General Dental Council | protecting patients, regulating the dental team

HEARING HEARD IN PUBLIC

MUSIAL, Mariusz Jerzy

Registration No: 85183

PROFESSIONAL CONDUCT COMMITTEE

MARCH 2017 – APRIL 2019

Most recent outcome: Suspended indefinitely

** See page 39 for the latest determination

Mariusz Jerzy MUSIAL, a dentist, Lek Stom Warsaw 2001, was summoned to appear before the Professional Conduct Committee on 13 March 2017 for an inquiry into the following charge:

Charge (as amended on 13 and 15 March 2017)

"That being registered as a dentist Mr Mariusz Musial's (85183) fitness to practise is impaired by reason of misconduct. In that:

1. You failed to maintain an adequate standard of record keeping in respect of Patient A's consultations from 13 January 2006 to 24 January 2013, including by;
   a) Not making any records for consultations on:
      i. 28 March 2006,
      ii. 10 May 2006.
2. You failed to conduct adequate examinations in respect of Patient A's consultations from 13 January 2006 to 24 January 2013, including by;
   a) Not undertaking a medical history update for consultations on:
      i. 13 January 2006,
      ii. 16 January 2007,
      iii. 16 May 2007,
      iv. 11 June 2007,
      v. 29 June 2007,
      vi. 17 October 2007,
      vii. 22 October 2007,
      viii. 5 December 2007,
      ix. 13 December 2007,
      x. 10 January 2008,
      xi. 10 July 2008,
      xii. 23 July 2009,

xiii. 2 February 2010,
xiv. 2 August 2010,
xv. 9 February 2011,
xvi. 16 January 2012,
xvii. 20 February 2012,
xviii. 5 March 2012,
xix. 22 March 2012,
xx. 24 January 2013.

b) Not undertaking an oral hygiene assessment for consultations on:
i. 29 June 2007,
ii. WITHDRAWN,
iii. 2 February 2010,
iv. 20 February 2012,
v. 24 January 2013.

c) Not undertaking a TMJ check for consultations on:
i. 29 June 2007,
ii. 10 July 2008,
iii. 23 July 2009,
iv. 2 February 2010,
v. 2 August 2010,
vi. 9 February 2011,
vii. 20 February 2012,
viii. 24 January 2013.

d) Not undertaking an extra-oral examination for consultations on:
i. 29 June 2007,
ii. 10 July 2008,
iii. 23 July 2009,
iv. 2 February 2010,
v. 2 August 2010,
vi. 9 February 2011,
vii. 20 February 2012,
viii. 24 January 2013.

e) WITHDRAWN

i. WITHDRAWN,
ii. WITHDRAWN,
iii. WITHDRAWN,
iv. WITHDRAWN,
v. WITHDRAWN,
vi. WITHDRAWN,
vii. WITHDRAWN,
viii. WITHDRAWN.

f) Not undertaking a caries risk assessment for consultations on:
i. 29 June 2007,
ii. 10 July 2008,
iii. 23 July 2009,
iv. 2 February 2010,
v. 2 August 2010,
vi. 9 February 2011,
vii. 20 February 2012,
viii. 24 January 2013.

g) Not undertaking a periodontal risk assessment on:
i. 29 June 2007,
ii. 10 July 2008,
iii. 23 July 2009,
iv. 2 February 2010,
v. 20 February 2012,
vi. 24 January 2013.

h) Not undertaking a BPE on:
i. 29 June 2007,
ii. 10 July 2008,
iii. 23 July 2009,
iv. 2 February 2010,
v. 2 August 2010,
vi. 9 February 2011,
vii. 20 February 2012,
viii. 24 January 2013.

3. You failed to maintain an adequate standard of record keeping in respect of Patient A's consultations from 13 January 2006 to 24 January 2013, including by;

a) Failing to record a medical history update for consultations on:

i. 13 January 2006,
ii. 16 January 2007,
iii. 16 May 2007,
iv. 11 June 2007,
v. 29 June 2007,
vi. 17 October 2007,
vii. 22 October 2007,
viii. 5 December 2007,
ix. 13 December 2007,
x. 10 January 2008,
xi. 10 July 2008,
xii. 23 July 2009,
xiii. 2 February 2010,
xiv. 2 August 2010,
xv. 9 February 2011,
xvi. 16 January 2012,
xvii. 20 February 2012,
xviii. 5 March 2012,
xix. 22 March 2012,
xx. 24 January 2013.

b) Failing to record an oral hygiene assessment for consultations on:

i. 29 June 2007,
ii. WITHDRAWN,
iii. 2 February 2010,
iv. 20 February 2012,
v. 24 January 2013.

c) Failing to record a TMJ check for consultations on:

i. 29 June 2007,
ii. 10 July 2008,
iii. 23 July 2009,
iv. 2 February 2010,

v. 2 August 2010,
vi. 9 February 2011,
vii. 20 February 2012,
viii. 24 January 2013.

d) Failing to record an extra-oral examination for consultations on:
i. 29 June 2007,
ii. 10 July 2008,
iii. 23 July 2009,
iv. 2 February 2010,
v. 2 August 2010,
vi. 9 February 2011,
vii. 20 February 2012,
viii. 24 January 2013.

e) Failing to record recall interval for consultations on:
i. 29 June 2007,
ii. 10 July 2008,
iii. 23 July 2009,
iv. 2 February 2010,
v. 2 August 2010,
vi. 9 February 2011,
vii. 5 March 2012,
viii. 24 January 2013.

f) Failing to record a caries risk assessment for consultations on:
i. 29 June 2007,
ii. 10 July 2008,
iii. 23 July 2009,
iv. 2 February 2010,
v. 2 August 2010,
vi. 9 February 2011,
vii. 20 February 2012,
viii. 24 January 2013.

g) Failing to record a periodontal risk assessment on:
i. 29 June 2007,

ii. 10 July 2008,

iii. 23 July 2009,

iv. 2 February 2010,

v. 20 February 2012,

vi. 24 January 2013.

h) Failing to record a BPE on:

i. 29 June 2007,

ii. 10 July 2008,

iii. 23 July 2009,

iv. 2 February 2010,

v. 2 August 2010,

vi. 9 February 2011,

vii. 20 February 2012,

viii. 24 January 2013.

i) In relation to a Root Canal Treatment performed on LL4 on 5 December 2007 and 13 December 2007 you did not record:

i. the endodontic instruments used on 5 December 2007,

ii. if local anaesthetic was given, and if it was, full details of the local anaesthetic on 5 December 2007 and/ or 13 December 2007,

iii. the intra-canal endodontic dressing used on 5 December 2007.

4. You failed to provide an adequate standard of care to Patient A from 13 January 2006 to 24 January 2013, including by:

a) Failing to arrange to see Patient A for a full mouth examination between 13 January 2006 and 29 June 2007,

b) Failing to formulate any, and/or any adequate, treatment plan between 13 January 2006 and 16 January 2012,

c) Failing to provide adequate long-term repairs to the LL4 between 13 January 2006 and 16 January 2012.

d) Failing to provide an adequate standard of care as clinically indicated following the BPE score recorded on 2 August 2010, including by:

i. Failing to diagnose chronic periodontitis,

ii. WITHDRAWN,

iii. WITHDRAWN,

iv. WITHDRAWN,

v. WITHDRAWN,

vi. WITHDRAWN,

vii. WITHDRAWN.

e) Failing to provide an adequate standard of care as clinically indicated following a BPE score recorded on 9 February 2011, including:

i. Failing to diagnose chronic periodontitis,

ii. Failing to ensure that oral hygiene instruction was given

iii. WITHDRAWN,

iv. Failing to ensure that root surface debridement was performed,

v. Failing to carry out further investigation including in relation to plaque distribution and gingival inflammation,

vi. Failing to ensure pocket depth measurements were recorded in sextants scoring BPE 3,

vii. WITHDRAWN.

f) Failing to identify and/or adequately treat caries at:

i. UR3,

ii. UR2,

iii. UL2,

iv. UL3,

v. UL4,

vi. UL5,

vii. LL7,

viii. LL6,

ix. LL4,

x. LR4,

xi. LR5,

xii. LR6.

g) Failing to identify and/or adequately treat a defective inlay at LL7,

h) Failing to expose radiographs as clinically indicated on:

i. 29 June 2007,

ii. WITHDRAWN,

iii. 10 July 2008,

iv. 23 July 2009,

v. 2 February 2010,

vi. 2 August 2010,

vii. 9 February 2011.

i) Failing to obtain informed consent from Patient A regarding her treatment between 13 January 2006 and 16 January 2012 including by;

i. not advising of the treatment option of removing the bridge and re-cementing it,

ii. not advising of the treatment option of sectioning the bridge, and restoring the LL4 and retaining the LL6 as a crown,

iii. not advising of the treatment option of referring Patient A to a restorative specialist,

iv. not advising of the risks to LL4 of not sectioning or removing the bridge."

Mr Musial was not present and was not represented. On 16 March 2017 the Chairman announced the findings of fact to the Counsel for the GDC:

"Service

Mr Musial was neither present nor represented at today's Professional Conduct Committee (PCC) hearing. Mr Tom Day of Counsel appeared on behalf of the General Dental Council (GDC). In Mr Musial's absence, the Committee first considered whether the GDC had complied with service of the Notice of Hearing in accordance with Rules 13 and 65 of the GDC (Fitness to Practise) Rules Order of Council 2006 (the Rules).

