

HEARING HEARD IN PUBLIC

SCHWARTZ, Leigh Jos

Registration No: 84540

PROFESSIONAL CONDUCT COMMITTEE

JANUARY 2020

Outcome: Suspended for 12 months with immediate suspension (with a review)

Leigh Jos SCHWARTZ, a dentist, BDS Lond 2004, was summoned to appear before the Professional Conduct Committee on 13 January 2020 for an inquiry into the following charge:

Charge

“That being registered as a dentist,

1. You did not maintain any, or any adequate clinical records in respect of appointments with Patient A on:
 - a. 20.02.2013;
 - b. 07.08.2013;
 - c. 18.10.2013;
 - d. 21.10.2013;
 - e. 23.10.2013;
 - f. 07.11.2013;
 - g. 10.03.2014;
 - h. 03.07.2014;
 - i. 09.12.2014;
 - j. 05.01.2015;
 - k. 29.01.2015;
 - l. 10.02.2015;
 - m. 24.03.2015;
 - n. 31.03.2015;
 - o. 20.04.2015;
 - p. 28.04.2015;
 - q. 18.05.2015;
 - r. 02.06.2015;
 - s. 16.06.2015;

- t. 06.07.2015.
2. You failed to justify and/or evaluate radiograph(s) in breach of IR(ME)R on:
 - a. 21.10.2013;
 - b. 23.10.2013;
 - c. 12.06.2014.
3. From 8 August 2017 to at least 8 June 2018 you failed to co-operate with the General Dental Council in a fitness to practise investigation by not providing any, or any adequate evidence of indemnity when requested to do so.
4. From at least 8 August 2017 to 25 October 2017 you failed to maintain a correct and up-to-date registered address;
5. You failed to adequately respond to a complaint from Patient A about their dental treatment.

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

As Mr Schwartz did not initially attend at commencement of the hearing and was not represented, the Chairman made the following statement regarding proof of service. He addressed this to the Counsel for the GDC.

“Decision on service of the Notification of Hearing 13 January 2020

The Committee considered whether notice of the hearing had been served on Mr Schwartz in accordance with Rules 28 and 65 of the Rules. It received a bundle of documents containing a copy of the Notification of Hearing letter, dated 10 December 2019 and a Royal Mail ‘Track and Trace’ receipt confirming that the letter had been signed for by ‘LEIGH SCHWARTZ’. A copy of the letter was also sent to him by email.

The Committee was satisfied that the letter contained proper notification of today’s review hearing, including its time, date and venue, as well as notification that the Committee had the power to proceed with the hearing in Mr Schwartz’s absence. On the basis of the information provided, the Committee was satisfied that notice of the hearing had been served on Mr Schwartz in accordance with the Rules.

Decision on whether to proceed with the hearing in the absence of Mr Schwartz 13 January 2020

The Committee next considered whether to exercise its discretion under Rule 54 of the Rules to proceed with the hearing in the absence of Mr Schwartz and/or any representative on his behalf. It approached the issue with the utmost care and caution, noting his right to attend and participate. The Committee had regard to the factors to be considered in reaching its decision as set out in the case of *R v Jones [2003] 1 AC 1HL*, and the public interest considerations referred to in *Adeogba v GMC [2016] EWCA CIV 162* as well as the obligation on professionals to engage with their regulator. It took into account that fairness to Mr Schwartz was of primary importance, but also remained mindful of the need to be fair to the GDC. The Committee also took into account the public interest in dealing with Mr Schwartz’s case expeditiously.

The Committee's attention was drawn to a Notification of Hearing letter for the PCC hearing from the GDC to Mr Schwartz, dated 10 December 2019, and which has been sent to his registered address. That letter set out the allegations against Mr Schwartz.

Ms Gates referred the Committee to the information contained in the bundles which showed the attempts made by the GDC to secure Mr Schwartz's engagement in these proceedings by letter, email (sent to two email addresses) and telephone. The Committee was mindful that the factual allegations relate to issues going back to 2013. The Committee noted that the last contact from Mr Schwartz was an email dated 06 September 2019 to the GDC instructing lawyer. Ms Gates further informed the Committee that she received an oral update from the GDC instructing lawyer who confirmed that there have been numerous telephone calls and voice messages left for Mr Schwartz last Friday, 10 January 2020. No response has been received from Mr Schwartz.

