

**HEARING PARTLY HEARD IN PRIVATE\***

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

**JEFFERS VARGAS, Steven Michael**

**Registration No: 100774**

**HEALTH COMMITTEE**

**MAY 2016 – MAY 2018\*\***

**Most recent outcome: Suspended indefinitely\*\***

\*\* See page 8 for the latest determination.

Steven Michael JEFFERS VARGAS, a dentist, Lic Odont Madrid 2005, was summoned to appear before the Health Committee on 4 May 2016 for an inquiry into the following charge:

**Charge (as amended)**

“That, being a registered dentist:

1. You suffer from one or more of the medical conditions set out in the attached schedule<sup>1</sup>;
2. Between around 12 May 2015 and 25 August 2015 and thereafter you failed to co-operate adequately or at all with an investigation conducted by the General Dental Council (GDC) including by:
  - (a) refusing your consent to a medical assessment and/or to disclosure of your medical records;
  - (b) failing to provide on request evidence of your professional indemnity cover.
3. Between around 17 April 2015 and around 8 November 2015 you failed to co-operative adequately or at all with an investigation conducted by NHS England into your state of health and/or fitness for inclusion on the National Dental Performers List including by not engaging with requests by NHS England that you undergo a medical assessment.

And that, in relation to the facts alleged, your fitness to practise is impaired by reason of your:

- (a) adverse physical and/or mental health;
- (b) misconduct.”

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<sup>1</sup> The Schedule is a private document and cannot be disclosed to the public.

Mr Jeffers Vargas was not present and was not represented. On 4 May 2016 the Chairman announced the findings of fact to the Counsel for the GDC:

“Ms Bruce: You are representing the General Dental Council (GDC) at the Health Committee (HC) hearing of Mr Jeffers’ case. Mr Jeffers is neither present nor represented. At the outset of the hearing, you made an application under Rule 53(2) of the GDC’s (Fitness to Practise) Rules 2006 (the Rules) that part of this hearing be held in private since some of the matters under consideration relate to Mr Jeffers’ health. The Committee acceded to your application and heard the matters relating to Mr Jeffers’ health in private.

The Committee has seen a copy of the letter dated 7 March 2016 of the Notice of Hearing for this HC schedule to take place between 4 and 6 May 2016, which was sent by Capsticks Solicitors, acting on behalf of the GDC, to Mr Jeffers’ registered address in Spain by International Signed for delivery and also to his email account. The letter sets out the date, time and location of today’s hearing, as well as the particularised facts of the charge (1 to 2(b)). The Committee is satisfied that the letter complies with Rule 13. It has seen a copy of the envelope, which, it notes, contains the same bar code on it as that shown on the letter dated 7 March 2016. The envelope was returned to Capsticks Solicitors on 11 April 2016 with a sticker on it, indicating (in Spanish) that the item was “not received”. Further, the Committee has seen a copy of the delivery receipt dated 7 March 2016 from Microsoft Outlook which confirms that the item was successfully delivered to Mr Jeffers’ email address on that date. During the course of your submissions you referred the Committee to the witness statement of a Solicitor from Capsticks in respect of the steps taken by her regarding service of documents on Mr Jeffers. It has accepted the advice of the Legal Adviser. In the light of all these documents, 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 Mr Jeffers, in accordance with Rule 54. You have invited the Committee to do so, given that the allegations against Mr Jeffers are serious and there is a public interest in the expeditious disposal of this case. 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 to be fair to Mr Jeffers as well as to the GDC. [Text removed] There is nothing to suggest that Mr Jeffers would attend on a future occasion, were this Committee minded not to proceed with the hearing today. Furthermore, it has also had regard to the serious nature of the allegations in this case and the public interest in the expeditious disposal of his case. Taking all these factors into account, the Committee has decided to proceed in the absence of Mr Jeffers, in accordance with Rule 54.

