

Hearing held in public

Summary	
Name:	FOLTA, Tomas [Registration number: 101515]
Type of case:	Professional Conduct Committee (review)
Outcome:	Suspended indefinitely
Duration:	N/A
Date:	6 December 2021
Case number:	CAS-189912

Neither party is present at this resumed hearing of the Professional Conduct Committee (PCC). The hearing is being conducted remotely using Microsoft Teams in line with the GDC's current practice. The GDC has invited the Committee to conduct the hearing on the papers in the absence of both parties.

Purpose of hearing

The purpose of today's hearing is to review a substantive direction of suspension first imposed on Mr Folta's registration by the PCC on 24 September 2019. The hearing is being held in accordance with section 27C (1) of the Dentists Act 1984 (as amended) ('the Act').

Service

The Committee first considered whether service has been properly effected in accordance with the General Dental Council (Fitness to Practise) Rules 2006 ('the Rules').

In its written representations to the Committee the GDC has submitted that Mr Folta has been properly notified of today's hearing in accordance with Rule 28 of the Rules. The Committee noted that a notice of hearing was sent to Mr Folta's registered address on 21 October 2021 using the Royal Mail's Special Delivery postal service. That notice set out the date and time of the hearing, as well as confirming the remote nature of the hearing and the powers available to the Committee. A copy of the notice was also sent to Mr Folta's known email address. The Royal Mail's Track and Trace service records that an attempt was made to deliver the notice on 22 October 2021, but that there did not seem to be anyone at the address. The notice was subsequently returned to the GDC's offices by the Royal Mail with the information that the notice had not been called for.

The Committee accepted the advice provided by the Legal Adviser. Having regard to the GDC's submissions and the evidence placed before it the Committee was satisfied that service has been effected in accordance with the Rules.

Proceeding in absence

The Committee then went on to consider whether to exercise its discretion to proceed in the absence of Mr Folta, and indeed of all parties, in accordance with Rule 54 of the Rules. It was mindful that its discretion to proceed in the absence of a registrant must be exercised with the utmost care and caution. The Committee notes that the GDC has invited the Committee to proceed in the absence of Mr Folta and to conduct the hearing on the papers alone.

The Committee accepted the advice of the Legal Adviser. It determined that it would be appropriate to proceed in the absence of Mr Folta, and indeed of both parties. The Committee is mindful of the public interest in seeing an expeditious review of the extant order, particularly given the imminent expiry of the current direction of suspension. The Committee considers that an adjournment, which has not been sought by Mr Folta, would be unlikely to secure his attendance, particularly given his previous non-attendance at PCC hearings. The Committee considers that Mr Folta has been given every opportunity to attend, but has voluntarily absented himself. In the circumstances the Committee was content to proceed in Mr Folta's absence, and for the hearing to take place on the papers.

Existing order

In September 2019 the PCC held a hearing of inquiry in respect of allegations relating to Mr Folta's conduct. Mr Folta was not present at the hearing, and was not represented in his absence. Following its inquiry as to the facts the Committee determined that Mr Folta's fitness to practise was impaired by reason of his misconduct. The Committee's findings related to the standard of care that he provided to a number of patients in the overall period of October 2010 to January 2015. The Committee also determined that a finding of impairment was in the wider public interest. At the conclusion of the hearing the Committee determined that it was appropriate and proportionate to suspend Mr Folta's registration for a period of two months, with a review hearing to take place prior to the end of that period of suspended registration. The Committee also made recommendations as to the evidence that Mr Folta might provide which the future reviewing Committee might find helpful, including evidence of remediation and continuing professional development (CPD), and reflections on the Committee's findings.

The PCC reviewed Mr Folta's suspension on 27 November 2019. Mr Folta was not present at the hearing, and was not represented in his absence. The Committee determined that Mr Folta has not demonstrated sufficient remediation of his misconduct. The Committee determined that his fitness to practise remained impaired, and that a finding of current impairment was also required to maintain public confidence in the profession. The Committee determined to extend the period of suspension by 12 months, with another review hearing to take place prior to the expiry of that extended period of suspension. The reviewing Committee again made recommendations as to the evidence that Mr Folta might provide to the next reviewing Committee in the same terms as those expressed by the index Committee in September 2019.

