

PUBLIC HEARING**Professional Conduct Committee
Initial Hearing****12-13 February 2024**

Name: RAI, Yaïen
Registration number: 294371
Case number: CAS-200302-W1Q3J6

General Dental Council: Chris Saad, counsel
Instructed by Catlin Buckerfield, IHLPS

Registrant: Present
Unrepresented

Fitness to practise: Impaired by reason of misconduct

Outcome: Erased

Immediate order: Immediate order of suspension

Committee members: Edythe Murie (Chair, lay member)
Hall Graham (Dentist member)
Jennifer Cawley (DCP member)

Legal Adviser: Gerry Coll

Committee Secretary: Jennifer Morrison

Mrs Rai,

1. This is an initial Professional Conduct Committee (PCC) hearing, pursuant to Section 36P of the Dentists Act 1984 (as amended) ('the Act').
2. 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 General Dental Council (GDC) practice.
3. You were present at the hearing and were unrepresented.
4. Mr Chris Saad, counsel, appeared as case presenter on behalf of the GDC.

Background

5. On 6 October 2021, the Practice Principal ('the Informant') of 'Practice A', your employer at the time, informed the GDC that you and a colleague ('Registrant A') had purportedly cheated on the qualifying examination for the National Examining Board for Dental Nurses (NEBDN) Diploma in Dental Nursing. You and Registrant A had taken the two-part exam in November 2020 and December 2020 and had passed both parts of the exam. You subsequently applied for registration with the GDC and were admitted to the register as a dental nurse on 17 April 2021.
6. On 5 October 2021, the Informant had met with you to discuss the allegations. At the meeting, you reportedly admitted to having received unauthorised assistance via mobile phone from Person A during your dental nursing exam. You reportedly apologised for letting yourself and the practice down. As a result, Practice A suspended you from employment.
7. In addition to making a referral to the GDC, the Informant contacted the NEBDN for advice and guidance. Following an internal investigation, the NEBDN concluded that there was 'strong evidence' to support potential 'suspicious behaviour' from you and from Registrant A during your exam and that there was a 'high likelihood of cheating'.

Charges

'That being registered as a Dental Care Professional:

1. *In or around November 2020, whilst taking the examination specified in Schedule A, you:*
 - a. *Communicated with Person A (identified in Schedule A) for the purpose of obtaining their help in answering the examination questions.*
 - b. *Provided answers to the examination questions on the basis of your communication with Person A.*
2. *Your conduct in respect of 1(a) and/or 1(b) was dishonest.*
3. *In or around March 2021, you submitted an application for registration with the GDC relying on the qualification you obtained as a result of the examination.*
4. *Your conduct in respect of 3 was:*
 - a. *Misleading;*
 - b. *Dishonest;*
5. *Between 26 July 2021 and 5 October 2021, you worked as a Dental Nurse at Practice A identified in Schedule A.*
6. *Your conduct in respect of 5 was:*
 - a. *Unprofessional;*
 - b. *Misleading;*
 - c. *Dishonest.*

Schedule A:

The examination – NEBDN Diploma in Dental Nursing online examination

Person A – [REDACTED]

Practice A – [REDACTED]

Decision and reasons on the facts

8. The Committee considered all the evidence presented to it and accepted the advice of the Legal Adviser. It considered each head of 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.

Admissions

9. At the outset of the hearing, you made full admissions to all of the charges.

Committee's findings

10. In accordance with Rule 17(4) of the General Dental Council Fitness to Practise Rules 2006 (as amended) ('the Rules'), the Committee considered whether the charges are therefore found proved on the basis of your admissions without the need to adduce any further evidence. It heard no evidence that you had made the admissions under duress. The Committee acknowledged that you are unrepresented, but nonetheless, it was satisfied that you have understood the basis for, and the consequences of, the admissions.
11. Accordingly, the Committee finds all of the charges proved on the basis of your admissions under Rule 17(5).

Stage two

12. Having announced its decision on the facts, in accordance with Rule 20 of the Rules, the Committee heard submissions from Mr Saad in relation to the matters of misconduct, impairment and sanction. The Committee accepted the advice of the Legal Adviser.
13. The Committee reminded itself that its decisions on misconduct, impairment and sanction are matters for its own independent judgement. There is no burden or standard of proof at this stage of the proceedings. It had regard to its duty to protect the public, declare and uphold proper standards of conduct and competence and maintain public confidence in the profession. Where applicable, the Committee took into consideration the GDC's Standards for the Dental Team (September 2013) ('the Standards') and the Guidance for the Practice Committees, including Indicative Sanctions Guidance, (October 2016, revised December 2020) ('the Guidance'). The Committee also had regard to relevant case law.
14. Mr Saad first addressed the Committee on the matter of misconduct. He submitted that as per *Roylance v General Medical Council* [2000] 1 AC 311, the conduct found proved amounts to serious professional misconduct. Mr Saad submitted that your actions involved two separate cases of dishonesty, the first being you cheating on your dental nursing exam, and the second being you having obtained registration with those exam results. He submitted that the public is endangered by a registrant who has been permitted to practise based on a false demonstration of the skills and knowledge required.