The Committee took into account all the information before it. It bore in mind the submissions made by Mr Day on behalf of the GDC. It accepted the advice of the Legal Adviser.

The Committee received a copy of the Notification of Hearing, dated 10 February 2017, which was sent to Mr Musial's registered address by way of Special Delivery and by First Class Post. The Committee was satisfied that the letter contained proper notification of today's hearing, including its time, date and location, as well as notification that the Committee has the power to proceed with the PCC hearing in Mr Musial's absence. The Notification of Hearing also contained a copy of the charge against Mr Musial. The Committee was content that the Notification of Hearing complied with Rule 13. A copy of the letter was also sent by email to Mr Musial and his former defence representatives, the Medical Defence Union (MDU) on 10 February 2017.

The Committee had sight of a Royal Mail Track and Trace receipt which confirmed delivery on 13 February 2017 and was signed for in the printed name 'ROBERTS'.

Taking all this into account, the Committee was satisfied that notification of this PCC hearing had been served on Mr Musial in accordance with the rules.

Proceeding in the absence of Mr Musial

The Committee then considered whether to exercise its discretion under Rule 54 to proceed with this PCC hearing in Mr Musial's absence.

The Committee took into account all the information before it. It bore in mind the submissions made by Mr Day on behalf of the GDC. It accepted the advice of the Legal Adviser.

The Committee was mindful that this was a discretion that must be exercised with the utmost care and caution. It also had regard to the need for fairness to both parties, as well as the public interest in the expeditious disposal of the hearing.

Mr Musial had been sent notification of today's hearing. The Committee had sight of a letter from the MDU, dated 3 March 2017, stating that Mr Musial is not attending the hearing and that he means no disrespect by this. The letter stated that Mr Musial is now out of the country and the Committee noted he has appears to have no immediate intention of returning. The MDU's letter further states '…he has asked me to confirm on his behalf that he is content for the Committee to hear this matter in his absence…'. It also referred the documents that Mr Musial had requested to be placed before the Committee. The Committee further noted he had been offered the opportunity to participate in the hearing remotely but that he had declined. The Committee was therefore satisfied that he was aware of today's hearing. It took into account that Mr Musial had not requested an adjournment of this PCC hearing and that he had confirmed he was content for it to proceed in his absence. It therefore concluded that he voluntarily absented himself from this hearing and that an adjournment would be unlikely to lead to his attending a future hearing.

Having weighed the interests of Mr Musial with those of the GDC and the public interest in the expeditious disposal of this hearing the Committee determined to proceed in his absence.

Preliminary matters

On behalf of the GDC and pursuant to Rule 18 of 'the Rules', Mr Day proposed a number of amendments and withdrawals to the charge. He informed the Committee that Mr Musial had been made aware of the proposed amendments and that his responses to the heads of charge were in relation to the amended version. He submitted that the proposed amendments provided further clarification of the current heads of charge.

The Committee took into account all the information before it and the submissions made by Mr Day on behalf of the GDC. It accepted the advice of the Legal Adviser.

The Committee considered that the proposed amendments were a further specification of the current heads of charge. The Committee took into account that Mr Musial had not objected to the proposed amendments and that it had before it his responses to the amended charges. It concluded that the amendments could be made without injustice to either party, it therefore acceded to the application, and the charge was duly amended.

During the course of the hearing and before the Committee retired to consider the facts, Mr Day made an application to withdraw further heads of charge. The Committee accepted the withdrawals and the charge was duly amended.

Decision on admissibility of evidence

Mr Day next made a further application pursuant to Rule 57 in relation to whether four further documents should be admitted. He informed the Committee that the first document contained the exhibits to Witness B's statement which should have already been included in the bundle. He informed the Committee that the second document contained correspondence between the GDC and the MDU relating to whether the two final documents

should be admitted as evidence. He further informed the Committee that the third document was a supplementary witness statement from Patient A. The MDU objected to this document being admitted until Mr Musial had had an opportunity to consider it. Mr Day submitted that it would not cause any procedural unfairness for this to be admitted. Finally, he informed the Committee that the fourth document was an expert report prepared by Mr Thomas Norfolk, the defence expert instructed on behalf of Mr Musial. He submitted that this hearsay document should not be admitted as the defence expert would not be giving oral evidence and so his evidence would not be able to be tested by either the GDC nor the Committee. He further submitted that should the Committee admit the defence expert report then it should attach the appropriate weight to the document when necessary.

The Committee took into account all the information before it. It bore in mind the submissions made by Mr Day on behalf of the GDC. It accepted the advice of the Legal Adviser.

The Committee determined that all four documents should be admitted as evidence. It considered that each would be helpful to the Committee in its considerations. It could not see any injustice to either party in admitting the exhibits that should have been attached to Witness B's statement. The Committee concluded that the document containing correspondence between the GDC and MDU provided background to the further two documents and that it would be in the interests of justice for it to be admitted. In relation to Patient A's supplementary statement, the Committee noted that Mr Musial had been sent the statement, on 9 March 2017, but had not submitted any observations. The Committee considered that the statement was in relation to Patient A's records and that admitting the document would not cause any procedural unfairness to either party. Finally, in relation to the defence expert report, the Committee concluded that it would be in the interests of justice for it to be admitted and that it could attach the appropriate weight to the document when necessary.

Background to the case

This case arose from a complaint received by the GDC from Patient A on 24 September 2015. The complaint related to the standard of treatment provided by Mr Musial to Patient A between 13 January 2006 and 24 January 2013.

Evidence

The Committee heard oral evidence from Patient A and Witness B, the Practice Manager at Mr Musial's former practice. Witness B provided his evidence by telephone. It considered that Patient A was a credible witness who was doing her best to assist the Committee. It took into account that she was honest when she was unable to remember due to the passage of time. In relation to Witness B, the Committee considered that he provided his evidence in a straightforward, clear and credible manner.

The Committee also heard oral evidence from Mr Turner, the GDC's expert. It concluded that he provided his evidence in a credible manner, making concessions where he felt necessary.

The Committee was also provided with documentary material in relation to the heads of charge against Mr Musial, namely: Patient A's dental records, a witness statement and a supplementary witness statement from Patient A, a statement from Witness B, an expert report, prepared by Mr Turner, correspondence documents between the MDU and the GDC, a witness statement from Mr Musial and an expert report prepared by Mr Norfolk.

As Mr Musial is not present, nor represented at this hearing and has not provided oral evidence to the Committee, it concluded that less weight could be attached to his submissions and written statement as neither the GDC nor the Committee had had the opportunity to test the evidence. Nevertheless, the Committee considered his views in every instance. Similarly, less weight could be attached to Mr Norfolk's expert report as the GDC and the Committee have not been able to test his evidence.

Committee's findings of fact

The Committee took into account all the evidence presented to it and all the information contained in the documentation before it. It bore in mind the submissions made by Mr Day on behalf of the GDC.

The Committee accepted the advice of the Legal Adviser. In accordance with that advice it considered each head of charge separately, although in respect of a number of the heads of charge the Committee's findings will be announced collectively.

The Committee was reminded that the burden of proof lies with the GDC, and considered the heads of charge against the civil standard of proof, that is to say, the balance of probabilities.

The Committee's findings in relation to each head of charge are as follows:

1.	*You failed to maintain an adequate standard of record keeping in respect of Patient A's consultations from 13 January 2006 to 24 January 2013, including by;*
1.a	*Not making any records for consultations on:*
1.a.i – 1.a.ii	*28 March 2006,* *10 May 2006.* Found proved. The Committee noted the oral evidence of Witness B who confirmed that consultations had taken place between Mr Musial and Patient A on 28 March 2006 and 10 May 2006. Witness B informed the Committee that Patient A had been charged a fee for her appointment on 10 May 2006 but not for 28 March 2006 as this was a review appointment. The Committee concluded that, as it was more likely than not there was a consultation on both of these dates, that Mr Musial would have been under an obligation to make a recording of the consultations. It noted that although the payment notes do show reference to these two appointments, there is no record of either consultation in Patient A's clinical notes. Taking all this into account, the Committee concluded that it was more likely than not that Mr Musial did not make any record for the consultations on 28 March 2006 and 10 May 2006. Accordingly, the Committee found the particulars of this charge proved.
	Finding in relation to the stem of head of charge 1

