

**Hearing held in public**

**Summary**

<b>Name:</b>	<b>JHALLI, Naresh Kumar [Registration number: 146526]</b>
<b>Type of case:</b>	<b>Professional Conduct Committee (Review)</b>
<b>Outcome:</b>	<b>Suspended indefinitely</b>
<b>Date:</b>	<b>16 February 2022</b>
<b>Case number:</b>	<b>CAS-187685</b>

This is a resumed hearing pursuant to s 36Q of the Dentists Act 1984.

On 27 June 2019 the Professional Conduct Committee (PCC) found Mr Jhalli's fitness to practise as a dental technician to be impaired by reason of misconduct, summarising the factual background to the misconduct as follows:

The facts found proved are that on 14 February 2018 you assisted a registered dentist with an implant procedure carried out on Patient A including by providing aspiration. You worked beyond your scope of practice. The Committee found your conduct in this regard to be misleading and dishonest and you accepted that you knew that you were working outside of your scope of practice. Mr Entwistle considered that your conduct in assisting a dentist with the placing of an implant, even if on only occasion [sic], would amount to conduct that was unacceptably poor as to be deplorable and would fall far below the standard expected of a reasonably competent DT. The Committee agrees.

In your evidence you explained that you attended the surgery that afternoon with the intention of meeting the named dentist socially. You say that the named dentist asked you to help him with Patient A. You accepted that it was a "stupid thing" to have done and that you did not think about the consequences of your actions. The Committee notes that this was a one-off incident and accepted your evidence that you felt under pressure to help the named dentist. Nevertheless, the Committee takes a serious view of your conduct in acting outside your scope of professional practice.

The Committee was also concerned that from 11 May 2018 to 2nd September 2018 you failed to co-operate with an investigation by the GDC by not providing the GDC with any evidence of indemnity and details of your employer. Similarly, from the 17 October 2018 to 8 March 2019 you failed to co-operate with an investigation by the GDC by failing to respond to a request to undergo a health assessment.

The June 2019 PCC considered the risk of repetition to be low and that Mr Jhalli did not therefore pose a risk to the public. It found his fitness to practise to be impaired on wider public interest grounds alone, stating in its determination:

...[The Committee] is satisfied that the findings in relation to you working beyond your scope of practice and your lack of engagement with the GDC are capable of being remedied.

The Committee has borne in mind your apology for working beyond your scope of practice and your assurances that it will not happen again. There is no evidence that you have worked beyond your scope of practice prior to or since the events in question. Your dishonest conduct arose out of you working beyond your scope of practice. The Committee accepts that these matters, although serious, were a one-off episode when

you felt under pressure to help a friend. On the evidence before it, the Committee has concluded that these matters are unlikely to be repeated.

In respect of your lack of engagement with the GDC, the Committee considers that as a registered dental professional, you had a duty to co-operate with the GDC into its investigation into your fitness to practise. You did not do so over a long period of time. It has borne in mind your explanation that you did not do so due to health matters. However, the Committee is of the view that you still had a duty to respond to the GDC's inquiries. It does, however, note that you have engaged with the GDC in relation to these proceedings and that you did eventually reply to the GDC's requests for information on 2 September 2018.

The Committee considers that you have shown some insight into the matters that brought you before the GDC. It considers it is very unlikely that you will act outside your scope of practice again. Taking all these matters into account, the Committee has concluded that a risk of repetition of the misconduct identified is low and therefore a finding of current impairment is not necessary for the protection of the public.

However, the Committee has had regard to the wider public interest. It has found that you have acted outside the scope of your practice as a DT and that your conduct in this regard was both misleading and dishonest. In addition, it finds your failure to co-operate with the GDC in its investigation into your fitness to practise undermines public confidence in the regulator.

The Committee finds that your misconduct has brought the dental profession into disrepute and that you have breached one of the fundamental tenets of the profession. The Committee is satisfied that a finding of current impairment on the grounds of misconduct is necessary to maintain public confidence in the profession and to declare and uphold proper standards of conduct and behaviour.

