HEARING HEARD IN PUBLIC

PROFESSIONAL CONDUCT COMMITTEE

NOVEMBER 2010 – DECEMBER 2012 **

** See page 9 for the latest determination

PRZYBYLSKI, Lukasz

Registration No: 85118

Lukasz Przybylski registered dentist; Lek Stom Szczecin 2000, was summoned to appear before the Professional Conduct Committee on 16 November 2010 for inquiry into the following charge:

Charge

"That, being a registered dentist:

1. In 2007, you were employed as an Associate Dentist at Dr AA Govani and Associates, 10, Fosse Road, Central Leicester, LE3 5PR ("the Practice").
2. On 15 February 2007, Patient A attended an appointment with you at the Practice:
    a. You did not take, or make a record of, a medical history from Patient A;
    b. You did not take, or make a record of, a social history from Patient A;
    c. You did not undertake, or make a record of, an extra oral examination;
    d. You did not undertake, or make a record of, an oral soft tissue examination;
    e. You did not record an assessment and plan for the ulcer on Patient A's tongue.
3. On 26 February 2007, Patient A attended a further appointment with you at the Practice during the course of which you extracted the tooth at LL8:
    a. You did not take, or make a record of, a medical history from Patient A;
    b. You did not take, or make a record of, a social history from Patient A;
    c. You did not make a record of any post-extraction advice given to Patient A;
    d. You did not record an assessment and plan for the ulcer on Patient A's tongue.
4. On 21 March 2007, Patient A attended a further appointment with you at the Practice:
    a. You did not record your reasons for taking a radiograph;
    b. You did not record the findings of the radiograph taken;
    c. You did not record that:
        i. you issued a prescription for antibiotics;
        ii. the reason for prescribing antibiotics to Patient A:
    d. You did not record an assessment and plan for the ulcer in Patient A's mouth;
    e. You did not make an urgent referral of suspected cancer to a specialist service in Patient A's case despite the fact that:

i. the ulcer had been present without healing for over 3 weeks;

ii. you had extracted LL8 over 3 weeks previously thereby removing a possible cause and the ulcer was still present;

f. You did not make any clinical notes in relation to the appointment on 21 March 2007.

5. On 23 March 2007 Patient A attended a further appointment with you at the Practice:

a. You did not record an assessment and plan for the ulcer in Patient A's mouth;

b. You did not make an urgent referral of suspected cancer to a specialist service in Patient A's case despite the fact that:

i. the ulcer had been present without healing for over 3 weeks;

ii. you had extracted LL8 over 3 weeks previously thereby removing a possible cause and the ulcer was still present;

c. You did not make any clinical notes in relation to the appointment on 23 March 2007.

6. On 25 April 2007, Patient A attended a further appointment with you at the Practice:

a. You did not make a record of your findings and your treatment plan on 25 April 2007;

b. You knew or ought to have known that an urgent referral was required in Patient A's case;

c. You did not make an urgent referral of suspected cancer to a specialist service;

d. You did not make a timely referral in Patient A's case.

7. On 10 May 2007, Patient A attended her last appointment with you at the practice during the course of which you asked your principal Mr Govani to come into the treatment room:

a. You did not make any note of your findings or a treatment plan on 10 May 2007 or confirm that Mr Govani had made such a note.

8. Your behaviour as set out at 2, 3, 4, 5, 6 and 7 above was not of the standard expected of a registered dentist.

AND, by reason of the facts stated, your fitness to practise as a Dentist is impaired by reason of your misconduct."

On 23 November 2010 the Chairman made the following statement regarding the finding of facts:

"Ms Harris,

The Committee has taken into account all the evidence presented to it. It has accepted the advice of the Legal Adviser.

The Committee makes plain at the outset that in relation to the term "suspected cancer" in several heads of charge, on the basis of the evidence of Mr Layton and the National Institute for Health and Clinical Excellence (NICE) June 2005 guidelines it would not be necessary to describe the lesion reported by the patient in such terms. Accordingly, the Committee has approached such heads of charge on the understanding that this was a lesion of unknown

cause and it has made its determination on this basis. I will now announce the Committee's findings in relation to each head of charge:

1	Proved
2 (the stem)	Proved
2 a	Not proved. Ms B, whom the Committee considers to be a credible witness, gave evidence that a medical history was provided by the completion of a form on the 15 February 2007, although this fact was not recorded in the patient notes.
2 b	Proved. Although there is evidence that a medical history had been taken, the computerised record dated 5 April 2007, page 21 of C1, does not show any social history. The Committee is satisfied that had any questions been asked about social history, Ms B would have recollected it.
2 c	Proved. The records do not show that any such examination was undertaken. Whilst noting that the record keeping was generally poor, if such an examination had been undertaken, it is likely that Ms B would have recollected it.
2 d	Proved. Ms B's evidence that there was a small lesion on the tongue was accepted by the Committee. This is not recorded in the notes, and therefore it is probable that no soft tissue examination was carried out.
2 e	Proved. Mr Przybylski's actions make it plain that he did not record an assessment plan for dealing with the ulcer because he had not identified it.
3 (the stem)	Proved
3 a	Proved. Unlike at the appointment a week earlier, there is no evidence on this occasion that any history was taken or record made.
3 b	Proved. The Committee refers to the reasons above.
3 c	Proved. Ms B stated in evidence that she was given a leaflet and the Committee is satisfied that this was not recorded in the patient notes.
3 d	Proved. There was no evidence of an assessment or plan and the Committee is satisfied that had there been one it would have been recorded.
4 (the stem)	Proved
4 a	Proved

4 b	Proved
4 c (i)	Proved
4 c (ii)	Proved
4 d	Proved
	The Committee is satisfied that in relation to the above heads of charge, these are matters of simple records which should have appeared in the patient notes and did not.
4 e	Proved. The Committee accepts the evidence of Mr Layton and the NICE guidelines, paragraph 1.11.4 that it should have been the subject of an urgent referral because of its nature.
4 f	Proved. The computerised appointment history at page 24 of C1 is the only record of this appointment.
5 (the stem)	Proved
5 a	Proved. There was no evidence of an assessment or plan and the Committee is satisfied that if there had been one it would have been recorded.
5 b	Proved. For the reasons stated at paragraph 4 e above, the Committee is satisfied that the situation was no different and an urgent referral was necessary.
5 c	Proved. The computerised appointment history at page 24 of C1 is the only record of this appointment.
6 (the stem)	Proved
6 a	Proved. The computerised appointment history at page 24 of C1 is the only record of this appointment.
6 b	(as amended by the deletion of the words “knew or”) Proved. The Committee relies on the evidence of Mr Layton and the NICE guideline in relation to what was required on 25 April 2007 when several weeks had passed and there was no improvement in Patient A’s condition. At this stage the need for an urgent referral was more pressing.
6 c	Proved. There is a letter purportedly dated 25 April 2007. If this letter was intended to be a referral letter, the Committee is satisfied that it was not written in urgent terms and it is not clear whether it was ever received by the hospital.

6 d	Proved. The Committee refers to the reasons set out above.
7 (the stem)	Proved
7 a	Proved
8	In relation to 2 (except 2(a)), 3, 4, 5, 6 and 7 Proved
	The Committee is satisfied that the patient was entitled to expect of a registered dentist the minimum following standards: • clear and accurate record keeping • adequate examination • taking of full medical and social history • providing appropriate treatment • knowledge and use of appropriate referral pathways In respect of your acts and omissions identified above such standards were not met.

We move to Stage Two."

On 25 November 2010 the Chairman announced the determination as follows:

"Ms Harris,

Mr Przbylski was neither present nor represented at this hearing. After considering the service bundle and hearing submissions, the Committee was satisfied that he had been properly notified of the proceedings and further exercised its discretion to hear the case in the absence of the dentist for these reasons:

1. Mr Przbylski has not engaged with the hearing process.
2. He had supplied a written response to the allegations to the General Dental Council (GDC).
3. The public interest and the interest of the other respondents would not be served by any further delay.

In 2007 Mr Przbylski was employed as an Associate Dentist at AA Govani and Associates.

On 15 February 2007 Patient A attended an appointment with Mr Przbylski. On this occasion Mr Przbylski did not take or make a record of any social history and failed to undertake or make a record of an extra oral examination or an oral soft tissue examination. Mr Przbylski did not record an assessment and plan for the ulcer on Patient A's tongue.

On 26 February 2007 Patient A attended a further appointment at which Mr Przbylski extracted the LL8 tooth. He failed to take or record a medical or a social history. He did not record any post extraction advice given to Patient A although there is evidence that she was provided with a leaflet. Again there was not a record made of any assessment or plan for the ulcer on the Patient A's tongue.

