

**Hearing part-held in private
PUBLIC determination**

Summary

Name:	GUIRGUIS, Kareem [Registration number: 193829]
Type of case:	Professional Conduct Committee (review)
Outcome:	Suspended indefinitely
Date:	3 November 2022
Case number:	CAS-192869

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.

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This is a resumed hearing pursuant to section 27C of the Dentists Act 1984. The hearing was conducted remotely using Microsoft Teams and was part-held in private under Rule 53 of the General Dental Council (Fitness to Practise) Rules 2006 (the “Rules”) to protect Mr Guirguis’s right to privacy in relation to his health.

The initial hearing before the Professional Conduct Committee (“PCC”): December 2019

On 5 December 2019, the PCC (the “initial PCC”) found Mr Guirguis’s fitness to practise as a dentist to be impaired by reason of his misconduct, which it summarised as follows:

On 20 September 2017 Patient A attended Mr Guirguis’s practice for an initial consultation relating to the provision of orthodontic treatment, including upper and lower aligners. Mr Guirguis failed to explain to Patient A the risks of the proposed treatment and Patient A was therefore not in a position to give his valid consent to the treatment. Patient A decided to proceed with the treatment. On 29 September 2017 he made a payment of £2,400.00 for the treatment and was advised by Mr Guirguis that it would take approximately two weeks for the aligners to be manufactured. Patient A was advised that once the aligners were received at the Practice a further appointment would be scheduled for the aligners to be fitted.

On 29 September 2017 Mr Guirguis filed two of Patient A’s upper teeth without obtaining his valid consent: although Patient A had requested the treatment, there was no prior discussion with him about what was going to happen and

therefore he could not have given his valid consent for Mr Guirguis to file his teeth.

Towards the end of October 2017 Patient A started to chase the aligners with the Practice. On 10 November 2017 he attended an appointment for the aligners to be fitted but when he arrived at the Practice he was advised that the aligners were yet to be delivered.

Another appointment was scheduled for 14 November 2017 but was cancelled on the day by the Practice. When Patient A spoke to Mr Guirguis over the phone that day, Mr Guirguis stated that he had the aligners in his possession and that he would personally take them to the post office to post and that once he had done so he would send the tracking number by SMS and would also arrange for a partial refund to be issued in light of the delay.

At around 08.32am on 15 November 2017 Mr Guirguis told Patient A over the telephone that he had posted the aligners. When asked by Patient A for the tracking number, he stated that he had been in too much of a hurry to post the aligners and that he did not take down the tracking number.

In fact, the aligners were posted to the Practice from the dental laboratory in Italy, during the afternoon of 14 November 2017. This delay was the result of poor administration within the Practice and late payment from Mr Guirguis to the dental laboratory.

The Committee found as fact that Mr Guirguis did not have the aligners in his possession on 14 November 2017, nor would he have received and then posted them onto Patient A by around 08:32am the following morning. Mr Guirguis's statements to Patient A were dishonest. However, the Committee acknowledged that in context the dishonesty was likely to have arisen out of panic and embarrassment, rather than there being a more pre-meditated or manipulative element to the dishonest conduct.

Later on 15 November 2017 Patient A decided to withdraw from the treatment and requested a full refund, which he received.

In response to a complaint from Patient A, Mr Guirguis posted Patient A's records with the records of another unrelated Patient (B) to his defence organisation. He did not make any copy of the records, which have now been lost, before posting them.

The initial PCC directed that Mr Guirguis's registration be made subject to his compliance with conditions for a period of 12 months with a review, stating:

...Each case must be decided on its own facts. In the Committee's judgment, the shortcomings in this case are not so serious that suspension is indicated. Having regard to all the circumstances, the Committee decided that suspension would be disproportionate and potentially punitive in the circumstances. Mr Guirguis has engaged in these proceedings to some degree. He has in his

representations expressed a willingness to undertake further training and to work to conditions of practice. In the Committee's judgment, conditions are in all the circumstances workable and proportionate.

The Committee reached its decision by first formulating conditions and then measuring the adequacy and proportionality of these against a direction for suspension. In formulating the conditions, the Committee considered any risk which might arise if Mr Guirguis's interim suspension were to be lifted. The Committee did not identify any clinical risk to patients which would require him to work under supervision. The required learning here is not about techniques in clinical practice. It is about the importance of understanding the standards to which the Committee has already referred and understanding the underlying importance behind those standards. That is extra learning which can be acquired within the framework of conditions requiring reflection and learning with the support of a Postgraduate Deanery.

