

PUBLIC HEARING

Professional Conduct Committee Initial Hearing

13 – 15 November 2023

Name: DURKIN, Christine Elizabeth

Registration number: 295144

Case number: CAS-202830-N5M7Z8

General Dental Council: Sam Thomas, counsel
Instructed by IHLPS

Registrant: Not present
Unrepresented

Fitness to practise: Impaired by reason of misconduct

Outcome: Erased

Immediate order: Interim suspension order

Committee members: Helen Baker (Chair, dentist member)
Jane Jones (Lay member)
Kirsty Payton (DCP member)

Legal Adviser: Charles Apthorp

Committee Secretary: Jennifer Morrison

1. This is an initial Professional Conduct Committee (PCC) hearing in the case of Ms Christine Durkin, pursuant to Section 36P of the Dentists Act 1984 (as amended) ('the Act').
2. The members of the Committee, as well as the Legal Adviser and the Committee Secretary, conducted the hearing remotely via Microsoft Teams in line with current General Dental Council (GDC) practice.
3. Ms Durkin was not present at the hearing and was unrepresented.
4. Mr Sam Thomas, counsel, appeared as case presenter on behalf of the GDC.

Preliminary matters

Decision on service of Notice of Hearing

5. In Ms Durkin's absence, the Committee first considered whether the Notice of Hearing ('the Notice') had been served on Ms Durkin in accordance with Rules 13 and 65 of the General Dental Council (Fitness to Practise) Rules Order of Council 2006 ('the Rules').
6. The Committee received from the GDC an indexed PCC hearing bundle of 304 pages. This hearing bundle contained a copy of the Notice, dated 9 October 2023, which was sent to Ms Durkin's registered address by Special Delivery and First Class post.
7. The Committee considered 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 Royal Mail 'Track and Trace' receipt provided that the Notice sent by Special Delivery was delivered and signed for in the printed name of 'DURKIN' on 10 October 2023. The Committee also considered that a copy of the Notice was sent to Ms Durkin at her registered email address on 9 October 2023.
8. The Committee accepted the advice of the Legal Adviser.
9. The Committee considered that the Notice contained information about, amongst other things, the date, time and remote venue of the hearing and Ms Durkin's right to attend, be represented, and to adduce evidence. On the basis of all the information provided, the Committee was satisfied that notice of the hearing had been served on Ms Durkin in accordance with the Rules and the Act.

Decision and reasons on proceeding in the absence of Ms Durkin

10. The Committee next considered whether to exercise its discretion to proceed with the hearing in the absence of Ms Durkin and any representative on her behalf. It was mindful that its decision to proceed in Ms Durkin's absence must be handled with the utmost care and caution. The Legal Adviser reminded the Committee of the requirement to be fair to both parties and to consider the public interest in the expeditious disposal of the case.
11. The Committee was satisfied that Ms Durkin is aware of this hearing. It considered that the Notice of 9 October 2023 was received at her registered address. The Committee noted that the Notice was also sent to an email address Ms Durkin had previously used to correspond with the GDC. In the Notice, Ms Durkin was asked to confirm her attendance at the hearing and whether she would be represented by 23 October 2023. Ms Durkin was also invited to provide any written documentation in support of her case. She was reminded of the Committee's power to proceed in her absence.
12. The Committee considered that Ms Durkin had apparently last engaged with the GDC in August 2021. It noted that no response to the Notice or any documentation in support of Ms Durkin's case had been received by the GDC. The Committee was satisfied that Ms Durkin's absence was voluntary. It has received no information to indicate that adjourning or postponing the hearing would serve any meaningful purpose.

13. 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 Ms Durkin.

Background

14. Ms Durkin was first accepted onto the register as a dental nurse on 6 March 2012. She came off the register on 30 January 2018 as a result of non-payment of her annual retention fee. On 25 June 2020, Ms Durkin made a new application to join the register. Ms Durkin's application was initially returned to her on the basis that she had not provided all required documentation. The GDC and Ms Durkin corresponded a number of times between June and September 2020 in relation to the outstanding documentation. As the required documents were never received by the GDC, the application was therefore returned to Ms Durkin and not processed.