The Committee was satisfied from the information before it, that Mr Schwartz is aware of the current hearing dates and had formal notice of the hearing. It was satisfied that Mr Schwartz had voluntarily decided not to attend the hearing. The Committee noted that Mr Schwartz has a history of sporadic engagement with his regulator, had not requested to attend the hearing by other means available to him and has not sought an adjournment. In the circumstances, the Committee concluded that it was unlikely that an adjournment of the hearing would secure Mr Schwartz's attendance on a future occasion. The Committee determined that it was fair and in the interests of justice for the hearing to proceed in the absence of Mr Schwartz."

On 15 January 2020 the Chairman made the following statement regarding the finding of facts:

"Mr Schwartz,

This is the Professional Conduct Committee's inquiry into the facts which form the basis of the allegations against you that your fitness to practise is impaired by reason of your misconduct.

This is a case which raises a number of serious issues of fact. It was listed for five days beginning on Monday 13 January 2020. At the outset of the hearing Ms Gates on behalf of the GDC made an application to proceed in your absence. The Committee took account of the submissions and the Legal Advice and decided it was fair and reasonable to proceed in your absence. The case was opened, evidence was presented, and the Committee retired into camera to discuss the facts. By the early morning of Tuesday 14 January 2020, Mr McNeilly an instructing lawyer for the GDC, received an email from you stating that you now wish to engage with the hearing. At this point the Committee remained in camera and the determination had not been handed down. Upon your arrival the hearing was adjourned for a short while to allow you time to consider your position. In your submissions to the Committee you expressed that you have been unwell which is why you were unable to attend the hearing yesterday and that you wish to reopen stage one of the proceedings.

Application to reopen stage one

You invited the Committee to reopen stage one based on you disputing one of the charges. This was opposed by Ms Gates. It was resolved that the Committee would consider your application to consider reopening stage one once it had been provided with certain documents. In the event, however, following provision of exhibit three which was an agreed

position by yourself and Ms Gates, the outcome was that the motion to reopen stage one was in fact withdrawn. Therefore, there was no application for the Committee to consider.

The Charges

There are five charges relating to you in these proceedings. Charge one relates to twenty occasions where it is alleged that you did not maintain any or any adequate clinical records in respect of appointments and the totality of the period covered is 2013 to 2015. Charge two relates to a failure to justify and or evaluate radiographs which is a breach of the Ionising Radiation (Medical Exposure) Regulations 2000 (IR(ME)R2000) designed to protect individuals from the dangers of ionising radiation while undergoing medical procedures. Charge three relates to your failure to cooperate with the GDC in a fitness to practise investigation by not providing any or any adequate evidence of indemnity when you were required to do so. Charge four relates to a failure by you to maintain an up to date registered address from 8 August 2017 to 25 October 2017. Lastly, Charge 5 relates to the failure of you to adequately respond to Patient A about her dental treatment and a query that she raised in respect of it.

Evidence

In considering the charges against you, the Committee has had regard to all the evidence before it. This includes the GDC's main prosecution bundle which contains the signed witness statement of Patient A and the associated exhibits, Witness 2 – UK Registrations Team Manager, Witness 3 – Caseworker in Registrations, Witness 4 – Practice Manager at Bupa Dental Care.

The Committee also received expert evidence from Ms Liz Glass (called on behalf of the GDC) in the form of a written report dated 06 November 2019.

Admissions

You made full admissions to all of the charges.

The Committee's Findings of Fact

The Committee considered all the evidence presented to it. It took account of the submissions made by Ms Gates on behalf of the GDC and it accepted the advice of the Legal Adviser.

The Committee considered each head of charge separately, bearing in mind that the burden of proof rests with the GDC and that the standard of proof is the civil standard, that is, whether the alleged facts are proved on the balance of probabilities.

