

**HEARING HEARD IN PUBLIC**

**ULMAN, Joanna Magdalena**

**Registration No: 156299**

**PROFESSIONAL CONDUCT COMMITTEE**

**JUNE – JULY 2016 \***

\*This hearing was heard together with the Conduct hearing of SHRESHTA [67696]

**Outcome: Erased with Immediate Suspension**

Joanna Magdalena ULMAN, a dental nurse, registered as of 76 London Road, Wembley HA9 7HG, United Kingdom; Verified competency in Dental Nursing, was summoned to appear before the Professional Conduct Committee on 27 June 2016 for an inquiry into the following charge:

**Charge**

“That you, being a registered dental nurse:

**Working beyond the scope of her practice**

1. Worked beyond your scope of practice on one or more occasions between 16 August 2014 and 29 October 2014, while employed at Lister House International Centre for Excellence in Dentistry (‘the practice’), in that you provided the following treatments to patients:
  - (a) scaling and polishing; and/or
  - (b) non-surgical debridement; and/or
  - (c) post-operative debridement; and/or
  - (d) tooth whitening.

**Misleading advertising**

2. Allowed yourself to be described as a “Specialist Dental Nurse & Dental Hygienist” on the practice website from an unknown date in January 2015 until on or about 17 March 2015.
3. Your conduct in relation to paragraph 2 above was misleading, in that:
  - (a) “Specialist Dental Nurse” is not a specialism recognised by the GDC; and/or
  - (b) you were not registered as a Dental Hygienist in the UK.
4. Your conduct in relation to paragraph 2 above was dishonest, in that:
  - (a) you were aware of and/or had approved the contents of your profile; and
  - (b) you were aware of the facts and matters set out in paragraphs 3(a) and/or 3(b) above.

**Insurance**

5. On one or more occasions between 9 September 2014 and 20 December 2014 worked as a dental nurse at Glow Dental Practice, 87 Northcote Road, Battersea, London SW11 6PL, on a self-employed basis, when you did not hold any or any adequate professional indemnity insurance.
6. Your conduct at 5 above was dishonest in that you knew:
  - (a) that you did not hold any or any adequate professional indemnity insurance;
  - (b) that in those circumstances you were not allowed to practise as a dental nurse.

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

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

**Service and proceeding in the absence of Ms Ulman**

“Mr Mulchrone: You are representing the General Dental Council (GDC) at the Professional Conduct Committee (PCC) hearing of Ms Ulman’s case. Ms Ulman is neither present nor represented at the hearing. In her absence, the Committee first considered whether the GDC has complied with service of the notice of hearing in accordance with Rules 13 and 65 of the GDC (Fitness to Practise) Rules Order of Council 2006 (the Rules).

The Committee has seen a copy of the notice of hearing letter dated 26 May 2016 from Capsticks Solicitors, acting on behalf of the GDC, to Ms Ulman, which was sent by Special Delivery and First Class Post to the address shown in the GDC’s register as being her registered address. The letter sets out the date, time and location of today’s hearing, as well as the allegation against her. The Committee is satisfied that the letter complies with Rule 13 and notes that it was sent more than 28 days in advance of today’s hearing. The Royal Mail sticker on the envelope states that it attempted delivery of the letter but it was not able to do so as the item was “not called for”. In addition, the Committee has been referred to various emails from Capsticks Solicitors to Ms Ulman’s email address concerning today’s hearing. Ms Ulman confirmed to the GDC by email dated 16 July 2015 that she was no longer residing in the UK but that she was able to receive post via email to the email address given. Taking all these matters into account, the Committee is satisfied that the GDC has complied with the requirements of service in accordance with Rule 65.