Thereafter, you made an application under Rule 25 for this Committee to consider a new allegation (allegation 3), together with the allegations set out in the Notice of Hearing dated 7 March 2016. The additional allegation is as follows:

“Between around 17 April 2015 and around 8 November 2015 you failed to co-operative adequately or at all with an investigation conducted by NHS England into your state of health and/or fitness for inclusion on the National Dental Performers List including by not engaging with requests by NHS England that you undergo a medical assessment.”

Your position is that this additional allegation is of a similar kind to the matters previously referred to the HC and falls within the provisions of Rule 25. You referred the Committee to

the letter dated 7 March 2016 from Capsticks to Mr Jeffers which advises him of the final charge incorporating the additional allegation under Rule 25. The Committee has considered the submissions you have made. It has accepted the advice of the Legal Adviser. In the Committee’s judgement, the new allegation (allegation 3) falls within the provisions of Rule 25 in that it is of a similar kind to the matter referred and accordingly, it has determined to consider it at the same time as the other allegations (allegations 1 to 2).

**The GDC’s case**

The GDC’s case falls into three categories:

- A failure to co-operate with the GDC’s investigation
- A failure to co-operate with an investigation conducted by NHS England (the new allegation)
- [Text removed]

In support of its case, the GDC relies on the witness statements of Witness 1 (NHS England), Witness 2 (GDC Casework Manager), Witness 3 (Practice Manager), Witness 4 (Dental Nurse), Witness 5 (Dental Nurse), Witness 6 (Dental Nurse), Witness 7 (Dental Nurse), Witness 8 (Receptionist) and the Solicitor from Capsticks. [Text removed]

The Committee has considered carefully all the evidence, including the letters and emails from Mr Jeffers to the GDC. It notes that there are no formal admissions by Mr Jeffers to the charges.

The Committee has accepted the advice of the Legal Adviser and the Medical Adviser. It has borne in mind that the burden of proof is on the GDC and that it must decide the facts according to the civil standard of proof, namely on the balance of probabilities. In accordance with that advice it has considered each head of charge separately.

I will now announce the Committee’s findings in relation to each charge:

1.	Found proved [Text removed]
2a.	Found proved  In reaching its decision, the Committee has had regard to the statement of Witness 2, who gave evidence relating to the GDC’s investigation. This includes the fact that on 12 May 2015 the GDC asked Mr Jeffers to agree to undergo a health assessment and/or consent to disclosure of his medical records. By email dated 2 June 2015 Mr Jeffers stated: “I do not agree to a health assessment. Therefore I do not consent one”. On 3 June 2015 and 9 June 2015 respectively the GDC wrote to Mr Jeffers, reminding him of his duty to co-operate with the GDC in connection with this matter. However, Mr Jeffers did not consent to a Health Assessment or to the disclosure of his medical records prior to the IC meeting on 25 August 2015.
2b.	Found proved  In reaching its decision, the Committee has had regard to the statement of Witness 2, who gave evidence relating to the GDC’s investigation. Witness 2 confirmed that on three occasions, dated 12 May 2015, 3 June

	2015 and 5 June 2015, the GDC asked Mr Jeffers to provide details of his current indemnity provider and his cover arrangements. By email dated 2 June 2015 Mr Jeffers provided the name of his current indemnity provider, but he has not provided any details, such as a certificate of indemnity.
3.	Found proved  The Committee has had regard to the statement of Witness 1 in which she sets out in detail the correspondence between NHS England and Mr Jeffers between April 2015 and November 2015, as well as the notes of the meetings with Mr Jeffers. [Text removed]

We move to Stage Two.”

On 5 May 2016 the Chairman announced the determination as follows:

“Ms Bruce: In accordance with Rule 20 of the General Dental Council (Fitness to Practise) Rules Order of Council 2006, the Committee has considered the submissions you have made on behalf of the General Dental Council (GDC) at this stage of the proceedings.

### **Misconduct**

You have submitted that the findings of fact against Mr Jeffers, which relate to his failure to co-operate with his regulatory body and with NHS England, amount to misconduct. During the course of your submissions you referred to the relevant GDC’s standards which, you say, Mr Jeffers has breached. However, you accepted that the factual matters maybe closely linked to the concerns raised regarding Mr Jeffers’ health.