The first PCC review hearing: November 2020

The review hearing was held on 18 November 2020, when the PCC found that Mr Guirguis's fitness to practise continued to be impaired by reason of misconduct. It directed that the conditions on his registration be replaced by a period of suspension for 12 months with a review, stating:

Mr Guirguis has not engaged with the Council since January 2020. The Committee noted that Mr Guirguis' registration was suspended by another Committee shortly after the conditions in this case were imposed. It also noted that this would have meant that Mr Guirguis could not comply with the clinical conditions. However, it accepted the submissions of Ms Headley that there were some non-clinical conditions that he could have complied with which he did not. The Committee considered that Mr Guirguis had breached the conditions on his registration.

There was no evidence before the Committee on which it could assess whether Mr Guirguis has addressed the failings identified in his practice. He has not engaged with the Council as he should, being subject to fitness to practise proceedings. The Committee concluded in the absence of any evidence, that there remained a risk to the safety of patients and a risk of repetition of the failings found proved. It determined that a finding of current impairment is required for the protection of the public. Furthermore, the Committee determined that a finding of current impairment is in the public interest in order to uphold the standards of the profession. A fully informed member of the public knowing the nature of the facts found proved, the absence of any remediation and the lack of engagement by Mr Guirguis would be concerned if a finding of current impairment was not made.

In replacing the conditions with a period of suspension for 12 months with a review, the November 2020 PCC stated:

The Committee was of the view that having breached the conditions and the lack of engagement by Mr Guirguis, it was not confident that he would comply with any further conditions on his registration. The Committee determined that conditions were no longer workable or appropriate.

The Committee was of the view that a period of suspension was the appropriate sanction to impose in the light of a complete lack of engagement, the absence of any evidence of remediation by Mr Guirguis and the identified risk to patients and risk of repetition in the absence of remediation.

...a period of 12 months would be appropriate and proportionate to give Mr Guirguis an opportunity to re-engage with the Council and demonstrate adequate remediation of his failings, should he wish to do so.

The Committee also directs that the case be reviewed prior to the expiry of the 12-month suspension. A reviewing Committee may be assisted by receiving evidence of Mr Guirguis' personal reflection and targeted CPD.

The second PCC review hearing: November 2021

The review hearing was held on 11 November 2021, when the PCC found that Mr Guirguis's fitness to practise continued to be impaired and directed that the suspension of his registration be extended by a further period of 12 months with a review, stating:

...there was no evidence before the Committee on which it could assess whether Mr Guirguis has addressed the failings identified in his practice. He has not engaged with the Council since January 2020. The Committee concluded that there appears to be an attitudinal issue on the part of the Registrant and in the absence of any evidence, that there remained a risk to the safety of patients and a risk of repetition of the failings found proved. There is no information to suggest that Mr Guirguis' insight and remediation has improved. It determined that a finding of current impairment is required for the protection of the public. Furthermore, the Committee determined that a finding of current impairment is in the public interest in order to uphold the standards of the profession. A fully informed member of the public knowing the nature of the facts found proved, the absence of any remediation and the lack of engagement by Mr Guirguis would be concerned if a finding of current impairment was not made.

...

an order of conditions may be appropriate if the Registrant had fully engaged in the process, however [the Committee] considered that conditions would not be workable, appropriate or proportionate in this case. Mr Guirguis has disengaged with the Council and failed to provide any evidence of current insight and remediation. The Committee had no confidence that Mr Guirguis would comply with conditions.

The Committee therefore directs that the current period of suspension of Mr Guirguis' registration be extended for a further period of 12 months...

The Committee also directs that the case be reviewed prior to the expiry of the 12-month suspension. A reviewing Committee may be assisted by receiving evidence of Mr Guirguis's personal reflection and targeted CPD.

The third PCC review: November 2022

The role of the present Committee is to undertake the review directed by the November 2021 PCC. The Committee was aware that Mr Guirguis's registration is currently subject to two other directions for suspension imposed in parallel Practice Committee proceedings under the references CAS-184880 and CAS-190140:

- (i) In CAS-184880, the Health Committee ("HC") found in January 2020 that Mr Guirguis's fitness to practise was impaired by reason of: (i) misconduct in relation to other matters; (ii) caution; and (iii) adverse physical or mental health, and directed that his registration be suspended for a period of 12 months with a review. The review hearing was held on 18 November 2020, when the PCC determined that Mr Guirguis's fitness to practise continued to be impaired by reason of misconduct and adverse physical or mental health and directed that the suspension be extended by a further period of 12 months with a review. The next review hearing was held on 11 November 2021, when the PCC found that Mr Guirguis's fitness to practise continued to be impaired by reason of misconduct and adverse physical or mental health, and directed that the suspension be extended by a further period of 12 months with a review. On 3 November 2022 the HC reviewing that suspension directed that Mr Guirguis's registration be suspended indefinitely. That review was listed before the present Committee today in addition to this review hearing for the PCC proceedings. Whilst both review hearings shared the same listing, the Committee conducted its review in respect of each set of proceedings separately. The fact of the other set of proceedings was before the Committee only to enable it to have regard to the full extent and nature of the regulatory sanctions to which Mr Guirguis is currently subject. It determined his fitness to practise in relation to these PCC proceedings on the information relevant to that case alone.
- (ii) In CAS-190140, the PCC found in September 2021 that Mr Guirguis's fitness to practise was impaired by reason of misconduct relating to other matters and directed that his registration be suspended for a period of 12 months with a review. The review hearing took place on 3 and 5 October 2022, when the PCC determined that Mr Guirguis's fitness to practise continued to be impaired by reason of misconduct and directed that the suspension of his registration be extended by a further period of 12 months with a review. The fact of these proceedings was before the Committee only to enable it to have regard to the full extent and nature of the regulatory sanctions to which Mr Guirguis is currently subject when determining his fitness to practise. A transcript of the review hearing on 3