The Committee then went on to consider whether to hear this case in the absence of Ms Ulman, in accordance with Rule 54. You have referred to the various letters from Capsticks Solicitors to Ms Ulman regarding today’s hearing, including requests that she notify the GDC whether or not she would be attending the hearing and/or whether she would be represented. The Committee further notes the emails from Capsticks Solicitors to Ms Ulman concerning today’s hearing with requests that she notify Capsticks Solicitors in advance of the hearing commencing today whether she is attending today’s hearing and whether she will be represented. To date, Ms Ulman has not responded to any of those requests. The emails have not been returned as undeliverable. You also drew the Committee’s attention to a letter dated 1 February 2016 from an enquiry agent, acting on the instructions of Capsticks Solicitors, regarding contact details for Ms Ulman. The letter confirms that Ms Ulman’s email address appears to be active but that her mobile telephone number is ‘dead’ and the two addresses supplied appear to be multiple occupancy. In the light of all this information, you

have submitted that Ms Ulman has voluntarily absented herself from these proceedings and that it is fair and in the public interest to proceed with the hearing in the absence of Ms Ulman.

The Committee has considered the submissions you have made. It has accepted the advice of the Legal Adviser. It has borne in mind that the discretion to proceed in the absence of the respondent must be exercised with the utmost care and caution and that it must have in mind the need for fairness to Ms Ulman as well as to the GDC. The Committee has taken into account Ms Ulman's lack of engagement with the GDC in respect of these proceedings, despite numerous requests from Capsticks Solicitors for her to respond. It notes that her last communication with the GDC was on 16 July 2015 in which she stated that she was no longer residing in the United Kingdom. There is nothing before the Committee to suggest that Ms Ulman would return to the United Kingdom to attend this hearing, or, if it was adjourned, on another occasion. In these circumstances, the Committee has concluded that she has voluntarily absented herself from these proceedings. Furthermore, the Committee has had regard to the serious nature of the allegations against Ms Ulman, which include an allegation that she acted outside the scope of her practise. The Committee is satisfied that there is a clear public interest in the expeditious disposal of Ms Ulman's case. Accordingly, the Committee has decided to proceed in the absence of Ms Ulman, in accordance with Rule 54.

#### **Preliminary applications under Rule 25**

Thereafter, you made an application under Rule 25(1)(a) that the allegations against Ms Ulman and that of Mr Shrestha be considered by this Professional Conduct Committee (PCC) at the same hearing. You say that the allegations against each respondent arise out of the same circumstances in accordance with Rule 25(1)(a) and that the GDC intends to rely on a number of witnesses in support of its case for both respondents. In short you say that there would be no risk of prejudice to the fairness of the proceedings in the allegations against Ms Ulman and that of Mr Shrestha being joined at the same PCC hearing.

Ms Wilson, Solicitor, acting on behalf of Mr Shrestha, confirmed that he had no objection to this proposed course of action. The Committee has received no representations from Ms Ulman on this matter but notes that Capsticks Solicitors had formally notified her of its intention to make this application by letter dated 27 May 2016.

The Committee has considered the submissions made. It has accepted the Legal Adviser's advice. In the Committee's judgement, the allegations against each respondent arise out of the same circumstances in accordance with Rule 25(1)(a). It is satisfied that it would be fair to hear them both at the same hearing of the PCC. According, the Committee has acceded to your application under Rule 25(1).

Thereafter, you made further applications under Rule 25(2) for this Committee to hear additional allegations against Ms Ulman and Mr Shrestha. In respect of Ms Ulman, the additional allegations relate to the provision of treatment (charges 1(c) and 1(d) which are said to be outside the scope of her practice (and are mirrored in charges 1(c) and 1(d) for Mr Shrestha) and that she did not have any or any adequate professional indemnity insurance (charge 6). In respect of Mr Shrestha, the additional allegation (charge 5) relates to information he provided to the GDC as to his knowledge of the contents of the practice website concerning Ms Ulman, which is said to be false and/or misleading (charge 6). Your position is that these allegations are of a similar kind and are founded on the same alleged facts and fall within the provisions of Rule 25(2). The Committee notes from the documents

before it that Capsticks Solicitors notified Ms Ulman and Mr Shrestha of its intention to apply for further allegations to be considered by the PCC at this hearing.

Ms Wilson confirmed that Mr Shrestha had no objection to the additional allegations being considered by this PCC at this hearing.