The patient attended a further appointment on 21 March 2007 at which he took a radiograph and prescribed antibiotics. There are no clinical notes for this appointment. He made no record of the reason for taking the radiograph or the findings. He did not record his prescription or the reason why antibiotics were prescribed. Once again there was no assessment or plan for the ulcer on Patient A's tongue. He failed to make an urgent referral to a specialist service despite the fact that the ulcer had been present without healing for over 3 weeks and he had removed a possible cause by extracting the LL8 on 26 February 2007.

Patient A attended again on 23 March 2007. There are no clinical notes for this appointment. Mr Przbylski did not record an assessment and plan for the ulcer in patient A's mouth and again failed to refer to a specialist service despite the fact that the ulcer had been present for over 3 weeks without healing.

Patient A's next appointment with Mr Przbylski was on 25 April 2007. He made no record of his findings or treatment plan on this day. He ought to have known that an urgent referral to a specialist service was required under the National Institute for Health and Clinical Excellence (NICE) 2005 guidelines but failed to make a timely referral. There is evidence of a referral letter dated 25 April 2007 but this letter does not appear in hospital records and the Committee is unable to determine whether it was ever sent.

On 10 May 2007 Patient A attended the last appointment with Mr Przbylski at which Dr Govani gave a second opinion. Patient A was urgently referred to a specialist service that day. Mr Przbylski did not make any notes of the findings or treatment plan or confirm that Dr Govani had done so.

By his failing to note the ulcer and take and record medical and social histories subsequent treating clinicians could be misled by the notes and possibly would not react in a timely manner.

Patient A died following complications after surgical treatment for oral cancer. Expert opinion given to the Committee in evidence indicated that it was likely that the outcome would have been the same in any event. Nevertheless, Patient A was entitled to proper care which would have improved the quality of her life in those last months.

Mr Przbylski's failings breached the GDC's ethical guidance, Standards for Dental Professionals, May 2005, namely:

1.3 Work within your knowledge, professional competence and physical abilities. Refer patients for a second opinion and for further advice when it is necessary, or if the patient asks. Refer patients for further treatment when it is necessary to do so.

1.4 Make and keep accurate and complete patient records, including a medical history, at the time you treat them. Make sure that patients have easy access to their records.

2.4 Listen to patients and give them the information they need, in a way they can use, so that they can make decisions.

This will include:

- communicating effectively with patients;
- explaining options (including risks and benefits); and
- giving full information on proposed treatment and possible costs.

4.3 Communicate effectively and share your knowledge and skills with other team members and colleagues as necessary in the interests of patients. In all dealings with

other team members and colleagues, make the interests of patients your first priority. Follow our guidance 'Principles of dental team working'.

5.1 Recognise that your qualification for registration was the first stage in your professional education. Develop and update your knowledge and skills throughout your working life.

5.3 Find out about current best practice in the fields in which you work. Provide a good standard of care based on available up-to-date evidence and reliable guidance.

The Committee is in no doubt that the facts proved amount to misconduct.

The Committee is satisfied that the failings would be capable of remediation but has noted that Mr Przbylski has withdrawn from these proceedings and moved to a different country. There is no evidence that he has remedied any of the failings identified and has not shown any insight into his shortcomings. In all the circumstances, the Committee has concluded that there is a real risk of repetition of his conduct. It has therefore concluded that Mr Przbylski's fitness to practise is currently impaired by reason of this misconduct.

The Committee reminded itself that its statutory powers exist to protect the public, maintain confidence in the profession and uphold the standards of the profession. Sanctions are not intended to be punitive and should be imposed in a manner which is proportionate, having regard to the interests of the registrant and the public. At each stage the Committee has borne in mind the principle of proportionality and the effect of any sanction upon Mr Przbylski.

Given the serious misconduct in this case, the Committee is satisfied that it is necessary to impose a sanction.

The Committee first considered concluding the case with or without a reprimand. The purpose of imposing a sanction in this case is to mark a serious departure from professional standards. The GDC's guidance in relation to reprimand refers to 'misconduct to a relatively minor degree'. The Committee does not regard this as a minor matter. It has concluded that a reprimand would not be a sufficiently serious sanction in this case.

The Committee has the power to impose conditions. Taking into account that Mr Przbylski has not engaged with the process, the Committee has considered that conditions would not be appropriate in this case. Conditions could not be workable and measurable if Mr Przbylski is out of the country.