15. On 21 December 2020, the GDC received a further registration application from Ms Durkin. On the application form, Ms Durkin was asked to confirm that she had not been and was not currently subject to proceedings or investigations against her. This application was processed by the GDC in May 2021; however, by that time, the declarations had expired. On 19 May 2021, Ms Durkin was again asked to confirm that the details she had provided in her application form were true and correct, including details about her employment since qualifying as a dental nurse in 2002. Ms Durkin's application was accepted, and subsequently, she was accepted onto the register on 26 May 2021.

16. Commencing on 8 June 2021, Ms Durkin was contacted several times by the GDC in relation to payment of her annual retention fee. On 30 July 2021, Ms Durkin responded to these communications and explained that she had contracted COVID-19. She stated that she had been in isolation and as a result, was unable to pay the annual retention fee by the due date. Ms Durkin asked that the deadline to pay the fee be extended to 4 August 2021. The GDC requested further evidence in relation to her health, but did not accept the evidence supplied, and advised that as her registration had now lapsed, Ms Durkin should make an application for restoration to the register.

17. It is alleged that as part of the registration application process and annual retention fee process, Ms Durkin made a number of false statements and declarations to the GDC.

Decision and reasons on the facts

18. The Committee considered all the evidence presented to it and took account of the submissions made by Mr Thomas on behalf of the GDC. The Committee accepted the advice of the Legal Adviser. It considered each head of charge separately, bearing in mind that the burden of proof rests with the GDC and that the standard of proof is the civil standard, that is, whether the alleged facts are proved on the balance of probabilities.

Evidence

19. The Committee had regard to a number of documents included in the GDC hearing bundle of 304 pages. It received no evidence from Ms Durkin.

Witnesses

20. The Committee considered written evidence from the following GDC witnesses:

- Witness 1, GDC Registration team member;
- Witness 2, GDC Renewals team member;
- Witness 3, Information Governance Manager, NHS National Services Scotland; and
- Witness 4, registered dentist and practice partner.

21. The Committee did not require the witnesses to give oral evidence, as it considered that the GDC's case relied primarily on the documentary evidence supplied.

Committee's findings

22. The Committee's findings in relation to each head of charge are as follows:

Charge 1

'On 3 August 2021 you submitted a positive COVID-19 result to the GDC Registrations team which was false.'

PROVED

23. The Committee accepted the evidence of Witness 2 and Witness 3 in respect of this charge. In her written evidence, Witness 3 stated that she had been asked to verify the authenticity of a text message provided by Ms Durkin that purportedly showed a positive test result for COVID-19. She confirmed that the case reference number provided in the text was related to another individual, and that Ms Durkin's consumer record did not have a mobile number. Accordingly, it would not have been possible for Ms Durkin to have received a text notification of her test result. Witness 3 further stated that a technician colleague confirmed that the message font was different to that typically used.

24. The Committee considered Witness 3's evidence to be reliable, noting that it was given by a professional witness in the course of her professional duties and was supported by official documentary evidence. It had sight of a screenshot of the text message in question and an email from Ms Durkin to the GDC dated 3 August 2021 requesting an extension to the fee payment deadline, with the screenshot as an attachment. The Committee also took into account the document showing Ms Durkin's COVID-19 test result history for the relevant period, which showed all negative results.

25. Accordingly, the Committee determined that it was more likely than not that Ms Durkin had submitted a positive COVID-19 test result which was false to the GDC and found **Charge 1 proved.**

Charge 2

'You altered the Covid-19 result to reflect your details in that you added your name to an NHS Scotland Test and Protect SMS Text Message which had a unique reference [...] that was allocated to another.'

PROVED

26.The Committee accepted the evidence of Witness 3 in respect of this charge. It noted that Witness 3's colleague had confirmed that it was unusual for the recipient of the test result's name to be in all-capitals. Witness 3's colleague further confirmed that the unique reference number in the text had been allocated to another individual and that Ms Durkin had no positive test recorded under her name in the system.

27.The Committee concluded that it was more likely than not that Ms Durkin had altered the screenshot of the text message she sent to the GDC by adding her name. Accordingly, the Committee finds **Charge 2 proved**.