The extended period of suspension was next, and most recently, reviewed by the PCC on 26 November 2020. Mr Folta was again not present at the hearing, and was not represented in his absence. The Committee considered that Mr Folta's misconduct was remediable, but that as he had not provided any evidence of remediation, and indeed had not engaged, his fitness to practise remained impaired. The Committee also determined that a finding of current impairment was again also required to maintain public confidence in the profession. The Committee determined to extend the period of suspension by 12 months, with another review hearing to take place prior to the expiry of that extended period of suspension.

It falls to this Committee today to once more review Mr Folta's suspension.

Submissions

In their written submissions to the Committee the GDC submitted that, as Mr Folta has not provided any information to address the concerns that were identified by the previous Committees, Mr Folta's fitness to practise remains impaired by reason of his unremediated misconduct. The GDC invited the Committee to make a direction of indefinite suspension from the register.

The Committee has not received any written submissions, or indeed any information, from Mr Folta in relation to this review hearing.

Committee's determination

The Committee has carefully considered all the information presented to it, including the written documentation and submissions provided by the GDC. In its deliberations the Committee has had regard to the GDC's *Guidance for the Practice Committees, including Indicative Sanctions Guidance* (October 2016, updated December 2020). The Committee has accepted the advice of the Legal Adviser.

Impairment

The Committee has determined that Mr Folta's fitness to practise remains impaired. It notes that Mr Folta has not engaged in any way with these proceedings since the last review. The Committee is mindful that there is a persuasive burden on Mr Folta to demonstrate that his fitness to practise is no longer impaired. At the last review hearing a number of recommendations were made in relation to what Mr Folta might do to remedy his misconduct. Mr Folta has not provided this or any other evidence. In light of the absence of any information or evidence to suggest that Mr Folta has, or intends to, remedy the misconduct giving rise to the index finding of impairment, the Committee finds that Mr Folta's fitness to practise remains impaired. The Committee also finds that a finding of impairment is also required to maintain public trust and confidence in the profession.

Sanction

The Committee next considered whether it would be appropriate to revoke the suspension, or to replace the suspension with a direction of conditional registration.

The Committee considered that revoking the suspension would be wholly insufficient to protect the public and would also undermine public trust and confidence in the profession given its finding of current impairment.

The Committee next considered whether it could formulate conditions which would be workable and which would address the ongoing risks that have been identified. The Committee concluded that a direction of conditional registration would be insufficient to protect the public. A direction of conditions would also undermine public trust and confidence in the profession. The Committee notes that Mr Folta has not engaged with these proceedings. In the absence of his engagement the Committee is not able to identify conditions which would be workable, and it also considers that conditions would be unlikely to be complied with on account of Mr Folta's persistent and longstanding lack of participation.

The Committee then went on to consider whether it would be appropriate to extend the current period of suspension. The Committee considers that a further extension of the current direction of suspension would serve little purpose on account of what appears to be a settled pattern of non-engagement from Mr Folta. The Committee is mindful of the public interest in the efficient regulation of the profession, and it considers that a further direction of suspension with a review would not represent an effective and proportionate use of the GDC's resources.

In the circumstances, the Committee considers that a direction of indefinite suspension is the appropriate and proportionate sanction in the current circumstances. The Committee hereby directs that Mr Folta's registration be suspended indefinitely in accordance with section 27C (1) (d) of the Act. This indefinite suspension will take effect from the date on which the existing period of suspension would otherwise expire, namely 24 December 2021.

Right of appeal

Mr Folta will have 28 days from the date on which notice of this decision is deemed to have been served on him to appeal against this decision. Should he decide to appeal, the extant suspension will remain in force until the resolution of any such appeal. Should he decide not to appeal, the current suspension will become indefinite on the date on which it would otherwise expire, namely on 24 December 2021.

Subsequent reviews

This direction may be reviewed in accordance with the provisions of section 27C (4) of the Act. More particularly, Mr Folta may, after two years have elapsed from the date on which this direction of indefinite suspension takes effect, ask for the indefinite suspension to be reviewed.

That concludes this case for today.