

HEARING PARTLY HEARD IN PRIVATE*

*The Committee has made a determination in this case that includes some private information.
That information has been omitted from the text.

ARMAS, José

Registration No: 81959

PROFESSIONAL CONDUCT COMMITTEE

JANUARY – NOVEMBER 2019

Outcome: Erased with immediate suspension

José ARMAS, a dentist, MFDS RCPS Glasg 2005 BDS, University of Glasgow 2003, was summoned to appear before the Professional Conduct Committee on 14 January 2019 for an inquiry into the following charge:

Charge

1. You have adverse health conditions as set out in schedule A¹.
2. In relation to Health Condition 1 you engaged in conduct as set out in schedule A.
3. In relation to Health Condition 2 you engaged in conduct as set out in schedule A.
4. You made a false declaration to Practice 1 that you were employed as an 'office worker' as recorded on a medical registration form dated 21 September 2010.
5. In relation to 4., your conduct was:
 - a. Misleading;
 - b. Dishonest,
6. You did not inform Practice 1 of your status as a healthcare professional from 21 September 2010 to a date on or around 28 February 2017.
7. In relation to 6. your conduct was:
 - a. Misleading;
 - b. Dishonest,
8. You made a false declaration to Centre 1, on 2 August 2010 that you were employed as a 'receptionist from 9 to 5 PM'.
9. In relation to 8., your conduct was
 - a. Misleading;
 - b. Dishonest,

¹ Please note all schedules are private documents which cannot be disclosed

10. You did not inform Centre 1 of your status as a healthcare professional at any time from 2 August 2010 to a date in early 2017.
11. In relation to 10., your conduct was:
 - a. Misleading;
 - b. Dishonest,
12. You made a false declaration to Employer 1 on a NHS health declaration form dated 8 October 2011, by ticking 'NO' in response to the question 'Do you have, or have you ever had, any medical conditions or operations?'.
13. In relation to 12. your conduct was:
 - a. Misleading;
 - b. Dishonest,
14. You made a false declaration to Employer 1 on a NHS health declaration form dated 8 October 2011, by ticking 'NO' in response to the question 'Are you receiving any pills/tablets, injections or other treatment at the moment? (including pills, tablets, inhalers, injections, self-medication, physiotherapy etc)'.
15. In relation to 14. your conduct was:
 - a. Misleading;
 - b. Dishonest,
16. You did not declare Health Condition 1 when prompted on a NHS health declaration form dated 8 October 2011.
17. In relation to 16. your conduct was:
 - a. Misleading;
 - b. Dishonest,
18. You did not declare Health Condition 2 when prompted on a NHS health declaration form dated 8 October 2011.
19. In relation to 18. your conduct was:
 - a. Misleading;
 - b. Dishonest,
20. You did not declare Health Condition 1 at any time when employed at Employer 2 from 2 September 2013 to 1 February 2017.
21. In relation to 20. your conduct was:
 - a. Misleading;
 - b. Dishonest,
22. Between 14 February 2002 and 5 January 2016, you provided treatment to family members at Hospital 1 when employed by Employer 1.
23. Your conduct in relation to 22.:

- a. lacked integrity in that you were obliged to adhere to NHS Codes of Conduct including the Principles of Business Conduct;
- b. was dishonest in that you concealed the treatment, including the nature and extent of the treatment, of family members at Hospital 1.

And that by reason of the matters alleged above, your fitness to practise is impaired by reason of your misconduct.

On 18 January 2019 the hearing adjourned part heard and resumed on 6 August 2019.

On 8 August 2019 the Chairman made the following statement regarding the finding of facts:

“Dr Armas,

This hearing was held entirely in private under Rule 53 of the General Dental Council (Fitness to Practise) Rules 2006 (the “Rules”) in accordance with a direction given at a Preliminary Meeting on 23 November 2018:

...The Committee also reflected on the need for open justice but considered that the mandatory requirement of Rule 45 to publish a suitably redacted final determination of the PCC would satisfy this...

The Committee sat between 14 and 18 January 2019, adjourning part-heard during the factual inquiry on 18 January 2019. The Committee resumed on 6 August 2019, announced its findings of fact on 8 August 2019 and adjourned part-heard again on 9 August 2019. The Committee resumed on 12 to 14 November 2019 and 18 November 2019, when the determinations on misconduct, impairment, sanction and immediate order were announced in private.