Charge 3

'On 30 July 2021, in response to an email from the GDC, you falsely stated: "...my renewal is due but I have been ill with covid the past few weeks and completely overlooked payment date, is it possible to pay on wed 4th as my isolation finishes then so I can put money into my bank"'

PROVED

28.The Committee had sight of an email sent by Ms Durkin to the GDC on 30 July 2021, from an address she regularly used, which contained this statement. Given its conclusion in charges 1 and 2 that Ms Durkin had provided falsified COVID-19 test results, the Committee concluded that it was more likely than not that Ms Durkin did not have COVID-19 during the relevant time. The Committee also took into account the document showing Ms Durkin's COVID-19 test result history for the relevant period, which showed all negative results. Accordingly, Ms Durkin would have had no plausible reason to self-isolate and therefore, on the balance of probabilities, Ms Durkin provided a false statement to the GDC within her email of 30 July 2021. The Committee accordingly finds **Charge 3 proved**.

Charge 4

'On 19 May 2021, in response to an email from the GDC which stated "Please can you finally confirm as you qualified as a Dental Nurse in 2002. Please confirm whether or not you have been working as a dental nurse in the time between qualifying and applying for first registration", you falsely replied: "No I was living in Spain when I returned i was working as dental receptionist until my Gdc comes"'

PROVED

29.Although Ms Durkin had previously been registered with the GDC from 6 March 2012 to 30 January 2018, the Committee noted from the evidence of Witness 1 that in 2020, Ms Durkin had erroneously applied to rejoin the register through the process of first registration rather than through the restoration process.

30.Nonetheless, the Committee noted that on 19 May 2021, the GDC had put Ms Durkin's

qualification date of 2002 to her and asked her to confirm that she had not been working as a dental nurse in the period between qualifying in 2002 and prior to applying for her first registration. The associated email chain made it clear that the application for first registration related to the current application process in 2021. Ms Durkin had responded on the same day to confirm that she had not been working as a dental nurse during that period. The Committee had sight of this response, which contained the statement as specified in the charge.

31. The Committee considered that Ms Durkin was reminded on several occasions of the need to provide true and accurate details on her application form, and that to do so otherwise could affect her registration. Ms Durkin reaffirmed her personal declaration attesting to this on 19 May 2021 by copying and pasting the text of her declaration into an email by way of reply to the GDC.
32. The Committee accepted the evidence of Witness 4, who recalled in his written statement that he first met Ms Durkin in October 2013 when he took over Practice A as a partner. Witness 4 stated that at the time he joined the practice, Ms Durkin had already been working there, covering both reception and dental nursing roles.
33. Witness 4 stated that Ms Durkin later worked for him at Practice B from 2 February 2015 to 31 May 2021. He recalled that Ms Durkin initially came in to work as a dental nurse, but after approximately one year, asked to be placed on reception duties. Witness 4 stated that *'on the odd occasion'* Ms Durkin would continue to assist the practice as a dental nurse.
34. The Committee considered Witness 4's evidence to be reliable, noting that it was given by a professional witness in the course of his professional duties and was supported by documentary evidence. Accordingly, the Committee concluded that on the balance of probabilities, Ms Durkin provided a false statement to the GDC within her email of 19 May 2021. It therefore finds **Charge 4 proved**.

Charge 5

'On 17 December 2020 you signed a GDC application declaration within which you falsely ticked "No" in relation to the question "To the best of your knowledge, have you been or are you currently subject to any proceedings or investigations by a regulatory or licensing body in the UK or any other country, including student fitness to practise?"'

PROVED

35. The Committee had sight of a registration application that had been signed by Ms Durkin and dated 17 December 2020. It noted that under the heading 'Declarations', the radio button indicating 'No' had been ticked in response to the question, 'To the best of your knowledge, have you been or are you currently subject to any proceedings or investigations by a regulatory or licensing body in the UK or any other country, including student fitness to practise?' The Committee was satisfied that Ms Durkin had signed the GDC application declaration affirming this statement.
36. The Committee was provided with evidence of previous fitness to practise investigations and proceedings involving Ms Durkin. These included Case Examiner Decision Sheets dated 3 August 2017 and 7 December 2017 respectively and an Interim Orders Committee determination

dated 26 June 2017. The Committee did not have sight of the contents of the documents, only the titles and dates, and therefore did not have information about the substance of the previous proceedings. It bore in mind the GDC's submission that Ms Durkin was of good character and did not take into account the existence of previous fitness to practise proceedings as an indication of her character.

