

HEARING HEARD IN PUBLIC

MUSTAFA, Majid

Registration No: 83652

PROFESSIONAL CONDUCT COMMITTEE

DECEMBER 2019

Outcome: Erased with immediate suspension

Majid MUSTAFA, a dentist, Lek Dent Katowice 1994, was summoned to appear before the Professional Conduct Committee on Monday 2 December 2019 for an inquiry into the following charge:

Charge

“That being registered as a dentist:

1. Between 30 March 2017 and 25 April 2017 you intentionally encouraged Patient A to obtain a drug known as Gamma Hydroxybutyrate or GHB on your behalf with the intention of administering it to your wife unlawfully and without her consent.
2. In relation to the conduct alleged at Charge 1 above you failed to maintain adequate professional boundaries in your relationship Patient A.
3. Your conduct at allegation 1 above was;
 - a. Unprofessional;
 - b. Lacking in integrity.

And, as a result of the matters set out above, your fitness to practise as a dentist is impaired by reason of your misconduct.”

Mr Mustafa was not present and was not represented. On 2 December 2019 the Chairman announced the findings of fact to the Counsel for the GDC:

“The Committee has taken into account all the evidence presented to it. In accordance with that advice it has considered each head of charge separately.

This is the Professional Conduct Committee’s inquiry into the facts which form the basis of the allegation against Dr Mustafa that his fitness to practise is impaired by reason of his misconduct.

Dr Mustafa was neither present nor represented in this hearing. Mr Doble, as Case Presenter for the General Dental Council’s (GDC) case, made an application under Rule 54 of the General Dental Council (Fitness to Practise) Rules 2006 (“the Rules”) that the hearing should proceed in Dr Mustafa’s absence. He submitted that the notification of hearing had been served on Dr Mustafa in accordance with Rules 13 and 65.

Decision on service of notification of hearing

The Committee had before it a copy of the notification of hearing letter dated 1 November 2019 which was sent by special delivery to Dr Mustafa's registered address as it appears on the GDC's Register. It was satisfied that the letter contained all the components necessary for a notice of hearing to be valid in accordance with Rule 13. The Committee noted the Royal Mail track and trace proof of delivery which showed that a failed attempt at delivery was made on 4 November 2019.

The notice of hearing was also sent to Dr Mustafa via email to an address held by the GDC. The Committee has seen evidence that the notice was downloaded. The Committee further noted that Dr Mustafa responded to the GDC's correspondence on 26 November 2019. Having heard the advice of the Legal Adviser, the Committee was satisfied that the notification of hearing had been served in accordance with Rules 13 and 65.

Decision on proceeding in the Registrant's absence

Mr Doble then made an application under Rule 54 that the hearing should proceed in Dr Mustafa's absence. The Committee bore in mind that its discretion to proceed with a hearing in these circumstances should be exercised with the utmost care and caution. It took account of Mr Doble's submissions and it accepted the advice of the Legal Adviser.

He stated to the Committee that notification of the hearing had been properly served and Dr Mustafa was aware that the hearing was taking place. Furthermore, Dr Mustafa had emailed the GDC on 26 November 2019 and gave no indication that he wanted the hearing to be postponed.

The Committee noted that the GDC had taken all possible steps to notify Dr Mustafa of the hearing, and that they had informed him that he could also attend the hearing by telephone or video link as an alternative to attending in person. They noted the email from Dr Mustafa to the GDC and concluded that it was clear that Dr Mustafa had waived his right to attend the hearing, and he was satisfied for the hearing to proceed in his absence. Given that Dr Mustafa has voluntarily absented himself the Committee determined that it should proceed in his absence having regard to the public interest in the expeditious disposal of cases. It concluded that no useful purpose would be served by an adjournment of this hearing.

Background

The case first involves a referral made to the GDC by Humberside Police on 13 June 2018, notifying that Dr Mustafa was sentenced to a conditional discharge. On 12 April 2018, at Doncaster Crown Court, Dr Mustafa pleaded guilty to a charge of intentionally encouraging or assisting the commission of an indictable offence. By virtue of section 14(3) of the Powers of Criminal Courts (Sentencing) Act 2000, the Committee is aware that a conditional discharge is deemed not to be a conviction for any purpose other than the proceedings in which the discharge is made, and therefore Dr Mustafa's fitness to practise cannot be impaired by reason of the conviction itself.

