

Hearing held in public

Summary

Name:	PROFETA, Andrea [Registration number: 187898]
Type of case:	Professional Conduct Committee (Review)
Outcome:	Suspended indefinitely
Date:	20 August 2021
Case number:	CAS-189669

This is a resumed hearing before the Professional Conduct Committee (PCC) pursuant to section 27C of the *Dentists Act 1984 (as amended)* ('the Act'). Members of the Committee, as well as the Legal Adviser and the Committee Secretary, are participating via Microsoft Teams video-link in line with the General Dental Council's current practice of holding hearings remotely.

The purpose of this hearing has been for the Committee to review Mr Profeta's case and determine what action should be taken in relation to his registration. Neither party is participating in today's hearing, following a request for the review to be conducted on the papers.

The Committee first considered the issues of service and whether to proceed with the hearing in the absence of Mr Profeta and any representatives for either party. The Committee accepted the advice of the Legal Adviser on these matters.

Decision on service

The Committee considered whether notice of the hearing had been served on Mr Profeta in accordance with Rules 28 and 65 of the *General Dental Council (Fitness to Practise) Rules 2006 Order of Council* ('the Rules'), and section 50A of the Act.

The Committee received from the General Dental Council (GDC) an indexed hearing bundle of 63 pages. The bundle contained a copy of the Notice of Hearing dated 13 July 2021 ('the notice'), which was sent to Mr Profeta's registered address by Special Delivery. A copy of the notice was also sent to him by email. The Committee took into account that there is no requirement within the Rules for the GDC to prove delivery of the notice, only that it was sent. However, it noted from the associated Royal Mail 'Track and Trace' receipt, also within the hearing bundle, that the copy of the notice sent by Special Delivery was delivered and signed for on 14 July 2021.

The Committee was satisfied that the notice sent to Mr Profeta complied with the required 28-day notice period. It was also satisfied that it contained proper notification of today's hearing, including its date and time, as well as confirmation that the hearing would be held remotely via video-link. Mr Profeta was further notified that the Committee had the power to proceed with the hearing in his absence.

On the basis of all the information provided, the Committee was satisfied that notice of the hearing had been served on Mr Profeta in accordance with the Rules and the Act.

Decision on whether to proceed with the hearing in the absence of the registrant and on the papers

The Committee next considered whether to exercise its discretion under Rule 54 to proceed with the hearing in the absence of Mr Profeta and any representative for either party. It approached this issue with the utmost care and caution. The Committee took into account the factors to be considered in reaching its decision, as set out in the case of *R v Jones [2003] 1 AC 1HL* and as explained in the cases of *General Medical Council v Adeogba* and *General Medical Council v Visvardis [2016] EWCA Civ 162*. The Committee remained mindful of the need to be fair to both Mr Profeta and the GDC, taking into account the public interest in the expeditious review of this case.

The Committee was satisfied that all reasonable efforts had been made by the GDC to notify Mr Profeta of this hearing. It took into account that the notice of 13 July 2021 was delivered to his registered address. However, there was no evidence before the Committee to indicate that Mr Profeta had made any contact with the GDC regarding these proceedings. Mr Profeta did not make any application for an adjournment, and the Committee, having had regard to the history of his limited engagement, concluded that an adjournment would serve no useful purpose. It received no information to suggest that delaying today's hearing would secure Mr Profeta's attendance on a future date.

The Committee had regard to the serious nature of the matters in this case and reminded itself of its duty to act expeditiously in undertaking its statutory review. The Committee also took into account the written submissions provided by the GDC in respect of this hearing, which invited it to proceed with the hearing on the basis of the papers.

In all the circumstances, the Committee determined that it was fair and in the public interest to proceed with the hearing in the absence of Mr Profeta and on the papers.

Background

Mr Profeta's case was first considered by a PCC at a hearing held between July and August 2019. He was present for part of that hearing via Skype and he represented himself and he denied all of the charges. That initial Committee found that there were significant clinical failings in Mr Profeta's care and treatment of eight patients over a 16-month period. The facts found proved against him included: inadequate or entirely absent clinical records; breaches of 'The Ionising Radiation (Medical Exposure) Regulations 2000', which exposed patients to excess radiation; poor clinical care; and failures to discuss treatment or obtain consent. The Committee in 2019 also found dishonesty. In particular, that Mr Profeta had lied when asked about his employment history in order to prevent the GDC from fully investigating concerns into his fitness to practise.

