

**HEARING HEARD IN PUBLIC
SMOLKA, Aleksandra Krystyna
Registration No: 254253**

PROFESSIONAL CONDUCT COMMITTEE

October 2021

Outcome: Erased with Immediate Suspension

SMOLKA, Aleksandra Krystyna, a dentist, Lek Stom Katowice 1995, was summoned to appear before the Professional Conduct Committee on 13 October 2021 for an inquiry into the following charge:

Charge

“That, being a registered dentist:

1. From 10 February 2020 to 07 January 2021, you failed to fully cooperate with an investigation conducted by the GDC into your fitness to practise, in that when asked to do so, you did not provide the GDC with:
 - a. a medical reference from your GP/Medical Practitioner.
 - b. consent to undergo a health assessment.

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

As Ms Smolka did not attend and was not represented at the hearing, the Chairman made a statement regarding proof of service on 13 October 2021.

“Ms Smolka was neither present nor represented at this hearing. In her absence, the Committee first considered whether notice of this hearing had been served in accordance with rules 13 and 54 of the *General Dental Council (Fitness to Practise) Rules Order of Council 2006* (the rules).

The Committee received a copy of the Notification of Hearing, dated 2 September 2021, which was sent to Ms Smolka by way of International Track and Trace post and by email. The Committee was aware that the rules require proof of sending and not proof of delivery of the notice, however it also had sight of an extract from the Royal Mail Track and Trace website showing that the item was delivered on 7 September 2021.

The Committee was satisfied that the General Dental Council (GDC) had taken all reasonable steps to serve notice of this hearing on Ms Smolka. The Committee concluded that the notice 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 hearing in the absence of Ms Smolka.

The Committee was satisfied, having regard to the submissions made by Mr Hamlet on behalf of the General Dental Council (GDC) and the advice of the Legal Adviser, that the notice of this hearing was served on Ms Smolka in accordance with the rules.

Proceeding in absence

The Committee then considered proceeding in the absence of Ms Smolka. The Committee had regard to the submissions made by Mr Hamlet and the advice of the Legal Adviser.

The Committee was mindful that this discretion must be exercised with the utmost care and caution as referred to in the case of R. v Jones (Anthony William), (No.2) [2002] UKHL 5. The Committee was aware that this discretion was not absolute, but it must consider all the circumstances of Ms Smolka's absence, when reaching any decision regarding proceeding in her absence.

In deciding whether to proceed in the absence of Ms Smolka, the Committee weighed its responsibilities for public protection and the expeditious disposal of the case with Ms Smolka's right to a fair hearing.

The Committee noted that Ms Smolka has not engaged with the GDC and has not substantively responded to attempts by the GDC to contact her regarding this hearing. Previous correspondence from Ms Smolka related to her expressing that she no longer wished to be on the Register, however no completed request for Voluntary Removal has been submitted by her. The Committee considered that it is unlikely that any adjournment, although none has been sought, would serve any useful purpose in the circumstances nor would it be likely to result in Ms Smolka's attendance on any future date. Accordingly, the Committee has concluded that Ms Smolka has voluntarily waived her right to attend today.

Having weighed the interests of Ms Smolka with those of the GDC and the public interest in an expeditious disposal of this hearing, the Committee has determined to proceed in her absence.

FINDINGS OF FACT – [13 October 2021]

In reaching its decisions on the facts, the Committee considered all the evidence presented in this case. The Committee had regard to the submissions made by Mr Hamlet on behalf of the GDC.

The Committee accepted the advice of the Legal Adviser. In accordance with that advice, it has considered each charge separately.

The Committee was conscious that the burden of proof rests on the GDC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that the facts of a charge will only be proved if the Committee finds that it is more likely than not that the facts occurred as alleged. The Committee reminded itself that Ms Smolka was not required to prove or disprove anything.

The allegations giving rise to this hearing relate to Ms Smolka failing to cooperate with an investigation into her fitness to practise carried out by the GDC into matters separate to this hearing. It is alleged that Ms Smolka failed to provide the documentation relating to her health that was requested as part of the GDC's investigation.

The evidence put before the Committee consisted of a number of documents, including a witness statement from a GDC Paralegal who exhibits, among other documentation, the correspondence between the GDC and Ms Smolka as part of the GDC investigation that forms the basis of these allegations.

