

HEARING HEARD IN PUBLIC

NAGRA, Sundip Singh

Registration No: 150170

PROFESSIONAL CONDUCT COMMITTEE

OCTOBER 2020

Outcome: Erased with Immediate Suspension

NAGRA, Sundip Singh, a dentist, BDS University of Birmingham 2008, was summoned to appear before the Professional Conduct Committee on 28 September 2020 for an inquiry into the following charge:

Charge

"That being registered as a dentist:

1. While an associate at IDH/mydentist, you took payments directly from patients, namely:
 - a. Patient B on or around 19 September 2016;
 - b. Patient C on or around 18 October 2016;
 - c. Patient D on or around June 2017;
 - d. Patient E on or around 24 October 2017;
 - e. Patient F on or around December 2017;
 - f. Patient G on or around 26 April 2018;
 - g. Patient H on or around 16 May 2018;
 - h. Patient I on or around 28 November 2018.
 - i. As amended - Patient 1 on or around 28 November 2017.
2. In relation to one or more of these payments:
 - a. You did not process the payment through IDH/mydentist's agreed process;
 - b. You deprived IDH/mydentist of money due to it.
3. Your conduct at allegation 1 and/or 2 above was financially motivated.
4. Your conduct at allegation 1 and/or 2 and/or 3 above was:
 - a. Misleading;
 - b. Lacking in integrity;
 - c. Dishonest"

And that by reason of the above your fitness to practise is impaired by misconduct"

On 28 September 2020 the Chairman made the following statement regarding the finding of facts:

“Mr Nagra

The Committee has taken into account all the evidence presented to it. It has accepted the advice of the Legal Adviser. In accordance with that advice it has considered each head of charge separately.

You are present and you are represented by Mr Haycroft, Counsel. Ms Bo-Eun Jung, Counsel, appears on behalf of the General Dental Council (GDC).

At the outset of the hearing Ms Bo-Eun Jung made a preliminary application under Rule 18(1) of the GDC (Fitness to Practise) Rules (the Rules) to amend the charge. She invited the Committee to amend head of charge 1.i. to change the date from 2018 to 2017. Mr Haycroft confirmed that he had no objection to the amendment of that head of charge. Accordingly, it acceded to Ms Bo-Eun Jung's application and has agreed to amend head of charge 1.i.

Background

In early June 2018, Witness SJ (Treatment Co-ordinator at Hinckley Practice at the relevant time), during a routine review of the private revenue of the practice, SJ came across an entry for a private patient (Patient I) attending with you for 'in-surgery' tooth whitening. This was unusual as the practice did not perform this treatment. She reported the matter to the Practice Manager (Witness GF) and an investigation followed.

Upon retrieving the patient's file, they discovered a letter to the patient's solicitor asking for money to be sent directly to your personal bank account.

As part of the investigation, Ms J, Ms GF and your dental nurse, went through other private patient records and compared the contents with what was on the Practice's software. They found paperwork on the files which suggested that fees were due from patients but there were no corresponding charges or payments found on the Practice's case management software.

Upon conducting a full review into the matter, Witness GF discovered that there was a substantial sum of money that had been paid by patients to the Registrant, that had not been accounted for on the mydentist system, in breach of the banking policy

The GDC alleges that your conduct as set out at charges 1 and 2 was, misleading, lacking integrity and dishonest. Its position is your conduct was financially motivated in that you intended to make a financial gain for yourself.

The Committee noted your admissions and accepted them in reaching its findings of fact.

Evidence and witnesses

No witnesses were called during the stage 1 proceedings. The Committee has given careful consideration to both the various witness statements as well as the expert report, dated 25 February 2020, provided by Mr Kramer.