and 5 October 2022 was before the present Committee for two reasons. First, Mr Guirguis had made representations at that hearing relating to his remediation in those proceedings which might be of relevance to his remediation more generally and which demonstrated his recent engagement in the regulatory process. Secondly, he had discussed matters relating to his health at that review hearing which might be of relevance to his application for a postponement of the present hearing, to which the Committee shall turn shortly. The matters arising in the parallel proceedings were not otherwise taken into account by the Committee in respect of the present PCC proceedings.

Mr Guirguis was neither present nor represented at this review hearing, which was scheduled to commence on 2 November 2022 at 09:30. On 1 November 2022 at 00:14 he emailed Mr Cao Hernandez, an Assistant Presentation Lawyer at the GDC, to apply for a postponement of the hearing in the following terms:

I am unwell at the moment and not able to attend or partake in the hearing. I would request that the hearing be postponed but out of respect for the panel I would assume that this is not going to be possible.

[IN PRIVATE] i [sic] will leave it to the GDC / the panel's discretion and will request a review as soon as practicable.

Mr Cao Hernandez replied on 1 November 2022 at 09:41 to state:

I am very sorry to hear that you are currently unwell. Please note that medical evidence would assist the Committee once considering your application to postpone the hearing hence you are invited to provide documentary evidence in this respect as soon as practicable.

In the absence of any medical evidence, it is very likely that the GDC will oppose your application to postpone the hearing as the orders must be reviewed before the end of the expiry period.

There is no record before the Committee of any response or communication from Mr Guirguis until an email sent to Mr Cao Hernandez on 2 November 2022 at 00:38, stating:

I replied with everything needed and keep encountering an auto reply. Is this to prevent me from being able to submit any medical evidence so the hearing goes ahead without me?

Mr Cao Hernandez replied on 2 November 2022 at 07:48 to state:

Thanks for your email.

As you may appreciate, I was not working yesterday at 00:14am when you sent me the attached email and that is why you got an autoreply.

Nonetheless, I replied to your email yesterday at 09:14am (see attached) and I have not received any further email from yourself barring the one below at 00:38am. I have not received any medical evidence from yourself either.

Should you like to provide any documentation, please do so urgently as the hearing will be starting at 09:30am.

Equally, should you like to attend the hearing and make oral submissions, please join the hearing link provided to you (also attached) at 09:30am.

Mr Guirguis replied at 07:54 to state:

My apologies for the misunderstanding. I sent other emails during the day when I received an auto reply.

There was no record before the Committee of any further reply or communication from Mr Guirguis. According to the records before the Committee, Mr Guirguis had provided no medical or other evidence in support of his application for a postponement and had provided no details of the alleged illness, injury or other incapacity on which he relied in support of the application.

Mr Micklewright, the Case Presenter for the GDC, opposed the application for a postponement. He submitted that the notice of hearing had been served on Mr Guirguis in accordance with the requirements of the Rules and that the hearing should proceed in Mr Guirguis's absence.

Service and absence

The Committee accepted the advice of the Legal Adviser on the requirements of service and proceeding in absence.

The first consideration for the Committee was whether notice of this hearing had been served on Mr Guirguis in accordance with the requirements of the Rules.

The notice of hearing was sent to Mr Guirguis at his registered address on 26 September 2022 by both Special Delivery and first-class post. Royal Mail "Track and Trace" records that the Special Delivery item was delivered on 27 September 2022, signed for against the name "KAREEM".

The Committee was satisfied that the notice was sent with more than 28 days' notice of this hearing; that it contained the information prescribed under Rule 28 of the Rules, including the time, date and (remote) venue of this hearing; and that it had been served in accordance with the requirements of Rule 65 of the Rules by virtue of its being sent by post to Mr Guirguis at his registered address.

A link to download a copy of the notice of hearing was also sent to Mr Guirguis by email on 26 September 2022.

The next consideration for the Committee was whether to exercise its discretion to proceed in the absence of Mr Guirguis. This is a discretion which must be exercised with great care and caution.