15. Mr Saad referred the Committee to the GDC's Standards, submitting that you had breached standards 1.3, 1.7 and 7.2. These require you to be honest and act with integrity, to put patients' interests before your own, and to work within your knowledge, skills, professional competence and abilities.
16. In relation to the matter of impairment, Mr Saad submitted that your dishonesty was at the upper end of the spectrum of seriousness because of the connection between your dishonesty and your entitlement to practise. Furthermore, Mr Saad submitted that your dishonesty was premeditated and longstanding, in that having falsely obtained your qualification, you had practised for a considerable length of time before your deception was discovered.
17. With respect to the case of *CHRE v (1) NMC and (2) Grant* [2011] EWHC 927 (Admin), Mr Saad submitted that your misconduct showed a wilful disregard for public safety. He submitted that your dishonesty had brought the reputation of the profession into disrepute and had breached its fundamental tenets. Mr Saad further submitted that you had acted dishonestly in the past, and in the absence of any evidence of insight or remediation, you are liable to act dishonestly in the future.
18. Lastly, Mr Saad addressed the Committee on the matter of sanction. He submitted that as you have admitted cheating in order to obtain a qualification, it is only appropriate that you are prevented from continuing to practise under this qualification. Mr Saad submitted that given your stated intent to leave the profession, an order of conditions or a period of suspension with a review would serve no useful purpose. Furthermore, given the seriousness of your dishonesty, from which you obtained a personal gain, and the lack of evidence of any insight or remediation, Mr Saad submitted that the only appropriate and proportionate sanction is one of erasure.
19. You were invited to address the Committee on the matters of misconduct, impairment and sanction but declined to do so.

Decision and reasons on misconduct

20. The Committee first considered whether the facts found proved amount to misconduct. It found that your dishonest behaviour, both in cheating during your exam and then using the results of the qualification you gained through deception in order to obtain registration to which you were not entitled, were serious departures from professional standards. The Committee agreed with Mr Saad's submission that your conduct had breached standards 1.3, 1.7 and 7.2.
21. The Committee further considered that misleading one's regulator regarding the validity of a professional examination result is dishonesty of a particularly serious nature, as it shows a wilful disregard of the GDC's regulatory systems and their overarching purpose of public protection. The Committee concluded that your actions fell far below the expectations of a registered professional and amounted to serious professional misconduct.

Decision and reasons on impairment

22. The Committee then considered in turn whether your fitness to practise is currently impaired by reason of your misconduct.

23. The Committee was mindful of its role to protect patients from risk of harm and to uphold the public interest, which includes the need to declare and maintain proper standards of conduct and performance.
24. The Committee found that your misconduct placed patients at an unwarranted risk of harm. The purpose of professional examinations is to ensure that only people who have demonstrated the requisite knowledge and skills are allowed to practise a particular profession. As you have not legitimately passed the dental nursing exam, the public cannot be assured that you possess the level of skill and knowledge required to safely and effectively practise as a dental nurse.
25. The Committee next considered whether the misconduct found proved is remediable. It noted that dishonesty is said to be difficult to remediate, as it is an attitudinal failing. Nonetheless, the Committee went on to consider whether you have in fact remedied your failings.
26. The Committee was mindful that at this stage of proceedings, it is for a registrant to demonstrate that her fitness to practise is not currently impaired. As you have chosen not to address the Committee and have not provided any written information for the Committee's consideration, the Committee has before it no evidence that you have reflected on your misconduct or that you would act differently in the future in similar circumstances. Rather than take steps to attempt to remediate your dishonest behaviour, you have apparently chosen to leave the profession entirely.
27. For these reasons, the Committee considered that there is a high risk that you could repeat the misconduct it has found proved. It therefore concluded that a finding of impairment is necessary in the interest of public protection.
28. The Committee further considered that the nature of your dishonesty goes to the heart of professional standards and their purpose of promoting public trust and confidence in the dental profession and its practitioners. It found that your actions have brought the profession into disrepute and have breached the fundamental tenets of probity and integrity. Accordingly, the Committee concluded that public confidence in the profession and in the GDC as its regulator would be severely undermined if a finding of impairment in relation to misconduct was not made in the circumstances of this case. It therefore determined that a finding of impairment is in the public interest.

