

HEARING HEARD IN PUBLIC

JHALLI, Naresh Kumar

Registration No: 146526

PROFESSIONAL CONDUCT COMMITTEE

APRIL 2022

Outcome: Erased with Immediate Suspension

JHALLI, Naresh Kumar, a dental technician, National Diploma in Science (Dental Technology) BTEC 1997, was summoned to appear before the Professional Conduct Committee on 27 April 2022 for an inquiry into the following charge:

Charge

“That, being registered as a dental care practitioner:

1. From 15 February 2021 to 06 January 2022, you failed to cooperate with an investigation conducted by the General Dental Council (‘GDC’) into your fitness to practise, in that you did not provide the GDC with the following information, when requested to do so:
 - a. details of your working arrangements;
 - b. details of your indemnity arrangements.

AND that by reason of the facts alleged, your fitness to practise is impaired by reason of misconduct.”

Mr Jhalli was not present and was not represented. On 27 April 2022, the Chairman made a statement regarding the preliminary application. On 27 April 2022 the Chairman announced the findings of fact to the Counsel for the GDC:

“This is a Professional Conduct Committee hearing. The members of the Committee, as well as the Legal Adviser and the Committee Secretary, conducted the hearing remotely via Microsoft Teams in line with current GDC practice. Mr Jhalli was not present at the hearing and was not represented in his absence. Mr Stevens appeared on behalf of the GDC.

Decision on service (27 April 2022)

The Committee considered whether notice of the hearing had been served on Mr Jhalli in accordance with Rules 28 and 65 of the *General Dental Council (Fitness to Practise) Rules 2006 Order of Council* (‘the Rules’).

The Committee received from the GDC an indexed hearing bundle of 73 pages. The bundle contained a copy of the Notice of Hearing dated 16 March 2022, which was sent to Mr Jhalli’s registered address. A copy of the notice was also sent to him by email. It noted from the associated Royal Mail ‘Track and Trace’ receipt, also within the hearing bundle, that delivery of the notice letter had been attempted and instructions had been left for Mr Jhalli to arrange for redelivery. The Committee took into account that there is no requirement within the Rules for the GDC to prove delivery of the notice, only that it was sent.

The Committee was satisfied that the notice sent to Mr Jhalli complied with the required 28 day notice period. It was also satisfied that it contained proper notification of today's hearing, including its date and time, as well as confirmation that the hearing would be held remotely via Microsoft Teams. Mr Jhalli was further notified that the Committee had the power to proceed with the hearing in his absence.

On the basis of all the information provided, the Committee was satisfied that notice of the hearing had been served on Mr Jhalli in accordance with the Rules and the Act.

Decision on whether to proceed with the hearing in the absence of Mr Jhalli (27 April 2022)

The Committee next considered whether to exercise its discretion under Rule 54 to proceed with the hearing in the absence of Mr Jhalli or any representation for him. It approached this issue with the utmost care and caution. The Committee took into account the factors to be considered in reaching its decision, as set out in the case of *R v Jones [2003] 1 AC 1HL* and as explained in the cases of *General Medical Council v Adeogba*. The Committee remained mindful of the need to be fair to both Mr Jhalli and the GDC, taking into account the public interest in this case.

The Committee noted from the Notification of Hearing letter of 16 March 2022 that Mr Jhalli was asked to confirm by 29 March 2022, whether he would be attending today's hearing and/or whether he would be represented. The information before the Committee indicates that there has been no response from Mr Jhalli. The Committee was informed that he had been sent a link for today's hearing. Mr Jhalli has not provided a reason for his non-attendance, nor has he requested an adjournment. The Committee noted there was no information before it to indicate that an adjournment was likely to secure his attendance on a future date.

In all the circumstances, the Committee determined that it was fair and in the public interest to proceed with the hearing in the absence of Mr Jhalli.

Rule 57 application (27 April 2022)

Mr Stevens invited the Committee to admit the evidence of Witness 1, Paralegal at the GDC, as contained in the PCC bundle to be read by the Committee as her evidence. Mr Stevens submitted that Witness 1's statement exhibits a number of documents that were sent from the GDC to Mr Jhalli relevant to the allegations that he faces. He submitted that in the absence of any explicit objection from Mr Jhalli and him not being in attendance to ask any questions of that witness, it is the GDC's intention to have that evidence read. The Committee accepted the advice of the Legal Adviser.