The Committee has considered the submissions made by both parties. It has accepted the Legal Adviser’s advice. In the Committee’s judgement, the additional allegations against Ms Ulman and Mr Shrestha arise out of the same circumstances and fall within the provisions of Rule 25(2). Accordingly, the Committee has acceded to your application under Rule 25(2).”

On 30 June 2016 the Chairman announced the findings of fact to the Counsel for the GDC:

“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 Mulchrone on behalf of the GDC. It accepted the advice of the Legal Adviser. In accordance with that advice, it has considered each charge separately.

The Committee was aware that the burden of proof rests on the GDC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that the facts of a charge will only be proved if the Committee finds that it is more likely than not that the facts occurred as alleged. The Committee reminded itself that Ms Ulman was not required to prove or disprove anything. The Committee drew no adverse inference from the non-attendance of Ms Ulman.

The Committee heard oral evidence from three GDC witnesses, namely Witness 1; an employee at your practice, Witness 2; an employee of the website design company employed by your practice, and Mr Fulford, an expert witness instructed by the GDC. The Committee found these witnesses to be generally credible, although it considered that Witness 2 was of less help for the Committee’s considerations as she was unable to provide specific information required.

The documentary evidence before the Committee consisted of a number of written witness statements. It has also had regard to Mr Fulford’s expert report dated 4 January 2016. The Committee has also been provided with copies of the GDC’s “Scope of Practice” and “Guidance on Advertising.”

The Committee made the following findings:

1.	<i>Worked beyond your scope of practice on one or more occasions between 16 August 2014 and 29 October 2014, while employed at Lister House International Centre for Excellence in Dentistry (“the practice”), in that you provided the following treatments to patients:</i>
1.(a)	<i>scaling and polishing; and/or</i>
1.(b)	<i>non-surgical debridement; and/or</i>
1.(c)	<i>post-operative debridement; and/or</i>
1.(d)	<i>tooth whitening.</i>
	<b>Found Proved in its entirety</b>

	<p>The Committee had regard to the documents provided by Ms Ulman to the GDC in support of her application for registration as a dental hygienist dated 5 January 2015. This included the work log of treatment provided by Ms Ulman to patients and in which the level of supervision provided is described as minimum. The log sets out the treatment listed at charges 1(a) to 1(d). Mr Fulford’s evidence was that irrespective of the level of supervision, these procedures fell outside the scope of practice as a registered dental nurse. It has had regard to Mr Shrestha’s evidence that Ms Ulman carried out scaling and polishing, non-surgical debridement, post-operative debridement and tooth whitening, while under his supervision. He explained that he allowed Ms Ulman to carry out supervised work experience, at her request, to help her with her application for registration as a dental hygienist with the GDC. At that stage he did not realise that this was not permitted.</p> <p>In her response to the allegations, dated 24 April 2015, Ms Ulman stated that <i>‘I have been providing dental nurse duties at Lister House ICED and any hygiene procedures were carried out by Mr Anil Shrestha and I was assisting.’</i> The Committee did not accept this account, given the accepted evidence from Mr Shrestha to the contrary.</p> <p>Given the above, the Committee finds that Ms Ulman provided the above treatment to patients, outside the scope of her practice. Accordingly, the Committee finds this charge proved.</p>
2.	<p><i>Allowed yourself to be described as a “Specialist Dental Nurse &amp; Dental Hygienist” on the practice website from an unknown date in January 2015 until on or about 17 March 2015.</i></p> <p><b>Found Not Proved</b></p> <p>The Committee has had regard to the evidence that Ms Ulman had left her employment at the Practice in December 2014 before the website went live in January 2015. The Committee was of the view that, whilst it is incumbent upon a registrant to ensure that information about them contained on their employer’s website is correct and accurate, given that Ms Ulman no longer worked at the Practice in question at the time that the website went live, it concluded that she did not ‘allow’ herself to be described in this manner and there was no evidence that she was aware that this description was on the website. Accordingly, this charge is found not proved.</p>
3.	<p><i>Your conduct in relation to paragraph 2 above was misleading, in that:</i></p>
3(a).	<p><i>“Specialist Dental Nurse” is not a specialism recognised by the GDC; and/or</i></p> <p><i>you were not registered as a Dental Hygienist in the UK.</i></p>
3(b).	<p><b>Found Not Proved in its entirety</b></p> <p>Given the Committee’s findings at 2 above, this charge is found not</p>

