

HEARING HEARD IN PRIVATE*

The Committee has made a determination in this case that includes some private information. That information has been omitted from the text.

BURKE, Abby

Registration No: 120369

HEALTH COMMITTEE

NOVEMBER 2014 – DECEMBER 2016

Most recent outcome: Suspended Indefinitely**

** See page 4 for the latest determination.

Abby BURKE, Verified experience in Dental Nursing, was summoned to appear before the Health Committee on 25 November 2014 for an inquiry into the following charge:

Charge in PRIVATE

Ms BURKE was not present and was not represented. On 25 November 2014 the Chairman announced the findings of fact to the Counsel for the GDC:

Findings of Facts in PRIVATE

On 26 November 2014 the Chairman announced the determination as follows:

“Ms Przybylska ,

The Committee has carefully considered your submissions on behalf of the General Dental Council (GDC). The Committee accepted the advice of both the Medical and Legal Advisers.

Ms Burke was neither present nor represented at today’s hearing. In her absence, the Committee first considered whether notice of this hearing had been served on her in accordance with Rules 13 and 65 of the General Dental Council (GDC) (Fitness to Practise) Rules Order of Council 2006 (the Rules).

The Committee saw a copy of the notification of today’s hearing dated 21 October 2014 which was sent to Ms Burke’s registered address and to her home address, both by way of special delivery. The Committee is satisfied that the letter contained proper notification of the nature of today’s hearing and its date, time and location. The Committee has also received a copy of the Royal Mail proof of delivery, which confirms that the letter was delivered and signed for, in the name of ‘Burke,’ on 22 October 2014. The Committee was therefore satisfied that all reasonable efforts had been made by the GDC to send notification to Miss Burke in accordance with the Rules 13 and 65 and that the requirements of service are met.

The Committee went on to consider whether to exercise its discretion under Rule 54 to hear this case in the absence of Ms Burke. You have submitted that it is necessary for the protection of the public and is in the public interest to proceed with this hearing in Ms Burke’s absence in view of the alleged health concerns and misconduct.

The Committee has considered carefully the submissions you have made. It has accepted the advice of the legal adviser. It is aware of the need to exercise its discretion to proceed in

the absence of the registrant and it must do so with the utmost care and caution. The Committee has borne in mind Ms Burke's ongoing lack of engagement with the GDC in relation to these proceedings, including the absence of any response from her to the GDC regarding her attendance at this hearing as requested to do so by the GDC by letter and by email.

In the circumstances, the Committee was satisfied that having regard to the nature of the allegations, there is a clear public interest in hearing this case today. Further, in light of Ms Burke's continuing lack of engagement with the GDC the Committee took the view that no useful purpose would be served by adjourning these matters. Accordingly, the Committee has decided that it is appropriate and fair to proceed in her absence.

Impairment

The Committee first considered the issue of misconduct. It reminded itself that Ms Burke was described as an excellent dental nurse for most of the time she worked at the practice. The Committee considered whether or not Ms Burke's failure to respond to requests for information made of her, amounts to misconduct. The Committee has already determined that Ms Burke failed to engage with her regulator, having been requested to do so on four separate occasions. These requests were for information relating to her health, her place of employment and in respect of her indemnity cover. By failing to respond this impeded the GDC in fulfilling its statutory obligations. She was not contactable at her registered address. The Committee is satisfied that she was under an obligation to respond to requests from the GDC. The Committee is satisfied that Ms Burke's conduct fell seriously short of the standards expected of registered professionals. The Committee determined that her failure to engage with the GDC amounted to misconduct.

Furthermore the Committee was in no doubt that Ms Burke's fitness to practise is also impaired by reason of her misconduct as she has given no explanation for her failure to respond to repeated requests for information. However the Committee accepts, as indeed was advanced by the GDC, that her failure to engage is more likely than not to be linked to reasons relating to her health.

The Committee next considered what formal action, if any, to take in respect of Ms Burke's registration. It has borne in mind its duty to protect the public and safeguard public confidence in registered dental professionals. In all its deliberations it has had regard to the principle of proportionality. The Committee has taken account of the GDC's *Guidance for the Health Committee*, November 2009.

The Committee was of the view that to conclude this case with no further action or with a reprimand would not be appropriate because of the nature of the facts found proven.

