

Hearing held in public

Summary

Name:	IWANICKI, Jaroslaw Michal [Registration number:252779]
Type of case:	Professional Conduct Committee (Review)
Outcome:	Suspended indefinitely
Date:	12 April 2023
Case number:	CAS-194422

This is a resumed hearing pursuant to s 27C of the Dentists Act 1984. The hearing was conducted remotely using Microsoft Teams.

Background

On 6 January 2021, the Professional Conduct Committee (PCC) found Mr Iwanicki's fitness to practise to be impaired by reason of misconduct and directed that his registration be suspended for a period of six months with a review. The misconduct related to his orthodontic care and treatment of a patient ("Patient A") between 7 December 2016 and 8 May 2019 and was summarised by the January 2021 PCC as follows:

"The Committee took into account that its findings against Mr Iwanicki relate to a single patient, Patient A. However, there were failings across a number of fundamental areas of his clinical practice over the duration of Patient A's treatment, ranging from treatment planning to the provision of a good standard of care. Mr Iwanicki also failed to adhere to a fundamental tenet of the dental profession by not obtaining informed consent from the patient for the treatment he provided. In addition, there were significant failings in his record keeping of the patient's appointments, including records that were insufficiently detailed or incomprehensible.

Professor Willmot clearly set out in his written report, which he adopted in his oral evidence, his opinion that a number of Mr Iwanicki's failings fell far below the standard expected. Professor Willmot also highlighted the risk of harm to Patient A from the deficiencies identified in Mr Iwanicki's clinical practice, as well as the serious impact on the patient of his failure to obtain informed consent for the IPR, which involved the reduction of her teeth.

It was the view of the Committee that the evidence of Professor Willmot, which it accepted, demonstrated the gravity of the Mr Iwanicki's failings. It was satisfied on the evidence that the matters highlighted in this case represented a serious departure by Mr Iwanicki of the above GDC standards."

Mr Iwanicki was neither present nor represented before the PCC in January 2021. The PCC found from his written observations and responses at an earlier stage of the proceedings that he lacked insight into his clinical failings and that, on the evidence available to it, there was a risk of repetition. In deciding to impose a period of suspension rather than conditions, the PCC stated: *"...the shortcomings identified in his clinical practice are capable of being remedied. Therefore, they could potentially be addressed by way of conditions. However, given that Mr Iwanicki has not engaged with the hearing process and as a result there is no evidence relating to his insight or remediation, the Committee determined that conditional registration would not be workable or appropriate. In the circumstances, imposing conditions would not serve to protect the public or the wider public interest."*

The case was reviewed by the PCC on 30 July 2021. It found that Mr Iwanicki's fitness to practise continued to be impaired by reason of misconduct and directed that the suspension be extended by a further period of 12 months with a review. There continued to be no attendance or engagement from Mr Iwanicki.

The next review was held on 27 July 2022 when the PCC found that Mr Iwanicki's fitness to practise continued to be impaired by reason of misconduct and directed that the period of suspension be extended by a further period of 9 months with a review. Mr Iwanicki had attended the hearing on this occasion. The July 2022 PCC summarised his submissions as follows:

"You told the Committee that due to personal circumstances you are no longer living in the UK. You said that you feel "guilt" about the failings identified but you do not agree with all of the medical charges found proved. You said that you spoke with the patient at the time about consent and possible treatment plans as well as provided her with a leaflet about the procedure. However, you accept that you did not write this down, which you agreed you should have done.

You told the Committee that you are trying to do the best you can but you have no additional evidence to provide today as you have not been practising as a dentist. You said that you do not think that you want to work as a dentist in the UK again and requested that your name be removed from the GDC register."

In finding that Mr Iwanicki's fitness to practise continued to be impaired by reason of misconduct, the July 2022 PCC stated:

"...the burden is on you to demonstrate that you have remedied the failings found proved in your practice by showing evidence of reflection, education and remorse.

The Committee considered the oral evidence you provided, that you no longer wish to practice as a dentist in the UK. You have not provided any evidence of CPD or training, despite a number of letters sent to you by the GDC. The Committee noted the email, dated 16 December 2021, where the GDC gave you notice of this hearing review including recommendations as to what may assist a future reviewing Committee. The Committee therefore determined that

you have not fully remediated the concerns raised, that a risk to the public remains.

The Committee considered that a fully informed member of the public aware of the initial findings made and the lack of any evidence of remediation and/or insight from you, would be shocked if a finding of current impairment was not made...”