The Committee then considered suspension. The Committee has concluded that a period of suspension is both necessary and sufficient. It has concluded that a period of suspension of twelve months is the appropriate sanction in this case. The Committee considers that it is necessary to have a review hearing at the end of the period. At the review hearing, that Committee would be assisted by evidence of remediation and insight into his failings.

The Committee recommends that the GDC informs the relevant dental authorities in Poland and all other EU countries of this determination.

The Committee is minded to consider imposing an order for Mr Przbylski's immediate suspension, but wishes first to hear submissions from you on the matter.

The Committee considers that it is necessary for the protection of patients, in the public interest and in Mr Przbylski's interests to impose an order for immediate suspension.

The effect of the foregoing direction and order is that Mr Przbylski's name is suspended from the Dentists Register forthwith and, unless he exercises his right of appeal, his name will be suspended for a further period of 12 months 28 days from the date on which this

determination is deemed to have been served on him. The suspension will be reviewed shortly before it expires.

That concludes the case for today."

At a review hearing on 13 December 2011 the Chairman announced the determination as follows:

"Ms Steele,

The Committee has carefully considered the documents placed before it, and has accepted the advice of the Legal Adviser.

Mr Przybylski is neither present nor represented today. On behalf of the General Dental Council (GDC) you made an application to proceed in his absence. The Committee has been referred to *'The General Dental Council (Fitness to Practise) Rules Order of Council 2006'* (the Rules), in particular Rule 54.

The Committee is satisfied that all reasonable steps have been taken by the Council to effect service. The letter of 15 September 2011 at exhibit C2 was sent more than 28 days before today's hearing. It was sent to the last known registered address of the Registrant in Poland. The letter was sent by email, airmail, international signed-for, and by international courier. There is evidence that the letter which was sent by international courier was delivered and signed for on 20 September 2011.

In line with Rule 54, the Committee is satisfied that all reasonable efforts have been made to serve the notice of enquiry and was, in the interests of justice, content to proceed in the Registrant's absence.

This is a review of a 12 month Suspension Order made on 16 November 2010. The previous Committee concluded that the treatment of the patient in this case amounted to misconduct and Mr Przybylski's fitness to practise was found to be impaired at the time of the hearing.

The previous Committee suggested the reviewing Committee would be assisted by evidence of remediation and insight into his failings. This Committee has had no such evidence presented to it. The Registrant has not engaged in any way with the proceedings. In fact, there has been no contact of any kind.

This Committee therefore concludes that there remains a real risk of repetition, a real risk to patients, and a risk to the reputation of the profession. The Committee concludes that Mr Przybylski's fitness to practise remains impaired.

In light of the circumstances of this case, and in particular, the lack of engagement by the Registrant, the Committee has determined that the only proportionate and appropriate sanction is an order for a further period of suspension. Mr Przybylski's registration will be suspended for 12 months commencing upon expiration of the current period of suspension. Mr Przybylski's right of appeal is governed by Section 29 of the Dentists Act 1984. This order will be reviewed before the end of the 12 month period.

The Committee recommends that the GDC informs the relevant dental authorities in Poland and all other EU countries of this determination.

That concludes the matter for today."

On 5 December 2012 at a review hearing, the Chairman announced the determination as follows:

"Mrs Steele,

Mr Przybylski is neither present nor represented at today's hearing. The Committee have considered carefully the submissions from you on behalf of the General Dental Council (GDC). It has heard and accepted the advice of the Legal Adviser. The Committee has read the documentation placed before it.

The Committee first considered whether service of the notification had been properly effected. The Committee has been referred to The General Dental Council (Fitness to Practise) Rules Order of Council 2006 (the Rules), in particular the requirements of Rule 54.

The Committee has had sight of the letter of notification dated 4 October 2012, sent by international signed-for post to the Registrant's last known registered address in Poland. The letter was also sent by regular airmail, by e-mail to Mr Przybylski's last known e-mail address, and by international courier. Proof of posting was provided to the Committee in the form of a printed report from Royal Mail's 'track and trace' website which indicated that the letter sent using the 'international signed-for' service was passed to the postal service in Poland. There was an indication that the version sent by international courier was refused at Mr Przybylski's registered address, and was returned to sender.

A further letter dated 1 November 2012 was sent informing Mr Przybylski of this hearing, and the results from Royal Mail, and the courier company were the same as the previous letter. The attempts to e-mail Mr Przybylski did not evoke any response from him, although the Committee was informed that the e-mails did not bounce back. The Committee is satisfied that the letter contained proper notification of the allegations, the nature of today's hearing, and the date, time and location of this hearing. It took the view that these letters were sent in reasonable time to enable the Registrant to make arrangements to obtain representation, attend, or make written submissions to this Committee.