The Committee has accepted the advice of the Legal Adviser. It has borne in mind that the burden of proof is on the GDC and that it must decide the facts according to the civil standard of proof, namely on the balance of probabilities. You need not prove anything. In respect of the charges alleging that your conduct was dishonest, the Committee received advice from the Legal Adviser of the test it must apply, as set out in the Supreme Court judgment in the case of Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67. This was as follows:

"... When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence going to whether he genuinely held the belief, but it is not a requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established by the fact-finder the tribunal must then consider whether that conduct was dishonest by the standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

The Committee has considered each charge separately.

I will now announce the Committee's findings in relation to each head of charge:

1.	While an associate at IDH/mydentist, you took payments directly from patients, namely;
1.a	<p>Patient A on or around February 2016;</p> <p>Admitted and found proved.</p> <p>The Committee has noted there is no documentation confirming that mydentist had received these payments. Patient A confirmed in her statement that she gave £4,600 to you outside the practice in cash and not the practice. You have admitted to this head of charge. It therefore finds this head of charge proved.</p>
1.b	<p><i>Patient B on or around 19 September 2016;</i></p> <p>Admitted and found proved.</p> <p>The Committee had sight of a cheque stub and the bank statement for £300 paid to you from Patient B. Patient B has confirmed this in his witness statement to paying you this money directly. You have admitted to this head of charge. It therefore finds this head of charge proved.</p>
1.c	<p>Patient C on or around 18 October 2016;</p> <p>Admitted and found proved.</p> <p>The Committee has seen Patient C's bank statement which confirms that a cheque for £450 was paid to you. Witness C's bank statement and bank stub also confirms this. You have admitted to this head of charge. It therefore finds this head of charge proved.</p>
1.d	<p>Patient D on or around June 2017;</p> <p>Admitted and found proved.</p> <p>Witness D confirms in his witness statement that he paid you in cash on two separate occasions. The Committee noted that although some monies were paid to the laboratory, on the balance on probabilities, the Committee is satisfied that it is satisfied that you took these payments from Patient D. You have admitted to this head of charge. It therefore finds this head of charge proved.</p>
1.e	Patient E on or around 24 October 2017;

	<p>Admitted and found proved.</p> <p>The Committee had sight of the bank statement showing a cheque being cashed. £1,500 was received by you from Patient E. This is supported in Patient E's witness statement. You have admitted to this head of charge. It therefore finds this head of charge proved.</p>
1.f	<p>Patient F on or around December 2017;</p> <p>Admitted and found proved.</p> <p>The Committee had sight of Patient F's witness statement, who confirmed that you were paid in cash £1000. The patient's bank statements confirms that £250 was withdrawn on 4 occasions. You have admitted to this head of charge. It therefore finds this head of charge proved.</p>
1.g	<p>Patient G on or around 26 April 2018;</p> <p>Admitted and found proved.</p> <p>The Committee had sight of Patient G's bank and witness statement confirming that a cheque for £1,300 was cashed by you. Patient G's statement confirms this. You have admitted this head of charge.</p>
1.h	<p>Patient H on or around 16 May 2018;</p> <p>Admitted and found proved.</p> <p>The Committee noted the Patient H's witness statement that stated that she paid for the whole course of treatment, and that you accepted £2,000 in cash from her. You have admitted to this head of charge. It therefore finds this head of charge proved.</p>
1.i	<p><i>Patient I on or around 28 November 2017.</i></p> <p>The Committee had sight of documentation confirming that Solicitors acting on behalf of Patient I transferred £4,400 to you on 28 November 2017. This is supported both in Patient I's solicitors witness statement and the screen shot of the payment. It also has sight of a letter from you requesting these monies to be paid into your personal bank account. You have admitted to this head of charge. It therefore finds this head of charge proved.</p>
2.	<p>In relation to one or more of these payments:</p>
2.a	<p>You did not process the payment through IDH/mydentist's agreed process;</p> <p>Admitted and found proved.</p> <p>The Committee had sight of the practice policies which were in place at the time of the alleged offences. This was signed by you on 7 November 2017. The Committee is satisfied that you were aware of the banking and treasury policies during the dates that these offences occurred. You had signed a declaration in your induction that you would follow this process and to use the mydentist bank account and adhere</p>