The Committee found proved that between around 12 May 2015 and 25 August 2015 and thereafter Mr Jeffers failed to co-operate adequately or at all with the GDC’s investigation in two respects. Firstly, he refused his consent to a medical assessment and/or to disclose his medical records. Secondly, he failed to provide evidence of his professional indemnity cover. In addition, the Committee found that between around 17 April 2015 and around 8 November 2015 Mr Jeffers failed to co-operate with an investigation conducted by NHS England into his state of health and/or fitness for inclusion on the National Dental Performers List (the List), including by not engaging with requests by NHS England that he undergo a medical assessment.

The Committee has reminded itself that in order to reach a finding of misconduct, it must be satisfied that the findings against Mr Jeffers are sufficiently serious. The Committee considers it to be very important that Registrants co-operate with their regulatory body and, as appropriate, with the NHS in their investigations. Mr Jeffers failed to do so between around April 2015 to November 2015. [Text removed] Accordingly, the Committee is not satisfied that the findings against Mr Jeffers amount to a finding of misconduct.

### **Impairment**

You invited the Committee to conclude that Mr Jeffers’ fitness to practise is currently impaired by reason of his adverse health condition. [Text removed]

The Committee has determined that Mr Jeffers’ fitness to practise is currently impaired by reason of his adverse [Text removed] health.

## **Sanction**

The Committee next considered what outcome, if any, to impose on Mr Jeffers' 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 had regard to the GDC's "Guidance for the Health Committee" (November 2009) and its "Guidance for the Practice Committees including Indicative Sanctions Guidance" (October 2015). It has applied the principle of proportionality, balancing the public interest with Mr Jeffers' own interests.

You submitted that the appropriate outcome would be a period of suspension of Mr Jeffers' registration [Text removed].

[Text removed]

The Committee considers it is necessary for the protection of the public, is otherwise in the public interest, as well as in Mr Jeffers' own interests, to direct that his registration be suspended for a period of 12 months. [Text removed].

A Committee will review Mr Jeffers' case at a resumed hearing to be held shortly before the end of the period of suspension. That Committee will consider what action to take in relation to his registration. [Text removed] He will be informed of the date and time of that resumed hearing.

It now invites submissions from you as to whether Mr Jeffers' registration should be suspended immediately, pending the taking effect of its substantive direction."

## **Decision on immediate order**

"Ms Bruce: The interim order of suspension on Mr Jeffers' registration is hereby revoked.

Having directed that Mr Jeffers' registration be suspended, the Committee has considered whether to impose an order for immediate suspension in accordance with Section 30(1) of the Dentists Act 1984.

You, on behalf of the General Dental Council (GDC), have submitted that such an order is necessary in the light of the Committee's findings.

In all the circumstances, the Committee is satisfied that it is necessary for the protection of the public, is otherwise in the public interest and is in Mr Jeffers' own interests to impose an order for immediate suspension on his registration. The Committee has concluded that Mr Jeffers poses an ongoing risk to the public in view of the serious concerns regarding his health. The Committee has therefore decided that it would be inconsistent to allow Mr Jeffers to practise during the intervening appeal period.

The effect of the foregoing determination and this immediate order is that Mr Jeffers' registration will be suspended from the date on which notice of this decision is deemed served upon him. Unless Mr Jeffers exercises his right of appeal, his registration will be suspended for a period of 12 months. Should Mr Jeffers exercise his right of appeal, this immediate order for suspension will remain in place until the resolution of any appeal.

That concludes this case."

On 19 May 2017, at the review hearing, the Chairman announced the determination as follows:

“Mr Ahmed

### **SERVICE AND PROCEEDING IN ABSENCE**

Mr Jeffers Vargas was not present, nor was he represented at this hearing.