Decision and reasons on sanction

29. The Committee next considered what sanction, if any, to impose on your registration. It recognised that the purpose of a sanction is not to be punitive, although it may have that effect. The Committee applied the principle of proportionality, balancing your interests with the public interest. It also took into account the Guidance.
30. The Committee considered the mitigating and aggravating factors in this case as outlined in paragraphs 5.17 and 5.18 of the Guidance.
31. The Committee could not identify any mitigating factors in this case, although it noted that you admitted to the allegations at an early stage and apologised for your actions. You also have no previous fitness to practise history.

32. The aggravating factors in this case include:

- Dishonesty;
- Premeditated misconduct, in that your method of cheating would have required prior planning and coordination with Person A;
- Financial gain by you, in that through your dishonesty, you were able to obtain the benefit of registration and employment as a dental nurse, to which you were not entitled.
- Breach of trust;
- Misconduct sustained or repeated over a period of time;
- Blatant or wilful disregard of the role of the GDC and the systems regulating the profession; and
- No evidence of insight.

33. The Committee decided that it would be inappropriate to conclude this case with no further action. It would not satisfy the public interest, given the serious nature of the misconduct and the Committee's finding of current impairment.

34. The Committee then considered the available sanctions in ascending order starting with the least serious.

35. The Committee concluded that misconduct of this nature cannot be adequately addressed by way of a reprimand. It cannot be said to be at the lower end of the spectrum of seriousness. The public interest would not be upheld by the imposition of such a sanction. The Committee therefore determined that a reprimand would be inappropriate and inadequate.

36. The Committee then considered whether a conditions of practice order would be appropriate. It was not satisfied that workable conditions could be formulated that would address the attitudinal concerns inherent to your misconduct. Furthermore, since you apparently no longer wish to remain in the profession, the Committee was not satisfied that any conditions would be complied with. The Committee was also mindful that as you have, in fact, not demonstrated that you have met the requisite standards of practice for dental nursing, imposing conditions on your registration would, in effect, allow you to work without the proper qualification. It determined that conditions of practice would be neither sufficient nor appropriate to address the seriousness of your misconduct and uphold the public interest.

37. The Committee next considered whether to suspend your registration for a specified period. It questioned whether a suspension would be proportionate in all the circumstances of the misconduct it has found. Whilst the Committee acknowledged that a period of suspension with a review may provide an opportunity for reflection and for you to legitimately pass the dental nursing exam, it considered the message that would be sent to practitioners who obtained their qualifications honestly. Furthermore, such a course of action would diminish public confidence in the GDC's willingness to uphold standards of conduct for members of its professions.

38. The Committee further considered that you have provided no evidence of remediation or shown any insight into these serious matters. It was not satisfied that a sanction of suspension would be sufficient to mark the seriousness of your misconduct or to maintain public confidence in the profession and in the GDC as its regulator.

39. In considering whether the sanction of erasure was appropriate, the Committee had regard to paragraph 7.34 of the Guidance, which includes:

40. *‘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;*
- *serious dishonesty, particularly where persistent or covered up;*
- *a persistent lack of insight into the seriousness of actions or their consequences.’*

41. The Committee was satisfied that all of the above applied in the circumstances of this case. You have shown no insight into your behaviour, and your conduct was a serious departure from the standards expected of dental professionals. Given these reasons, the Committee concluded that your behaviour was so egregious that it is fundamentally incompatible with being a dental professional.

42. In all the circumstances, the Committee has determined to erase your name from the dental care professionals register.

43. The Committee invited submissions as to whether an immediate order should be imposed on your registration, pending the taking effect of its determination for erasure.

Decision and reasons on immediate order

44. The Committee has considered whether to make an immediate order against your registration in accordance with Section 30 of the Dentists Act 1984 (as amended).

45. Mr Saad submitted that in the light of the Committee’s finding of current impairment and its reasons for imposing a substantive order of erasure, an immediate order is necessary to restrict you from practising during the appeal period. He submitted that such an order is required in order to protect the public and to uphold public confidence in the profession.

46. The Committee is satisfied that an immediate order of suspension is necessary for the protection of the public and is otherwise in the public interest. The Committee concluded that given the nature of its findings and its reasons for the substantive order of erasure in your case, it is necessary to direct that an immediate order of suspension be imposed on both of these grounds. The Committee considered that, given its findings, if an immediate order of suspension was not made in the circumstances, there would be a risk to public safety and public confidence in the profession would be undermined.

47. The effect of this direction is that your registration will be suspended immediately. Unless you exercise your right of appeal, the substantive order of erasure will come into effect 28 days from the date on which notice of this decision is deemed to have been served on you. Should you exercise your right of appeal, this immediate order for suspension will remain in place until the resolution of any appeal.

48.The Committee also directs that the interim order of suspension currently in place on your registration be revoked.

49.That concludes this determination.