	to their payment policies. However, you did not follow it. In addition, there is clear evidence that monies paid by these patients were not received by IDH. You have admitted to this head of charge. It therefore finds this head of charge proved.
2.b	<p>You deprived IDH/mydentist of money due to it.</p> <p>Admitted and found proved.</p> <p>The Committee had sight of your treatment plans for your patients which reflected full costs for the patients which should be received by IDH. The Committee has had sight of evidence that these treatments were carried out, in particular the patient records and also their witness statements confirming that these treatments were carried out. You took payments directly and by doing so deprived IDH of these monies. You have admitted to this head of charge. It therefore finds this head of charge proved.</p>
3	<p>Your conduct at allegation 1 and/or 2 above was financially motivated.</p> <p>Admitted and found proved.</p> <p>In its natural meaning, the Committee is satisfied that your actions were financially motivated. There is clear evidence that you took payments directly from patients and failed to put these payments through IDH accounts. The Committee is satisfied that your actions were financially motivated. By admitting this head of charge you yourself acknowledge that your actions were financially motivated. It therefore finds this head of charge proved.</p>
4.	Your conduct at allegation 1 and/or 2 and/or 3 above was:
4.a	<p>Misleading;</p> <p>Admitted and found proved.</p> <p>The Committee took into account the ordinary meaning of misleading.</p> <p>The Committee having found that your conduct was financially motivated, it is satisfied that you deliberately misled the practice by not processing the monies through their bank accounts. The Committee is also satisfied that you also mislead the patients by stating that they could pay you directly and not through IDH. You also chose not to put these transactions on the patients' records.</p> <p>You have admitted to this head of charge. It therefore finds this head of charge proved.</p>
4.b	<p>Lacking in integrity;</p> <p>Admitted and found proved.</p> <p>The Committee took into account the Legal advice and notes that lacking in integrity is a failure to meet the higher standards which society expects from those who exercise a profession. It considers that this is an objective test.</p>

	<p>The Committee considers that you knew at the time that you were required to put all monies received from patients through the IDH financial system. It considers that you knew that you were under a duty to make absolutely clear to both your patients and IDH if this was not the case.</p> <p>The Committee took into account that professionals have a duty to behave with integrity. Society in general would expect you to adhere to these standards at all times. The Committee is satisfied that your misleading behaviour lacked integrity. You put your own financial interests above the needs of your patients. The Committee is satisfied that you abused your position of trust by taking payments from patients which were intended for your employers. You have admitted to this head of charge.</p> <p>It therefore considers that you lacked integrity and finds head of charge proved.</p>
4.c	<p>Dishonest.</p> <p>Admitted and found proved.</p> <p>You deprived IDH of monies paid by patients. You had signed a banking and treasury document acknowledging that you were required to adhere to IDH financial processes when processing payments from patients. However, you chose not to do so on more than one occasion. The Committee is satisfied that you knew that you had to process patient payments through the practice at all times. Witness GF confirmed in her witness statement that in your first interview with your employers on 6 June 2018 that you admitted to being dishonest by taking numerous payments from patients which were intended for IDH, and that you felt very foolish and that you should have stopped. You have admitted to this head of charge.</p> <p>Taking all this into consideration the Committee determined that by the standards of ordinary and decent people your actions would be considered dishonest.</p>

We move to Stage Two.”

On 1 October 2020 the Chairman announced the determination as follows:

“The Committee has considered the submissions made by Ms Jung and those made by Mr Haycroft. It has accepted the advice of the Legal Adviser.

Ms Jung confirmed that you have no previous fitness to practise history. She submitted that the findings against you, which relate to multiple payments taken directly from patients, and misleading and dishonest claims for treatment you provided, are serious, have breached fundamental GDC standards, and amount to misconduct. She invited the Committee to conclude that your fitness to practise is currently impaired by reason of that misconduct. She said that the dishonesty in this case was serious, which involved you depriving IDH, your employers, of monies due to them over a sustained period of time which was financially motivated. She submitted that

public confidence in the profession would be undermined if a finding of impairment were not made in this case.

