the following charge:

Charge

“That being registered as a dentist Mr Jayantalil Mistry’s (49167) fitness to practise is impaired by reason of conviction. In that:

1. On 30 July 2015 you were convicted at the Crown Court at Blackfriars of:
 - a) False accounting contrary to section 17(1)(A) of the Theft Act 1968;
 - b) Fraud by false representations contrary to sections 1 and 2 of the Fraud Act 2006.”

On 21 June 2016 the Chairman announced the determination as follows:

“Mr Dent: You represent the General Dental Council (GDC) at this one-day hearing of Mr Mistry’s case. Mr Mistry is neither present nor represented at today’s hearing. In his absence, the Committee first considered whether the Notice of the Hearing has been served on Mr Mistry in accordance with Rules 13 and 65 of the General Dental Council (Fitness to Practise) (GDC) Rules Order of Council 2006 (the Rules). The Committee has received a bundle of documents provided by the GDC which contains a copy of the Notice of Hearing letter dated 23 May 2016 sent to Mr Mistry’s registered address, and copied to Mr W of Dental Protection Society (Mr Mistry’s representative). The letter sets out the date, time and venue of the hearing, as well as the charge against Mr Mistry. The Royal Mail track and trace receipt confirms that the item was delivered to Mr Mistry on 25 May 2016, and was also signed for in the name of ‘Mistry’. The Committee notes that a copy of Notice of Hearing letter and enclosures was also sent to Mr W of Dental Protection. In these circumstances, the Committee is satisfied that Rules 13 and 65 have been met.

The Committee then went on to consider whether to exercise its discretion under Rule 54 to hear this case in the absence of Mr Mistry. The Notice of Hearing letter dated 23 May 2016 from the GDC to Mr Mistry states: “Your representative, B W of Dental Protection, has informed us that you do not wish to participate any further in the GDC process and do not wish to receive correspondence while you are in prison. We understand that your representative is in contact with you and will advise if you change your mind and wish to participate in proceedings.” The Committee has seen a copy of a letter dated 17 June 2016 from Mr W to the GDC in which he states: “I understand indirectly from Mr Mistry that he is

quite aware that the hearing will be proceeding, and whilst I would not describe him as happy, he is content for the hearing to proceed in his absence. We have not been instructed to make representations or put documents before the Committee.” The Committee has also been furnished with a copy of the exchange of emails between the GDC’s Prosecution Lawyer and Mr W regarding further clarification as to Mr Mistry’s wishes with the hearing proceeding in his absence. Mr W, in his email this morning, states that Mr Mistry “is understanding that the process must be followed and has chosen not to offer any representations on his behalf and is content that the hearing will go ahead on that basis.”

You have invited the Committee to proceed in the light of his indication through Mr W that he is content for the hearing to go ahead in his absence. You note that Mr Mistry has not sought an adjournment of this hearing. You also submit that given the serious nature of the charges against Mr Mistry there is a public interest in proceeding today.

The Committee has considered the submissions you have made. It has accepted the advice of the Legal Adviser. It has kept at the forefront of its mind that the discretion to proceed in the absence of the respondent should be exercised with the utmost care and caution. The Committee has had regard to Mr Mistry’s indication through Mr W that he is content for the hearing to progress in his absence, that he does not wish to offer any representations and that he does not wish to be contacted in connection with these proceedings. He has not requested an adjournment and the Committee has received no information to suggest that he would attend on a future occasion were it to adjourn today’s hearing. In all the circumstances, and given the serious nature of the charges against Mr Mistry, the Committee is satisfied that it is fair and in the public interest to hear this case in the absence of Mr Mistry in accordance with Rule 54.

In relation to the substantive matter in this case, the Committee has considered all the documentary evidence contained in the prosecution bundle. It has taken into account the submissions you have made on behalf of the GDC. The Committee has accepted the advice of the Legal Adviser.

This case concerns Mr Mistry’s conviction on 30 July 2015 at the Blackfriars Crown Court upon his own confession of false accounting, contrary to section 17(1)(A) of the Theft Act 1968 and fraud by false representations, contrary to sections 1 and 2 of the Fraud Act 2006. The Committee has seen a copy of the certificate of conviction dated 25 September 2015, which, in accordance with Rule 57(5), it has accepted as conclusive proof of Mr Mistry’s conviction. The Committee therefore finds the charge proved.

The Committee has had regard to the circumstances surrounding Mr Mistry’s offences, including the case summary, as well as the Judge’s sentencing remarks dated 18 December 2015. The Judge stated:

“Over a period of more than 15 years you committed fraud on a grand scale against the National Health Service. You were a dentist in sole practice. You invented large numbers of entirely fictitious claims for treatment. You made up the names and addresses of patients. You went to considerable trouble to create false dental records and trails to x-rays to substantiate your claim. You also made false claims in respect of a small number, 10 or 20, of genuine patients but about 90 percent of all the claims you submitted were bogus. In total, you obtained some £775,000 ...