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

1. a.	<i>You did not maintain any, or any adequate clinical records in respect of appointments with Patient A on:</i> <i>a. 20.02.2013;</i> <i>b. 07.08.2013;</i> <i>c. 18.10.2013;</i> <i>d. 21.10.2013;</i>
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	<p>e. 23.10.2013; f. 07.11.2013; g. 10.03.2014; h. 03.07.2014; i. 09.12.2014; j. 05.01.2015; k. 29.01.2015; l. 10.02.2015; m. 24.03.2015; n. 31.03.2015; o. 20.04.2015; p. 28.04.2015; q. 18.05.2015; r. 02.06.2015; s. 16.06.2015; t. 06.07.2015.</p> <p>Admitted and Found proved in its entirety</p>
2.	<p><i>You failed to justify and/or evaluate radiograph(s) in breach of IR(ME)R on:</i></p> <p>a. 21.10.2013; b. 23.10.2013; c. 12.06.2014</p> <p>Admitted and Found proved</p>
3.	<p><i>From 8 August 2017 to at least 8 June 2018 you failed to co-operate with the General Dental Council in a fitness to practise investigation by not providing any, or any adequate evidence of indemnity when requested to do so.</i></p> <p>Admitted and Found proved</p>
4.	<p><i>From at least 8 August 2017 to 25 October 2017 you failed to maintain a correct and up-to-date registered address;</i></p> <p>Admitted and Found Proved</p>
5.	<p><i>You failed to adequately respond to a complaint from Patient A about their dental treatment.</i></p> <p>Admitted and Found Proved</p>

We move to Stage Two.”

On 17 January 2020 the Chairman announced the determination as follows:

“The Committee took account of the submissions made by Ms Gates on behalf of the General Dental Council (GDC) and those made by you. It accepted the advice of the Legal Adviser.

Your evidence

The Committee noted that while you were able to provide thorough responses to questioning you did not always provide a clear answer to the question that was put to you. It considered that your evidence indicated only limited acceptance of responsibility as the treating dentist for failures that occurred. It also had regard to the particular problems in relation to communication that you say have occurred. You put forward explanations for your lack of engagement with the GDC in this investigation: your computer was lost, your emails had been hacked, a family member was unwell, your emails were not working properly, you could not receive messages on your mobile phone, your landline was not working and that you did not receive the notice of hearing letter in December 2019. The Committee did not accept these explanations and concluded therefore that you were not credible in respect of this aspect of your evidence.

Previous fitness to practise history

In accordance with Rule 20, Ms Gates firstly referred the Committee to your previous fitness to practise history.

PCC March 2017

The Committee had sight of a previous PCC Determination from March 2017 which included charges about radiographic practice. In relation to those proceedings current impairment was found by that Committee. That Committee found that some remediation had been undertaken by yourself, but improvement was still required. As a result of the findings in the March 2017 proceedings the Committee imposed conditional registration for a period of 12 months.

PCC October 2017

The Committee determined that although some facts were found proved your failings did not amount to misconduct. However, this Committee noted that the factual findings were relevant to this case as they included deficiencies in respect of record keeping.

IOC 30 November 2018

In addition, there were matters relating to the interim order in the present case before this Committee. On 30 November 2018 the IOC imposed interim conditions for a period of 12 months. However, due to your non-compliance with those conditions the IOC met again on the 22 March 2019 when the conditions were revoked, and interim suspension was imposed on your registration.

Decision on Misconduct

The Committee bore in mind that its decisions on misconduct and impairment are matters for its own independent judgement. There is no burden or standard of proof at this stage of the proceedings. Ms Gates outlined the specific GDC standards, which in her submission, have been breached. She invited the Committee to conclude that the facts found proved are

serious and amount to misconduct. You conceded that the facts found proved amount to misconduct.

The Committee had regard to the GDC's Standards for the Dental Team (September 2013) and determined that your failings breached the following standards below:

1.9 You must find out about laws and regulations that affect your work and follow them

4.1 Make and keep contemporaneous, complete and accurate patient records.

5.1 Make sure that there is an effective complaints procedure readily available for patients to use and follow that procedure at all times.