In directing that the period of suspension be extended by a further period of 9 months with a review, the July 2022 PCC stated:

“Given the lack of any remediation demonstrated, the Committee could not be satisfied that conditions would be workable or that they would be complied with. It also bore in mind your evidence, that you no longer wish to practice as a dentist in the UK. The Committee concluded that conditions would not be appropriate.

In the Committee’s judgement, a suspension order is required. In the circumstances, the Committee has determined that it would be appropriate and proportionate to extend the period of the suspension by nine months. It considers that this period of time is likely to be sufficient for you to reflect on whether you wish to fully engage with the process if you wish to return to the register...

Should you decide you do wish to engage, as indicated by the initial PCC, a committee reviewing your case may find it helpful to receive the following from him:

- *Evidence of your insight, including your reflections on the various failings identified in this case.*
- *Evidence of further training focused on the breaches of the standards set out in this determination.*
- *Evidence of any other relevant Continuing Professional Development.”*

The resumed hearing 12 April 2023

It is the role of the Committee today to undertake the review directed by the July 2022 PCC. Neither party was present at the hearing.

In its written submissions, the General Dental Council (GDC) asked that the hearing proceed in the absence of the parties and that the suspension be reviewed on the papers. Its position is that Mr Iwanicki’s fitness to practise continues to be impaired by reason of misconduct and that a direction for indefinite suspension should now be made.

In correspondence with the GDC in August 2022, Mr Iwanicki discussed an application for voluntary removal from the Register. As part of that correspondence, he stated that he did not accept the findings of fact against him which had been made in his absence by the initial PCC in January 2021. He stated that he had not been given notice of

those proceedings and that he had not been informed of his right of appeal. Mr Iwanicki stated that he would be content for his name to be removed from the Register but was unwilling to undergo the process of voluntary removal, as he felt this would mean that he would be “stigmatised forever”. This appeared to be in reference to his disagreement with the findings of fact which had been made by the initial PCC in January 2021 and his view that by applying for voluntary removal he would be affirming those findings. Although it is not entirely clear from the brief terms of his email correspondence, it appears that Mr Iwanicki’s position as at August 2022 remained that he no longer had any intention of returning to practise in the United Kingdom.

By email to the GDC on 11 March 2023 in respect of his attendance at the hearing today, Mr Iwanicki stated:

Since my health and financial circumstances do not allow me to attend the hearing and hire a legal representative on my behalf, I will not be able to attend the hearing.

During over 30 years of my work, despite a few failures, I have successfully treated many hundreds of patients. I am kindly asking for my job back.

The Committee therefore noted that Mr Iwanicki’s position may now be that he does wish to resume practice in the United Kingdom. The GDC responded to his email on 4 April 2023 to provide him with contact details of various organisations (“Advocate, Citizens Advice and Fitness to Practise Clinic - Legal Advice Centre”) which might be able to provide him with free legal advice. The email also asked him the following questions:

- 1. Whether you wish to seek a postponement of the hearing taking place on 12 April;*
- 2. If you wish to seek a postponement and this postponement is granted whether you intend on attending and/or being represented at the hearing;*
- 3. If you do not wish to seek a postponement, if you are content for the matter to proceed on the papers in the absence of the parties as proposed by the Council; and*
- 4. Whether there are any documents or information you wish to provide to the Committee.*

Mr Iwanicki was asked to respond by 6 April 2023. There was no record before the Committee of any response or other engagement from him.

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

The first consideration for the Committee was whether the notification of hearing had been served on Mr Iwanicki in accordance with the requirements of the General Dental Council (Fitness to Practise) Rules 2006 (the “Rules”).

The notification of hearing was sent to Mr Iwanicki’s registered address in Poland on 8 March 2023 by international signed delivery and secure email. Royal Mail ‘Track and

Trace' records that delivery of the international signed item was attempted on 22 March 2023 "*but there didn't seem to be anyone in*" and that a note was left about how to make further arrangements. The Committee was satisfied that the notification of hearing contained the required information under Rule 28 of the Rules, including the time, date and (remote) venue of this hearing; and that it had been served on Mr Iwanicki in accordance with the requirements of Rule 65 by virtue of its being sent by post to his registered address. Proof of delivery is not required under the Rules for service to be effected.

The next consideration for the Committee was whether to proceed with the hearing in Mr Iwanicki's absence. This is a discretion under Rule 54 of the Rules which must be exercised with great care and caution. The Committee was satisfied that the GDC had made all reasonable efforts to send notice of this hearing to Mr Iwanicki. It is unclear from the tracking information whether the hard copy of the notification of hearing had in fact been delivered to his registered address. However, it was clear that he was aware of today's hearing and its purpose as he had responded on 11 March 2023 to the emailed notification of hearing to confirm that he would not be attending the hearing, as quoted above. He has not provided any further detail or evidence in support of the health and/or financial circumstances which he stated affect his ability to attend this remote hearing. He also has not applied for a postponement of the hearing.