The Committee made the following findings:

1.	<i>From 10 February 2020 to 07 January 2021, you failed to fully cooperate with an investigation conducted by the GDC into your fitness to practise, in that when asked to do so, you did not provide the GDC with:</i>
1.a)	<i>a medical reference from your GP/Medical Practitioner.</i>
1.b)	<i>consent to undergo a health assessment.</i>
<p>Found Proved in its entirety</p> <p>The Committee had sight of the correspondence between the GDC and Ms Smolka. The timeline of these are as follows:</p> <p>The GDC sent a letter, dated 27 January 2020, to Ms Smolka informing her that concerns had been raised regarding her health and requesting information to assist with the initial consideration of these concerns. Two of the items that were requested by the GDC were a medical reference from her GP or another medical practitioner, and Ms Smolka's consent to undergo a health assessment, templates were provided to Ms Smolka for both of these. These items were requested to be returned to the GDC by 10 February 2020.</p> <p>On 9 March 2020 the GDC sent, via mail and email, another letter to Ms Smolka again requesting these documents and extending the time for her to return them until 16 March 2020. A download receipt was received confirming that the documents sent to Ms Smolka's email address had been downloaded.</p> <p>On 25 March 2020 Ms Smolka emailed the GDC requesting that her registration be cancelled. On 1 April 2020 the GDC caseworker responded to Ms Smolka's email providing the link for Voluntary Removal and also confirming that the investigation would continue.</p> <p>On 20 April 2020 the GDC wrote to Ms Smolka to confirm that her case would be going before the Case Examiners and requesting documentation as part of that process. On 25 April 2020 Ms Smolka responded to the email requesting that the documents be resent. These were resent to her on 27 April 2020.</p> <p>On 29 April 2020 Ms Smolka again emailed the GDC caseworker thanking her for the information and again requesting that her registration be cancelled and stating that she would not be presenting anything as she has a 'right to be deleted'.</p> <p>On 21 May 2020 the GDC again wrote to Ms Smolka confirming that the matter was being put before the Case Examiners and again asking if she had any comments she wished to be considered. Ms Smolka responded to the email on the same date again requesting that her name be deleted from the register and confirming she would not be presenting anything.</p> <p>Another letter was sent to Ms Smolka explaining the Voluntary Removal process and the steps that she would need to take in order to make the formal request for Voluntary Removal. It was also confirmed that the Voluntary Removal application cannot be processed without the declaration and supporting documents.</p> <p>On 18 June 2020 the GDC emailed Ms Smolka confirming that the declaration form had been received, however explained that it could not be accepted without it being witnessed by a lawyer.</p> <p>On 21 July 2020 Ms Smolka emailed the GDC demanding that her name be</p>	

removed from the register and stating that she will not send any documents to the GDC or pay any fees.

On 26 August 2020 Ms Smolka was sent a letter confirming that her case had been referred to the Professional Conduct Committee.

On 16 October 2020 the GDC Lawyer with conduct of Ms Smolka's case wrote to her to request, once again, that she provide a reference from her GP or another medical practitioner, and her consent to undergo a health assessment. The templates for these were also sent to Ms Smolka again on this date.

Further attempts were made by the GDC to contact Ms Smolka but no response was received from her.

The Committee was aware that the lack of submission of documents pertaining to Voluntary Removal do not form part of the charge, however it considered this in the overall context of the correspondence timeline during this period.

The Committee was satisfied, based on the documentation before it, that Ms Smolka was under a duty to cooperate with the GDC investigation into her fitness to practise, as outlined by the Standards for the Dental Team. There is evidence to demonstrate that multiple attempts were made to obtain this information from Ms Smolka and she failed to provide any of the necessary information. The first date that Ms Smolka was asked to provide these documents and failed to do so was 10 February 2020, and by 7 January 2021 Ms Smolka has still not provided the necessary documentation despite multiple requests and has not provided any reason as to why she has not provided these documents, apart from her stating that her health is fine.

Accordingly, the Committee finds this charge proved in its entirety.

We move to Stage Two.”

On 13 October 2021, the Chairman announced the determination as follows:

“Having announced its findings on all the facts, the Committee heard submissions on the matters of misconduct impairment and sanction.

The Committee's task at this stage of the hearing has been to consider whether the facts found proved against Ms Smolka amount to misconduct and, if so, whether her fitness to practise is currently impaired by reason of that misconduct. If current impairment were to be found the Committee would then be required to consider the issue of sanction.

The Committee considered all the evidence presented to it, including the further documentation provided by Mr Hamlet at this stage. Nothing has been provided by Ms Smolka.

Mr Hamlet submitted that, in summary, misconduct is acts or omissions which amount to a serious departure from the standards reasonably expected of a professional. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a practitioner in the particular circumstances. He submitted that the misconduct must be serious. In assessing the question of misconduct, Mr Hamlet invited the Committee to determine whether the facts found proved breach the standards in place at the time of the incidents. He identified the paragraphs of the Standards which he submitted have

been breached. Mr Hamlet submitted that the breaches in this case are serious and do amount to misconduct.