5.3 Give patients who complain a prompt and constructive response.

9.4 You must co-operate with any relevant formal or informal inquiry and give full and truthful information.

9.4.1 If you receive a letter from the GDC in connection with concerns about your fitness to practise, you must respond fully within the time specified in the letter. You should also seek advice from your indemnity provider or professional association.

The Committee also had regard to the relevant guidance with regard to grading and recording dental x-rays: *The Ionising Radiation (Medical Exposure) Regulations 2000* and determined that your actions breached these regulations.

The Committee appreciated that the above breaches do not automatically result in a finding of misconduct. However, it was of the view that the breaches in this case are serious and fundamental and the Committee concluded that your conduct was a significant departure from the standards expected of a registered dental professional. In considering the gravity of your departures from the GDC's Standards, the Committee took into account the opinion of the expert witness in this case, Ms Glass.

The Committee noted that the factual findings in this case included failings in basic dentistry over a prolonged period of time. It considered that these failings concern fundamental aspects of dentistry and directly impacted upon the overarching issue of patient safety.

Record keeping

The Committee noted that record keeping failures are not always sufficiently serious to amount to misconduct. The Committee had regard to Ms Glass' evidence that the record keeping failures in this case were serious. It had regard to Ms Glass' report where she sets out very clearly twenty occasions where your record keeping has fallen far below the standard expected. She states that during the course of the twelve appointments between 27 January 2015 to 11 August 2015 you failed to record any treatment carried out at ten consecutive appointments and added "*this is the poorest example of record keeping I have encountered and falls very far below the standard of record keeping expected of a dentist working in general practice*".

Radiographs

The Committee found that the radiographs on the specific dates had not been justified. This is the only clinical failing within this set of charges. Ms Glass described a duty to justify/evaluate radiographs as a legal requirement in accordance with IR(ME)R 2000. Failure to report on radiographs could result in potential dangers to a patient from increased doses of radiation which is why the guidelines are in place to stop such radiographs being

taken. The Committee accepted the opinion of Ms Glass that your record keeping fell far below the standard expected.

Failure to cooperate with the GDC

The Committee was satisfied from the standards that you have an unequivocal duty to cooperate with the investigation being conducted by the GDC and you clearly failed to do so over a prolonged period of time. You failed to respond to the majority of the communications from your regulatory body and those of the lawyers instructed by it and failed to provide evidence of your indemnity insurance. You also failed to update your address. The Committee considers that your conduct has frustrated the GDC investigation into concerns relating to you and undermined the effectiveness of the GDC's role in professional regulation. The Committee had no doubt that this would be seen as deplorable conduct by fellow registrants and the public. In the Committee's view, you have breached a fundamental duty of your registration. It was satisfied that such a breach is serious and that falls far below the standard expected.

Complaint handling

The Committee took the view that in the context of all the other failings your failure to respond adequately to Patient A's complaint was serious. It considered that Patient A deserved an explanation and has been deprived of one to date. According to GDC standards, it notes dentists should be accountable for their actions.

The Committee determined that your failures, individually and collectively, amounted to misconduct.

Decision on Impairment

The Committee next considered whether your fitness to practise is currently impaired by reason of your misconduct. Ms Gates addressed the Committee on the factors that it must consider, including your level of insight and any remediation. She also addressed the Committee on the need to have regard to protecting the public and the wider public interest, which includes the need to declare and maintain proper standards and maintain public confidence in the profession and in the GDC as a regulatory body. She submitted that whilst the failings are remediable, you have provided insufficient evidence of remediation and that you have displayed a disregard for your regulator. She submitted that your fitness to practise is currently impaired by reason of your misconduct.

You deny that you are currently impaired but submitted that you are well on the way to a point where you do not pose a risk to patients.

The Committee adopted the approach formulated by Dame Janet Smith in her Fifth Report from the Shipman case; that is, the PCC should ask itself:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or
- b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or

- c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or
- d. ...