37. However, the Committee concluded that Ms Durkin must have been aware of the interim order dated 26 June 2017. The Interim Orders Committee must have proceeded to make a decision on an interim order on the basis of effective service of the Notice of Hearing. Accordingly, Ms Durkin would have been well-aware of the interim proceedings against her and the associated investigation.

38. Accordingly, the Committee finds **Charge 5 proved**.

Charge 6

'Your actions in relation to allegations 1; 2; 3; 4; and/or 5 were:

a. Misleading; and/or

b. Dishonest in that you knowingly acted to deceive your regulator.'

PROVED in its entirety in respect of charges 1, 2, 3, 4 and 5

39. The Committee considered charges 6(a) and 6(b) in relation to charges 1, 2, 3, 4 and 5 in turn. It had regard to its earlier findings of fact in reaching its decision on charges 6(a) and 6(b).

Charge 1

40. Ms Durkin was well-aware at the time that she had not tested positive for COVID-19. The Committee concluded that she submitted false test results in this respect in order to obtain the benefit of extra time to pay her annual retention fee. The Committee considered this to be plainly misleading and dishonest by the standards of ordinary, decent people.

Charge 2

41. As before, Ms Durkin knew that she had not tested positive for COVID-19 and therefore knowingly doctored the test results to indicate otherwise to the GDC. The Committee considered this to be plainly misleading and dishonest by the standards of ordinary, decent people.

Charge 3

42. Ms Durkin was well-aware at the time that she had not been ill with COVID-19 or subject to isolation requirements. The Committee concluded that she made a false statement in this respect in order to obtain the benefit of extra time to pay her annual retention fee. The Committee considered this to be plainly misleading and dishonest by the standards of ordinary, decent people.

Charge 4

43. Ms Durkin stated that she had not been working as a dental nurse since 2002 when she clearly had. The Committee concluded that she had made this false statement in order to obtain the benefit of registration and considered it to be plainly misleading and dishonest by the standards of ordinary, decent people.

Charge 5

44. The Committee was presented with evidence that Ms Durkin would have been aware of previous regulatory proceedings against her, and despite this knowledge, she indicated otherwise on her application form. The Committee considered this to be plainly misleading and dishonest by the standards of ordinary, decent people.

Stage two

45. Having announced its decision on the facts, in accordance with Rule 20 of the Rules, the Committee heard submissions from Mr Thomas in relation to the matters of misconduct, impairment and sanction. The Committee accepted the advice of the Legal Adviser.

46. The Committee reminded itself that its decisions on misconduct, impairment and sanction are matters for its own independent judgement. There is no burden or standard of proof at this stage of the proceedings. It had regard to its duty to protect the public, declare and uphold proper standards of conduct and competence and maintain public confidence in the profession. Where applicable, the Committee took into consideration the GDC's Standards for the Dental Team (September 2013) ('the Standards') and the Guidance for the Practice Committees, including Indicative Sanctions Guidance, (October 2016, revised December 2020) ('the Guidance'). The Committee also had regard to relevant case law.

47. Mr Thomas first addressed the Committee on the matter of misconduct. He submitted that the conduct found proved amounts to a serious case of misconduct. Mr Thomas referred the Committee to the GDC's Standards, submitting that Ms Durkin had breached standard 1.3, which states 'you must be honest and act with integrity'. However, he submitted that it was not necessary to refer to standards of the profession to conclude that it is improper for a practitioner to repeatedly lie. He submitted that Ms Durkin was dishonest on a range of matters on five separate occasions over a period of around 12 months.