It was admitted by Dr Mustafa at trial that he sought to enlist Patient A's assistance in obtaining a quantity of the drug Gamma Hydroxybutyrate (GHB) apparently so that he could administer the drug to his wife and thereby gain access to her iPhone, which could be unlocked only by an access code (which he evidently did not know) or using her fingerprint. It is alleged that Dr Mustafa's conduct failed to maintain adequate professional boundaries in his relationship with Patient A and that his conduct was both unprofessional and lacking in integrity.

Witnesses

The Committee took account of all the documentary evidence presented in this hearing. It considered the submissions made by Mr Doble on behalf of the GDC. Although Dr Mustafa was not present, the Committee drew no adverse inferences from his absence.

The Committee received a witness statement from MD, a Practice Manager at Genesis Dental Care, and also a witness statement from Majid El-Giathi, Paralegal at the GDC. It also saw a transcript of the Court Case dated 10 to 12 April 2018. It also read and took into account Dr Mustafa’s written submissions to the GDC, including his email of 26 November 2019. The Committee acknowledged Dr Mustafa’s proposals for additional witnesses, but on enquiry discovered that no attempts had been made to call them to give evidence.

The Committee accepted the advice of the Legal Adviser. In accordance with that advice it has considered each head and sub-head of charge separately.

The burden of proving the facts alleged is on the General Dental Council (GDC) and the standard of proof is the civil standard which is “on the balance of probabilities”. Dr Mustafa is not required to prove anything.

The Committee’s findings in relation to each head and sub-head of charge is as follows:

<p>1.</p>	<p><i>Between 30 March 2017 and 25 April 2017, you intentionally encouraged Patient A to obtain a drug known as Gamma Hydroxybutyrate or GHB on your behalf with the intention of administering it to your wife unlawfully and without her consent.</i></p> <p>Proved.</p> <p>By his plea in the trial, Dr Mustafa accepted intentionally encouraging Patient A to obtain GHB on his behalf with the intention of administering it to his wife unlawfully and without her consent. In his 26 November 2019 email the Registrant states “I accept to be guilty”. The Registrant’s plea is entirely consistent with the transcripts of phone calls between Dr Mustafa and Patient A in which this encouragement was given, and the Registrant’s interview under caution, in which he accepted both encouraging Patient A to obtain the GHB, and his intention to administer the drug to his wife without her consent.</p> <p>The Committee is satisfied that Dr Mustafa had an intention to administer it to his wife unlawfully. The Committee noted that during the interview under caution in May 2017, Dr Mustafa said that if he had bought the drugs in Poland, he would have used them on his wife.</p> <p>It therefore finds this head of charge proved.</p>
<p>2.</p>	<p><i>In relation to the conduct alleged at Charge 1 above you failed to maintain adequate professional boundaries in your relationship with Patient A.</i></p> <p>Proved.</p> <p>The GDC <i>Standards for the Dental Team</i>, September 2013, states, at Standard 9.1:</p> <p><i>“You must 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”.</i></p>

	<p>9.1.4: <i>“You must maintain appropriate boundaries in the relationships you have with patients. You must not take advantage of your position as a dental professional in your relationships with patients.”</i></p> <p>It is submitted by the GDC that the conduct alleged above constituted a clear failure by Dr Mustafa to maintain adequate professional boundaries in his relationship with Patient A including, but not limited to, encouraging Patient A to commit a criminal offence.</p> <p>The Committee is satisfied that the conversations between Dr Mustafa and Patient A regarding obtaining GHB, emerged on or around 30 March 2017, which was the date of Patient A’s latest recorded dental appointment. The Committee is satisfied this patient was still considered to be his patient at that time. The evidence of witness MD was that Patient A was a long-standing patient of Dr Mustafa, who was therefore obliged to maintain appropriate professional boundaries.</p> <p>The Committee therefore considers that Dr Mustafa had developed an unprofessional relationship with Patient A and that he had failed to maintain adequate professional boundaries.</p> <p>It therefore finds this head of charge proved.</p>
3.	<p><i>Your conduct at allegation 1 above was:</i></p>
3. a.	<p><i>Unprofessional;</i></p> <p>Proved.</p> <p>The Committee is satisfied that Dr Mustafa’s conduct was unprofessional. Dr Mustafa’s conduct in asking a patient to obtain GHB to be used solely for the purposes of drugging his wife is clearly inappropriate.</p> <p>The Committee is satisfied that the public would consider Dr Mustafa’s conduct to be unprofessional and therefore finds this head of charge proved.</p>
3. b.	<p><i>lacking in integrity.</i></p> <p>Proved.</p> <p>The Committee when considering the issue of integrity took into the case of <u>Wingate and Evans v SRA; SRA v Malins [2018] EWCA Civ 366</u> and in particular the following paragraphs.</p> <p><i>In professional codes of conduct, the term “integrity” is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards.</i></p> <p><i>Integrity connotes adherence to the ethical standards of one’s own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a</i></p>