This fraud committed in breach of trust over a substantial period of time with significant planning and sophistication plainly reaches the highest level of culpability. The loss caused was some £775,000. No doubt it is true that you had to pay tax on some of

that sum but it was lost to the National Health Service. You fall within the most serious category range within the guidelines. The offence range for false accounting goes up to six and a half years. If it had not been for your plea of mitigation and your plea of guilty, I would have been sentencing at the top of that range.”

The Committee notes from the Judge’s sentencing remarks that within a few months of Mr Mistry’s initial arrest in 2013, the prosecution was aware that a guilty plea was likely. Secondly, the Judge observed that Mr Mistry repaid the whole of the sum obtained: £775,000.

The Committee first considered whether Mr Mistry’s fitness to practise is currently impaired by reason of his conviction. In doing so, it exercised its independent judgement. Throughout its deliberations, it has borne in mind its primary duty to protect the public interest. The public interest 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.

On behalf of the GDC, you have submitted that in light of the serious nature of Mr Mistry’s conviction, the features of which were described in the Judge’s sentencing remarks, Mr Mistry’s fitness to practise is currently impaired.

The Committee has had regard to the serious nature of Mr Mistry’s conviction; in his respected position as a dentist he committed fraud on a large scale over a period of more than 15 years. He received public money for the treatment of patients in the region of £775,000, to which he was not entitled. This amounted to a serious breach of one of the fundamental requirements of the profession, namely that a dentist must act honestly. The Committee has had regard to the following paragraphs of GDC’s guidance ‘Standards for Dental Professionals’ (2013) which states that as a dentist you must:

Standard 1.3

You must be honest and act with integrity

1.3.2 You must make sure you do not bring the profession into disrepute.

9.1 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.

Mr Mistry breached this guidance. In light of the serious nature of the conviction, and having regard to the need to maintain public confidence in the profession and declare and uphold proper standards of conduct and behaviour, the Committee has determined that Mr Mistry’s fitness to practise is currently impaired by reason of his conviction.

The Committee next considered what sanction, if any, to impose on his registration. It recognises that the purpose of a sanction is not to be punitive, although it may have that effect, but to protect patients and the wider public interest. It has taken into account the GDC’s “Guidance for the Professional Conduct Committee, including Indicative Sanctions Guidance (October 2015)”. The Committee applied the principle of proportionality, balancing the public interest with Mr Mistry’s own interests. You invited the Committee to consider the sanction of erasure, given the serious nature of Mr Mistry’s conviction.

The Committee has considered the range of sanctions available to it, starting with the least serious. In view of the gravity of Mr Mistry’s conviction, the Committee has determined that it would be wholly inappropriate to conclude this case without taking any action in respect of his registration or with a reprimand. Likewise, in the Committee’s judgement, conditions would not be sufficient for the maintenance of public confidence in the dental profession and

upholding the reputation of the dental profession given the serious nature of Mr Mistry's conviction for fraud.

The Committee went on to consider whether to suspend Mr Mistry's registration. Mr Mistry committed fraud over a period of more than 15 years on a grand scale, for his own personal gain. He went to considerable trouble to create false dental records. It has had regard to the mitigating factors, including the fact that Mr Mistry had made arrangements to repay the whole of the sum obtained - £775,000. However, given the gravity of the conviction, the Committee has concluded that suspension would not be appropriate or sufficient for maintaining public confidence in the profession and upholding professional standards.

Dishonest conduct is unacceptable and is highly damaging to a registrant's fitness to practise and to public confidence in dental professionals. The Committee is satisfied that Mr Mistry's conviction is so serious that it is fundamentally incompatible with him remaining on the Dentists' Register. The Judge described the significant planning and sophistication that went into executing the fraud, which, he said, reached "the highest level of culpability."

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 impact of such a direction on Mr Mistry's own interests. However, in the light of the serious nature of the conviction, the Committee considers that the public interest clearly outweighs Mr Mistry's own interests in this matter.

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

"Mr Dent: Having directed that Mr Mistry's name be erased from the Dentists' Register, the Committee has considered whether to impose an immediate order of suspension of his registration pending the taking effect of the substantive direction. You, on behalf of the General Dental Council (GDC), have made no positive submissions in support of an immediate order of suspension.

The Committee is satisfied that in view of the gravity of Mr Mistry's conviction for fraud and the wider public interest, it is necessary in the public interest to direct that Mr Mistry's registration be suspended forthwith in accordance with Section 30 of the Dentists Act 1984.

The effect of this direction is that Mr Mistry's registration will be suspended immediately. Unless Mr Mistry exercises his right of appeal, his name will be erased from the Dentists' Register 28 days from the date on which notice of this decision is deemed served on him. Should Mr Mistry exercise his right of appeal, this immediate order for suspension will remain in place until the resolution of any appeal.

The interim order of suspension on Mr Mistry's registration is hereby revoked in accordance with Section 27B(9) of the Dentists Act 1984.

That concludes this case."