	Found proved. Whilst the Committee acknowledges that this charge relates to two occasions of failing to make any record over a seven-year period, the Committee considered that there is an obligation on any dentist to record the details of every consultation and therefore this amounts to a failure to maintain an adequate standard of record keeping in respect of Patient A's consultations from 13 January 2006 to 24 January 2013. Accordingly, the Committee found this charge proved.
2.	*You failed to conduct adequate examinations in respect of Patient A's consultations from 13 January 2006 to 24 January 2013, including by;*
2.a	*Not undertaking a medical history update for consultations on:*
2.a.i – 2.a.xx	*13 January 2006,* *16 January 2007,* *16 May 2007,* *11 June 2007,* *29 June 2007,* *17 October 2007,* *22 October 2007,* *5 December 2007,* *13 December 2007,* *10 January 2008,* *10 July 2008,* *23 July 2009,* *2 February 2010,* *2 August 2010,* *9 February 2011,* *16 January 2012,* *20 February 2012,* *5 March 2012,* *22 March 2012,* *24 January 2013.* Found not proved. The Committee noted that in Patient A's written statement she said 'I do not recall filling medical forms when attending the Practice. I also do not recall Mr Musial asking me anything about my medical or health history, or medication I am on. We did not discuss my diet or habits. However, I do recall signing a form at the beginning of each

	appointment to confirm if there are any changes in my medication'. Patient A further confirmed this in her oral evidence to the Committee. She stated that she had completed and signed a form in relation to any changes in her medication and added that she had not seen this form in the records. The Committee noted that in Mr Musial's written statement he had detailed a similar process of Patient A completing and signing a template medical history form and that at every subsequent appointment she would be given the form and asked to confirm if it was correct, and if it was not, she would have been asked to complete a new form with the updates. Patient A stated in her oral evidence that her medication had not changed during this period and that she only remembered completing one form. Further, the Committee noted that Witness B had also confirmed there was a standard template medical history form that patients would complete and then update if necessary. Taking all this into account, whilst the Committee noted that there was no record in Patient A's dental notes of the medical history update being completed at each of these appointments, the Committee could not be satisfied that on the balance of probabilities Mr Musial did not undertake a medical history update on each of these occasions. Accordingly, the Committee found the particulars of this charge not proved.
2.b	*Not undertaking an oral hygiene assessment for consultations on:*
2.b.i	*29 June 2007,*
2.b.ii	WITHDRAWN
2.b.iii	*2 February 2010,*
2.b.iv	*20 February 2012,*
2.b.v	*24 January 2013.* Found not proved. The Committee noted that on a number of occasions during the period in question Mr Musial had made a record of his findings when undertaking an oral hygiene assessment on Patient A. Further, on other occasions a scaling was recorded as being completed, indicating an assessment of unsatisfactory hygiene. The Committee concluded that this indicated that Mr Musial's standard practice was to undertake an oral hygiene assessment and occasions he had also recorded this in Patient A's dental notes. It therefore could not be satisfied that on the balanceof probabilities Mr Musial did not undertake an oral hygiene assessment at each of these consultations. Accordingly, the Committee found the particulars of this charge not proved.

2.c	*Not undertaking a TMJ check for consultations on:*
2.c.i – 2.c.viii	*29 June 2007,* *10 July 2008,* *23 July 2009,* *2 February 2010,* *2 August 2010,* *9 February 2011,* *20 February 2012,* *24 January 2013.* Found proved. The Committee noted there is no record in Patient A's dental notes for each of these consultations of Mr Musial undertaking a TMJ check. The Committee therefore concluded that it was more likely than not that Mr Musial did not undertake a TMJ check at each of these appointments. Further, the Committee did consider Mr Musial's witness statement but was able to attach limited weight to it, given that it was untested evidence. He explained '…I would listen out for any clicking and grinding and I would ensure the patient could open their mouth properly. If the patient complained or I noticed any TMJ problems I would do the physical examination including palpation'. The Committee accepted the oral evidence of Mr Turner who stated that a TMJ check should always consist of a physical examination including palpation. In considering Mr Musial's explanation of what he had done to undertake a TMJ check at these consultations, the Committee did not consider that this would have constituted a TMJ check. Accordingly, the Committee found the particulars of this charge proved.
2.d	*Not undertaking an extra-oral examination for consultations on:*
2.d.i – 2.d.viii	29 June 2007, 10 July 2008, 23 July 2009, 2 February 2010, 2 August 2010, 9 February 2011, 20 February 2012, 24 January 2013.

	Found proved. The Committee noted there is no record in Patient A's dental notes of Mr Musial undertaking an extra-oral examination for each of these consultations. The Committee therefore concluded that it was more likely than not that Mr Musial did not undertake an extra-oral examination at each of these consultations with Patient A. Further, the Committee did consider Mr Musial's witness statement but was able to attach limited weight to it, given it was untested evidence. He explained 'If there was any specific problem such as an ulcer, abscess, fistula and so forth I would always examine the lymph nodes. I think it is good practice to check lymph node on every appointment and that is what I intend to do in the future'. The Committee accepted the oral evidence of Mr Turner who stated that an extra-oral examination should always include checking the patient's lymph nodes. In considering Mr Musial's explanation of what he had done to undertake an extra-oral examination at these consultations, the Committee did not consider that this would have constituted an extra-oral examination. Accordingly, the Committee found the particulars of this charge proved.
2.e	WITHDRAWN
2.e.i	WITHDRAWN
2.e.ii	WITHDRAWN
2.e.iii	WITHDRAWN
2.e.iv	WITHDRAWN
2.e.v	WITHDRAWN
2.e.vi	WITHDRAWN
2.e.vii	WITHDRAWN
2.e.viii	WITHDRAWN
2.f	*Not undertaking a caries risk assessment for consultations on:*
2.f.i- 2.f.viii	*29 June 2007,* *10 July 2008,* *23 July 2009,* *2 February 2010,* *2 August 2010,* *9 February 2011,* *20 February 2012,* *24 January 2013.*

	Found proved. The Committee noted there is no record in Patient A's dental notes of Mr Musial undertaking a caries risk assessment for each of these consultations. The Committee therefore concluded that it was more likely than not that Mr Musial did not undertake a caries risk assessment. Further, the Committee did consider Mr Musial's witness statement but was able to attach limited weight to it, given it was untested evidence. He explained that he considered Patient A's caries risk to be moderate. He stated that in undertaking a caries risk assessment on Patient A he had taken into account her age and that she had 'a number of fillings and a bridge'. The Committee accepted the oral evidence of Mr Turner who listed the factors a dentist should take into account when undertaking a caries risk assessment. These included fluoride intake, sugar intake, diet and family history as well as whether the patient had any restorations, the design, the amount of and the frequency of the replacement of the restorations. In considering Mr Musial's explanation of what he had done to undertake a caries risk assessment on Patient A at each of these consultations, the Committee did not consider that this would have constituted a caries risk assessment. Accordingly, the Committee found the particulars of this charge proved.
2.g	*Not undertaking a periodontal risk assessment on:*
2.g.i – 2.g.vi	*29 June 2007,* *10 July 2008,* *23 July 2009,* *2 February 2010,* *20 February 2012,* *24 January 2013.* Found proved. The Committee noted there is no record in Patient A's dental notes of Mr Musial undertaking a periodontal risk assessment for each of these consultations. The Committee therefore that it was more likely than not that Mr Musial did not undertake a periodontal risk assessment. Further, the Committee did consider Mr Musial's witness statement but was able to attach limited weight to it, given it was untested evidence. He explained 'I would always consider periodontal risks I would then take the requisite action, for example: give smoking cessation advice, OHA, plaque and tartar removal by me or by the

	hygienist…' The Committee accepted the oral evidence of Mr Turner who stated that a periodontal risk assessment should include looking at the patient's oral hygiene, discussing the patient's tooth brushing habits and checking the patient's susceptibility to plaque. In considering Mr Musial's explanation of what he had done to undertake a periodontal risk assessment on Patient A at each of these consultations, the Committee did not consider that this would have constituted a periodontal risk assessment. It considered that Mr Musial was only treating the current problem rather than assessing the patient's future risk. Accordingly, the Committee found the particulars of this charge proved.
2.h	*Not undertaking a BPE on:*
2.h.i – 2.h.iv	*29 June 2007,* *10 July 2008,* *23 July 2009,* *2 February 2010,* Found proved. The Committee noted that Mr Musial had not recorded a BPE being taken on these four dates. The Committee concluded that as he had recorded his findings on two other occasions when he had completed the BPE, it was more likely than not that he failed to undertake a BPE on the above dates. Accordingly, the Committee found the particulars 2.h.i – 2.h.iv of this charge proved.
2.h.v – 2.h.vi	*2 August 2010,* *9 February 2011,* Found not proved. The Committee noted that in Patient A's dental records for 2 August 2010 and 9 February 2011 Mr Musial had recorded his findings when undertaking a Basic Periodontal Examination (BPE) for these dates. Accordingly, the Committee found the particulars 2.h.v – 2.h.vi of this charge not proved.
2.h.vii-2.h.viii	*20 February 2012,* *24 January 2013.* Found proved. The Committee noted that he had not recorded a BPE being taken on these two dates. The Committee concluded that as he had recorded his findings on two other occasions when he had

	completed the BPE, it was more likely than not that he failed to undertake a BPE on the above dates. Accordingly, the Committee found the particulars 2.h.vii – 2.h.viii of this charge proved.
	<u>Finding in relation to the stem of head of charge 2</u> Found proved. In taking into account the Committee's positive findings and reasons at several charges contained in 2.a to 2.h, it concluded that this constituted a failure by Mr Musial to conduct adequate examinations in respect of Patient A's consultations from 13 January 2006 to 24 January 2013. Accordingly, the Committee found this charge proved.
3.	*You failed to maintain an adequate standard of record keeping in respect of Patient A's consultations from 13 January 2006 to 24 January 2013, including by;*
3.a	*Failing to record a medical history update for consultations on:*
3.a.i – 3.a.xx	*13 January 2006,* *16 January 2007,* *16 May 2007,* *11 June 2007,* *29 June 2007,* *17 October 2007,* *22 October 2007,* *5 December 2007,* *13 December 2007,* *10 January 2008,* *10 July 2008,* *23 July 2009,* *2 February 2010,* *2 August 2010,* *9 February 2011,* *16 January 2012,* *20 February 2012,* *5 March 2012,* *22 March 2012,* *24 January 2013.*