The Committee was of the view that your failures are capable of being remedied. It noted that there are numerous documents in your remediation bundle, many of which date back to the time period of the former PCC proceedings. Furthermore, it noted that most of the audits were carried out by yourself and were not independently verified. The Committee therefore attached less weight to this. The only independent audit particularly in relation to record keeping was dated 8 February 2017. The Committee noted that your Personal Development Plan was vague and had errors.

The Committee noted that there was no current evidence before it that you have taken sufficient action to remedy your misconduct. In any event the Committee had nothing before it to demonstrate that you have any recognition or real insight regarding the seriousness of the conduct that gave rise to these proceedings. Nor was there any recent evidence before it to demonstrate that you have made changes to your practice.

Furthermore, the evidence before this Committee indicates a pattern of non-engagement on your part including ignoring correspondence from the GDC and Patient A's complaint. In light of limited evidence of insight and remediation, it considered that there is a likelihood that you could repeat the misconduct it has found. Given that your misconduct is of the kind that could potentially undermine the GDC's ability to regulate the profession effectively, the Committee considered that patient safety concerns do arise from the matters in this case. In the Committee's view, your failure to cooperate effectively with the GDC and to deal with Patient A's complaint demonstrates a disregard for the GDC's important role in the protection of the public. The Committee cannot be confident that if any correspondence or complaint were to be raised it would be responded to as expected. Furthermore, the Committee determined to proceed in your absence on day one of this hearing as you did not attend or make any attempts to notify the GDC of reasons for your non-attendance. You simply attended the following day and explained that you could not attend as you were unwell.

You explain your misconduct on the basis of the difficulties in your private life at the material time. The Committee considered the explanations you gave for your conduct and was sympathetic towards you. Although it does not dismiss the difficulties which you experienced, it remains in no doubt that you were entirely responsible for your failure to engage with your regulator.

The Committee noted that, whilst you have made full admissions and have participated throughout the hearing with the GDC (from day two of the hearing), it was not satisfied that you have achieved full insight into your behaviour. The Committee considered that there is an ongoing risk to the public.

The Committee is of the view that there remains a real risk of repetition, as well as its consideration that public confidence would be undermined if a finding of current impairment were not made. It therefore determined that your fitness to practise is currently impaired by reason of your misconduct.

Decision on Sanction

The Committee next considered what action, if any, to take in relation to your registration. Ms Gates addressed the Committee on the matter of sanction and submitted that it must have regard to your non-engagement when determining the workability of any sanction. She drew to the Committee's attention to your previous fitness to practise history. Ms Gates invited the Committee to conclude that an order of suspension with a review would be appropriate.

You invited the Committee to impose a lesser sanction of conditions and gave assurance of the workability of such arrangements. You stated that you had a position in practice open to you but provided no evidence to support that assertion.

The Committee reminded itself that the purpose of a sanction is not to be punitive although it may have that effect. The Committee took into account the GDC's "Guidance for the Practice Committees, including Indicative Sanctions Guidance" (October 2016). The Committee bore in mind the principle of proportionality.

The Committee was provided with documents relating to the previous adverse findings against you. It considered that after conditions had been imposed by a previous PCC in 2017 and lifted in 2018 that you should have developed insight into your clinical and attitudinal deficiencies. However, you have failed to demonstrate that. The Committee took the view that your non-engagement, your previous fitness to practise history, together with the current findings of misconduct and impairment strongly indicate that you have some way to go to remedy your failings to a point where you can return to unrestricted practice.

The Committee considered the mitigating and aggravating factors in this case. It noted that this is a case involving a single patient during a single course of treatment. Conversely the Committee noted that Patient A suffered disadvantage from the treatment that you provided and your failure to respond to her complaint. You breached the trust placed in you as a professional by failing to adhere to standards of care which are fundamental to the practice of dentistry. Your misconduct was sustained and repeated in that you have previous findings against you, which are similar to the findings made in this case. You have demonstrated a disregard of the role of the GDC and the systems regulating the profession by failing to respond to correspondence and requests from the GDC. You have demonstrated limited insight into your actions.

The Committee considered the available sanctions in ascending order starting with the least restrictive.