The Committee saw a copy of the Notice of Hearing dated 20 April 2017 that was sent to Mr Jeffers Vargas' registered address in Spain by International Signed for delivery. The notice was also sent to him by email. The letter sets out the date, time and location of today's hearing. The Committee is satisfied that the letter complies with Rule 28. It has seen a printout from the Royal Mail Track and Trace website service that indicates that an attempt was made to deliver the notice to the address in Spain on 27 April 2017.

In the light of all of these documents, 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 Mr Jeffers Vargas, in accordance with Rule 54. You have invited the Committee to do so. 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 to be fair to Mr Jeffers Vargas as well as to the GDC.

There is nothing to suggest that Mr Jeffers Vargas would attend on a future occasion, were this Committee minded not to proceed with the hearing today. He has been in contact with the GDC on several occasions to state that he no longer wishes to work as a dentist in this country and that he does not want to receive any more letters or emails from the GDC. His last such correspondence was by email dated 16 January 2017. The Committee has also had regard to the serious nature of the allegations in this case and the public interest in the expeditious disposal of his case. Taking all these factors into account, the Committee has decided to proceed in the absence of Mr Jeffers, in accordance with Rule 54.

### **APPLICATION FOR PART OF THE HEARING TO TAKE PLACE IN PRIVATE**

At the start of this hearing you made an application under Rule 53 of the Fitness to Practise Rules for aspects of the hearing to be heard in private on the basis that matters relating to Mr Jeffers Vargas' health would be discussed.

The Committee acceded to the application.

### **BACKGROUND**

Around 12 May 2015 and 25 August 2015 and thereafter Mr Jeffers failed to co-operate adequately or at all with an investigation by the GDC in two respects; firstly, he refused his consent to a medical assessment and did not disclose his medical records. Secondly, he failed to provide evidence of his professional indemnity cover. In addition, the Committee found that between around 17 April 2015 and around 8 November 2015 Mr Jeffers failed to co-operate with an investigation conducted by NHS England into his state of health and/or fitness for inclusion on the National Dental Performers List (the List), including by not engaging with requests by NHS England that he undergo a medical assessment.

At the initial hearing the Health Committee determined that Mr Jeffers Vargas' fitness to practise was impaired by reason of his adverse health and it imposed a twelve month period of suspension upon his registration with a review shortly before the end of the order.

Today this Committee has conducted a review of the matter. It has considered all of the evidence before it. It took account of the submissions made by you on behalf of the GDC.

The Committee accepted the advice of the Medical Adviser and the Legal Adviser.

### **IMPAIRMENT**

The Committee considered whether Jeffers Vargas' fitness to practise remains impaired by reason of his adverse health.

The Committee noted that Mr Jeffers Vargas has corresponded with the GDC in order to state that he no longer wishes to practise dentistry in this country and that he does not wish to continue receiving correspondence from the GDC. He has provided no up to date evidence regarding his current state of health, nor has he put forward evidence to demonstrate that he recognises he is unwell and has insight into his condition.

[PRIVATE]

Taking all these factors into account, the Committee has determined that Mr Jeffers Vargas' fitness to practise remains impaired by reason of his adverse mental health.

### **SANCTION**

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

You invited the Committee to consider a continuation of the current order of suspension for a period of 12 months.

Having regard to the serious nature of Mr Jeffers Vargas' health condition, the Committee has determined that it would be inappropriate to terminate the current order of suspension and conclude the case with no further action.

The Committee considered whether to terminate the current order and impose conditions on Mr Jeffers Vargas' registration. It determined that, in the light of his expressed desire to never work in this country again, nor to receive correspondence from the GDC going forward, conditions would not be appropriate or workable.

The Committee then went on to consider whether to extend the order of suspension. In so doing, it has borne in mind the serious nature of his health condition. There is no evidence before the Committee to demonstrate that Mr Jeffers Vargas is undergoing treatment or that he recognises that he is unwell and has insight into his condition. The Committee has therefore determined that it is necessary for the protection of the public, is otherwise in the public interest, as well as in Mr Jeffers Vargas' own interests, to direct that his registration be suspended for a further period of 12 months.