She asked the Committee to consider whether your insight into your dishonest conduct is complete. Further, Ms Jung drew the Committee's attention to your oral evidence. She said that you have not demonstrated consistent insight, either whilst giving your evidence or prior to the hearing. She also submitted that you knew at the time that you were being dishonest and chose to do what you did because of a financial motive. Ms Jung submitted that the appropriate sanction was one of erasure, stating that your conduct is incompatible with continued registration and bringing to the attention of the Committee a number of aggravating factors in this case.

Mr Haycroft conceded that the findings against you amount to misconduct and that your fitness to practise is currently impaired. You have admitted all of the charges against you. This showed insight and you have expressed remorse. Mr Haycroft referred the Committee to the supportive testimonials from professional colleagues who mainly attest as to your skills as a dentist. Mr Haycroft submitted that since the incidents you are now working well in a new clinical setting, who have no concerns with your practise. He invited the Committee to conclude this case with a suspension order to mark the seriousness of the misconduct and said that the sanction of erasure would deprive the public of a dentist who is otherwise clinically competent.

Misconduct

The Committee first considered whether the facts found proved amount to misconduct. In so doing, it has had regard to all the evidence before it. It has also had regard to the GDC's "Standards for the Dental Team" (September 2013). The Committee has accepted the advice of the Legal Adviser. Throughout its considerations the Committee has kept in mind the relevant case law regarding the meaning of 'misconduct' within the context of regulatory proceedings.

The facts found proved in this case, which you have admitted to at the outset of this hearing, arise from multiple payments directly taken from patients by you.

The Committee has taken into account the nature and extent of its findings, covering the period from February 2016 to May 2018, in which you took payments directly from patients thus depriving your employers of these payments. You failed to process these payments through the IDH/mydentist's agreed process. By doing so, you deprived your employers of these monies. Your conduct was found to be financially motivated, misleading, lacking integrity and dishonest. The Committee takes a serious view of your misleading and dishonest conduct. It involved a number of patients and was a sustained pattern of behaviour over a period of some 2 years, which only ceased on being brought to your attention when you were notified of an internal investigation. The dental profession relies on dentists being honest and trustworthy at all times. You breached the trust of your employers and patients.

Having regard to its findings, the Committee considers that you have breached the following standards of the GDC's "Standards for the Dental Team" (September 2013):

1.3 Be honest and act with integrity.

1.3.1. You must justify the trust that patients, the public and your colleagues place in you by always acting honestly and fairly in your dealings with them.

1.3.2. You must make sure that you do not bring the profession into disrepute.

1.7.1 You must always put your patients' interests before any financial, personal or other gain.

6.1.3 You must treat all colleagues fairly in all financial transactions

9.1 You must ensure that your conduct, both at work and in your personal life, justifies patients' trust in you and the public's trust in the dental profession.

9.2 You must protect patients and colleagues from risks posed by your health, conduct or performance.

The Committee finds that your conduct in accepting payments directly from various patients which was misleading, lacking integrity and dishonest, is serious and undermines public confidence in the profession. It is in no doubt that fellow dental professionals would judge your conduct to be deplorable. Accordingly, the Committee has determined that the facts found proved amount to misconduct.

Decision on current impairment

The Committee next considered whether your fitness to practise is currently impaired by reason of your misconduct. In so doing, it has had regard to the submissions made by both parties. The Committee has accepted the advice of the Legal Adviser. It has reminded itself of the factors set out in the case of the Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council and (2) Grant [2011] EWHC 927 (Admin) in the context of the issue of current impairment.