	Found not proved. The Committee concluded that, in light of its findings at 2.a, it could not be satisfied that on the balanceof probabilities Mr Musial failed to record a medical history update for each of these consultations. Accordingly, the Committee found the particulars of this charge not proved.
3.b	*Failing to record an oral hygiene assessment for consultations on:*
3.b.i 3.b.ii 3.b.iii 3.b.iv 3.b.v	*29 June 2007,* WITHDRAWN *2 February 2010,* *20 February 2012,* *24 January 2013.* Found proved. The Committee noted that there was no record in Patient A's dental notes of an oral hygiene assessment for each of these four consultations. Further Mr Musial accepts that he failed to record undertaking the assessment for each of these consultation. In light of these reasons, the Committee found the particulars of this charge proved.
3.c	*Failing to record a TMJ check for consultations on:*
3.c.i – 3.c.viii	*29 June 2007,* *10 July 2008,* *23 July 2009* *2 February 2010,* *2 August 2010,* *9 February 2011,* *20 February 2012,* *24 January 2013.* Found not proved. As the Committee found proved at charges 2.c.i – 2.c.viii that Mr Musial had failed to undertake a TMJ check for each of these consultations, there would be no obligation on Mr Musial to record this. Accordingly, the Committee found the particulars of this charge not proved.
3.d	*Failing to record an extra-oral examination for consultations on:*
3.d.i – 3.d.viii	*29 June 2007,* *10 July 2008,*

	23 July 2009, *2 February 2010,* *2 August 2010,* *9 February 2011,* *20 February 2012,* *24 January 2013.* Found not proved. As the Committee found proved at charges 2.d.i – 2.d.viii that Mr Musial had failed to undertake an extra-oral examination for each of these consultations, there would be no obligation on Mr Musial to record this. Accordingly, the Committee found the particulars of this charge not proved.
3.e	*Failing to record recall interval for consultations on:*
3.e.i – 3.e.viii	*29 June 2007,* *10 July 2008,* *23 July 2009,* *2 February 2010,* *2 August 2010,* *9 February 2011,* *5 March 2012,* *24 January 2013.* Found proved. There was no record in Patient A's dental notes of a recall interval for each of these consultations. The Committee did not accept Mr Musial's explanation in his witness statement that he recorded these on an internal system. It considered that any record should be contained in Patient A's dental records. Accordingly, the Committee found the particulars of this charge proved.
3.f	*Failing to record a caries risk assessment for consultations on:*
3.f.i – 3.f.viii	*29 June 2007,* *10 July 2008,* *23 July 2009,* *2 February 2010,* *2 August 2010,* *9 February 2011,* *20 February 2012,*

	24 January 2013. Found not proved. As the Committee found proved at charges 2.f.i – 2.f.viii that Mr Musial had failed to undertake a caries risk assessment at each of these consultations, there would be no obligation on Mr Musial to record this. Accordingly, the Committee found the particulars of this charge not proved.
3.g	*Failing to record a periodontal risk assessment on:*
3.g.i – 3.g.vi	*29 June 2007,* *10 July 2008,* *23 July 2009,* *2 February 2010,* *20 February 2012,* *24 January 2013.* Found not proved. As the Committee found proved at charges 2.g.i – 2.g.vi that Mr Musial had failed to undertake a periodontal risk assessment at each of these consultations, there would be no obligation on Mr Musial to record this. Accordingly, the Committee found the particulars of this charge not proved.
3.h	*Failing to record a BPE on:*
3.h.i – 3.h.iv	*29 June 2007,* *10 July 2008,* *23 July 2009,* *2 February 2010,* Found not proved. As the Committee found proved at charges 2.h.i – 2.h.iv that Mr Musial had failed to undertake a BPE on each of these dates, there would be no obligation on Mr Musial to record this. Accordingly, the Committee found the particulars of this charge not proved.
3.h.v - 3.h.vi	*2 August 2010,* *9 February 2011,* Found not proved. The Committee noted that in Patient A's dental records for 2 August 2010 and 9 February 2011 Mr Musial had recorded his findings when undertaking a BPE for these dates. Accordingly, the Committee found the particulars of this charge not proved.
3.h.vii – 3.h.viii	*20 February 2012,* *24 January 2013.*

	Found not proved. As the Committee found proved at charges 2.h.vii – 2.h.viii that Mr Musial had failed to undertake a BPE on each of these dates, there would be no obligation on Mr Musial to record this. Accordingly, the Committee found the particulars of this charge not proved.
3.i	*In relation to a Root Canal Treatment performed on LL4 on 5 December 2007 and 13 December 2007 you did not record:*
3.i.i	*the endodontic instruments used on 5 December 2007,* Found proved. There is no record in Patient A's dental notes of the endodontic instrument used by Mr Musial on 5 December 2007. It therefore found this charge proved.
3.i.ii	*if local anaesthetic was given, and if it was, full details of the local anaesthetic on 5 December 2007 and/ or 13 December 2007,* Found proved. The Committee accepted the opinion of Mr Turner that it would be unlikely that Mr Musial would have performed root canal treatment on Patient A's LL4 on 5 December 2007 and 13 December 2007 without using a local anaesthetic. Taking this into account the Committee considered it was more likely than not that Mr Musial did use a local anaesthetic at each of these appointments. There is no record in Patient A's dental notes of the full details of the local anaesthetic used on 5 December 2007 and 13 December 2007. The Committee therefore found this charge proved.
3.i.iii	*the intra-canal endodontic dressing used on 5 December 2007.* Found proved. There is no record in Patient A's dental notes of the intra-canal endodontic dressing used on 5 December 2007. The Committee therefore found this charge proved.
	<u>Finding in relation to the stem of head of charge 3</u> Found proved. In taking into account the Committee's positive findings and reasons at several charges contained in 3.a to 3.i, it concluded that this constituted a failure by Mr Musial to maintain an adequate standard of record keeping in respect of Patient A's consultations from 13 January 2006 to 24 January 2013. The Committee therefore found this charge proved.
4.	*You failed to provide an adequate standard of care to Patient A from 13 January 2006 to 24 January 2013, including by:*
4.a	*Failing to arrange to see Patient A for a full mouth examination between 13 January 2006 and 29 June 2007,*

	Found not proved. The Committee noted that an appointment took place on 10 May 2006. Given the record of the charge for an examination on this date the Committee considered that it was more likely than not that a full examination took place at this appointment. In light of the 10 May 2006 appointment falling within the date range in this charge the Committee found the charge not proved.
4.b	*Failing to formulate any, and/or any adequate, treatment plan between 13 January 2006 and 16 January 2012,* Found proved. There was no written treatment plan before the Committee. It accepts the oral evidence of Patient A that she was not provided with a written or oral treatment plan. The Committee considered this was further evident in the treatment provided to Patient A. It considered that Mr Musial seemed to treat Patient A on an emergency basis rather than by way of a structured treatment plan. Both Mr Turner and Mr Norfolk agree there was an absence of a written treatment plan for the treatment provided to Patient A during 13 January 2006 and 16 January 2012. In light of these reasons the Committee found this charge proved.
4.c	*Failing to provide adequate long-term repairs to the LL4 between 13 January 2006 and 16 January 2012.* Found proved. The Committee noted in Mr Musial's witness statement he stated that he had explained the options to Patient A several times and that she did not want the bridge removed. The Committee noted the oral evidence of Patient A that, had the options have been fully discussed with her, including the associated risks and benefits, she would have agreed to the bridge being removed. Further, the Committee noted the only detail in Patient A's dental records of Mr Musial explaining the options to Patient A was on 17 October 2007 when he wrote '…other solution to destroy the brige,pt wants to avoid it'. The Committee noted that there was no long-term repair to the LL4 between these dates and that there was no record in the notes as to why this had not taken place. Additionally, Mr Turner and Mr Norfolk agreed that no long-term repair to the LL4 was provided between these dates. The Committee considered that this was further evidenced by the frequency and the number of repairs that Mr Musial provided to the LL4. Taking all this into account the Committee found this charge proved.
4.d	*Failing to provide an adequate standard of care as clinically indicated following the BPE score recorded on 2 August 2010, including by:*