The Committee considered that this is a single witness case and that Witness 1's evidence appears to be the only evidence going to the charge. The charge has two key aspects with a requirement on the GDC to demonstrate that correspondence was sent to Mr Jhalli and prove the lack of response from him to that correspondence. The Committee considered that Witness 1 is the sole and key factual witness in this case. It therefore determined that it would be appropriate and fair that the Committee ask questions to test the weight of Witness 1's evidence and to examine the reliability of her examination of the GDC case records. The Committee therefore refused Mr Steven's application and determined that it would be assisted in hearing from Witness 1.

The Charge

On 12 February 2020 the GDC received a complaint made against Mr Jhalli's fitness to practise. The GDC commenced an investigation which necessitated the GDC contacting Mr Jhalli requesting various pieces of information. It is alleged in this case that Mr Jhalli has failed to cooperate with the GDC's investigation.

Evidence

The Committee had regard to all of the documentary evidence received in this case. It had the benefit of hearing oral evidence from Witness 1.

FINDINGS OF FACT – 27 April 2022

The Committee considered all the evidence presented to it. It took account of the closing submissions made by Mr Stevens on behalf of the GDC. The Committee accepted the advice of the Legal Adviser. It considered each part of the charge separately, bearing in mind that the burden of proof rests with the GDC, and that the standard of proof is the civil standard, that is, whether the alleged facts are proved on the balance of probabilities.

The Committee's findings are as follows:

1.	<p>From 15 February 2021 to 06 January 2022, you failed to cooperate with an investigation conducted by the General Dental Council ('GDC') into your fitness to practise, in that you did not provide the GDC with the following information, when requested to do so:</p> <ul style="list-style-type: none">a. details of your working arrangements;b. details of your indemnity arrangements. <p>Found Proved from the 15 February 2021 to 04 January 2022</p> <p>The Committee had regard to the GDC standards, in particular Standard 9.4.1:</p> <p><i>"If you receive a letter from the GDC in connection with concerns about your fitness to practise, you must respond fully within the time specified in the letter. You should also seek advice from your indemnity provider or professional association."</i></p> <p>The Committee was satisfied that, as a registrant, Mr Jhalli had a duty to cooperate with the GDC's investigation into his fitness to practise. It received and accepted the clear written and oral evidence from Witness 1 of Mr Jhalli's non-engagement with the GDC between 15 February 2021 and 05 January 2022. The Committee had sight of the evidence and noted that requests were sent by the GDC to Mr Jhalli's registered address, specifying a time frame for the information to be received and that no response was received from Mr Jhalli. The Committee took into account the track and trace documentation which showed signed receipt at his registered address of letters dated 1 February 2021, 24 February 2021, 6 April 2021 and the letter dated 2 July 2021 re-sent on the 5 August 2021.</p> <p>The Committee notes that the 06 January 2022 was put as the end date in the charge, but it considered that there is no evidence before it of any failure by Mr Jhalli to respond on that date. Witness 1 confirmed that the last occasion on which she had checked the GDC case management system, looking for correspondence from Mr Jhalli, was 5 January 2022.</p> <p>The Committee concluded that as a registered dental professional, Mr Jhalli was</p>
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	under a duty to cooperate fully with the GDC's investigations into his fitness to practise. It found that Mr Jhalli failed in that duty by not providing details of his working arrangements and details of his indemnity arrangements.
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We move to Stage Two.”

On 28 April 2022, the Chairman announced the determination as follows:

“This is a Professional Conduct Committee hearing of Mr Jhalli’s case. The hearing commenced on 27 April 2022 and is being conducted remotely via Microsoft Teams video-link in line with the current practice of the General Dental Council (GDC).

Mr Jhalli is not present at this hearing and he is not represented in his absence. The Case Presenter for the GDC is Mr Stevens, Counsel.

The Committee’s task at this second stage of the hearing has been to consider whether the facts found proved against Mr Jhalli amount to misconduct and, if so, whether his fitness to practise is currently impaired by reason of that misconduct. The Committee noted that if it found current impairment, it would need to go on to consider the issue of sanction.

The Committee considered all the evidence presented to it, both at the fact-finding stage and at this stage. The evidence received by the Committee at this stage was a bundle of documents provided by the GDC relating to Mr Jhalli’s fitness to practise history.