The Committee notes that you acknowledge that your fitness to practice is impaired and that you have stated that you have not yet been fully remediated. The Committee took into account the oral evidence given by your current employer, CB, who confirmed that you have been employed as a dentist working at her practice since September 2018. She stated that she and your colleagues have no concerns with your practice. The Committee also had sight of your mentor, JB's report which was positive.

The Committee also had regard to the bundle of defence documents which comprises:

- Certificates of your Continued Professional Development (CPD)
- Evidence of Personal Development Plan (PDP)
- Audits
- Report from JB your coach/mentor
- Reflective statement from you as to what you have learnt.
- Testimonials, mainly from professional colleagues attesting to your competency and character as a dentist.

The Committee has considered carefully whether your dishonest conduct can be remedied and whether in fact it has been. It considers that dishonest conduct is difficult to remedy given the Committee's view that such conduct is attitudinal in nature.

At the outset of the hearing you made full admissions to all heads of charges, including an acceptance that your conduct was dishonest.

However, the Committee considers that you have shown limited insight into your dishonesty. Your insight into your dishonest behaviour is limited to the context in which it occurred rather than your own dishonest action. You felt that circumstances led to your behaviour rather than needing to address why you responded in that way and whether you would respond similarly if circumstances were the same.

It notes that the events in question relate to a course of conduct that took place between 2016 and 2018 and which only ceased when you were notified of concerns at the practice into your recordings of payments and you were dismissed. When questioned in oral evidence about what you would do differently when faced with similar circumstances, your answer was that you would not work in a corporate setting. This answer concerned the Committee because it was focused on the circumstances in which the dishonesty had occurred rather than addressing any change in your moral compass. It suggests that the reasons for your dishonest behaviour was the external circumstances rather than your own decision to act dishonestly.

The Committee notes that you have done some Continuing Professional Development (CPD) on ethics but the Committee considers that your learning and reflection is limited. You admitted dishonesty but the Committee considers that you have don't have a full understanding of acting dishonestly.

In these circumstances, the Committee considers that you have not fully remediated and that there is a risk of repetition of your dishonest conduct. You have acknowledged that you have not fully remediated.

The Committee has also had regard to the wider public interest, including the need to declare and uphold proper standards of conduct and behaviour among dental professionals, so as to maintain public confidence in the profession. The Committee has found that you have acted dishonestly in the context of your professional practice. This was a deliberate and persistent course of dishonest conduct for over 2 years, from which you benefitted financially. Such conduct undermines public confidence in the profession and amounts to a breach of one of the fundamental tenets of the profession- namely to be honest. The Committee considers that public confidence would be undermined if a finding of impairment were not made, given the extent of the dishonesty findings in this case.

Accordingly, the Committee has determined that your fitness to practise is currently impaired by reason of your misconduct.

Decision on sanction

The Committee next considered what sanction, if any, to impose on your registration. It recognises that the purpose of a sanction is not to be punitive, although it may have that effect, but to protect patients and the wider public interest. The Committee has taken into account the GDC's "Guidance for the Practice Committees, including Indicative Sanctions Guidance" (October 2016). It has applied the principle of proportionality, balancing the public interest with your own interests.

The Committee has had regard to the aggravating and mitigating factors in this case.

The aggravating factors identified by the Committee include:

- Potential risk of (reputational) harm to the patients
- Dishonesty
- Abused your privileged position
- Premeditated misconduct
- Financial gain by you
- Breach of trust
- Lack of integrity

- The involvement of a vulnerable patient/individuals
- Attempts to cover up wrong doings
- Misconduct sustained and repeated over a period of time
- Limited insight into your dishonest behaviour.

The Committee did not accept the mitigating factor of your resentment towards your employer relating to the terms of your employment. The Committee considered that the circumstances were not exceptional in the course of professional employment and could not mitigate dishonest behaviour. The Committee also considered that your age and experience was not a mitigating factor. The Committee considered that you are an experienced dentist.

The mitigating factors include:

- Evidence of good conduct following the incident in question
- Evidence of good character
- Your engagement with the GDC throughout these proceedings
- Evidence of remorse/some insight/apology given.