The June 2019 PCC directed that Mr Jhalli's registration be made conditional on his compliance with conditions for a period of three months with a review, with conditions requiring him to work within his Scope of Practice and to hold appropriate professional indemnity when providing dental services. Condition 7 also provided:

Prior to a review of this order he must provide the GDC with a written reflection of the importance of working within his scope of practice, engaging with his professional regulator and holding appropriate indemnity.

The conditions were reviewed by the PCC on 4 October 2019. Mr Jhalli was neither present nor represented at that hearing. The October 2019 PCC found that his fitness to practise continued to be impaired by reason of misconduct, stating in its determination:

...There has been no engagement from him since the last hearing and he has breached condition 7, which required him to provide a written reflection of the importance of working within his scope of practice, engaging with his professional regulator and holding appropriate indemnity. There is no other evidence whatsoever before the Committee of any insight, remediation or reflection. The findings made against Mr Jhalli in June 2019 were serious and there is nothing to indicate to the Committee that he understands the magnitude and seriousness of his misconduct. The Committee today is of the view that Mr Jhalli's lack of reflection and engagement demonstrates that the concerns present in the original finding of impairment remain wholly unaddressed.

In those circumstances, public confidence in the profession and this regulatory process would be seriously undermined if no finding of impairment were made. Therefore, in the Committee's judgment, the wider public interest requires a finding that Mr Jhalli's fitness to practise continues to be impaired by reason of his misconduct.

The October 2019 PCC directed that the conditions on Mr Jhalli's registration be replaced with a period of suspension for four months with a review and an immediate order of suspension. It stated in its determination:

The Committee hopes that Mr Jhalli will use the period of suspension to reflect upon the seriousness of his misconduct. The reviewing Committee may be assisted by his written reflections on the importance of professional indemnity, of working within his Scope of Practice and of engaging with the GDC as part of its regulatory process. This is in addition to any further evidence or other information that Mr Jhalli may wish to place before the reviewing Committee.

The next review hearing before the PCC was held on 12 February 2020. Mr Jhalli was neither present nor represented at that hearing, which was held on the papers at the request of the General Dental Council ("GDC"). The February 2020 PCC found that his fitness to practise continued to be impaired, stating in its determination:

At the last review of Mr Jhalli's case in October 2019, it was found that he had not engaged at all with his conditional registration and as a result, the conditions were replaced with a period of suspension. This Committee noted that there has been no change in circumstances since that last review. Mr Jhalli's lack of engagement has continued and, as such, there is no evidence before this Committee of any insight on Mr Jhalli's part, nor is there any evidence of any remediation he has undertaken. There is no information at all to suggest that Mr Jhalli has addressed any of the concerns that were raised by the initial Committee in June 2019.

In the absence of any written reflections from Mr Jhalli or any other evidence of any steps he had taken in light of his misconduct, the Committee concluded that the concerns about his practice as a dental technician, as highlighted at the initial PCC hearing, must remain. The Committee considered that public confidence in the dental profession and this regulatory process would be seriously undermined if no finding of impairment were made in the circumstances of this case.

The February 2020 PCC directed that the suspension be extended by a further period of 12 months with a review.

The next review hearing was held before the PCC on 11 February 2021. Mr Jhalli was neither present nor represented at the hearing, which was held on the papers at the request of the GDC. The February 2021 PCC found that his fitness to practise continued to be impaired, stating in its determination:

The Committee notes that since the last review hearing in February 2020 the GDC emailed Mr Jhalli on 14 February 2020 to remind him of the recommendations made by that Committee. Mr Jhalli responded to that email on 18 February stating that he was not aware of the review hearing that took place on 12 February and that he had been unwell. He further stated that he wished to appeal the decision. The GDC responded on 21 February 2020, informed Mr Jhalli that he was still in the appeal period and enclosed a link to the relevant guidance. No appeal was lodged by Mr Jhalli. The Committee notes that since these email exchanges in February 2020 there has been no further communication from Mr Jhalli.