	proved.
4.	<i>Your conduct in relation to paragraph 2 above was dishonest, in that:</i>
4(a). 4(b).	<i>you were aware of and/or had approved the contents of your profile; and you were aware of the facts and matters set out in paragraphs 3(a) and/or 3(b) above.</i>
	<p><b>Found Not Proved in its entirety</b></p> <p>Given the Committee's findings at 2 above, this charge is found not proved.</p>
5.	<p><i>On one or more occasions between 9 September 2014 and 20 December 2014 worked as a dental nurse at Glow Dental Practice, 87 Northcote Road, Battersea, London SW11 6PL, on a self-employed basis, when you did not hold any or any adequate professional indemnity insurance.</i></p> <p><b>Found Proved</b></p> <p>In an email sent to the GDC, dated 14 April 2015, Ms Ulman stated that she was unable to provide information regarding her indemnity insurance provider as she did not have her own indemnity provider. She also confirmed that she provided dental nurse services on a self-employed basis at Glow Dental. The Committee was aware that it is a requirement of registration that all registrants have adequate and appropriate indemnity insurance that covers all locations where they work and all tasks that they carry out. The Committee considered that the onus was on Ms Ulman to ensure that she had adequate indemnity insurance, and given that she was working in a self-employed capacity she would not be covered by the practice insurance; she was her own employer.</p> <p>Given the above, the Committee finds that Ms Ulman worked as a dental nurse in a self-employed basis when she did not hold any professional indemnity insurance. Accordingly, this charge is found proved</p>
6.	<i>Your conduct at 5 above was dishonest in that you knew:</i>
6(a) 6(b)	<i>that you did not hold any or any adequate professional indemnity insurance; that in those circumstances you were not allowed to practise as a dental nurse.</i>
	<p><b>Found Proved</b></p> <p>The Committee was referred to the test in relation to dishonesty, which it must apply when reaching its decision. First is the objective test; whether according to the ordinary standards of reasonable and honest dental care professionals what was done by Ms Ulman was dishonest. If it was dishonest by those standards then secondly, the</p>

subjective test should be applied and the Committee had to consider whether it is more likely than not that she realised that what she was doing was, by the above standards, dishonest.

The Committee has already found that Ms Ulman worked as a dental nurse without indemnity insurance. It was also aware that it is a requirement of registration with the GDC, that all registrants must be adequately and appropriately indemnified. Accordingly, it concluded that without indemnity insurance Ms Ulman was not allowed to work as a dental nurse.

The Committee was of the view that, according to the standards of the reasonable and honest dental care professional, what Ms Ulman did was dishonest. The Committee concluded that providing dental nurse services, on a self-employed basis, without indemnity insurance would be regarded by fellow dental care professionals as dishonest.

The Committee also concluded that it was more likely than not that Ms Ulman realised that working without indemnity insurance in circumstances that she was not allowed to practice as a dental nurse was, by the above standards, dishonest. Accordingly, this charge is found proved in its entirety.

We move to Stage Two.”

On 1 July 2016 the Chairman announced the determination as follows:

**Misconduct**

“Mr Mulchrone: The Committee has considered whether the facts found proved against Ms Ulman amount to misconduct. In so doing, the Committee has had regard to the evidence adduced in this case, as well as the submissions you have made on behalf of the General Dental Council (GDC). It has accepted the advice of the Legal Adviser.

You referred to the serious nature of the findings against Ms Ulman, including working without holding any or any adequate professional indemnity insurance, which was found to be dishonest. In short, you submitted that the facts found proved amount to misconduct.