The Committee next considered whether conditions would be appropriate and proportionate. It concluded that whilst conditions could be drafted to address Ms Burke's health issues, it considered that her complete lack of engagement were unlikely to be workable. Her complete lack of engagement with the GDC leaves the Committee with no confidence that she would engage with any conditions placed on her registration. The Committee went on to determine that the appropriate and proportionate disposal of this case is the imposition of a 12 month period of suspension on Ms Burke's registration with a review shortly before the end of that period. The Committee did not consider any higher sanction would be proportionate or appropriate in this case because it was found that the misconduct has been linked to her adverse health. In addition to being in the public interest which includes

protecting the reputation of the profession, this period of suspension will provide Ms Burke with an opportunity to re-engage with the GDC if she chooses to do so. It will also give her time to demonstrate her acknowledgement of the need to seek any necessary treatment for her condition prior to her review.

The Committee is minded to impose an order for immediate suspension but will first invite submissions on the matter.”

“Ms Przybylska

The Committee has heard your submissions on behalf of the GDC in respect of immediate suspension. It has accepted the advice of the Legal Adviser. The Committee has determined that it is necessary, for the protection of the public and is otherwise in the public interest to impose an order for immediate suspension of Ms Burke’s registration. This order is made in light of the Committee’s determination on misconduct and health and its finding on impairment.

The order for interim suspension currently on Ms Burke’s registration is hereby revoked.

The effect of the foregoing direction and this order is that Ms Burke’s registration will be suspended forthwith and unless she exercises her right of appeal, her registration will be suspended for a period of 12 months from the date on which notification is deemed served on her. Should she exercise her right of appeal, this order for immediate suspension will remain in place pending the resolution of any appeal proceedings.

That concludes the case for today.”

On 3 December 2015 at a review hearing, the Chair announced the determination as follows:

“IN PUBLIC

Ms French

The Committee has carefully considered your submissions on behalf of the General Dental Council (GDC). The Committee accepted the advice of both the Medical and Legal Advisers.

Ms Burke was neither present nor represented at today’s hearing. In her absence, the Committee first considered whether notice of this hearing had been served on her in accordance with Rules 28 and 65 of the General Dental Council (GDC) (Fitness to Practise) Rules Order of Council 2006 (the Rules).

The Committee saw a copy of the notification of today’s hearing dated 29 October 2015 which was sent to Ms Burke’s registered address by way of special delivery. The Committee is satisfied that the letter contained proper notification of the nature of today’s hearing and its date, time and location. The Committee also noted the attempt to have the letter received at another address and also by email. The Committee was therefore satisfied that all reasonable efforts had been made by the GDC to send notification to Ms Burke in accordance with the Rules 28 and 65 and that the requirements of service are met.

The Committee went on to consider whether to exercise its discretion under Rule 54 to hear this case in the absence of Ms Burke. You have submitted that it is necessary for the

protection of the public and is in the public interest to proceed with this hearing in Ms Burke's absence in view of the alleged health concerns and misconduct.

The Committee has considered carefully the submissions you have made. It has accepted the advice of the legal adviser. It is aware of the need to exercise its discretion to proceed in the absence of the registrant and that it must do so only with the utmost care and caution. The Committee has borne in mind Ms Burke's ongoing lack of engagement with the GDC in relation to these proceedings, including the absence of any response from her to the GDC regarding her attendance at this hearing as requested to do so by the GDC by letter and by email.

In the circumstances, the Committee was satisfied that having regard to the nature of the allegations, there is a clear public interest in hearing this case today. Further, in light of Ms Burke's continuing lack of engagement with the GDC the Committee took the view that no useful purpose would be served by adjourning these matters. Accordingly, the Committee has decided that it is appropriate and fair to proceed in her absence.

This is a review of an order for suspension imposed by the Health Committee on 26 November 2014 for twelve months.

IN PRIVATE

[REDACTED]

IN PUBLIC

The Committee has determined that Ms Burke's fitness to practise remains impaired by reason of her health and misconduct and that it is necessary to suspend her registration for a further period of 12 months, with a review at the end of that period. The order made today will take effect at the expiry of the current order.

That concludes the case for today."

At a review hearing on 7 December 2016 the Chairman announced the determination as follows:

"At this hearing the Committee made a determination that includes some private information. That information shall be omitted from any public version of this determination and the document is marked to show where the private material is removed.

Mode of hearing

The General Dental Council (GDC) did not appear at the hearing by way of a representative, but invited the Committee by written submissions to conduct this review case without an attendance on its part. Having taken advice from the Legal Adviser, the Committee decided to take that course under Rule 36 of the GDC's (Fitness to Practise) Rules 2006 (the Rules).