This document sets out the Committee’s public announcement of the Charge contained in the notification of hearing (as redacted), the Committee’s findings of fact in relation to the Charge and the Committee’s determinations on misconduct, impairment, sanction and immediate order.

The factual inquiry

At the commencement of the hearing in January 2019, the Committee allowed paragraph 4 of schedule A to the Charge to be amended to correct a typographical error. The application was made by Miss Barnfather on behalf of the General Dental Council (GDC) and was uncontested by Ms Watson on your behalf. The paragraph now refers to “The conduct at 3...” (as opposed to “2”). You then made admissions to all the heads of charge, save for 13 (in so far as it refers to Health Condition 2), 18, 19 and 23(b). The Committee noted your admissions but deferred making any findings of fact until all the evidence had been heard.

The Committee announced the following findings in relation to each head of charge (as redacted):

1.	<i>You have adverse health conditions as set out in schedule A.</i>
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	Admitted and found proved.
2.	<i>In relation to Health Condition 1 you engaged in conduct as set out in schedule A.</i> Admitted and found proved.
3.	<i>In relation to Health Condition 2 you engaged in conduct as set out in schedule A.</i> Admitted and found proved.
4.	<i>You made a false declaration to Practice 1 that you were employed as an 'office worker' as recorded on a medical registration form dated 21 September 2010.</i> Admitted and found proved.
5.	<i>In relation to 4., your conduct was:</i>
5.a.	<i>Misleading;</i> Admitted and found proved.
5.b.	<i>Dishonest,</i> Admitted and found proved.
6.	<i>You did not inform Practice 1 of your status as a healthcare professional from 21 September 2010 to a date on or around 28 February 2017.</i> Admitted and found proved.
7.	<i>In relation to 6., your conduct was:</i>
7.a.	<i>Misleading;</i> Admitted and found proved.
7.b.	<i>Dishonest,</i> Admitted and found proved.
8.	<i>You made a false declaration to Centre 1, on 2 August 2010 that you were employed as a 'receptionist from 9 to 5 PM'.</i> Admitted and found proved.
9.	<i>In relation to 8., your conduct was:</i>
9.a.	<i>Misleading;</i>

	Admitted and found proved.
9.b.	<i>Dishonest,</i> Admitted and found proved.
10.	<i>You did not inform Centre 1 of your status as a healthcare professional at any time from 2 August 2010 to a date in early 2017.</i> Admitted and found proved.
11.	<i>In relation to 10., your conduct was:</i>
11.a.	<i>Misleading;</i> Admitted and found proved.
11.b.	<i>Dishonest,</i> Admitted and found proved.
12.	<i>You made a false declaration to Employer 1 on a NHS health declaration form dated 8 October 2011, by ticking 'NO' in response to the question 'Do you have, or have you ever had, any medical conditions or operations?'.</i> Admitted and found proved.
13.	<i>In relation to 12., your conduct was:</i>
13.a.	<i>Misleading;</i> Admitted with respect to Health Condition 1. Found proved in respect to both Health Conditions 1 and 2 .
13.b.	<i>Dishonest,</i> Admitted and found proved with respect to Health Condition 1 alone.
14.	<i>You made a false declaration to Employer 1 on a NHS health declaration form dated 8 October 2011, by ticking 'NO' in response to the question 'Are you receiving any pills/tablets, injections or other treatment at the moment? (including pills, tablets, inhalers, injections, self-medication, physiotherapy etc)'.</i> Admitted and found proved.
15.	<i>In relation to 14., your conduct was:</i>
15.a.	<i>Misleading;</i>

	Admitted and found proved.
15.b.	<i>Dishonest,</i> Admitted and found proved.
16.	<i>You did not declare Health Condition 1 when prompted on a NHS health declaration form dated 8 October 2011.</i> Admitted and found proved.
17.	<i>In relation to 16., your conduct was:</i>
17.a.	<i>Misleading;</i> Admitted and found proved.
17.b.	<i>Dishonest,</i> Admitted and found proved.
18.	<i>You did not declare Health Condition 2 when prompted on a NHS health declaration form dated 8 October 2011.</i> Not proved.
19.	<i>In relation to 18., your conduct was:</i>
19.a.	<i>Misleading;</i> This allegation fell away in the light of the finding under head of charge 18 above.
19.b.	<i>Dishonest,</i> This allegation fell away in the light of the finding under head of charge 18 above.
20.	<i>You did not declare Health Condition 1 at any time when employed at Employer 2 from 2 September 2013 to 1 February 2017.</i> Admitted and found proved.
21.	<i>In relation to 20. your conduct was:</i>
21.a.	<i>Misleading;</i> Admitted and found proved.
21.b.	<i>Dishonest,</i>