The facts of this case are that between September 2014 and December 2014 Ms Ulman was employed as a dental nurse at the Lister House International Centre for Excellence in Dentistry (the Practice). The Committee found that Ms Ulman worked beyond her scope of practice on one or more occasions between 16 August 2014 and 29 October 2014, namely scaling and polishing; non-surgical debridement; post-operative debridement and tooth whitening. The Committee accepted Mr Shrestha’s evidence that Ms Ulman carried out this work under supervision and that patients, in the knowledge of her registration status, had given their verbal consent to her carrying out the work. There was no evidence that patients came to any harm as a result of the treatment carried out by Ms Ulman. Furthermore, the Committee notes the evidence that Ms Ulman, although not registered with the GDC as a dental hygienist, was qualified as a dental hygienist in Poland. The Committee found that Ms Ulman believed that she was required to carry out supervised work experience as part of the process of registering with the GDC as a dental hygienist. She was completely open about what she was doing and submitted her work experience log to the GDC with the application

form. The Committee did not consider that there was any intention on Ms Ulman's part to work outside the scope of her practice. Accordingly, the Committee is not satisfied that this finding amounts to misconduct.

Turning to other matters, the Committee has found that between December 2014 and February 2015 Ms Ulman worked on a self-employed basis as a dental nurse at Glow Dental Practice without professional indemnity insurance. Her actions in this regard was a clear breach of GDC's guidance as she was not allowed to practise as a dental nurse. The Committee takes a serious view of this failure; as a self-employed dental nurse, she had a clear professional duty to ensure that she had appropriate arrangements in place for indemnity insurance. However, she knowingly worked in this capacity without indemnity insurance for a period of several months. The Committee has found that Ms Ulman's conduct in this regard was dishonest. It has concluded that Ms Ulman's conduct was in breach of the GDC's "Standards for the Dental Team" (2013) as set out below.

**Standard 1.3**

*You must be honest and act with integrity*

**Standard 1.8**

*You must have appropriate arrangements in place for patients to seek compensation if they have suffered harm*

**Standard 1.9**

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

The Committee considers that these findings demonstrate conduct unbecoming of a registered dental professional which would be viewed as deplorable by fellow professionals. The Committee has concluded that the facts found proved amount to misconduct that is serious.

**Current impairment**

The Committee next considered whether Ms Ulman's fitness to practise is currently impaired. In so doing, it has had regard to your submissions. In short, you invited the Committee to find current impairment and say the statutory test is made out in this case. The Committee notes Ms Ulman's lack of engagement with the GDC since April 2015 and the absence of any evidence of remediation in respect of the matters relating to this case.

The Committee, in reaching its decision, has had regard to the public interest and accepted that there was no burden or standard of proof at this stage. The Committee has exercised its own independent judgement in reaching its decision.

The Committee takes a serious view of Ms Ulman's conduct in working as a dental nurse on one or more occasions when she did not hold any or any adequate professional indemnity insurance. Her actions had the potential to place those under her care at unwarranted risk of harm, including physical and financial harm. It has also concluded that her dishonest conduct has brought the profession into disrepute and breached fundamental tenets of the profession.

There is no evidence before the Committee of the steps taken by Ms Ulman in respect of the provision of indemnity insurance. In her email responses to the GDC's repeated requests for Ms Ulman to provide such evidence, she does not appear to understand the importance of having indemnity insurance as part of her professional obligations. In these circumstances,

the Committee considers that this raises a risk of repetition and, therefore, a finding of impairment is necessary for the protection of patients.

The Committee further considers the wider public interest, in particular the need to declare and uphold proper standards of conduct and behaviour, so as to maintain public confidence in the profession. The Committee has found that Ms Ulman practised when she did not have indemnity insurance and that she was dishonest in this regard. These are serious matters. In these circumstances, the Committee considers that public confidence would be undermined if a finding of impairment were not made.

Having regard to all of these matters, the Committee has determined that Ms Ulman's fitness to practise is currently impaired by reason of her misconduct.