Application to hear matters in private

The GDC made an application under Rule 53(2) that Ms Burke's hearing be heard in private since the matters before it relates to her health. The Committee, having heard the advice of the Legal Adviser, has acceded to the GDC's request given that the matters under consideration relate to Ms Burke's health. It decided that it was necessary to conduct the whole hearing in private.

Service and proceeding in absence

This is the resumed Health Committee (HC) hearing of Ms Burke's case. Ms Burke is neither present nor represented today. In her absence, the Committee first considered whether the Notification of Hearing had been served on Ms Burke at her registered address in accordance with Rules 28 and 65. The Committee has received a bundle of documents which contains a copy of the Notification of Hearing dated 25 October 2016 which was sent by special delivery to Ms Burke's registered address and to an alternative address held by the GDC. The Royal Mail track and trace receipts confirmed that the Notification of Hearing was delivered to the two addresses. The Committee is satisfied that the Notification of Hearing set out the information required by Rule 28 and that it was sent to Ms Burke's proper address more than 28 days in advance of today's hearing, also in accordance with Rule 28. The Committee, having heard the Legal Adviser's advice, is satisfied that the GDC has complied with Rules 28 and 65 and Section 50(A)(2) of the Dentists Act 1984 as amended. Therefore, due service of the Notification of Hearing has been effected.

The Committee went on to consider whether to proceed in the absence of Ms Burke, in accordance with Rule 54. It has considered the GDC's written submissions which referred to the further steps taken by the GDC to send the Notification of the Hearing to Ms Burke. These included attempts to contact her by telephone, as demonstrated by the telephone attendance notes dated 24 November 2016. In addition, the Committee has seen a copy of a letter dated 24 November 2016 from the GDC to Ms Burke, which was sent by special delivery, requesting that she contact the GDC at her earliest convenience. That letter was signed for in the name of 'A Burke' on 28 November 2016. As a result, the Committee is satisfied that all reasonable efforts have been made to send the Notification of Hearing to the Registrant in accordance with the Rules.

The GDC has submitted that there is no evidence to suggest that Ms Burke would attend at a future hearing, were it to be relisted. Furthermore, the GDC reminded the Committee that the current suspension order needs to be reviewed before its expiry on 29 December 2016. The Committee noted the absence of any response from Ms Burke in connection with today's hearing, despite the various steps taken by the GDC to secure her engagement. She has not requested an adjournment of today's hearing and there is nothing before the Committee today to suggest that Ms Burke might attend the hearing on a future occasion. In those circumstances, the Committee concluded that Ms Burke has voluntarily absented herself from today's hearing and has withdrawn from these regulatory proceedings. In addition, the Committee considers that there is a clear public interest in proceeding with matters today. Accordingly, the Committee has determined that it is fair to proceed with today's review hearing in the absence of Ms Burke.

Background

[Private material removed]

Today's review hearing

[Private material removed]

In these circumstances, this Committee has concluded that Ms Burke's fitness to practise remains impaired by reason of her misconduct and her adverse health.

The Committee next considered what action, if any, to take in respect of Ms Burke's registration. It has borne in mind its duty to protect the public and safeguard public confidence in registered dental professionals. In all its deliberations it has had regard to the

principle of proportionality. The Committee has taken into account the GDC's Guidance for the Health Committee, November 2009.

The GDC referred to Ms Burke's lack of engagement with the GDC over a prolonged period of time, and the fact that there is no evidence before the Committee to suggest that Ms Burke will start to engage. The GDC invited the Committee to make a direction that Ms Burke's registration be suspended indefinitely, in accordance with the requirements of section 36Q(1)(d) of the Dentists Act 1984 (as amended). In its additional submissions, the GDC provided evidence to show that the first order of suspension directed on Ms Burke's registration commenced on 30 December 2014. The further order of suspension directed by the HC on 3 December 2015 is due to expire on 29 December 2016. The GDC also submitted that were the Committee to make such a direction, it would be less than two months before the date on which the period of suspension would otherwise expire, that date being 29 December 2016.

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The Committee was satisfied that the provisions of section 36Q(1)(d) of the Dentists Act 1984 (as amended) have been made out in this case in view of the advice given by the Legal Adviser. In accordance with section 36Q(1)(d) of the Dentists Act 1984 (as amended), the Committee directs that Ms Burke's registration be suspended indefinitely.

The effect of the foregoing direction is that, unless Ms Burke exercises her right of appeal, her registration will be suspended indefinitely from the date on which the direction takes effect.

[Private material removed]

That concludes the case for today."