The Committee took account of the submissions made by Mr Stevens in relation to misconduct, impairment and sanction. It accepted the advice of the Legal Adviser. The Committee reminded itself that misconduct and current impairment were matters for its own independent judgement. There is no burden or standard of proof at this stage of the proceedings.

Submissions

In accordance with Rule 21 (1) Mr Stevens drew the Committee’s attention to the information regarding Mr Jhalli’s fitness to practise history.

Mr Stevens went on to make submissions in relation to this current case. In addressing the issue of misconduct, he referred the Committee to the relevant legal authorities, which highlight that a finding of misconduct requires a serious falling short of what is expected in the circumstances. Mr Stevens outlined the standard that he considered to be relevant in this case, as contained within the GDC’s publication ‘*Standards for the Dental Team (effective from September 2013)*’ (‘the GDC Standards’). Mr Stevens submitted that Mr Jhalli’s failings, as identified in this case, were serious with an ongoing failure by Mr Jhalli to co-operate with his regulator. It was Mr Stevens’ submission that the facts found proved in this case amount to misconduct.

Mr Stevens further submitted that Mr Jhalli’s fitness to practice is currently impaired by reason of misconduct. Mr Stevens submitted that there has been no evidence received by, or on behalf of Mr Jhalli, in relation to any remediation. Mr Stevens stated that in the circumstances, the only conclusion that could be made is that there is a risk of repetition and therefore a risk to the public. He also asked the Committee to take into account the wider public interest considerations in this case, and submitted that public confidence in the dental profession would be seriously undermined if a finding of impairment were not made.

In relation to sanction, Mr Stevens asked the Committee to have regard to the *‘Guidance for the Practice Committees including Indicative Sanctions Guidance (effective from October 2016; last revised in December 2020)’* (‘the Guidance’). He invited the Committee to consider the aggravating and mitigating factors in this case. Mr Stevens’ submission on behalf of the GDC was that Mr Jhalli was unsuitable for continued membership of the dental profession and therefore the only appropriate and proportionate sanction in this case was one of erasure.

The facts found proved

The matters found proved by the Committee were that whilst Mr Jhalli was registered with the GDC, between 15 February 2021 to 04 January 2022, Mr Jhalli failed to co-operate with an investigation conducted by the GDC by not responding appropriately to requests for details of his working arrangements and details of his indemnity arrangements. The Committee received and accepted the evidence of Witness 1, employed by the GDC regarding the correspondence sent to Mr Jhalli at the various stages of the GDC’s investigation into his fitness to practise, to which there has been no response.

Decision on misconduct

The Committee considered whether the facts found proved in this case amount to misconduct. It took into account that misconduct in the regulatory context requires a serious falling short of the expected professional standards. The Committee had regard to the GDC Standards, as set out in its publication *‘Standards for the Dental Team (September 2013)’*. In particular, Standard 9.4, which contains the following:

You must co-operate with any relevant formal or informal inquiry and give full and truthful information:

- 9.4.1 If you receive a letter from the GDC in connection with concerns about your fitness to practise, you must respond fully within the time specified in the letter. You should also seek advice from your indemnity provider or professional association.

The Committee was satisfied from the above Standard that there was a mandatory requirement to co-operate with the investigation being conducted by the GDC and Mr Jhalli failed to do so over a prolonged period of time. Mr Jhalli has failed to respond to the communications from his regulatory body. The Committee considered that his conduct has frustrated the GDC investigation into concerns relating to his fitness to practise and undermined the effectiveness of the GDC’s role in professional regulation. The Committee had no doubt that this would be seen as deplorable conduct by fellow registrants and the public. In the Committee’s view, Mr Jhalli has breached a fundamental duty of his registration. It was satisfied that such a breach is serious and that it amounts to misconduct.

Decision on impairment

The Committee next considered whether Mr Jhalli’s fitness to practise is currently impaired by reason of his misconduct.

In reaching its decision, the Committee exercised its independent judgement. It had regard to the over-arching objective of the GDC, which involves: the protection, promotion and maintenance of the health, safety and well-being of the public; the promotion and maintenance of public confidence in the dental profession; and the promotion and

maintenance of proper professional standards and conduct for the members of the dental profession.