The initial Committee found that the facts found proved amounted to misconduct, and that Mr Profeta's fitness to practise was impaired by reason of that misconduct. In its determination on impairment, that Committee stated as follows:

"The Committee first considered Mr Profeta's insight. It decided that not only was there no evidence before it of any insight, Mr Profeta's behaviour during the hearing, in particular his attempt to deflect blame for his failings onto a colleague, were positive evidence of a lack of insight into both his failings and the role of professional regulation..."

The Committee next considered remediation. It considered that the clinical matters that had been found proved, are capable of being remedied. However, there is no evidence before the Committee to suggest that Mr Profeta has taken any steps at all to acknowledge, address and remedy the serious shortcomings that the Committee has identified. Clearly, therefore, it cannot safely conclude that any meaningful remediation has occurred with regard to these failings.

The Committee is mindful that Mr Profeta's dishonest conduct is likely to be more difficult for him to remedy. The Committee has again not been provided with any information that might indicate Mr Profeta's awareness of the effect that his dishonest conduct has had, or any practical steps that he has taken or intends to take to address his misconduct. The Committee is of the view that members of the public would be very concerned about Mr Profeta's dishonesty. There is an expectation that professionals should act with honesty and integrity at all times. They are also expected to comply fully with requests made by their regulatory body. The Committee thus considered that Mr Profeta has not begun to remediate his dishonest conduct.

The Committee next considered the risk of repetition. As it has found that Mr Profeta has not begun to remediate either the clinical failures or his dishonesty, it considered that the risk of repetition of both must be high. He is liable and indeed likely to put patients at an unwarranted risk of harm in the future. The Committee finds that there is a real prospect of his conduct being repeated because of the complete absence of any evidence to suggest that he has taken any action to remedy his clinical failings and dishonest behaviour.

The Committee went on to consider the wider public interest. It found that a finding of impairment is required in order to declare and uphold proper standards of conduct and behaviour, and to maintain trust and confidence in the profession and in the regulatory process. Mr Profeta's clinical failings and dishonest conduct have breached fundamental tenets of the profession such that the profession has been brought into disrepute. Public trust and confidence in the profession, and in the regulator, would be seriously undermined if a finding of impairment were not made in the particular circumstances of this case."

The Committee in 2019 determined that Mr Profeta's registration should be suspended for a period of 12 months, and it imposed an immediate order. It directed a review of his case shortly before the end of the period of suspension. That Committee recommended that the Committee reviewing Mr Profeta's case may find it helpful to receive the following:

- evidence of Mr Profeta's understanding of the seriousness of the matters found proved in this case;
- evidence of Mr Profeta's insight and remediation on the matters found proved in this case;
- evidence that Mr Profeta has appropriately addressed the clinical concerns and is safe to practise;
- evidence that Mr Profeta understands how his behaviour has impacted on public confidence in the profession.

The matter was reviewed on 10 August 2020, where that Committee found that Mr Profeta's fitness to practise remained impaired. It stated "*The information before the Committee is that Mr Profeta has not engaged with the GDC since the conclusion of the PCC hearing in August 2019. Consequently, there has been no evidence from him in relation to his current level of insight or remediation, as recommended by the initial Committee. It was noted by that Committee, at that time, that Mr Profeta had not begun to remedy the matters that led to its finding of misconduct, namely the serious failings in his clinical practice and his dishonesty.*"

In deciding on sanction, that Committee determined "*The Committee was not satisfied that conditional registration could address issues of this gravity. Furthermore, given the lack of any evidence of insight or remediation, the Committee was not confident that Mr Profeta would comply with conditions, even if they could be imposed. He has not demonstrated any willingness in this regard. The Committee therefore decided that an order of conditions would not be an appropriate or proportionate sanction. It considered that such an order would not*

serve to protect the public, nor would it satisfy the wider public interest. In all the circumstances, the Committee has determined to extend the current suspension order on Mr Profeta's registration for a period of 12 months with a review."