	Admitted and found proved.
22.	<p><i>Between 14 February 2002 and 5 January 2016, you provided treatment to family members at Hospital 1 when employed by Employer 1.</i></p> <p>Admitted and found proved.</p>
23.	<i>Your conduct in relation to 22.:</i>
23.a.	<p><i>lacked integrity in that you were obliged to adhere to NHS Codes of Conduct including the Principles of Business Conduct;</i></p> <p>Admitted and found proved.</p>
23.b.	<p><i>was dishonest in that you concealed the treatment, including the nature and extent of the treatment, of family members at Hospital 1.</i></p> <p>Not proved.</p> <p>You provided dental treatment - including specialist restorative work - to three of your family members on the NHS [IN PRIVATE]. Your conduct lacked integrity, as you knowingly did not adhere to NHS Codes of Conduct.</p> <p>However, the Committee was not satisfied on the evidence before it that you had or had attempted to conceal the fact that you were treating three of your family members, or the nature and extent of the treatment you were providing to them. The names of each of family member were openly recorded on the Hospital computer system. The family members attended you for treatment during normal clinical hours. You made clinical notes of their treatment. The notes were discovered on your desk bound together by an elastic band. [IN PRIVATE]</p> <p>The notes would normally be filed separately in the Hospital's central storage system. The Committee rejected that this was evidence of a deliberate attempt by you to conceal treatment. The fact that you were making clinical notes for the family members in itself does not suggest an attempt to conceal the fact, nature and extent of their treatment. Further, if you really were attempting to conceal the notes then you would more likely in the Committee's judgment have kept the notes in a locked drawer, or you would have taken them home (or indeed you would have returned them yourself to the Hospital's central filing system to be filed away out of sight with all the other hospital records). Instead, you left them on your desk where they would easily be discovered. The evidence before the Committee was that the hospital employed a person to routinely retrieve and file the records left on the desks of Consultants.</p>

	<p>There was a clinical paper trail created by you of the treatment you were providing and the evidence does not support any active effort by you to conceal that paper trail.</p> <p>The Committee also had regard to the context in which the dishonesty alleged by the Council occurred. The evidence before the Committee was that you were treating your family openly in a workplace culture where it was not unusual for family to be treated. The Committee was not convinced that reasonable and honest people would consider that openly treating family members in that workplace culture would amount to concealment that could be considered dishonest. In the Committee's judgment, you were not concerned about openly treating your family members. It was not a matter you were trying to conceal.</p> <p>Further, in respect of the treatment you provided to the family members when a dental undergraduate, the Committee accepted your evidence that selecting friends and family to treat as part of your training was a normal and acceptable practice and that the Consultant knew you were treating the family members and had authorised it.</p>
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We move to Stage Two."

On 9 August 2019 the hearing adjourned part heard and resumed on 12 November 2019

On 18 November 2019 the Chairman announced the determination as follows:

"Dr Armas,

You qualified in 1993 as a Bachelor of Medicine and Surgery [IN PRIVATE]. In 1996 you moved to the United Kingdom, where you practised medicine in a range of clinical attachment and hospital posts. In 2003 you qualified as a dental surgeon [IN PRIVATE]. In August 2007 you became a Specialist Registrar in Periodontics [IN PRIVATE]. In July 2011 you became a Consultant in Periodontics at the Hospital, initially working as a locum Consultant before commencing your substantive post in January 2012.

You stated to the Committee that your ambition since childhood had been the practice of dentistry [IN PRIVATE].

At this stage of the proceedings, the Committee must decide whether the above facts amount to misconduct and, if so, whether your fitness to practise is currently impaired by reason of that misconduct. If the Committee finds impairment, it must decide what sanction (if any) to impose on your registration.

The Committee heard the submissions made on behalf of the General Dental Council (GDC) by Miss Barnfather and those made on your behalf by Ms Watson. Miss Barnfather submitted that the facts found proved amount to misconduct, that your fitness to practise is currently impaired by reason of that misconduct and that the only appropriate and

proportionate sanction in this case is that of erasure. Ms Watson submitted that you acknowledge the seriousness of the matters found proved and that you do not seek to resist a finding of misconduct. She made no positive submissions on the question of impairment. As to sanction, she submitted that suspension would strike the right balance and that for the Committee to go any further would be purely punitive.

he Committee accepted the advice of the Legal Adviser.