Mr Hamlet then moved on to the issue of current impairment and addressed the Committee on the factors that it must consider, including Ms Smolka's level of insight and any remediation. He also referred the Committee to the previous finding of the PCC, in relation to clinical matters, in 2018 whereby Ms Smolka has been made subject to a suspension order. He referred to the findings of the Committee that there had been a total disengagement from Ms Smolka, and took the Committee through the findings of the review Committee in December 2020 whereby there was a determination relating to a pattern of failing to engage and her suspension order was extended for a further period of 12 months. Mr Hamlet reminded the Committee that although Ms Smolka has expressed her intention not to return to work as a dentist in the UK, if there was no restriction on her registration, she could change her mind at any point.

Mr Hamlet referred the Committee to the case of Ronald Jack Cohen v General Medical Council [2008] EWHC 581 (Admin). He submitted that the Committee must also have regard to the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the GDC as a regulatory body. Mr Hamlet referred the Committee to the test set out in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin). He submitted that Ms Smolka's conduct in this case warrants a finding of current impairment on public interest grounds.

Mr Hamlet next addressed the matter of sanction and invited the Committee to take into account Ms Smolka's previous FtP history. He outlined the aggravating and mitigating factors in this case which the Committee must consider when looking at sanction. Mr Hamlet submitted that, given Ms Smolka's history with her regulator and her complete lack of insight, the realistic starting point for the Committee is that of suspension. However, the Committee must consider whether the aggravating factor of her history and the fact that there has been no change since she has been suspended and another period of suspension would serve no purpose. He invited the Committee to consider whether erasure would be the only appropriate sanction in these circumstances. He referred the Committee to the *Guidance for the Practice Committees* as published by the GDC.

The Committee took account of the submissions made by Mr Hamlet in relation to misconduct, impairment and sanction. It accepted the advice of the Legal Adviser.

Decision on Misconduct:

When determining whether the facts found proved amounted to misconduct the Committee had regard to 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 has concluded that Ms Smolka's conduct was in breach of the *Standards for the Dental Team* (2013) as set out below.

Standard 9.4

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

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

The Committee appreciated that breaches of the Standards do not automatically result in a finding of misconduct. However, the Committee was of the view that the breaches in this case were serious and capable of undermining public confidence in the profession.

The Committee was of the view that the findings in this case represent a significant departure from, and fell far below, the standards expected of a registered dental professional. In failing to cooperate with an investigation into her fitness to practise Ms Smolka demonstrated a disregard for the expectations and authority of her regulator and the Committee was of the view that this behaviour would be regarded as deplorable by her fellow professionals.

The Committee concluded that the facts found proved amounted to misconduct that is serious.

Decision on Impairment

The Committee then went on to consider whether Ms Smolka's fitness to practise is currently impaired by reason of misconduct. In doing so, it has exercised its own independent judgement. Throughout its deliberations, it has borne in mind that its primary duty is to address 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.

The Committee was of the view that the misconduct found is remediable. However, it had nothing before it to demonstrate that Ms Smolka has taken any steps to remedy her misconduct or that she takes responsibility for her failure to cooperate, despite the multiple attempts to get her to engage with the investigation. Regarding insight, the Committee considered that in the absence of any evidence from Ms Smolka to demonstrate that she has accepted accountability for her misconduct and demonstrated an understanding of why what she did was not acceptable, the only conclusion that can be made is that she lacks insight into the seriousness of her behaviour and the impact on the profession and the public interest. The Committee was of the view that, the findings in this case, the disregard for the authority of her regulator, is behaviour related to character and in the absence of any evidence of insight or remediation the Committee cannot be satisfied that the risk of repetition is unlikely.

The Committee has borne in mind that its primary function is not only to protect patients but also to take account of the wider public interest, which includes maintaining confidence in the dental profession and the GDC as a regulator and upholding proper standards and behaviour.

Dental professionals occupy a position of privilege and trust in society and must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession. In this regard the Committee considered the judgment in the case of Grant in which it was made clear that the Committee's considerations should include whether public confidence would be undermined if no finding of current impairment were made.

Ms Smolka has brought the profession into disrepute and breached a fundamental tenet of the profession through her behaviour. The Committee was satisfied that the misconduct

identified was sufficiently serious that the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances of this case.

Having regard to all of this the Committee has concluded that Ms Smolka's fitness to practise is currently impaired by reason of misconduct.

Decision on sanction

The Committee next considered what sanction, if any, to impose on Ms Smolka's registration. It recognised that the purpose of a sanction is not to be punitive, although it may have that effect, but rather to protect patients and the wider public interest.