The Committee noted from the terms of the notification of hearing that Mr Iwanicki was informed by the Dental Professionals Hearings Service (DPHS) that a link to access this hearing would be sent to him and that "*This is usually sent one day before the hearing is scheduled to start*". No such link was in fact sent, as it is not the practice of the DPHS or the GDC to send a link to the registrant for hearings which are anticipated to be on the papers. The Committee considered this inconsistency in the formal terms of the notification of hearing with the working practice of the DPHS to be unsatisfactory and potentially prejudicial, as the practical effect might be that a registrant would be unable to gain access to their own hearing if they were to decide at short notice that they wished to attend. The Committee therefore delayed the start time of the hearing today to allow inquiries to be made with the GDC to ascertain whether there had been any contact from Mr Iwanicki with either the GDC or the DPHS regarding his attendance at the hearing. The GDC confirmed through the Committee Secretary that there had been no such contact from Mr Iwanicki.

Having regard to all the circumstances, the Committee determined that Mr Iwanicki's absence from the hearing today was voluntary. There was nothing to suggest to the Committee that adjourning the hearing would make his attendance any more likely before the expiry of the current period of suspension on 7 May 2023. Balancing Mr Iwanicki's interests with the public interest in the prompt review of this case before expiry of the current order, the Committee determined that it would be fair and in the public interest to proceed with the hearing, notwithstanding his absence. He was aware of this hearing and its purpose and had voluntarily absented himself in circumstances where there was no application for a postponement and nothing to indicate that an adjournment would make his attendance any more likely in the foreseeable future.

The Committee further determined to proceed in the absence of the GDC and to review the suspension on the papers.

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

The Committee first determined that Mr Iwanicki's fitness to practise continues to be impaired by reason of misconduct. There has also only been very limited engagement from him in these proceedings. He does not accept the findings of fact of the original PCC, a position that he is at liberty to adopt. However, he has shown no evidence of insight into the seriousness of the concerns raised by those findings or the allegations that lay behind them. The clinical failings found proved were serious and spanned a period of years. Whilst such failings are remediable through learning, reflection and evidence of embedded improvement in practice, there was no such evidence before the Committee. Neither was there any evidence of the wider more general remedial steps to maintain fitness to practise relating to Continuing Professional Development (CPD) activity and a Personal Development Plan, which a reviewing Committee would ordinarily expect to see. There was no evidence before the Committee that Mr Iwanicki had undertaken any CPD during the period of his suspension or of any meaningful reflection into his misconduct.

The Committee determined that there remains a real risk of repetition and therefore a real risk of harm to patients should Mr Iwanicki be allowed to resume orthodontic practice without any restriction on his registration.

The Committee also considered that public confidence in the profession and in this regulatory process would be undermined if a finding of continued impairment were not made, owing to the seriousness of Mr Iwanicki's clinical failings.

Accordingly, the Committee determined that Mr Iwanicki's fitness to practise continues to be impaired by reason of his misconduct.

The next consideration for the Committee was what further action, if any, to take in respect of Mr Iwanicki's registration.

The Committee was satisfied that the continued restriction of Mr Iwanicki's registration remains necessary for the protection of the public and to maintain public confidence in the profession and its regulation. The Committee could not be satisfied that conditions of practice could be formulated to be workable, measurable and proportionate. This is because of Mr Iwanicki's lack of full engagement in these proceedings, the fact that he is not currently practising in the United Kingdom and his persistent lack of any meaningful insight or remediation.

Accordingly, the Committee determined that the suspension of Mr Iwanicki's registration remains necessary and proportionate. The Committee could identify no benefit in directing that the suspension be extended by a further specific term, as no specified period of up to 12 months is likely to result in full engagement from Mr Iwanicki and evidence of insight and remediation: a reviewing Committee in 12 months' time is unlikely to be in any different a position to the Committee today in

terms of these matters. Mr Iwanicki has already had ample opportunity to fully engage in these proceedings to provide some meaningful evidence of insight and remediation, but he has not done so.

The opportunity now arises for indefinite suspension, given the period over which Mr Iwanicki's registration has already been suspended. In the Committee's judgement, indefinite suspension is now the appropriate sanction.

Accordingly, the Committee gives a direction for indefinite suspension. Should Mr Iwanicki wish to apply for a review of the indefinite suspension he has the right to do so after a period of two years have passed following the taking effect of the direction.

That concludes this hearing.