

HEARING 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.

McKENNA, Peter John

Registration No: 262484

HEALTH COMMITTEE

NOVEMBER 2018 – NOVEMBER 2019

Most recent outcome: Suspension extended for 12 months (with a review)**

** See page 2 for the latest determination

Peter John MCKENNA, a dentist, BDS Lond 1975 was summoned to appear before the Health Committee on 23 November 2018 for an inquiry into the following charge:

Charge

“That, being a registered dentist:

1. You have an adverse health condition as specified in Schedule A¹.

AND by reason of the facts alleged your fitness to practise is impaired by reason of adverse health.”

Mr McKenna was not present and was not represented. On 23 November 2018 the Chairman announced the findings of fact to the Counsel for the GDC:

“The hearing was held in private under Rule 53 of the General Dental Council (Fitness to Practise) Rules 2006 (the “Rules”).

[IN PRIVATE]

Accordingly, the Committee’s finding in relation to the charge is that:

1.	<i>You have an adverse health condition as specified in Schedule A. Proved.</i>
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We move to Stage Two.”

On 23 November 2018 the Chairman announced the determination as follows:

“The hearing was held in private under Rule 53 of the General Dental Council (Fitness to Practise) Rules 2006.

[IN PRIVATE]

¹ Schedules are private documents that cannot be disclosed to the public.

Accordingly, the Committee, having found that Mr McKenna's fitness to practise is currently impaired by reason of adverse physical or mental health, directs that his registration be suspended for a period of 12 months with a review.

The Committee now invites submissions on the question of an immediate order.

The Committee is satisfied that it is necessary for the protection of the public and is otherwise in the public interest to order that Mr McKenna's registration be suspended forthwith under s 30(1) of the Dentists Act 1984. In reaching its decision, the Committee balanced the public interest with Mr McKenna's interests. It would be inconsistent with the decision the Committee has made not to make an immediate order.

The effect of this order is that Mr McKenna's registration is suspended immediately. Unless he exercises his right of appeal, the 12 month period of suspension will commence 28 days from when notification of this decision is served on him. Should he exercise his right of appeal, this immediate order will remain in force pending the disposal of the appeal.

The interim order on Mr McKenna's registration is hereby revoked.

That concludes the hearing."

At a review hearing on 25 November 2019 the Chairman announced the determination as follows:

"This is a resumed hearing pursuant to Section 27C (2) of the Dentists Act 1984 (as amended) ('the Act'). Mr McKenna is neither present nor represented in this hearing. Mr Patience appeared on behalf of the General Dental Council (GDC).

Preliminary Matters

Application for hearing to be held in private

The Committee considered Mr Patience's application pursuant to Rule 53 for the hearing to be held in private as the matters today relate directly to Mr McKenna's health. The Committee heard and accepted the advice of the Legal Adviser.

The starting point for the Committee is for all hearings to be held in public as it is in the interests of justice to do so. However, a hearing may be heard in private where it concerns matters that are inextricably linked to the health or private and family life of the Registrant concerned, under Rule 53(2) of the General Dental Council (Fitness to Practise) Rules Order of Council ("the Rules"). The Committee agreed that as the matters in this case relate solely to Mr McKenna's health, it was in his interests that the hearing should be heard in private. The Committee therefore acceded to the application.

Decision on service of the Notification of Hearing

The Committee first considered whether Mr McKenna had been sent notification of the hearing in accordance with Rules 28 and 65 of the Rules. It noted the telephone note dated 14 October 2019 of a call from the GDC to [IN PRIVATE], who confirmed that Mr McKenna was a permanent resident there, and that this was therefore the registrant's last known address. The Committee saw a copy of the Notification of Hearing, dated 14 October 2019, which was sent by Special Delivery. The Committee was satisfied that the letter contained proper notification of today's hearing, including its date, time and location, as well as notification that the Committee had the power to proceed with the hearing in Mr McKenna's

absence. The Committee had before it a copy of a Royal Mail track and trace document which showed that the notice of hearing letter was delivered on 15 October 2019 and signed for. The notice of hearing was also sent via email to Mr McKenna on 14 October 2019. The Committee was satisfied that the notification of hearing had been served in accordance with the Rules.

Decision on proceeding in the Registrant's absence

The Committee then considered whether to proceed to review this case in the absence of Mr McKenna. The Committee bore in mind that its discretion to proceed with a hearing in the absence of a respondent should be exercised with the utmost care and caution. In making its decision the Committee took account of the principles set out in *R v Hayward* and *R v Jones, GMC v Adeogba & Visvardis [2016] EWCA Civ 162*. The Committee accepted the advice of the Legal Adviser.

[IN PRIVATE]. The Committee was of the view that there is a public interest in conducting this review today, and an adjournment is unlikely to secure his attendance. A review is required in order to ensure the public remains protected given the nature of the matters under consideration. The Committee therefore determined that it was appropriate to proceed with the review hearing in Mr McKenna's absence.

Background

[IN PRIVATE]. Mr McKenna's fitness to practise was found to be impaired [IN PRIVATE] and his registration was suspended for a period of 12 months with a review to take place prior to the expiry of the order.

Submissions

[IN PRIVATE]

Mr Patience told the Committee that Mr McKenna's fitness to practise remains impaired [IN PRIVATE]. He stated that the order of suspension should be extended for 12 months with a review hearing.

Committee's decision on impairment

It is the role of the Committee today to undertake a comprehensive review as per the request of the GDC. In so doing, the Committee had careful regard to all the documentary evidence before it and took account of the submissions made by both parties. The Committee also heard and accepted the advice of the Legal Adviser. The Committee had regard to the *GDC's Guidance for the Practice Committees*, including *Indicative Sanctions Guidance* (October 2016) (the Guidance).

In making its decision, the Committee first sought to determine whether Mr McKenna's fitness to practise is still impaired [IN PRIVATE]. It exercised its independent judgement and was not bound by the decision of the previous committee. It balanced Mr McKenna's needs with those of the public and bore in mind that its primary duty is to protect the public, including by maintaining public confidence in the profession and declaring and upholding proper standards and behaviour.

[IN PRIVATE]

The Committee therefore determined that Mr McKenna's fitness to practise is currently impaired [IN PRIVATE].

Committee's decision on sanction

The Committee next considered what sanction, if any, should be imposed on Mr McKenna's registration. It bore in mind the need to protect patients and the public interest. The Committee once again had regard to the principle of proportionality, weighing the interests of the public with Mr McKenna's own interests.

The Committee was satisfied that taking no action and allowing the current suspension to expire would not protect the public. The Committee was also satisfied that the imposition of conditions would not be workable [IN PRIVATE] and would not be sufficient to protect the public. The Committee therefore determined that only a further suspension was sufficient and proportionate [IN PRIVATE]. That suspension needed to be for a further 12 months in the circumstances with a review before the end.

That concludes this hearing."