The Committee has taken into account the GDC's '*Guidance for Professional Committees*'. The Committee applied the principle of proportionality, balancing the public interest with Ms Smolka's own interests. The Committee has considered the range of sanctions available to it, starting with the least serious.

The Committee considered the mitigating circumstances outlined in the guidance. In the absence of any engagement from Ms Smolka the Committee concluded that there were no mitigating factors present in this case.

The aggravating factors include:

- 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;
- previous warnings, convictions or other adverse findings;
- lack of insight.

In the light of the findings against her the Committee has determined that it would be inappropriate to conclude this case without taking any action or with a reprimand, as neither would address the failure to cooperate found or the history of non-engagement. Further, the Committee considered that to take no action or to impose a reprimand would send the wrong message to the public about the standards they should expect of a registered dental professional.

The Committee next considered whether a period of conditional registration would be appropriate in this case. The Committee was mindful that any conditions imposed must be proportionate, measurable and workable. The Committee determined that given the nature of the misconduct which involved non-cooperation rather than clinical failings, it would not be possible to formulate appropriate and practical conditions which would address the fundamental issues identified in this case. Further, the Committee considered that conditions of practice would not be sufficient to address the public interest and in the absence of any demonstration of insight or willingness to comply, conditions would not be workable.

The Committee then considered whether a suspension order would be proportionate and appropriate in this case. The Committee is in no doubt that the misconduct identified was wholly unacceptable and, in its view, damaging to the reputation of the profession and to the public's confidence in the profession. The Committee had regard to the guidance in respect of imposing a suspension order.

The Committee was of the view that taken in isolation the misconduct may warrant the imposition of a suspension. However, when considering the aggravating factors, the history of persistent non engagement and Ms Smolka's lack of insight, and the risk of repetition, the Committee was not satisfied that a period of suspension would be sufficient.

The Committee also considered that there is evidence of repetition of the behaviour that led to this case, through her continued non engagement with the GDC throughout this investigation, including preventing the GDC from investigating serious concerns in relation to her health. Ms Smolka has shown an ongoing wilful disregard for her regulator and the Committee determined that a period of suspension would serve no purpose as there was no evidence that she has any insight or is willing to address the misconduct through remediation.

The Committee considered that all of the evidence it had considered during the course of this hearing demonstrate that Ms Smolka's misconduct is fundamentally incompatible with her remaining on the Register. There is no expression of remorse, no insight or remediation and a persistent lack of engagement and cooperation with the GDC investigation. Despite multiple attempts to get Ms Smolka to engage she has chosen not to, and the Committee considered that this would not change were a period of suspension to be imposed. Further anything short of erasure would undermine the public confidence in the profession.

The Committee considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standards of conduct required of a registered dental professional at all times.

The Committee was aware that the effect of this order is that Ms Smolka will be prevented from working as a registered dental professional using a GDC registration. This could result in financial hardship, though the Committee received no direct information about that matter apart from her assertion that she did not intend to return to the UK to work as a dentist. However, in applying the principle of proportionality, the Committee determined that Ms Smolka's interests in this regard are outweighed by the need for protection of the wider public interest.

Immediate Order:

Having directed that Ms Smolka's name be erased from the register, the Committee had to consider, in accordance with rule 22(2), whether to impose an immediate order to cover the appeal period, or until any appeal against the outcome is heard.

The Committee has considered the submissions made by Mr Hamlet that an immediate order should be made on the grounds that it is necessary for the protection of the public and is otherwise in the public interest. He applied for this order to cover any possible appeal and submitted that this would be compatible with the Committee's findings.

The Committee accepted the advice of the Legal Adviser.

The Committee was satisfied that an immediate order of suspension was necessary for the protection of the public and was otherwise in the public interest. The Committee concluded that given the seriousness and the specifics of its findings and its determination that an order of erasure is required, as well as Ms Smolka's lack of insight and the identified risk of repetition, to direct otherwise would be wholly inappropriate as this may allow Ms Smolka to return to work in the intervening time. The Committee considered that, given its findings, a properly informed member of the public would be surprised if an immediate order were not

made in the circumstances and public confidence in the profession and in the GDC as its regulator would be undermined.

If, at the end of the appeal period of 28 days, Ms Smolka has not lodged an appeal, this immediate order will lapse and will be replaced by the substantive direction of erasure. If she does lodge an appeal, this immediate order will continue in effect until that appeal is determined.

Unless Ms Smolka exercises her right of appeal, her name will be erased from the register 28 days from today.

That concludes this case.”