The Committee next considered whether it should proceed in Mr Przybylski's absence. The Committee reminded itself of the need to exercise the utmost care and caution before proceeding in Mr Przybylski's absence. It is incumbent upon a Dental Professional to provide their regulator with their current address.

The Committee had sight of a report dated 4 December 2012 from a search agent, which confirm their attempts to locate Mr Przybylski. Those efforts were entirely in vain. The Committee noted that the last two hearings of Mr Przybylski's case proceeded without his presence, and those Committees made their findings without any engagement from Mr Przybylski, save a handwritten submission from him at a very early stage. The latter confirms for the Committee that he is aware that these proceedings are continuing, and he does not wish to engage in the regulatory process.

In the light of the extensive efforts to contact Mr Przybylski the Committee is satisfied that all reasonable efforts have been taken by the GDC to send notification to Mr Przybylski in accordance with the Rules and that there has been good service.

The Committee has concluded that Mr Przybylski has voluntarily absented himself, and it is unlikely that Mr Przybylski would attend a rescheduled hearing if today's hearing were adjourned.

Taking into account the serious nature of the case, the protection of the public, and the clear public interest in the expeditious disposal of this case, the Committee is satisfied that it should proceed with this hearing in Mr Przybylski's absence.

This hearing is being held pursuant to Section 27C of the Dentists Act 1984 as amended (the Act), to review a 12 month Suspension Order made originally imposed on 25 November 2010, and extended by a reviewing Committee on 13 December 2011 for a further 12 months. Mr Przybylski's fitness to practise was found to be impaired at the both previous hearings, in the light of the evidence adduced by the GDC.

On behalf of the GDC, you submitted that Mr Przybylski's fitness to practise remains impaired for the reasons identified by two previous Committees and in particular because the risk of repetition is as relevant now as in previous hearings. You invited the Committee to make an order for indefinite suspension against Mr Przybylski's registration.

The Committee first considered whether Mr Przybylski's fitness to practise remains impaired. It noted that Mr Przybylski has not provided any evidence of insight into his identified failings or remorse for the harm caused to patients. The Committee was satisfied that the risk of further harm continues today, and therefore finds that Mr Przybylski's fitness to practise remains impaired.

The Committee next turned to consider which sanction should be imposed given the circumstances of this case. It has taken account of all the information presented to it and has borne in mind that it must balance the public interest against Mr Przybylski's own interests, and that it must act proportionately. The Committee reminded itself that the purpose of the proceedings is not to be punitive but is to protect the public from the Registrant's acts and omissions and maintain high standards within the dental profession.

The Committee has looked at each sanction in turn, starting with the least severe. It first considered imposing conditions, but noted that no conditions could be formulated that would be sufficiently workable, practicable and measurable.

The Committee next considered whether it should extend the period of suspension for a further specified period. In reaching its decision, the Committee noted that Mr Przybylski has not disclosed his whereabouts to the GDC, nor has he stated his intentions regarding his registration to practice as a dentist within the UK. If he had done so, the Committee would have expected him to provide evidence of how he intends to address the serious failings identified in his practice. He would also need to demonstrate significant insight into the impact his deficient practise might have both upon patients and the reputation of the dental profession.

Mr Przybylski's failure to show even the smallest inclination to engage with the ongoing regulatory process should be viewed in light of the serious risk of harm invoked by the proven inadequacies in his approach to dental practice. The Committee was satisfied that it would neither be in the public interest nor in Mr Przybylski's own interest to impose a specified period of suspension to be reviewed on a further occasion when he does not appear to intend to engage with the GDC or practice dentistry within the UK.

The Committee reminded themselves of the dual statutory prerequisites to making an order for indefinite suspension. Mr Przybylski was first suspended on 25 November 2010 and has therefore been suspended for 2 years, fulfilling the first requirement in Section 27C(1)(d) of the Act. Since the current period of suspension is due to expire in mid-January 2013, today's hearing is within 2 months of its expiry, thus fulfilling the second criteria for indefinite suspension.

For the protection of the public, in the public interest and to maintain confidence in the profession, it is therefore necessary and proportionate to suspend the registration of Lukasz Przybylski indefinitely.

Mr Przybylski has 28 days to appeal against this decision; however he will remain suspended pursuant to Section 33(3) of the Act should he appeal."