In the light of the findings against you, including its multiple findings of dishonesty, the Committee has determined that it would be wholly inappropriate to conclude this case without taking any action or with a reprimand as neither would be sufficient for the protection of the public, or otherwise in the wider public interest. It considered that the findings against you are at the higher end of the spectrum, given the extent of the proven dishonesty in this case.

The Committee considered whether a period of conditional registration would be appropriate in this case, bearing in mind that any conditions imposed must be proportionate, measurable and workable. In the Committee's view, conditions would not be able to properly address the conduct identified in this case, given that dishonest conduct is behavioural. Furthermore, the Committee has concluded that conditions would not be proportionate in this case to address the risks identified. The Committee considers that the public would be dismayed if a conditions of practice order were made in this case.

The Committee next considered whether it should impose a period of suspension. The Committee took into account the *'Guidance for the Professional Conduct Committee'* ('the Guidance'). In particular the Committee noted the following section at paragraph 48: *"Patients, employers, colleagues and others have a right to rely on registrants' integrity. Dishonesty, particularly when associated with professional practice, is highly damaging to the dental professional's fitness to practise and to public confidence in the profession."*

The Committee is in no doubt that the dishonest misconduct identified in this case was deplorable and damaging to the reputation of the profession and to the public's confidence in dental professionals. You breached one of the fundamental tenets of the profession – namely to be honest and trustworthy. You abused your position of trust. Although you have paid the monies back in full, the dental profession depends on dentists being honest in the process of accepting payments from patients. Over a sustained period of time you chose to deprive your employers of monies owed to them from patients. You used your professional position to benefit yourself financially and you broke the trust of your patients by dishonestly receiving their payments directly to yourself.

You have undertaken remediation. However, the Committee is not satisfied that you have provided compelling evidence of sufficient insight into your dishonest behaviour. It considers that you have

failed to demonstrate a full understanding of your own agency in choosing to follow a premeditated and repeated dishonest course of action over 2 years. The Committee's view is that your conduct was not out of character and that there remains a risk of repeated dishonest behaviour by you.

The Committee has considered your previous good character. However, the behaviour before this Committee demonstrated deep-seated attitudinal problems which involved the abuse of a position of trust and serious and persistent dishonesty. Your conduct indicated you used the reputation of the dental profession to your advantage (financial gain) to promote yourself as a person of integrity and honesty whilst carrying out dishonest activities which deliberately breached applicable regulations.

In light of these circumstances, the Committee concluded that a period of suspension would not be sufficient to address the issues in this case. It would not serve to maintain public confidence in the dental profession, or to declare and uphold proper standards of conduct and behaviour. The Committee considers that the reputation of the dental profession would be disproportionately damaged if a sanction of suspension were to be given.

In all the circumstances the Committee has determined that the appropriate and proportionate sanction is one of erasure. 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 dentist at all times. The Committee recognises the severe impact of this sanction but considers that the reputation of the profession is more important than the fortunes of an individual member.

Unless you exercise your right of appeal, your name will be erased from the Register, 28 days from the date when notice of this determination is deemed to have been served upon you.

The Committee now invites submissions from both parties as to whether your registration should be suspended forthwith."

Decision on Immediate Order

"Mr Nagra,

The Committee has considered whether to make an order for the immediate suspension of your registration in accordance with Section 30(1) of the Dentists Act 1984 (as amended).

The Committee has considered the submissions made. It has accepted the advice of the Legal Adviser.

The Committee has already concluded that there is a risk that you will repeat your misconduct. Therefore, in light of the risk of repetition identified and its reasons for directing that your registration be erased, which included its finding that your behaviour was fundamentally incompatible with being a dental professional, the Committee has determined that an immediate order of suspension should be imposed. The Committee has also determined that this order of immediate suspension is necessary to protect public confidence in the profession for the same reasons as identified in the substantive order.

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.

That concludes today's hearing."