### **Sanction**

The Committee next considered what sanction, if any, to impose on Ms Ulman's 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. The Committee has taken into account the GDC's "Guidance for the Professional Conduct Committee, including Indicative Sanctions Guidance" (October 2015). It has applied the principle of proportionality, balancing the public interest with Ms Ulman's own interests.

You invited the Committee to consider whether this is a case where nothing short of erasure would be appropriate. During the course of your submissions you referred the Committee to the specific matters for consideration as set out in the GDC's "Guidance for the Practice Committees".

The Committee has considered the range of sanctions available to it, starting with the least restrictive. It has determined that in the light of the gravity of the misconduct found, to conclude the case with no further action would not be sufficient for the protection of patients and public confidence in the profession. For the same reasons, the Committee has concluded that a reprimand is inappropriate and insufficient.

The Committee next considered whether a period of conditional registration would be appropriate in this case. In so doing, the Committee has had regard to the serious nature of the findings against Ms Ulman. There is no evidence of any insight, or engagement with the GDC, noting her last correspondence with the GDC was in April 2015, over a year ago. Taking all these factors into account, the Committee concluded that conditions would not be appropriate, workable or proportionate in this case.

The Committee considered whether a suspension order would be proportionate and appropriate in this case. The Committee is in no doubt that Ms Ulman's misconduct, including her failure to have indemnity cover and her dishonest conduct arising from that, is wholly unacceptable and seriously damaging to the reputation of the profession and to the public's confidence in the dental profession. The Committee has received no information from Ms Ulman to demonstrate that she has any insight into the seriousness of her actions or the potential consequences. Ms Ulman has not provided any assurance to this Committee that her misconduct would not be repeated.

The Committee then considered whether the issues identified are fundamentally incompatible with Ms Ulman remaining on the Register.

The Committee considered the guidance in relation to considering imposing a sanction of erasure. In particular:

*“Erasure will be appropriate when the behaviour is fundamentally incompatible with being a dental professional: any of the following factors, or a combination of them, may point to such a conclusion:*

- *serious departure(s) from the relevant professional standards;*
- *where a continuing risk of serious harm to patients or other persons is identified;;*
- *serious dishonesty, particularly where persistent or covered up;*
- *a persistent lack of insight into the seriousness of actions or their consequences.”*

In all the circumstances of this case the Committee concluded that Ms Ulman’s behaviour is fundamentally incompatible with her being a registered dental care professional. The Committee concluded that the only proportionate sanction is that of erasure. The Committee considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standards of conduct required of a registered dental care professional at all times.

The Committee has taken into account the principle of proportionality. It is aware that the effect of this order is that Ms Ulman will be prevented from working as a registered dental care professional using a GDC registration. This could result in financial hardship, though the Committee received no direct information about that matter. However, in applying the principle of proportionality, the Committee has determined that Ms Ulman’s own interests are outweighed by the need for public protection and protection of the wider public interest.

The Committee therefore directs that Ms Ulman’s name be erased from the Register.

The Committee now invites submissions from you as to whether Ms Ulman’s registration should be suspended immediately.”

### **Decision on immediate order**

“Mr Mulchrone: The interim order on Ms Ulman’s registration is hereby revoked in accordance with Section 27B(9) of the Dentists Act 1984.

Having directed that Ms Ulman’s name be erased from the Register, the Committee has considered whether to impose an order for immediate suspension. You, on behalf of the General Dental Council (GDC), have submitted that such an order is necessary for the protection of the public and is otherwise in the public interest in the light of the Committee’s findings.

In all the circumstances, the Committee has determined that it is necessary for the protection of the public and is otherwise in the public interest to direct that Ms Ulman’s registration be suspended forthwith. The Committee is satisfied that Ms Ulman poses an ongoing risk to the public and that it would be inconsistent to allow her the opportunity to continue to practise during the intervening appeal period.

The effect of this direction is that Ms Ulman’s registration will be suspended from the date on which notice of this decision is deemed served on her. Should Ms Ulman exercise her right of appeal, this immediate order for suspension will remain in place until the resolution of any appeal.

That concludes this case.”