48. Mr Thomas submitted that lying to one's regulator is at the upper end of the spectrum of dishonesty, in that it could result in an individual obtaining registration to which they are not entitled and could impact on patient safety. He submitted that Ms Durkin's willingness to compound her lies over time shows a level of sophistication. This is indicative of an attitudinal problem, shows a disregard for her regulator, and poses a greater risk of repetition. Mr Thomas submitted that Ms Durkin had in fact already repeated her dishonesty by way of the number of false statements she had made to the GDC.

49. In relation to the matter of impairment, Mr Thomas submitted that Ms Durkin's misconduct cannot easily be remedied and, in any event, Ms Durkin has not provided any evidence of insight or remediation. He further submitted that patients were placed at an abstract yet unwarranted risk of harm through her actions. Furthermore, Ms Durkin's behaviour had breached fundamental tenets of the profession and had brought its reputation into disrepute. Mr Thomas also submitted

that Ms Durkin had lied about working as a dental nurse in the period since qualifying in 2002 when there was no need for her to have done so. He submitted that if Ms Durkin was willing to lie where there was no clear motivation, then there is a real risk of repetition.

50. Lastly, Mr Thomas addressed the Committee on the matter of sanction. He submitted that owing to the seriousness of the concerns found proved, the lack of evidence of any remediation or insight, Ms Durkin's disregard for the importance of candour, and the evidence of deep-seated attitudinal concerns, the only appropriate and proportionate sanction is one of erasure.

Decision and reasons on misconduct

51. The Committee first considered whether the facts found proved against Ms Durkin amount to misconduct. It noted that the failings found proved covered a range of dishonest behaviour, including giving false declarations and doctoring documents. The Committee found that Ms Durkin breached standards 1.3.1 and 1.3.2, which relate to acting honestly and with integrity and not bringing the profession into disrepute. The Committee further noted that Ms Durkin was repeatedly dishonest over a period of eight months. It also considered the level of sophistication employed by Ms Durkin in her deceit and how her lies were compounded, which suggested deep-seated professional attitudinal concerns.

52. The Committee further considered that lying to and misleading one's regulator is dishonesty of a particularly serious nature, as it shows a wilful disregard of the GDC's regulatory systems and their overarching purpose of public protection. The Committee concluded that Ms Durkin's actions fell far below the expectations of a registered professional and amounted to serious professional misconduct.

Decision and reasons on impairment

53. The Committee then considered in turn whether Ms Durkin's fitness to practise is currently impaired by reason of her misconduct.

54. The Committee was mindful of its role to protect patients from risk of harm and to uphold the public interest, which includes the need to declare and maintain proper standards of conduct and performance.

55. The Committee considered that Ms Durkin's misconduct could have placed patients at risk of harm, as her dishonesty could have allowed her to obtain registration to which she may not have been entitled. Her actions have brought the profession into disrepute and have breached the fundamental tenets of probity and integrity. Finally, Ms Durkin's dishonesty was not an isolated incident, but was premeditated, repeated and compounded over time.

56. The Committee next considered whether the misconduct found proved is remediable. It noted that dishonesty is said to be difficult to remediate, as it is an attitudinal failing. Nonetheless, the Committee went on to consider whether Ms Durkin has in fact remedied her failings.

57. The Committee has seen no evidence of any insight, remorse or remediation from Ms Durkin. On the contrary, she has not engaged with these proceedings. For these reasons, the Committee considered that there is a high risk that Ms Durkin could repeat the misconduct it has found

proved. It therefore concluded that a finding of impairment is necessary in the interest of public protection.

58. The Committee further considered that public confidence in the profession and in the GDC as its regulator would be severely undermined if a finding of impairment in relation to misconduct was not made in the circumstances of this case. Accordingly, it determined that a finding of impairment is in the wider public interest.

Decision and reasons on sanction

59. The Committee next considered what sanction, if any, to impose on Ms Durkin's registration. It recognised that the purpose of a sanction is not to be punitive, although it may have that effect. The Committee applied the principle of proportionality, balancing Ms Durkin's interests with the public interest. It also took into account the Guidance.

60. The Committee considered the mitigating and aggravating factors in this case as outlined in paragraphs 5.17 and 5.18 of the Guidance.

61. The Committee could not identify any mitigating factors in this case, although it acknowledged that Ms Durkin has no previous fitness to practise findings against her.