	<p><i>professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse.</i></p> <p>The Committee considers that Dr Mustafa's actions in respect of head of charge 1 lacked integrity. The Committee notes that Dr Mustafa's plans to obtain a drug which is illegal in this country and to do so from an illicit source, could present risks to the person taking the drug as a result of contamination.</p> <p>Taking all of this into account, the Committee is satisfied that Dr Mustafa's conduct in respect of head of charge 1 lacked integrity and therefore finds this head of charge proved.</p>
--	---

We move to Stage Two.”

On 3 December 2019 the Chairman announced the determination as follows:

“The Committee having announced its decision on the facts, Mr Doble proceeded to make submissions pursuant to Rule 20 of the General Dental Council (GDC) (Fitness to Practise) Rules 2006. He informed the Committee that Dr Mustafa has no previous fitness to practise history. He then made submissions on misconduct and impairment in relation to the charges found proved. He submitted that the facts found proved amount to misconduct and that Dr Mustafa's fitness to practise is impaired by reason of his misconduct, and that the appropriate sanction to impose is one of erasure.

The Committee took account of the submissions made by Mr Doble on behalf of the GDC and of the written submissions by Dr Mustafa. It accepted the advice of the Legal Adviser.

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. The Committee was referred to several relevant authorities.

Misconduct

The Committee has found proved that Dr Mustafa intentionally encouraged Patient A to obtain Gamma Hydroxybutyrate (GHB) on his behalf with the intention of administering it to his wife unlawfully and without her consent. The Committee found that his actions in this respect were both unprofessional and lacking in integrity. Finally, the Committee found proved that he failed to maintain adequate professional boundaries in his relationship with Patient A.

The Committee noted that Dr Mustafa's conduct amounted to a criminal offence. His actions involved attempting to procure illegal drugs which would have been obtained from drug dealers in Poland. Dr Mustafa's actions were persistent and demonstrated a pattern of deliberate and calculated conduct. Dr Mustafa has shown a wilful disregard and contempt for his regulator and his premeditated actions may have caused serious harm to his wife, Patient A and to the wider public.

The Committee took into account that a finding of misconduct in the regulatory context requires a serious falling short of the professional standards expected of a registered dental professional. The Committee had sight of the *Standards for the Dental Team* (2013). It was satisfied that Dr Mustafa's failings included a breach of the following standards:

Standards for the Dental Team (30 September 2013)

- 1.3 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.
- 9.1.4 You must maintain appropriate boundaries in the relationships you have with patients. You must not take advantage of your position as a dental professional in your relationships with patients.

The Committee concluded that Dr Mustafa's unprofessional conduct was a serious departure from the standards expected of a registered dentist. Having taken into account all the aspects of Dr Mustafa's behaviour, the Committee was in no doubt that his actions and omissions, both individually and cumulatively represented serious breaches of the relevant standards. It is satisfied that members of the dental profession would find his conduct to be deplorable.

Accordingly, the Committee has determined that the facts found proved amount to misconduct.

Impairment

The Committee next considered whether Dr Mustafa's misconduct is remediable, has been remedied and is likely to be repeated. However, there is no current evidence before the Committee from Dr Mustafa of any steps he has taken towards addressing his failings, nor any current evidence of Dr Mustafa's insight into his unprofessional behaviour or awareness of the potential consequences his actions could bring. It was therefore unable to conclude that there had been any remediation. Dr Mustafa's recent engagement with the GDC in an email dated 26 November 2019 demonstrated a self-justifying attitude towards his conduct and displayed a profound lack of insight. The Committee therefore considers that there is a risk of repetition. Furthermore, the Committee noted that there was a pattern of unprofessional behaviour displayed by Dr Mustafa. There was and may remain a risk to the public interest given his lack of insight into his unprofessional conduct.

Furthermore, the Committee is of the view that public confidence would be undermined if a finding of impairment was not made, especially in the light of the conduct found proved and the absence of any evidence to demonstrate remediation. The Committee further found that Dr Mustafa's unprofessional behaviour breached fundamental tenets of the profession.

It concluded that a finding of impairment is required in the public interest, to maintain public confidence in the profession and to uphold and maintain professional standards and to protect the public. The Committee therefore determined that Dr Mustafa's fitness to practise is impaired by reason of his misconduct.