That Committee also recommended that the Committee reviewing Mr Profeta's case may find it helpful to receive the following:

- *evidence of Mr Profeta's understanding of the seriousness of the matters found proved in this case;*
- *evidence of Mr Profeta's insight and remediation on the matters found proved in this case;*
- *evidence that Mr Profeta has appropriately addressed the clinical concerns and is safe to practise;*
- *evidence that Mr Profeta understands how his behaviour has impacted on public confidence in the profession.*

Today's review

This has been the second review of Mr Profeta's case since the imposition of the suspension order in 2019. In comprehensively reviewing his case today, the Committee considered all the evidence presented to it, as contained in the indexed hearing bundle. It took account of the written submissions provided by the GDC. The Committee accepted the advice of the Legal Adviser. No material or written submissions were received from, or on behalf of, Mr Profeta.

In its written submissions, the GDC provided an update on the position since the initial hearing in 2019. *"The Registrant has not engaged with the Council since his brief attendance at the initial hearing in 2019. The Registrant was contacted on 12 August 2020 and again on 18 May 2021 to remind him about the previous reviewing committee's recommendations on what should be provided to this reviewing committee. Microsoft Office software confirmed that these emails were delivered, but no confirmation from the Registrant was received. To date the Registrant has not responded to the Notice of Hearing that was sent out on 13 July 2021. Whilst it has been signed for "Andrea", it has not been downloaded. Further emails (via outlook) were sent to the Registrant on 23 July and 30 July; informing him that the review hearing on 20 August will proceed on the papers and that indefinite suspension would be available to the committee. To date, no response has been received"*

In terms of sanction, the GDC says that it has concerns with regard to the imposition of an order of conditions on Mr Profeta's registration, given his lack of engagement with the GDC. In respect of an extension of the suspension order for a further period, the GDC's position is that given Mr Profeta's lack of engagement with the GDC and the absence of any evidence of insight or remediation from him, nothing would be gained by a further review. It submits that it would be open to this Committee to consider imposing an indefinite suspension on Mr Profeta's registration. The GDC refer to the dates when Mr Profeta's registration was first suspended and then further suspended. It therefore says that the provisions of 27C(1)(d)(i) and (ii) of the Act have been met, given that he will have been suspended for two years from the date in which the direction is likely to take effect.

The Committee considered carefully the submissions made. 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 in the regulatory process, and the declaring and upholding of proper standards of conduct and behaviour. The Committee has accepted the advice of the Legal Adviser.

There is no evidence before this Committee that Mr Profeta has addressed any of the deficiencies identified by the PCC at the initial hearing in July – August 2019 or at the review hearing in August 2020, despite being given the opportunity to do so. Further, Mr Profeta has

not engaged with the Council since the initial hearing before the PCC in 2019. In the absence of any evidence to show any material change in circumstances since the last hearing, the Committee considers that Mr Profeta remains a risk to the public. Accordingly, it has determined that his fitness to practise remains impaired.

The Committee next considered what direction to give. In so doing, it has had regard to the GDC's "Guidance for the Practice Committees including Indicative Sanctions Guidance" (October 2016, updated May 2019). It has had regard to the GDC's written submissions.

In the Committee's judgement, Mr Profeta has not demonstrated any commitment to remediate his deficiencies or engage with the GDC, despite being given the opportunity to do so. In these circumstances, the Committee concluded that terminating the current suspension order would not be appropriate or sufficient for the protection of the public.

The Committee considered whether to replace the current suspension order with one of conditions. In so doing, it had regard to the absence of any evidence of remediation from Mr Profeta and his extremely limited engagement with his regulator over the last two years, with no indication that he would engage in the future. In these circumstances, the Committee is not satisfied that conditions are appropriate, workable or sufficient for the protection of the public.

The Committee then went on to consider whether to direct that the current period of suspension be extended for a further period. It has borne in mind Mr Profeta's continuing lack of engagement with the GDC over a long period of time, despite being given the opportunity to do so, as well as the absence of any insight or remediation. Indeed, Mr Profeta's decision not to participate at any of these proceedings over the last two years has exacerbated the situation. In these circumstances, the Committee has concluded that a further period of suspension of 12 months would serve no useful purpose and not be in Mr Profeta's interests or the public interest. Accordingly, the Committee directs that Mr Profeta's registration be suspended indefinitely. It is satisfied that this is the proportionate and appropriate outcome. It is further satisfied that the provisions of Sections 27C(1)(d)(i) and (ii) of the Act are met.

The effect of the foregoing direction is that, unless Mr Profeta exercises his right of appeal, his registration will be suspended indefinitely from the date on which the direction takes effect. The intervening period between the current order expiring and the new order coming into effect will be covered by the extension of the current order of suspension.

That concludes this case.