The Committee considers that this period of time will ensure that the public is protected and public confidence in the profession is maintained, whilst allowing Mr Jeffers Vargas the opportunity to gain insight and seek treatment and support should he wish to do so.

A future Committee will review Mr Jeffers Vargas' case at a resumed hearing to be held shortly before the end of the period of suspension. That Committee will consider what action to take in relation to his registration. Up to date medical evidence, would greatly assist it in

determining whether or not Mr Jeffers Vargas' fitness to practise remains impaired. He will be informed of the date and time of that resumed hearing.”

On 24 May 2018, at the review hearing, 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 marked to show where private material is removed.

#### Service and proceeding in absence

This is the resumed Health Committee (HC) hearing of Mr Jeffers Vargas's case which is being held in accordance with Section 27C of the Dentists Act 1984 (the Act). Mr Jeffers Vargas is neither present nor represented today. In his absence, the Committee first considered whether the Notification of Hearing had been served on Mr Jeffers Vargas at his registered address in accordance with Rule 28 and Section 50A(2) of the Act. The Committee has received a bundle of documents which contains a copy of the Notification of Hearing dated 20 April 2018, addressed to Mr Jeffers Vargas's registered address in Spain and which contains a track and trace barcode at the top of the letter. The Royal Mail track and trace receipt confirms that it attempted to deliver the item with the same barcode shown on the Notification of Hearing to Mr Jeffers Vargas's registered address in Spain and the Canary Islands before 12.40 on 24 April 2018. The Committee is satisfied that the Notification of Hearing set out the information required by Rule 28 and that it was sent to Mr Jeffers Vargas's registered address more than 28 days in advance of today's hearing, also in accordance with Rule 28. The Committee also notes that the GDC sent notification of today's hearing to Mr Jeffers Vargas by email on 18 April 2018. The Committee, having heard the Legal Adviser's advice, is satisfied that the GDC has complied with Rule 28 and Section 50(A)(2) of the Act. Therefore, due service of the Notification of Hearing has been effected.

The Committee went on to consider whether to proceed in the absence of Mr Jeffers Vargas and on the basis of the papers, in accordance with Rule 54. It has considered the GDC's written submissions dated 17 May 2018 which invites the Committee to do so. The GDC submits that there would be little benefit in adjourning today's hearing as there is no indication that Mr Jeffers Vargas 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 6 June 2018.

The Committee has noted the absence of any response from Mr Jeffers Vargas in connection with today's hearing. He has not requested an adjournment of today's hearing and there is nothing before the Committee today to suggest that Mr Jeffers Vargas might attend the hearing on a future occasion. Indeed, the Committee notes that he did not attend the initial hearing in May 2016 or the review hearing in May 2017. In these circumstances, the Committee has concluded that Mr Jeffers Vargas has voluntarily absented himself from today's hearing. In addition, the Committee considers that there is a clear public interest in reviewing the order today given its imminent expiry. Accordingly, the Committee has determined that it is fair to proceed with today's review hearing on the basis of the papers and in the absence of both parties.

Application to hear matters in private

The GDC made an application under Rule 53(2) that Mr Jeffers Vargas's hearing be heard in private since the matters before it relate to his 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 Mr Jeffers Vargas's health. It decided that it was necessary to conduct the whole hearing in private.

Background

This is the second review hearing of Mr Jeffers Vargas's case before the Health Committee (the Committee). At the initial hearing in May 2016 the Committee found that around 12 May 2015 and around 25 August 2015 and thereafter Mr Jeffers Vargas failed to co-operate adequately or at all with an investigation by the GDC in two respects; firstly, he refused his consent to a medical assessment and did not disclose his medical records. Secondly, he failed to provide evidence of his professional indemnity cover. In addition, the Committee found that between around 17 April 2015 and around 8 November 2015 Mr Jeffers Vargas failed to co-operate with an investigation conducted by NHS England into his state of health and/or fitness for inclusion on the National Dental Performers List (the List), including by not engaging with requests by NHS England that he undergo a medical assessment.