The Committee was satisfied that Mr Jhalli's misconduct, as found in this case, is such that it is capable of being remedied. It considered that in order to demonstrate remediation, Mr Jhalli would need to embark on meaningful engagement with the GDC.

However, the Committee has received no information on Mr Jhalli's current circumstances and no evidence of insight on Mr Jhalli's part. There is nothing before the Committee to suggest that he has any understanding of his duty to co-operate with the GDC, nor has he provided any reason for his failure to co-operate with his regulatory body in matters of significant importance. Whilst the Committee has not drawn any adverse inference from Mr Jhalli's absence from this hearing, the current factual position is that Mr Jhalli's lack of engagement is ongoing.

The evidence before this Committee indicates a pattern of non-engagement on Mr Jhalli's part and in the absence of any evidence of insight or remediation, it considered that there is a likelihood that Mr Jhalli could repeat the misconduct it has found. Given that Mr Jhalli's wrongdoing is of the kind that could potentially undermine the GDC's ability effectively to regulate the profession, the Committee considered that patient safety concerns do arise from the matters in this case. Whilst the Committee had no evidence of a direct risk to patient safety, the continued behaviour by Mr Jhalli involved an undermining of the whole system of regulation which gave it concerns over the safety of the public in general. In the Committee's view, Mr Jhalli's inaction demonstrates a disregard for the GDC's important role in the protection of the public. It therefore considered that a finding of impairment is necessary in the interest of public protection.

The Committee also decided that a finding of impairment is in the wider public interest to maintain public confidence and uphold proper standards of conduct and behaviour. Mr Jhalli has breached a fundamental standard required by his regulator and has to date shown no insight into this serious matter and has taken no action to rectify his breach of the standard. The Committee considered that public confidence in the dental profession would be undermined if a finding of impairment were not made in the circumstances of this case.

Accordingly, the Committee has determined that Mr Jhalli's fitness to practise is currently impaired by reason of his misconduct.

Decision on sanction

The Committee considered what sanction, if any, to impose on Mr Jhalli's registration. 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 took into account the '*Guidance for the Practice Committees including Indicative Sanctions Guidance (dated October 2016, revised December 2020)*'. It considered the range of sanctions available to it, starting with the least restrictive. The Committee applied the principle of proportionality, balancing the public interest with Mr Jhalli's own interests.

In deciding on the appropriate sanction, the Committee first considered the issue of mitigating and aggravating factors. It decided that there was no evidence of any mitigating factors in this case. It did, however, identify a number of aggravating factors, which are as follows:

- misconduct sustained or repeated over a period of time;
- no apology or remorse shown;
- no evidence of remediation provided;
- blatant or wilful disregard of the role of the GDC and the systems regulating the profession; and
- lack of insight.

Fitness to Practise history

A further aggravating feature is Mr Jhalli's previous fitness to practise history. Mr Stevens informed the Committee of a PCC hearing held in June 2019 where findings were made that Mr Jhalli worked outside his scope of practice, was misleading and dishonest. Within that case there was also an allegation that Mr Jhalli failed to cooperate with the GDC, specifically a failure to provide the GDC with evidence of his indemnity cover and his employment details. That PCC determined that Mr Jhalli's fitness to practise was impaired by reason of his misconduct. The PCC deemed that the appropriate sanction was an order of conditions. A review was held in October 2019 and there was no engagement from Mr Jhalli. In light of that the PCC replaced the conditions with suspension for a period of 4 months with a review. A second review was held in February 2020 and Mr Jhalli was not in attendance nor was any evidence of insight or remediation provided by him. The order of suspension was extended for a period of 12 months. A third review was held in February 2021, and a similar picture emerged. That reviewing Committee extended Mr Jhalli's suspension for a further period of 12 months with a review. The last review of that case took place in February 2022 where the situation had remained the same and Mr Jhalli's registration was suspended indefinitely.

The Committee noted that aspects of Mr Jhalli's previous case are identical to those considered in this case.

In light of its outstanding concerns about the risk of Mr Jhalli repeating his misconduct and the potential impact this could have for the public and the wider public interest, the Committee concluded that it would be inappropriate to conclude this case without taking any action in respect of his registration. The Committee also decided against issuing a reprimand. Given the seriousness of the Mr Jhalli's misconduct, a reprimand would be insufficient to mark the wrongdoing and would fail to declare and uphold proper standards and would undermine public confidence in the profession and the regulatory process.