The Committee was of the view that to conclude this case with no further action or with a reprimand would be inappropriate because neither outcome would manage the risk that you pose to patients. In addition, neither option would be sufficient to protect the wider public interest.

The Committee then considered whether an order for conditional registration would be appropriate and sufficient in this case. You have not fully engaged with the GDC since September 2019. The Committee was of the view that conditions will require a willingness on the part of a registrant to comply with them and in light of your lack of engagement the Committee decided it could have no confidence that you would comply even if relevant, appropriate and workable conditions could be formulated. The Committee also had regard to the fact that interim conditions were revoked, and suspension was imposed on your registration due to your non-compliance in 2018. Although you assert that you could find a

position in a practice, there was no evidence to support that in the form of testimonials or an indicative letter that an offer was open to you. In these circumstances an order for conditional registration would be insufficient in this case to maintain public confidence in the profession and declare and uphold appropriate standards of conduct and competence among dental professionals.

The Committee has given careful consideration as to whether it is sufficient to direct that your registration be suspended or whether this is a case where an order of erasure is necessary. It is in no doubt that the findings against you are serious. The Committee also has concerns about your lack of insight into the consequences of your conduct and how it impacts on public confidence in the dental profession.

The Committee considered that a suspension order would protect patients and would send a signal to you, the profession and the public reaffirming the standards of conduct and behaviour expected of a registered practitioner. A period of suspension would also provide you with the opportunity to demonstrate a willingness to fully engage with your regulator and work towards a return to unrestricted practice.

This is not, in the Committee's opinion, a case where the evidence of a professional attitudinal problem is currently so strong as to be incompatible with you remaining on the register. Consequently, the Committee concluded that the sanction of erasure would not be appropriate or proportionate. Taking all these factors into account, the Committee is satisfied that the public interest concerns in this case are sufficiently met by a period of suspension.

Accordingly, the Committee directs that your registration on the Dentists Register be suspended for a period of 12 months. The Committee is satisfied that this period of time is appropriate to mark the seriousness of your misconduct and to send a message to the profession and the public that this type of conduct is not acceptable.

The Committee considers that your case should be reviewed at a resumed hearing to be held shortly before the end of the period of suspension. That Committee will consider what action it should take in relation to your registration.

The Committee considered that a Committee reviewing your case may find it helpful to receive the following:

- evidence of your meaningful engagement with the GDC;
- up to date Personal Development Plan;
- evidence of CPD and training relevant to the clinical risks identified; and
- a reflective piece demonstrating your insight and understanding of the impact of your behaviour upon Patient A and the wider public in the dental profession.

The Committee now invites submissions as to whether your registration should be suspended immediately.

Decision on immediate order

The Committee has considered whether to make an order for the immediate suspension of your registration. Ms Gates made an application for an immediate order. You made no submissions. The Committee has considered the submissions made by Ms Gates. It has accepted the advice of the Legal Adviser.

The Committee has had regard to its reasons for finding that your fitness to practise is impaired, including its view that there remains a real risk of repetition, as well as its consideration that public confidence would be undermined if a finding of current impairment were not made. It has also had regard to its reasons for directing that your registration be suspended. In these circumstances, the Committee has concluded that not imposing an immediate order and allowing you to practise during the period before the substantive order takes effect would place the public at risk. It was also satisfied that it would be contrary to the public interest and inconsistent with its findings not to impose an immediate order to cover the appeal period or, if an appeal is lodged, until it has been disposed of.

The Committee has determined that it is necessary for the protection of the public and is otherwise in the public interest that your registration be suspended forthwith.

The effect of this direction is that your registration will be suspended immediately. Unless you exercise your right of appeal, the substantive order of suspension will come into effect 28 days from the date on which notice of this decision is deemed to have been served on him. Should you exercise your right of appeal, this immediate order for suspension will remain in place until the resolution of any appeal.

The Committee noted that there was currently an interim order of suspension on your registration. However, it considered that the serious nature of the impairment found in this case justifies the imposition of an immediate order. The interim order of suspension currently on your registration is revoked.

That concludes the hearing of your case.”