4.d.i	*Failing to diagnose chronic periodontitis,* Found proved. The Committee noted in Mr Musial's witness statement he had suggested that he had diagnosed chronic periodontitis by referring Patient A to the hygienist but that he had failed to record the diagnosis. Further, the Committee noted that Patient A's dental records for 2 August 2010 do detail that Mr Musial suggested that Patient A see a hygienist. The Committee accepted the oral evidence of Mr Turner that referring Patient A to the hygienist would not constitute a diagnosis. The Committee therefore concluded that it was more likely than not that Mr Musial failed to diagnose chronic periodontitis. Accordingly, it found this charge proved.
4.d.ii	WITHDRAWN
4.d.iii	WITHDRAWN
4.d.iv	WITHDRAWN
4.d.v	WITHDRAWN
4.d.vi	WITHDRAWN
4.d.vii	WITHDRAWN
4.e	*Failing to provide an adequate standard of care as clinically indicated following a BPE score recorded on 9 February 2011, including:*
4.e.i	*Failing to diagnose chronic periodontitis,* Found proved. The Committee noted in Mr Musial's witness statement he had suggested that he had diagnosed chronic periodontitis by referring Patient A to the hygienist but that he had failed to record the diagnosis. Further, the Committee noted that Patient A's dental records for 9 February 2011 do detail that Mr Musial strongly advised that Patient A see a hygienist. The Committee accepted the oral evidence of Mr Turner that referring Patient A to the hygienist would not constitute a diagnosis. The Committee therefore concluded that it was more likely than not that Mr Musial failed to diagnose chronic periodontitis. Accordingly, it found this charge proved.
4.e.ii	*Failing to ensure that oral hygiene instruction was given* Found proved. The Committee noted Mr Musial had suggested to Patient A on two

	occasions that she should see a hygienist. Patient A explained in oral evidence that she did not make an appointment to see the hygienist, her reasons for not doing so and that Mr Musial was aware of this. The responsibility of ensuring oral hygiene instruction was given to Patient A was on Mr Musial and he did not make any further attempts to ensure that oral hygiene instructions were given, even when he knew Patient A had not booked to see the hygienist. Taking all this into account, the Committee found this charge proved.
4.e.iii	WITHDRAWN
4.e.iv	*Failing to ensure that root surface debridement was performed,* Found proved. Mr Musial did not perform root surface debridement and therefore he failed to ensure this took place. Accordingly, the Committee found this charge proved.
4.e.v	*Failing to carry out further investigation including in relation to plaque distribution and gingival inflammation,* Found proved. The Committee noted that Mr Musial explained in his witness statement that he would have expected the hygienist to carry out further investigation including in relation to plaque distribution and gingival inflammation. Patient A explained in oral evidence that she did not make an appointment to see the hygienist, her reasons for not doing so and that Mr Musial was aware of this. As Mr Musial was aware that Patient A had not made an appointment to see the hygienist he should have taken the necessary steps to carry out further investigation including in relation to plaque distribution and gingival inflammation. Taking all this into account, the Committee found this charge proved.
4.e.vi	*Failing to ensure pocket depth measurements were recorded in sextants scoring BPE 3.* Found proved. The Committee noted that Mr Musial had failed to record any pocket depth charting in any of the sextants which had a BPE finding of 3. Accordingly, the Committee found this charge proved.
4.e.vii	WITHDRAWN
4.f	*Failing to identify and/or adequately treat caries at:*
4.f.i	*UR3,*

	Found proved. The Committee accepted the oral evidence of Mr Turner that caries was detectable in this tooth. The Committee noted that in Mr Musial's witness statement he said that he did not agree there was caries in the UR3. Further, the Committee noted that Patient A's subsequent treating dentist did detect caries in this tooth during his initial examination and later provided treatment to it. Taking all this into account, the Committee concluded that it was more likely than not that Mr Musial failed to identify and treat the caries at UR3. It therefore found this charge proved.
4.f.ii	*UR2,* Found not proved. The Committee noted that in Mr Musial's witness statement he said that he did not agree there was caries in the UR2. The Committee further noted that Mr Turner had stated in his oral evidence that caries may not have been detectable in this tooth. Additionally, Patient A's subsequent treating dentist noted this tooth as being 'sound' during his initial examination. In light of these reasons the Committee could not be satisfied that on the balanceof probabilities there was caries at UR2 and it therefore could not find that Mr Musial failed to identify and/ or treat this. Accordingly, it found this charge not proved.
4.f.iii	*UL2,* Found not proved. The Committee noted that in Mr Musial's witness statement he said that he did not agree there was caries in the UL2. The Committee further noted that Mr Turner had stated in his oral evidence that caries may not have been detectable in this tooth. Additionally, Patient A's subsequent treating dentist noted this tooth as being 'sound' during his initial examination. In light of these reasons the Committee could not be satisfied that on the balance of probabilities there was caries at UL2 and it therefore could not find that Mr Musial failed to identify and/ or treat this. Accordingly, it found this charge not proved.
4.f.iv	*UL3,* Found proved. The Committee accepted the oral evidence of Mr Turner that caries would have been detectable in this tooth. The Committee noted that in Mr Musial's witness statement he said that he did not agree there was caries in the UL3.

	Further, the Committee noted that Patient A's subsequent treating dentist did detect caries in this tooth during his initial examination and later provided treatment to it. Taking all this into account, the Committee concluded that it was more likely than not that Mr Musial failed to identify and treat the caries at UL3. It therefore found this charge proved.
4.f.v	*UL4,* Found not proved. The Committee noted that in Mr Musial's witness statement he said that he did not agree there was caries in the UL4. The Committee further noted that Mr Turner had stated in his oral evidence that caries may not have been detectable in this tooth. Additionally, Patient A's subsequent treating dentist noted this tooth as being 'sound' during his initial examination. In light of these reasons the Committee could not be satisfied that on the balanceof probabilities there was caries at UL4 and it therefore could not find that Mr Musial failed to identify and/ or treat this. Accordingly, it found this charge not proved.
4.f.vi	*UL5,* Found not proved. The Committee noted that in Mr Musial's witness statement he said that he did not agree there was caries in the UL5. The Committee further noted that Mr Turner had stated in his oral evidence that caries may not have been detectable in this tooth. Additionally, Patient A's subsequent treating dentist noted this tooth as being 'sound' during his initial examination. In light of these reasons the Committee could not be satisfied that on the balanceof probabilities there was caries at UL5 and it therefore could not find that Mr Musial failed to identify and/ or treat this. Accordingly, it found this charge not proved.
4.f.vii	*LL7,* Found not proved. The Committee noted that in Mr Musial's witness statement he said that he did not agree there was caries in the LL7. The Committee further noted that Mr Turner had stated in his oral evidence that caries may not have been detectable in this tooth. Additionally, Patient A's subsequent treating dentist noted this tooth as being 'sound' during his initial examination. In light of these reasons the Committee could not be satisfied that on the balanceof probabilities there was caries at LL7 and it therefore could not find that Mr Musial failed to identify and/ or treat this.

	Accordingly, it found this charge not proved.
4.f.viii	*LL6,* Found not proved. The Committee noted that in Mr Musial's witness statement he said that he did not agree there was caries in the LL6. The Committee further noted that Mr Turner had stated in his oral evidence that caries may not have been detectable in this tooth. Additionally, Patient A's subsequent treating dentist noted this tooth as being 'sound' during his initial examination. In light of these reasons the Committee could not be satisfied that on the balanceof probabilities there was caries at LL6 and it therefore could not find that Mr Musial failed to identify and/ or treat this. Accordingly, it found this charge not proved.
4.f.ix	*LL4,* Found not proved. The Committee noted that in Mr Musial's witness statement he said that he did not agree there was caries in the LL4. The Committee further noted that Mr Turner had stated in his oral evidence that caries may not have been detectable in this tooth. Additionally, Patient A's subsequent treating dentist noted this tooth as being 'sound' during his initial examination. In light of these reasons the Committee could not be satisfied that on the balanceof probabilities there was caries at LL4 and it therefore could not find that Mr Musial failed to identify and/ or treat this. Accordingly, it found this charge not proved.
4.f.x	*LR4,* Found proved. The Committee accepted the oral evidence of Mr Turner that caries would have been detectable in this tooth. The Committee noted that in Mr Musial's witness statement he said that he did not agree there was caries in the LR4. Further, the Committee noted that Patient A's subsequent treating dentist did detect caries in this tooth during his initial examination and later provided treatment to it. Taking all this into account, the Committee concluded that it was more likely than not that Mr Musial failed to identify and treat the caries at LR4. It therefore found this charge proved.
4.f.xi	*LR5,* Found not proved. The Committee noted that in Mr Musial's witness statement he said

	that he did not agree there was caries in the LR5. The Committee further noted that Mr Turner had stated in his oral evidence that caries may not have been detectable in this tooth. Additionally, Patient A's subsequent treating dentist noted this tooth as being 'sound' during his initial examination. In light of these reasons the Committee could not be satisfied that on the balanceof probabilities there was caries at LR5 and it therefore could not find that Mr Musial failed to identify and/ or treat this. Accordingly, it found this charge not proved.
4.f xii	*LR6.* Found not proved. The Committee noted that in Mr Musial's witness statement he said that he did not agree there was caries in the LR6. The Committee further noted that Mr Turner had stated in his oral evidence that caries may not have been detectable in this tooth. Additionally, Patient A's subsequent treating dentist noted this tooth as being 'sound' during his initial examination. In light of these reasons the Committee could not be satisfied that on the balanceof probabilities there was caries at LR6 and it therefore could not find that Mr Musial failed to identify and/ or treat this. Accordingly, it found this charge not proved.
4.g	*Failing to identify and/or adequately treat a defective inlay at LL7,* Found not proved. The Committee noted that in Mr Musial's witness statement he said that he had not identified a defective inlay and/ or treated this tooth. The Committee further noted that Mr Turner had stated in his oral evidence that a defect could not be identified from the radiograph of LL7. In light of these reasons, the Committee could not be satisfied that on the balanceof probabilities Mr Musial failed to identify and/ or adequately treat a defective inlay at LL7. Accordingly, it found this charge not proved.
4.h	*Failing to expose radiographs as clinically indicated on:*
4.h.i	*29 June 2007,*
4.h.ii	*WITHDRAWN*
4.h.iii	*10 July 2008,*
4.h.iv	*23 July 2009,*
4.h.v	*2 February 2010,*
4.h.vi	*2 August 2010,*