The Committee had regard to the *Guidance for the Practice Committees, including Indicative Sanctions Guidance* (October 2016).

Misconduct

Misconduct is a serious departure from the standards reasonably expected of a dental professional. It can be characterised as conduct which fellow members of the profession would regard as “deplorable”. The Committee had regard to the following principles from *Standards for Dental Professionals* (in force from May 2005 until September 2013):

...

And from *Standards for the Dental Team* (September 2013):

...

[IN PRIVATE]

The third issue relating to the treatment of your family members is serious, but falls short of the threshold of misconduct in the Committee’s judgment. By treating your family you abused your position and NHS resources. You treated them during normal clinical hours and provided treatment to which they were not entitled and which would not have been available to other patients on the NHS, such as the placement of veneers purely for aesthetic purposes. Your treatment of the family members started legitimately when you were an undergraduate in training practising under supervision and with the approval of your supervisor. However you continued to treat them after you qualified and you knew by at least 2015 that such conduct was in breach of the NHS codes of conduct. Other patients who were entitled to NHS treatment and who were on the waiting list for secondary care would have been disadvantaged by your lack of integrity.

However, the Committee recognises that you were not deliberately trying to abuse or gain from NHS resources: you were simply treating your close family members out of a desire to help and care for them. It may also have been difficult for you to have said “no” to those family members, owing to your caring nature. The Committee accepted that you treated them in a culture where it was not unusual for family and friends to be treated and where even senior clinicians, including your clinical director, were apparently engaging in such conduct. You treated the family members openly and did not seek to conceal the fact and extent of the treatment you were providing to them. The Committee considered the clinical time and resources which were devoted to their treatment. Whilst the Committee cannot formulate a percentage based on the material before it, it forms the view that the time and resources allocated to the treatment of the family members is likely to have been minimal in relation to your workload. In context, the Committee concluded that this matter in isolation would not in itself be considered deplorable by fellow professionals. Whilst misusing NHS

resources is unacceptable, it is not so serious that in the Committee's judgment it meets the threshold of misconduct.

Accordingly, the Committee does not make a finding of misconduct in respect of that aspect of the case. As to the facts found proved relating to [charges 2-17(b) and 20 to 21], there have been substantial breaches of the above quoted standards and the Committee finds that those matters clearly amount to misconduct.

[IN PRIVATE]

Impairment

The Committee considered whether your misconduct is remediable, whether it had been remedied and the risk of repetition. The Committee also had regard to the wider public interest.

The Committee recognised the stressful and intimidating nature of giving evidence. The Committee also had regard to the fact that English is not your first language.

You have engaged in considerable reflection and remediation. Your reflective statement is comprehensive and is a living document which you have updated since 2017. You are sincere and genuine in that reflection. The Committee considers that your initial sense of remorse may have related more to the discovery of your misconduct, rather than to the fact of that misconduct. However, over the regrettably protracted period of these proceedings, where the Court of Session has had to extend your interim order on three occasions and where the hearing before this Committee has twice resumed, having initially adjourned part-heard in January 2019, the Committee considers that your remorse has developed through reflection and insight and that you are now remorseful in relation to the misconduct itself. In the Committee's judgment there is now a marked improvement in your reflection and openness when answering questions from when you first gave evidence before the Committee in January 2019.

There is evidence of comprehensive and targeted Continuing Professional Development (CPD) activity before the Committee, with detailed reflective writing on your learning and on professional standards. You have diligently and sincerely worked to remedy your misconduct [IN PRIVATE].

You have given a talk to dental students on your actions and these proceedings, which is admirable and which must have taken considerable courage.

The many testimonials before the Committee are outstanding. They come from a range of colleagues, professional peers and friends, including nurses, practice managers and the Dean of a dental school, and speak exceptionally highly of you as a person and of your clinical skills and your commitment to dentistry. These are people who know you well personally and professionally. Each person giving a testimonial was aware of your admissions and the Committee's findings of fact. They do not doubt your integrity and reliability. They give a very clear picture of a man who is an exemplary and respected clinician, who gives a high standard of care and who is dedicated to his craft.