Whilst the Committee did consider the sanction of conditions, it determined that conditional registration would not be workable in a case such as this. 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, a measure of engagement and co-operation from Mr Jhalli, all of which are absent in this case. The Committee notes that in Mr Jhalli's previous fitness to practise case the initial decision was taken to impose conditions on Mr Jhalli's registration, directing that he provide reflections, however, there was no response from Mr Jhalli. In any event, the Committee considered that it could not formulate any workable or enforceable conditions to address the concerns in this case, which include cooperating with the GDC. Furthermore, this Committee has received no evidence of insight or remediation and there is no information about Mr Jhalli's current circumstances.

The Committee next considered whether to suspend Mr Jhalli's registration for a specified period. In doing so, it took into account its duty to impose the least restrictive sanction necessary in all the circumstances. It had regard to the Guidance at paragraph 6.28, which sets out the factors to be considered when deciding whether the sanction of suspension would be appropriate.

The Committee considered this is a case set against a history of a longstanding persistent failure to engage in the GDC process. The Committee noted from paragraph 6.28 that a suspension could be considered appropriate in circumstances where *"there is no evidence of harmful deep-seated personality or professional attitudinal problems"*. In the Committee's view, this is a case where the actions of Mr Jhalli demonstrate professional attitudinal problems. The findings made against Mr Jhalli are serious. Further, there has been no evidence to indicate that he has even acknowledged his wrongdoing and its impact on the reputation of the dental profession.

Given the Committee's concerns about Mr Jhalli's attitude and the ongoing risk it has identified to the public and the wider public interest considerations, the Committee went on to consider whether a higher sanction would be more appropriate and proportionate. It had regard to paragraph 6.34 of the Guidance which deals with erasure. That paragraph states that, *"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...a persistent lack of insight into the seriousness of actions or their consequences."*

Taking this into account, together with its concerns about Mr Jhalli's professional attitude, the Committee concluded that the only appropriate and proportionate sanction to protect the public is erasure. It further considered that public confidence in the dental profession and the GDC would be seriously undermined if a lesser sanction were to be imposed. The Committee considered that the public interest would not be satisfied by a period of suspension, even the maximum period of 12 months, as it considered that Mr Jhalli has demonstrated a lack of commitment to the profession as a whole.

In all the circumstances, the Committee has determined to erase Mr Jhalli's name from the GDC Dental Professionals Register.

Unless Mr Jhalli exercises his right of appeal, his name will be erased from the Register, 28 days from the date when notice of this Committee's direction is deemed to have been served upon him.

The Committee now invites submissions from Mr Stevens, as to whether an immediate order of suspension should be imposed on Mr Jhalli's registration to cover the appeal period, pending its substantive determination taking effect.

Decision on immediate order

In reaching its decision on whether to impose an immediate order of suspension on Mr Jhalli's registration, the Committee took account of Mr Stevens' submission that such an order should be imposed and noted his references to the relevant paragraphs in the Guidance. The Committee accepted the advice of the Legal Adviser. Mr Stevens confirmed that there is no interim order in place on Mr Jhalli's registration.

The Committee determined that it is necessary for the protection of the public and is otherwise in the public interest to impose an immediate order of suspension on Mr Jhalli's registration. It has found that Mr Jhalli has a professional attitudinal problem that is incompatible with remaining the GDC Register. Further, the Committee received no evidence of any insight or remediation. Consequently, it has identified a risk of harm to the public. An immediate order is therefore necessary for the protection of the public.

The Committee also considered that the imposition of an immediate order is in the wider public interest. The Committee considered that public confidence in the dental profession and this regulatory process would be seriously undermined in the absence of an order suspending Mr Jhalli's registration immediately. It considered that it would be inconsistent not to impose an order in all the circumstances.

The effect of the foregoing determination and this order is that Mr Jhalli's registration will be suspended from the date on which notice is deemed to have been served upon him. Unless he exercises his right of appeal, the substantive direction for erasure, as already announced, will take effect 28 days from the date of deemed service.

Should Mr Jhalli exercise his right of appeal, this immediate order of suspension will remain in place until the resolution of any appeal.

The Committee notes Mr Jhalli's registration is indefinitely suspended regarding fitness to practise matters separate to this case. The Committee considered it was appropriate to impose an immediate order in light of its findings in this particular case.

That concludes this hearing."