4.h.vii	*9 February 2011.* Found proved. The Committee accepted the oral evidence of Mr Turner that radiographs were required on these dates. Further, Mr Musial accepts in his written statement that he did not take these radiographs and that he should have. Accordingly, the Committee found the particulars 4.h.i and 4.h.iii – 4.h.viii of this charge proved.
4.i	*Failing to obtain informed consent from Patient A regarding her treatment between 13 January 2006 and 16 January 2012 including by;*
4.i.i	*not advising of the treatment option of removing the bridge and re-cementing it,* Found proved. The Committee noted that in Mr Musial's witness statement he explained that he did not consider that removing the bridge and re-cementing it was an adequate option and so he did not discuss it with Patient A. The Committee accepted the oral evidence of Mr Turner that this was an adequate option and that it should have been explained as an option to Patient A. In light of these reasons the Committee found this charge proved.
4.i.ii	*not advising of the treatment option of sectioning the bridge, and restoring the LL4 and retaining the LL6 as a crown,* Found proved. The Committee accepted the oral evidence of Patient A that when Mr Musial explained this he detailed this option as 'destroying the bridge'. She further stated that this was the reason for her reluctance to undertake this treatment option which would leave her with a gap but if it had been explained to her properly she would have agreed to this option. In light of Mr Musial not explaining the option sufficiently, the Committee concluded that it was more likely than not that he did not advise Patient A of this option. In light of these reasons the Committee found this charge proved.
4.i.iii	*not advising of the treatment option of referring Patient A to a restorative specialist,* Found proved. The Committee noted that in Mr Musial's witness statement he explained that he did not consider referring Patient A to a restorative

	specialist as an option and therefore he did not advise her of this. The Committee accepted the oral evidence of Mr Turner that this was an adequate option and that it should have been explained as an option to Patient A. In light of these reasons the Committee found this charge proved.
4.i.iv	*not advising of the risks to LL4 of not sectioning or removing the bridge.* Found proved. The Committee noted in Patient A's written statement she explained 'I do not recall Mr Musial explaining me anything about the repeated treatment and making any suggestions as to the alternative treatment'. Further, in Patient A's oral evidence she said she was never told before 2012 that the bridge was causing problems to her LL4 nor that sectioning or removal of the bridge was needed for the health of her tooth. In light of this, the Committee found this charge proved.
	<u>Finding in relation to the stem of head of charge 4</u> Found proved. In taking into account the Committee's positive findings and reasons at several charges contained in 4.a to 4.i, it concluded that this constituted a failure by Mr Musial to provide an adequate standard of care to Patient A from 13 January 2006 to 24 January 2013.

The hearing will now proceed to stage 2."

On 17 March 2017 the Chairman announced the determination as follows:

"Having announced its findings on all the facts, the Committee heard submissions from Mr Day, on behalf of the GDC, on the matters of misconduct, impairment and sanction.

<u>Submissions</u>

In accordance with Rule 20 (1) (a) of the Rules, the Committee was informed by Mr Day that Mr Musial does not have previous fitness to practise history.

Mr Day addressed the Committee on misconduct and submitted that the facts found proved in this case, although in relation to one patient, are wide-ranging, happened over a prolonged period of time and are serious. He submitted that Mr Musial's failings not only exposed a patient to harm but actual harm was suffered by the patient. He outlined the specific issues identified in line with the Standards, which in his submission, have been breached. He referred the Committee to the principles of patient consent as published by the GDC in 'Principles of Patient Consent (May 2005)'. He submitted that Mr Musial's conduct fell far below the standard expected of a registered dentist and that the facts found proved do amount to misconduct.

Mr Day next addressed the issue of current impairment and referred the Committee to the factors identified by Dame Janet Smith in the Fifth Report of the Shipman Inquiry which may indicate current impairment. Mr Day highlighted the factors which in his submission the Committee should consider such as whether Mr Musial's failings are remediable and whether they have been remedied. On the issue of remediation, Mr Day referred the Committee to the Continuing Professional Development (CPD) courses completed by Mr Musial. Mr Day submitted that, in light of the wide-ranging failures identified in this case, the remediation completed by Mr Musial is limited. He further submitted that it does not cover all the areas of concern identified by the Committee and that there is no evidence before the Committee of any steps taken by Mr Musial to embed the learning he may have developed into his current practice, particularly since he has not been working since approximately August 2016.

In relation to insight Mr Day referred the Committee to Mr Musial's witness statement and to his reflection documents. He submitted that Mr Musial's insight is limited and that although he accepts some responsibility he does not acknowledge the severity or extent of his failings. Mr Day further submitted that the nature of the failings in this case also requires a finding of current impairment in order to maintain public confidence in the profession. He submitted that Mr Musial's fitness to practise is currently impaired by reason of his misconduct.

Mr Day then addressed the Committee on the matter of sanction. He submitted that the Committee should consider the sanctions available to it in ascending order, starting with the least restrictive. He submitted that the appropriate and proportionate sanction was a period of suspension with a review.

Committee's considerations

The Committee had regard to all the information contained in the documentation before it and gave consideration to the submissions of Mr Day on behalf of the GDC.

The Committee accepted the advice of the Legal Adviser.

In its deliberations, the Committee had regard to the GDC's *Guidance for the Practice Committees, including Indicative Sanctions Guidance* (October 2016).

Decision on misconduct

The Committee first considered whether the facts found proved amount to misconduct. In considering the issue of misconduct, the Committee reminded itself of the extent and nature of the findings of fact made against Mr Musial. The Committee's reasons for its findings have been set out in full in its determination on the facts.

When determining whether the facts found proved amounted to misconduct the Committee had regard to the GDC's guidance on the Principles of Patient Consent (May 2005) and the terms of the relevant professional standards in force at the time.

The Committee, in reaching its decision, had regard to the public interest and accepted that there was no burden or standard of proof at this stage. The Committee exercised its own independent judgement in reaching its decision.

The Committee concluded that Mr Musial's conduct was in breach of the GDC's *Standards for Dental Professionals* (May 2005) as set out below:

1 Putting patients' interests first and acting to protect them.

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 Respecting patients' dignity and choices.

2.2 Recognise and promote patients' responsibility for making decisions about their bodies, their priorities and their care, making sure you do not take any steps without patients' consent (permission). Follow our guidance 'Principles of patient consent'.

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.

5 Maintaining your professional knowledge and competence.

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.

5.2 Continuously review your knowledge, skills and professional performance. Reflect on them, and identify and understand your limits as well as your strengths.

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.

5.4 Find out about laws and regulations which affect your work, premises, equipment and business, and follow them.

The Committee accepted that not every failure to meet the standard would inevitably result in a finding of misconduct. However, the Committee considered that the breaches were numerous, serious, concerned basic and fundamental areas of dentistry and happened over a protracted period of time. It also noted that Mr Musial failured to adhere to the principles of patient consent. Although these breaches are in relation to one patient they represent serious departures from the standard expected of a registered dentist. It considered that these breaches were capable of undermining the public interest in maintaining public confidence in the profession and upholding proper standards of conduct and behaviour.

The Committee considered the failings in this case concerned a wide spectrum of basic and fundamental areas of dentistry, namely basic examinations, record keeping, treatment planning, informed consent and radiography. The Committee concluded that both Mr Musial's clinical failings and his record keeping fall far below the standard expected of a registered dentist. It took into account that Mr Musial's failings not only exposed a patient to serious harm but also caused that patient to suffer significant harm over a prolonged period. It considered that fellow practitioners would consider these failings to be deplorable.

Taking all this into account, the Committee was in no doubt that the facts found proved amount to misconduct.

<u>Decision on current impairment</u>

The Committee next considered whether Mr Musial's fitness to practise is currently impaired by reason of his misconduct. In reaching its decision on impairment, the Committee exercised its own independent judgement. It bore in mind that its duty was to consider the public interest, which includes the protection of patients, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour.

In reaching its decision the Committee had regard to whether Mr Musial's failings are remediable, whether it had any evidence to demonstrate that these failings have been remedied and whether they are likely to be repeated. The Committee considered that the failings in this case were capable of remediation. However, the Committee concluded that the remediation undertaken by Mr Musial in this case is limited. The Committee took into account that Mr Musial had completed a number of CPD courses, many of which were online courses. However, it considered that completing CPD is a standard requirement of being registered as a dentist, that the CPD completed by Mr Musial is extremely limited and that it does not cover many of the areas of concern identified by the Committee. Further, the Committee has no evidence before it that Mr Musial has embedded any of his learning into his clinical practice, although he has stated an intention to do so. Aside from CPD, the Committee does not have before it any evidence of remediation.

In relation to insight the Committee took account of Mr Musial's witness statement and his reflective documents. The Committee notes that Mr Musial does express some remorse for his actions, that he accepts the majority of his record keeping failings and that this demonstrates a degree of insight. However, it further notes that he does not accept the majority of his other failings, nor does he provide any information on the steps he has taken to improve his clinical practice and prevent a similar situation re-occurring. In light of the wide-ranging failings and the fact that actual harm was suffered in this case, the Committee concluded that Mr Musial's insight is currently wholly inadequate.