Sanction

The Committee next considered what action, if any, to take in relation to Dr Mustafa's registration. It reminded itself that the purpose of a sanction is not to be punitive although it may have that effect. The Committee has considered carefully the submissions made by Mr Doble. It also had regard to the written submissions by Dr Mustafa. The Committee bore in mind the principle of proportionality. The Committee then considered the available sanctions

in ascending order. It had regard to the Guidance for the Practice Committees, including Indicative Sanctions Guidance (ISG) (3 May 2019).

In its consideration of the appropriate sanction, the Committee took into account the following aggravating and mitigating features it identified in this case.

Aggravating:

- Sustained conduct over a period of time
- No acknowledgement of the potential consequences of his actions
- Lack of insight

Mitigating:

- No previous fitness to practice history with the GDC
- An isolated episode
- Dr Mustafa was dealing with challenging personal circumstances at that time
- References testifying to his good character, although the Committee noted that these were not produced for this PCC hearing.

To conclude this case with no further action would be inappropriate given that Dr Mustafa's fitness to practise is currently impaired by reason of his misconduct. The Committee determined that it could not allow Dr Mustafa to practise unrestricted.

The Committee is of the view that a reprimand would be inappropriate and insufficient given the seriousness of Dr Mustafa's unprofessional behaviour. A reprimand is also not appropriate because there is evidence that he may pose a risk to the public, he has not demonstrated insight and there is no evidence of steps taken to remediate his failings.

The Committee then considered whether to impose a period of conditional registration. It noted from its guidance that conditions must be relevant to the identified shortcomings and proportionate to the identified impairment. The Committee was mindful that any conditions imposed must be proportionate, measurable and workable. The Committee considered that, in order for conditions to be workable, there would need to be insight and a measure of meaningful engagement and co-operation from Dr Mustafa, all of which appear to be lacking. In any event, the Committee determined that it would not be possible to formulate appropriate and practical conditions which would address the serious heads of charge found proved. The Committee concluded that conditions would not be appropriate, workable, proportionate or sufficient in this case.

The Committee then considered whether a period of suspension would be appropriate.

It concluded that a period of suspension would not be sufficient in this case to adequately maintain the reputation of the profession. Without insight into the risk of harm caused or potentially caused by his actions, there is a real risk of repetition and a consequent risk of damage to the reputation to the dental profession. Dr Mustafa lacks insight and his misconduct shows a failure to adhere to the standards of the profession. Dr Mustafa has had, over at least the last twelve months, a chance to reflect and to demonstrate an improvement in his attitude towards professional standards. However, his latest email to the GDC dated 26 November 2019 does not show such an improvement.

The Committee then considered whether the issues identified are fundamentally incompatible with Dr Mustafa remaining on the Register. It had regard to paragraph 7.34 of the ISG which states:

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; the abuse of a position of trust or violation of the rights of patients, particularly if involving vulnerable persons; ...*
- *a persistent lack of insight into the seriousness of actions or their consequences.*

The Committee concluded that the factors listed above were present. The Committee has decided that erasure from the register is the only appropriate and proportionate sanction to impose in the particularly serious circumstances of this case. The misconduct that the Committee has identified arises out of serious departures from Dr Mustafa's professional obligations. The Committee has considered the effect that erasure from the register is likely to have on Dr Mustafa, but it finds that any lesser sanction than erasure would be wholly insufficient to protect the public, declare and uphold proper professional standards and maintain public trust and confidence in the profession and in the regulatory process.

The Committee has determined, and hereby directs, that Dr Mustafa's name be erased from the Dentists Register.

Decision on immediate order

The interim order of suspension on Dr Mustafa's registration is hereby revoked.

The Committee has made serious findings against Dr Mustafa and is satisfied, for the reasons set out in its substantive determination, that he poses a risk to the public, and also to public interest, and that there is a high risk of repetition of the misconduct found. In these circumstances, the Committee has concluded that it would be inconsistent to allow him the opportunity to continue to practise during the intervening appeal period. Further, the Committee is satisfied that immediate action is necessary to uphold public confidence in the profession.

In accordance with the Dentists Act 1984 (as amended) the Committee has determined that it is necessary for the protection of the public and is otherwise in the public interest that Dr Mustafa registration be suspended forthwith.

The Committee therefore directs that Dr Mustafa's registration be suspended forthwith. Unless he exercises his right of appeal, Dr Mustafa's name will be erased from the Register 28 days from the date on which notice of this decision is deemed to have been served on him. Should Dr Mustafa exercise his right of appeal, this immediate order for suspension will remain in place until the resolution of any appeal.

That concludes this case."