Mr Guirguis applied for a postponement of the hearing but provided no medical or other evidence in support of his assertion that he was “*unwell*”, neither did he give any details of the alleged illness, injury or incapacity on which he relies in support of the application. However, the Committee recognised that there are proceedings before the HC and had regard to the adverse physical or mental health condition which is the subject of those proceedings. The Committee also had regard to the references which Mr Guirguis had made to his health at the review hearing on 5 October 2022.

[IN PRIVATE]

Accordingly, Mr Guirguis had not specified why he was “*unwell*” and provided no medical evidence to the Committee establishing that he would have been unable to have attended or participated in the hearing. He was self-evidently aware of this hearing and its purpose. He had attended and participated in some of the hearings which were held as part of the various Practice Committee proceedings to which he was subject, notwithstanding any adverse physical or mental health condition from which he was suffering. There was nothing to suggest to the Committee that postponing or adjourning the hearing would make his attendance any more likely in the near future. There was a pending need for the current period of suspension to be reviewed prior to its expiry on 20 December 2022. Having regard to all these factors, the Committee refused the application for a postponement and determined that it would be fair and in the public interest to proceed with the hearing, notwithstanding Mr Guirguis’s absence.

The review of the current period of suspension

The Committee had careful regard to all the documentary evidence put before it. The Committee heard the submissions made on behalf of the GDC by Mr Micklewright, who submitted that Mr Guirguis’s fitness to practise continues to be impaired by reason of misconduct, and that his registration should now be suspended indefinitely.

The Committee accepted the advice of the Legal Adviser on the review of the current period of suspension.

The Committee considered whether Mr Guirguis’s fitness to practise continues to be impaired by reason of his misconduct. Whilst Mr Guirguis has not produced any material for this hearing, the Committee noted that, at the review hearing on 5 October 2022, he made reference to a comprehensive Personal Development Plan and other documents relating to his remediation, but he has not produced these. The Committee determined that there continues to be no meaningful evidence of any reflection, insight or remediation in relation to his misconduct in this case. Mr Guirguis has had ample opportunity to provide such evidence as part of these proceedings and had been advised by the previous PCCs to do so. His misconduct

involved both clinical failings and dishonesty towards a patient. He demonstrates only very limited reflection and remediation relating to his clinical failings and no reflection, insight or remorse relating to his dishonesty. It appears he has undertaken only very limited Continuing Professional Development (CPD) activity targeted to address the concerns raised in the parallel PCC proceedings. In the absence of evidence of any meaningful reflection, insight or remediation, the Committee could not be satisfied that the risk of Mr Guirguis's repeating his misconduct would be low or that the suspension of his registration has been sufficient to mark the seriousness of his misconduct, so as to maintain public confidence in the profession and in this regulatory process. The Committee therefore considered there to be a high risk of repetition.

Accordingly, the Committee determined that Mr Guirguis's fitness to practise as a dentist continues to be impaired on the statutory basis of misconduct. The Committee was satisfied that his misconduct continues to raise both public protection and wider public interest concerns.

The Committee next considered what further action, if any to take in respect of Mr Guirguis's registration.

The Committee was satisfied that the continued restriction of Mr Guirguis's registration is necessary. There would be a risk of harm to the public should Mr Guirguis be allowed to practise without any restriction on his registration and public confidence in the profession and in this regulatory process would also be seriously undermined.

The Committee could not identify any conditions of practice which could be formulated to be workable, measurable and proportionate owing to the nature of Mr Guirguis's misconduct and his lack of full engagement in these proceedings. The Committee could not be satisfied that Mr Guirguis would comply with any conditions on his registration. The Committee noted that he had previously failed to comply with the conditions initially imposed on his registration by the PCC in this set of proceedings.

The Committee determined that the suspension of Mr Guirguis's registration therefore remains necessary and proportionate. The periods of suspension previously imposed on Mr Guirguis's registration have not achieved their intended purpose, as Mr Guirguis continues to demonstrate a lack of reflection, insight and remediation into his misconduct and there continues to be a lack of full engagement from him in respect of these proceedings. There was nothing to suggest to the Committee that Mr Guirguis would be likely to engage fully in these proceedings in respect of his misconduct and demonstrate sufficient reflection, insight and remediation within the next 12 months.

The Committee determined that, in all likelihood, any reviewing Committee considering the case in 12 months' time would be in the same position as the Committee today in respect of Mr Guirguis's misconduct. The Committee therefore determined that extending the current period of suspension for a further period of up to 12 months with a review would serve no meaningful purpose. The Committee

recognised that the prior imposition of a sanction of indefinite suspension in the parallel and separate HC review proceedings protected the public, but it recognised that it had a duty to consider and determine each case brought by the regulator in the public interest. The Committee therefore directs that Mr Guirguis's registration be suspended indefinitely.

That concludes the hearing today.