Whilst the Committee notes that Mr Musial had indicated that he currently does not work as a dentist, does not reside in the UK and that he has no immediate intention of returning, it further notes that he could return to practice at any point. The Committee concluded that in light of the lack of sufficient remediation to address his failings and the limited insight developed by Mr Musial into his failings there is a significant risk of repetition in this case.

The Committee bore in mind that its primary function is to protect patients. It also considered the wider public interest, which includes maintaining confidence in the dental profession and the GDC as a regulator, and upholding proper standards and behaviour. The Committee considered that Mr Musial had failed to meet the standard expected of a registered dentist, in many respects over a prolonged period, which resulted in actual harm to a patient. It considered that this had the potential to bring the profession into disrepute. The Committee concluded that to make a finding of no current impairment would send a message to the public and the profession that Mr Musial's conduct was acceptable. The Committee concluded that public confidence in the dental profession, and the GDC as its regulator, would be undermined if a finding of impairment was not made in this case. The Committee had regard to the serious nature of the issues identified in the circumstances of this case when reaching this decision.

Having regard to all of this, the Committee concluded that Mr Musial's fitness to practise is currently impaired by reason of misconduct.

Decision on sanction

Having determined that Musial's fitness to practise is currently impaired by reason of misconduct, the Committee considered what sanction, if any, to impose on his registration. It reminded itself that the purpose of a sanction is not to be punitive, but is to protect patients and to address the wider public interest.

The Committee considered the range of sanctions available to it, starting with the least serious. It applied the principle of proportionality, balancing the public interest with Mr Musial's own interests.

In considering the matter of sanction, the Committee considered the mitigating and aggravating factors in this case. In mitigation:

- acknowledgement of his shortcomings in relation to record keeping and lack of radiographic assessment; and
- evidence of Mr Musial's previous good character.

Aggravating factors include:

- actual harm to a patient;
- misconduct sustained or repeated over a period of time; and
- lack of insight, particularly in relation to Mr Musial's failure to identify and put in place measures that would prevent a recurrence of such circumstances.

In light of the findings against Mr Musial, the Committee determined that it would be wholly inappropriate to conclude this case without taking any further action or with a reprimand. It considered that the serious departures from the standards expected of a registered dentist, the fact that actual harm had occurred to a patient, and the lack of sufficient insight and remediation, raising as it does significant concerns regarding the risk of repetition, required a restriction on Mr Musial's registration. It concluded that allowing Mr Musial to practise unrestricted would not address the potential risk of harm to patients nor would it address the wider public interest concerns engaged in this case.

The Committee then went on to consider whether conditional registration would provide the necessary level of public protection and address the public interest engaged in this case. Whilst the Committee accepted that conditions could usually be formulated to address the clinical deficiencies identified, due to the widespread nature of the failings in this case, the fact that actual harm was suffered by a patient, the lack of sufficient insight and remediation, and the limited engagement from Mr Musial in this process, the Committee concluded that it could not formulate conditions to adequately address the risks identified. Further, the Committee noted that conditions of practice require a strong degree of engagement and willingness to comply with the conditions which is not evident in this case. Taking all this into account, the Committee determined that, in the circumstances of this case, conditions of practice would not provide the necessary level of protection, nor would it address the wider public interest concerns and therefore would not be the appropriate and proportionate sanction.

The Committee next considered whether a period of suspension would be an appropriate and proportionate sanction. Whilst the Committee acknowledged that the failings in this case relate to one patient, it further took into account that they are serious, wide-spread, repeated over a protracted period of time and caused significant harm to a patient. The Committee concluded that, due to the inadequate remediation and insight on Mr Musial's part into his failings, there remains a risk of repetition and therefore a period of suspension is needed to

protect the public and the wider public interest. It considered that, in the circumstances of this case, public protection and public confidence in the profession and the GDC, as its regulator, would not be upheld by any lesser sanction than one of suspension.

Accordingly, the Committee determined that the appropriate and proportionate sanction was one of suspension. The Committee did consider erasure but concluded that it would be disproportionate in the circumstances of this case. It considered that Mr Musial's failings are remediable and that the lesser sanction, namely suspension could provide the necessary level of public protection and would address the wider public interest concerns. It did not consider that he had a deep-seated personality or professional attitudinal problem.

In considering the period of suspension, the Committee determined that the maximum, 12-month period of suspension was necessary to mark the severity of the concerns in this case. It considered that a period of 12 months' suspension is proportionate as it would provide the necessary level of public protection, it would address the wider public interest and it would also provide enough time for Mr Musial to fully engage in this process and to demonstrate any insight and/or remediation he might have gained during this period if he chooses to do so.

The Committee therefore determined to suspend Mr Musial's registration for a period of 12 months, and for the case to be reviewed prior to the end of the period of suspension. A Committee will review Mr Musial's case at a resumed hearing to be held shortly before the end of the period of suspension on his registration.

A reviewing Committee may be assisted by receiving the following:

- evidence to demonstrate that Mr Musial has taken steps to address all the concerns identified by the Committee and that he has developed sufficient insight into his failings.

The Committee now invites submissions on whether an immediate order should be imposed."

"Immediate order

Having directed that Mr Musial's name be suspended from the register, the Committee considered whether to impose an order for his immediate suspension in accordance with section 30. (1) of the Dentists Act 1984 (as amended).

The Committee took into account the submissions of Mr Day on behalf of the GDC. He submitted that in the light of the Committee's findings an immediate order was necessary for the protection of the public and was otherwise in the public interest.

The Committee accepted the advice of the Legal Adviser.

In its deliberations, the Committee had regard to the GDC's *Guidance for the Practice Committees, including Indicative Sanctions Guidance* (October 2016).

The Committee was satisfied that an immediate order for suspension was necessary for the protection of the public and was otherwise in the public interest. The Committee concluded that given its findings and reasons for the substantive order of suspension to direct otherwise would be inconsistent, especially in light of its findings that there was limited insight, little remediation and a significant risk of repetition.

If, at the end of the appeal period of 28 days, Mr Musial has not lodged an appeal, this immediate order will lapse and will be replaced by the substantive direction of suspension for a period of 12 months. If Mr Musial does lodge an appeal, this immediate order will continue in effect until that appeal is determined.

That concludes this case for today."

At a review hearing on 6 April 2018 the Chairman announced the determination as follows:

"This is a resumed hearing pursuant to Section 27C of the Dentists Act 1984 (as amended) ('the Act') to review the order of suspension imposed on your registration by the Professional Conduct Committee (PCC) in October 2017.

Background

Your case was first considered by a PCC in March 2017. You were neither present nor represented.

That Committee considered the failings in this case concerned a wide spectrum of basic and fundamental areas of dentistry, namely basic examinations, record keeping, treatment planning, informed consent and radiography. The Committee concluded that both your clinical failings and your record keeping fell far below the standard expected of a registered dentist. It took into account that your failings not only exposed a patient to serious harm but also caused that patient to suffer significant harm over a prolonged period. It considered that fellow practitioners would consider these failings to be deplorable.

The Committee in March 2017 found that the facts found proved in your case amounted to misconduct and that your fitness to practise was impaired by reason of that misconduct. It determined to suspend your registration for a period of 12 months, with an immediate order of suspension, and directed a review of your case shortly before the expiry of the 12-month period. In directing a review, that Committee stated that the next reviewing Committee may be assisted by evidence to demonstrate that you have taken steps to address all the concerns identified by the Committee and evidence that you have developed sufficient insight into your failings.

Today's review

This is the first resumed hearing in respect of your case. This hearing was convened to review the current suspension order on your registration.

In reviewing the order today, this Committee considered all the evidence presented to it. It took account of the submissions made by Mr Round on behalf of the GDC and your evidence via a telephone link. The Committee accepted the advice of the Legal Adviser.

Mr Round submitted that your fitness to practise is currently impaired. He submitted that you have provided a lack of meaningful remediation and insight into your deficiencies. Mr Round submitted that you have failed to provide evidence of updated Continuing Professional Development (CPD). Mr Round submitted that if the Committee were to find that your fitness to practise remains impaired, the Committee should consider extending the current order of suspension on your registration for a further period of 12 months.

You gave evidence under oath. You stated that you are certain that you did not cause Patient A any harm and seemed to attribute some blame to the subsequent treating dentist. You said that you have learned valuable lessons since the last PCC hearing. You stated that

you have not lived or practised as a dentist in UK since August 2016 and have resided in Poland since that date. You confirmed that you have not worked as a dentist in Poland since around August 2016, but you have managed to complete some further study for a Polish dental examination. You state that it is your intention to work as a dentist in Poland, but you do not know when.

Impairment

The Committee has determined that your fitness to practise remains impaired. The PCC which imposed the initial period of suspension, provided helpful guidance to you as to the steps that you may wish to take to demonstrate that you are no longer impaired. In correspondence, you have been reminded of these steps. The Committee notes that you now reside in Poland. You have submitted certificates of relevant training, but these predate the prior PCC hearing. In addition, you have submitted some reflective pieces regarding radiography and record keeping. The Committee notes that you have provided sparse evidence of updated CPD. The Committee is satisfied that you have not provided evidence of the steps that you may have taken to remediate the serious deficiencies that have been identified in your practice. It is satisfied that you have failed to demonstrate sufficient insight into your failings. You stated under oath that you still believe that you caused no harm to Patient A. The Committee further notes that other than some study you have undertaken in Poland, there is no information available from any other source to suggest that you have adequately addressed any areas of concern identified by the initial PCC during the last 12 months.