62. The aggravating factors in this case include:

- Dishonesty;
- Premeditated misconduct, in that Ms Durkin's doctoring of COVID-19 test results would have required non-spontaneous planning and execution;
- 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;
- Attempts to cover up wrongdoing; and
- Lack of insight.

63. The Committee decided that it would be inappropriate to conclude this case with no further action. It would not satisfy the public interest, given the serious nature of the misconduct.

64. The Committee then considered the available sanctions in ascending order starting with the least serious.

65. The Committee concluded that misconduct of this nature cannot be adequately addressed by way of a reprimand. It cannot be said to be at the lower end of the spectrum of seriousness. The public interest would not be upheld by the imposition of such a sanction. The Committee therefore determined that a reprimand would be inappropriate and inadequate.

66. The Committee then considered whether a conditions of practice order would be appropriate. It was not satisfied that workable conditions could be formulated that would address the attitudinal concerns inherent to Ms Durkin's misconduct. Furthermore, given Ms Durkin's lack of engagement with these proceedings, the Committee was not satisfied that any conditions would be complied with. It determined that conditions of practice would neither be sufficient nor

appropriate to address the seriousness of Ms Durkin's misconduct and uphold the wider public interest.

67. The Committee next considered whether to suspend Ms Durkin's registration for a specified period. It questioned whether a suspension would be proportionate in all the circumstances of the misconduct it has found. In reaching its decision, the Committee considered that Ms Durkin has provided no evidence of remediation or shown any insight into these serious matters. Furthermore, her protracted dishonesty is indicative of a deep-seated professional attitudinal problem. The Committee was not satisfied that a sanction of suspension would be sufficient to mark the seriousness of Ms Durkin's misconduct or to maintain public confidence in the profession and in the GDC as its regulator.

68. In considering whether the sanction of erasure was appropriate, the Committee had regard to paragraph 7.34 of the Guidance, which includes:

69. *'Erasure will be appropriate when the behaviour is fundamentally incompatible with being a dental professional: any of the following factors, or a combination of them, may point to such a conclusion:*

- *serious departure(s) from the relevant professional standards;*
- *serious dishonesty, particularly where persistent or covered up;*
- *a persistent lack of insight into the seriousness of actions or their consequences.'*

70. The Committee was satisfied that all of the above applied in the circumstances of this case. Ms Durkin has shown no insight into her behaviour, and her conduct was a serious departure from the standards expected of dental professionals. Given these reasons, the Committee concluded that Ms Durkin's behaviour was so egregious that it was fundamentally incompatible with being a dental professional.

71. In all the circumstances, the Committee has determined to erase Ms Durkin's name from the dental care professionals register.

72. The Committee invited submissions as to whether an immediate order should be imposed on Ms Durkin's registration, pending the taking effect of its determination for erasure.

Decision and reasons on immediate order

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

74. Mr Thomas submitted that in the light of the Committee's findings that Ms Durkin has shown no insight, remorse or remediation and has not engaged with these proceedings, there is a high risk that she will repeat the misconduct found proved. Accordingly, he submitted that such an order is necessary to restrict Ms Durkin from practising during the appeal period. Furthermore, Mr Thomas submitted that an immediate order was necessary notwithstanding the current interim order of suspension on Ms Durkin's registration, as this may fall away.

75. The Committee is satisfied that an immediate order of suspension is necessary for the protection of the public and is otherwise in the public interest. The Committee concluded that given the nature of its findings and its reasons for the substantive order of erasure in Ms Durkin's case, it is necessary to direct that an immediate order of suspension be imposed on both of these grounds. The Committee considered that, given its findings, if an immediate order was not made in the circumstances, there would be a risk to public safety and public confidence in the profession would be undermined.
76. The effect of this direction is that Ms Durkin's registration will be suspended immediately. Unless Ms Durkin exercises her 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 her. Should Ms Durkin exercise her right of appeal, this immediate order for suspension will remain in place until the resolution of any appeal.
77. The Committee also directs that the interim order of suspension currently in place on Ms Durkin's registration should be revoked.
78. That concludes this determination.