[PRIVATE]

The Committee determined that Mr Jeffers Vargas's fitness to practise was impaired by reason of his adverse health and it imposed a suspension order for a period of 12 months on his registration with a review shortly before the end of the order.

The Health Committee reviewed the order at a hearing on 19 May 2017. It noted from Mr Jeffers Vargas's correspondence with the GDC that he no longer wished to practise dentistry in this country and that he did not wish to continue receiving correspondence from the GDC. [PRIVATE]. The Committee determined that Mr Jeffers Vargas's fitness to practise remained impaired. [PRIVATE].

The Committee determined that it was necessary for the protection of the public, was otherwise in the public interest, as well as in Mr Jeffers Vargas's own interests, to direct that his registration be suspended for a further period of 12 months. It considered that 12 months would ensure that the public was protected and public confidence in the profession was maintained, whilst allowing Mr Jeffers Vargas the opportunity to gain insight and seek treatment and support should he wish to do so.

Today's review hearing

The Committee has comprehensively reviewed the suspension order today. In making its decision it has had regard to the information before it contained in the GDC's bundle, as well as the written submissions made by the GDC. The Committee has accepted the advice of the Medical Adviser and that of the Legal Adviser.

This Committee has today considered whether Mr Jeffers Vargas's fitness to practise remains impaired by reason of his health condition. It has noted that in preparation for today's hearing the GDC sent reminders to Mr Jeffers Vargas about the recommendation made by the Committee on 19 May 2017. To date, Mr Jeffers Vargas has not provided any up-to-date medical evidence. This Committee, like the previous Committee on 19 May 2017, has no medical evidence as to Mr Jeffers Vargas's current state of health.

[PRIVATE]

Accordingly, the Committee has determined that Mr Jeffers Vargas's fitness to practise remains impaired by reason of his adverse health.

The Committee next considered what action, if any, to take in respect of Mr Jeffers Vargas'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 had regard to its powers under Section 27C of the Act.

The GDC initially invited the Committee to make a direction that Mr Jeffers Vargas's registration be suspended for a further period of 12 months. However, the Committee sought further clarification as to when the order of suspension commenced and when it is due to expire and whether, in the light of that information, it had the power to order indefinite suspension. By email dated 24 May 2018 from the In-House Legal Team's Prosecution Lawyer to the Committee Secretary, the Committee was advised the suspension order commenced on 7 June 2016 and ended on 6 June 2017. The Health Committee review order of suspension, made at the last hearing, commenced on 7 June 2017 and will end of 6 June 2018. The GDC sought an indefinite suspension. The Committee was advised by the Legal Adviser that it has the power to make such a direction under Section 27C(1) of the Act.

The Committee first considered whether Mr Jeffers Vargas's registration should be subject to an order of conditional registration. The Committee decided that this would not be sufficient for the protection of the public or workable. [PRIVATE].

The Committee then went on to consider whether to direct that the current period of suspension be extended for a further period. It has borne in mind Mr Jeffers Vargas's indication to the GDC in 2016 that he no longer wishes to practise as a dentist, as well as his continuing lack of engagement with the GDC. [PRIVATE] In these circumstances, the Committee has concluded that a further period of suspension of 12 months would serve no useful purpose and that an indefinite period of suspension is the appropriate and proportionate outcome. The Committee is satisfied that the provisions of sections 27C(1)(d)(i) and (ii) of the Act have been made out in this case in view of the advice given by the Legal Adviser. Accordingly, the Committee directs that Mr Jeffers Vargas's registration be suspended indefinitely.

The effect of the foregoing direction is that, unless Mr Jeffers Vargas exercises his right of appeal, his registration will be suspended indefinitely from the date on which the direction takes effect. The intervening period between the current order expiring and the new order coming into effect will be covered by the extension the current order of suspension under the provisions of Section 33(3) of the Act.

The Committee would also highlight to Mr Jeffers Vargas that should his condition sufficiently improve, he can apply to the GDC for a review of the indefinite suspension order two years after the direction for indefinite suspension takes effect. That concludes the case for today."