In view of your lack of engagement and meaningful remediation, the Committee concluded that the same risks to patient safety and public confidence persist, and that accordingly your fitness to practise continues to be impaired.

Sanction

The Committee next considered whether it could formulate conditions which would be workable and which would address the risks that have been identified. The Committee concluded that it could not formulate any conditions which would be practicable or workable, particularly when you are not currently in practice or any suggestion that you would engage and comply with any such conditions.

The Committee went on to consider whether it is necessary and appropriate to extend the current period of suspension. It determined that suspension remains the proportionate and appropriate sanction to impose. This is because of the serious failings identified, the risks of harm to the public, the potential undermining of trust and confidence in the profession, and the lack of evidence of remediation since the last hearing. A further period of suspension is required to protect the public, to declare and uphold proper standards of conduct and behaviour and to maintain trust and confidence in the profession and in the regulatory process.

The Committee therefore decided to extend the existing suspension of your registration. The Committee is satisfied that you have done virtually nothing to address the concerns raised by the previous PCC. In exercising its independent judgement, the Committee decided that the appropriate period of time for this further extended period of suspension should be 12 months because of the serious failings that have been identified and the risks that continue to arise from those shortcomings.

In accordance with section 27C of the Act this extended period of suspended registration will take effect from the date on which the existing period of suspension would otherwise expire, namely on 18 April 2018. The Committee determined that the further suspension should be reviewed prior to its expiry. Under section 27C (4) (a) it is open to you to seek an early review of this decision.

Recommendations

Although it is mindful that the task of reviewing this extended suspension is for a future PCC, such a Committee may be assisted by seeing evidence of reflective statements from you with Continuing Professional Development (CPD) addressing all areas of concerns identified by the previous PPC.

That concludes this case for today."

At a review hearing on 4 April 2019 the Chairman announced the determination as follows:

"This is a resumed hearing of Mr Musial's case.

Mr Musial is neither present nor represented. The General Dental Council (GDC) is also not in attendance. It relies on written submissions in which it submits that: (i) service of the notification of hearing had been effected on Mr Musial in accordance with the General Dental Council (Fitness to Practise) Rules 2006 (the Rules); (ii) the hearing should proceed in his absence; (iii) his fitness to practise remains impaired by reason of misconduct and (iv) that an order of indefinite suspension be directed.

Service and proceeding in the absence of parties

The Committee first considered whether the notification of today's review hearing had been served on Mr Musial in accordance with Rules 28 and 65. The Committee has received a bundle of documents which contains a copy of notification of hearing dated 04 March 2019 which was sent by Special Delivery to Mr Musial's registered address. The Committee is satisfied that the notification contains the required information under Rule 28, including the time, date and venue of this hearing; and that the notification had been served on Mr Musial in accordance with Rule 65. Taking all these factors into account, the Committee is satisfied that the GDC has complied with the requirements of service in accordance with Rules 28 and 65.

The Committee then went on to consider whether to proceed in the absence of Mr Musial in accordance with Rule 54. In so doing, it has borne in mind that its discretion to proceed in the absence of Mr Musial must be exercised with the utmost care and caution. It is satisfied that the GDC has made all reasonable efforts to notify Mr Musial of this hearing and its purpose. The notification of hearing informed him that the Committee had the power to deal with the resumed hearing on the papers in the absence of parties and that the GDC was proposing to request that arrangements be made for the hearing to take place on the papers. The letter further stated that it was open to Mr Musial to provide the Committee with written submissions and any documents that he felt were relevant to the review of the order. The letter asked Mr Musial to notify the GDC if there was any reason why the hearing should not proceed on the papers. He was also asked to notify the GDC whether he would be attending the hearing and/or be represented. The Committee had sight of a telephone attendance note dated 04 April 2019 in which Mr Musial confirmed he is content for the matters to proceed on the papers. There has been no application for a postponement and there is nothing to suggest that an adjournment would make Mr Musial's attendance any more likely on a future

occasion. Having regard to all the circumstances, the Committee has determined that Mr Musial has voluntarily absented himself from this hearing. It considers that there is a clear public interest in reviewing the order today. Accordingly, the Committee has determined to proceed with today's review hearing in the absence of Mr Musial and on the papers before it.

Background matters

This is the second review of a suspension order that was first imposed on Mr Musial's registration for a period of 12 months by the Professional Conduct Committee (PCC) on 17 March 2017. Mr Musial did not attend that hearing and he was not represented. At that hearing the PCC found proved that the failings in this case concerned a wide spectrum of basic and fundamental areas of dentistry, namely basic examinations, record keeping, treatment planning, informed consent and radiography. The Committee concluded that both Mr Musial's clinical failings and his record keeping fall far below the standard expected of a registered dentist. It took into account that Mr Musial's failings not only exposed a patient to serious harm but also caused that patient to suffer significant harm over a prolonged period. It considered that fellow practitioners would consider these failings to be deplorable.

The PCC concluded that the findings against Mr Musial amounted to misconduct. In considering impairment, the Committee considered that they were capable of being remedied. However, the Committee did not have before it any evidence of remediation undertaken by Mr Musial aside from limited CPD evidence. Additionally, it had regard to his reflective documents at the substantive hearing, the Committee considered that Mr Musial expressed some remorse for his actions, that he accepted the majority of his record keeping failings and that this demonstrated a degree of insight. However, it noted that he did not accept the majority of his other failings, nor provide any information on the steps he took to improve his clinical practice and prevent a similar situation re-occurring. In light of the wide-ranging failings and the fact that actual harm was suffered in this case, the Committee concluded that Mr Musial's insight was inadequate.

The Committee concluded that Mr Musial's fitness to practise was currently impaired by reason of misconduct.

The PCC reviewed the order on 06 April 2018. Mr Musial attended the hearing via telephone and was not legally represented. The Committee determined that Mr Musial's fitness to practise remained impaired in view of his lack of engagement and meaningful remediation and directed that the period of suspension be extended by a further period of 12 months (with a review).

Today's review hearing

This Committee has comprehensively reviewed the current order. In so doing, it has had regard to the GDC bundle, as well as the GDC's submissions and the documents provided by Mr Musial.

The Committee first considered whether Mr Musial's fitness to practise is still impaired. There is little evidence before this Committee that Mr Musial has addressed his past impairment or provided any information as recommended to him by the PCC at the initial hearing or at the subsequent review hearing. The Committee had regard to the small number of CPD certificates provided on behalf of Mr Musial. It notes that the CPD courses were online and completed within the last 2 weeks and that no reflective pieces on his learning were provided. It also noted the same CPD certificates that were before the previous Committees. It noted Mr Musial has submitted recent CPD certificates, but the

Committee considered they were neither targeted or reflective, and in any event the recency of that CPD material would not allow him to embed that into his practice.

In these circumstances, the Committee considers that there remains a risk that Mr Musial could repeat the misconduct and thus he remains a risk to the public. Accordingly, the Committee has determined that Mr Musial's fitness to practise is currently impaired.

The Committee next considered what direction to give, bearing in mind its powers in accordance with Section 27C of the Dentists Act 1984. In so doing, it has had regard to the GDC's "Guidance for the Practice Committees including Indicative Sanctions Guidance" (October 2016).

The Committee has borne in mind the principle of proportionality, balancing the public interest against Mr Musial's own interests. The public interest includes the protection of the public, the maintenance of public confidence in the profession, and declaring and upholding standards of conduct and performance within the profession.

The Committee first considered whether it would be appropriate to allow the current order to lapse at its expiry or to terminate it with immediate effect. Given Mr Musial's limited engagement with the GDC and insufficient remediation, the Committee has concluded that it would not be appropriate to terminate the current order or to allow it to lapse.

The Committee next considered whether a period of conditional registration would be appropriate in this case. The Committee is aware that in order for conditions to be appropriate and workable there would need to be some measure of positive engagement from Mr Musial. To date, he has not fully engaged with the GDC process or provided evidence of meaningful remediation, despite being given the opportunity to do so. The Committee further notes that he currently resides in Poland. In these circumstances, the Committee has concluded that replacing the suspension order with a conditions of practice order would not be workable or appropriate.

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 Musial's minimal engagement with the GDC over a sustained period of time. The Committee noted that it had power to order a further period of suspension for up to 12 months, in which period the public would be protected. However, the purpose of a further period of suspension would also be to allow Mr Musial to demonstrate his remediation of his past misconduct and impairment. It also noted that his original suspension having been imposed on 17 March 2017 had lasted for more than 2 years and that during that time the Committee considers very little progress has been made. There is no indication that this position will change with further reviews given Mr Musial's consistent lack of insight, limited remediation and his declared intention to remain outside the UK. 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. It therefore directs that Mr Musial's registration be suspended indefinitely.

The effect of the foregoing direction is that, unless Mr Musial exercises his right of appeal, his registration will be suspended indefinitely from the date on which the direction takes effect.

That concludes the case for today."