Some of the authors of the testimonials were individuals who had previously been deceived by you but they still speak of you in the highest terms and they support you.

In the Committee's judgment, the testimonials are a genuine and true reflection of who you are as a person and of your performance and character as a dentist.

In the Committee's judgment, the risk of repetition is low. The risk of you repeating such conduct is no greater than that of any other practitioner faced with trying circumstances. You had not acted dishonestly prior to the index events and since the discovery of your dishonesty you have been on a long and challenging journey during which you have deeply reflected and learned from your misconduct. You now show good insight.

You have in the Committee's judgment taken all the steps you could have taken to demonstrate remediation.

The Committee does not find current impairment in relation to any ongoing risk of harm to the public.

The question before the Committee is the wider public interest and the need to maintain public confidence in the profession and this regulatory process. Dishonesty is a most serious matter in the context of professional practice.

[IN PRIVATE]

Accordingly, the Committee finds that your fitness to practise as a dentist is currently impaired by reason of your misconduct on wider public interest grounds. Any fair minded and well informed member of the public would lose confidence in the dental profession and this regulatory process if no finding of impairment were made. Indeed, they would be shocked and outraged.

Sanction

The purpose of a sanction is not to be punitive, although it may have that effect, but to protect the public and the wider public interest. The Committee balanced the aggravating and mitigating factors in this case.

[IN PRIVATE]

The Committee considered each sanction in ascending order of severity.

To conclude this case with no further action or a reprimand would be wholly inappropriate, owing the exceptionally serious nature of your misconduct. The Committee could not identify any conditions which could be formulated to address the dishonesty in this case and conditional registration would in any event be wholly inadequate to mark the seriousness of your misconduct.

The Committee gave careful consideration to directing that your registration be suspended for 12 months. In light of your remediation and the public interest in retaining an otherwise competent practitioner in the profession, and the [IN PRIVATE] circumstances in which the initial dishonesty occurred, the Committee carefully considered whether a 12 month period of suspension might be sufficient to mark your misconduct and to maintain public confidence in the profession.

[IN PRIVATE]

Your dishonesty, which is likely to have continued had you not been caught by chance, was entirely self-serving. This also demonstrates a pattern of behaviour which is fundamentally incompatible with remaining on the Register.

Accordingly, the Committee directs that the name of José ARMAS be erased from the Register.

The Committee now invites submissions on the question of an immediate order and on the public announcement of this decision.

The Committee revoked the order for interim conditional registration on Dr Armas' registration. The revocation of the interim order will take effect (whichever is sooner) on the making of an immediate order or once the substantive direction for erasure takes effect

The Committee heard the submissions made on behalf of the General Dental Council by Mr McNeilly, and those made on behalf of Dr Armas by Ms Watson.

Mr McNeilly submitted that an immediate order is necessary to maintain public confidence in the profession, referring the Committee to its findings on the seriousness of Dr Armas' misconduct and the Committee's finding that he had demonstrated a pattern of behaviour which is fundamentally incompatible with remaining on the Register. Ms Watson submitted that an immediate order is not necessary for the protection of the public, nor is the high bar for the making of an immediate order on public interest grounds alone met in the circumstances of this case. As to that, she referred the Committee to *Davey v General Dental Council*, Queen's Bench Division [2015 WL 6757832] as authority for the proposition that the gravity of the misconduct should not be the sole or determinative factor in deciding whether that threshold is met.

The Committee accepted the advice of the Legal Adviser.

The Committee is not satisfied that it is necessary for the protection of the public to order that Dr Armas' registration be suspended forthwith under section 30(1) of the Dentists Act 1984 (the "Act").

As to the public interest, the misconduct in this case is, as the Committee has found, exceptionally serious. Dr Armas had demonstrated a self-serving pattern of behaviour which is fundamentally incompatible with remaining on the Register, including repeated dishonesty over a period of years and having put patients at risk of harm. Whilst the bar is set high for the making of an immediate order on public interest grounds alone, the misconduct in this case is of such an exceptionally serious nature that it would be inconsistent with the decision the Committee has made not to make an immediate order.

The effect of this order is that Dr Armas' registration is suspended forthwith. Unless he exercises his right of appeal, his name will be erased from the Register in 28 days from when notification is served on him under the Act. Should he exercise his right of appeal, this immediate order will remain in force pending the disposal of the appeal.

That concludes the case."