[...]

The Committee went on to consider whether Mr Jhalli's fitness to practise is still impaired. It bore in mind that at a review hearing the onus is on the registrant to demonstrate that their fitness to practise is no longer impaired. There is no evidence before this Committee that Mr Jhalli has addressed his past misconduct or provided any information as recommended to him by the reviewing PCC on 12 February 2020. In addition, he has not provided any information to demonstrate any evidence of insight

or remediation. In these circumstances, the Committee considers that there remains a risk that Mr Jhalli could repeat the misconduct identified and thus he remains a risk to the public. It also notes that Mr Jhalli has not engaged with the GDC in relation to these proceedings over a protracted period of time, despite repeated attempts by the GDC to secure his involvement. Given its concerns regarding Mr Jhalli's lack of insight and remediation the Committee considers that the risk of repetition remains. Accordingly, the Committee has determined that Mr Jhalli's fitness to practise remains impaired.

The February 2021 PCC directed that the suspension be extended by a further period of 12 months with a review, stating in its determination:

...In all the circumstances, the Committee has determined to extend the current suspension order on Mr Jhalli's registration for a period of 12 months with a review. In deciding on the period, the Committee took into account the serious and extensive nature of the outstanding concerns in this case. It was satisfied that this further period of suspension would adequately protect the public and the wider public interest. In the event that Mr Jhalli decides to engage with the remediation process, a period of 12 months will afford him time to focus on the recommendations made by the previous reviewing Committee in February 2020 "*provide a written reflection of the importance of working within his scope of practice, engaging with his professional regulator and holding appropriate indemnity*". It would also provide him time to further demonstrate his fitness to return to practice with appropriate CPD, a personal development plan and any other evidence he considers relevant in advance of the next review...

### **This resumed hearing 16 February 2022**

It is the role of the Committee today to undertake the review directed by the February 2021 PCC. Neither party was present at the hearing, which was conducted remotely using Microsoft Teams.

#### *Service and absence*

In its written submissions the GDC asked that the hearing be held in the absence of the parties and that the suspension be reviewed on the papers. Its position is that Mr Jhalli's fitness to practise continues to be impaired owing to his "*long history of non-engagement*" and the absence of any information from him addressing the concerns raised by the previous Committee.

The GDC submitted that Mr Jhalli's registration should continue to be suspended and that it is now appropriate and proportionate for the Committee to consider giving a direction for indefinite suspension.

There has been no response or engagement from Mr Jhalli regarding the hearing today. The last record before the Committee of any contact or engagement from Mr Jhalli is his email correspondence with the GDC in February 2020, as recorded in the above quoted extract from the determination of the February 2021 PCC.

In deciding whether to accede to the GDC's request to proceed in the absence of the parties and to review the suspension on the papers, the first consideration for the Committee was whether the notification of hearing had been served on Mr Jhalli in accordance with the General Dental Council (Fitness to Practise) Rules 2006 (the "Rules").

The notification of hearing was sent to Mr Jhalli at his registered address on 14 January 2022 by Special Delivery. A secure link to download a copy of the notification of hearing was also sent to him by email on the same day.

Royal Mail 'Track and Trace' records that the Special Delivery item was delivered on 15 January 2022, signed for under the printed name "JHALLI".

The Committee was satisfied that the notification of hearing contained the required information under Rule 28 of the Rules, including the time, date and (remote) venue of this hearing; and that the notification had been served in accordance with Rule 65 by virtue of its being posted to Mr Jhalli's registered address by Special Delivery. The duty is on Mr Jhalli as a registered dental professional to keep his contact details up to date with his regulatory body and the Committee therefore proceeded on the basis that he remains contactable at the address used for service of the notification of hearing.

The next consideration for the Committee was whether to proceed in the absence of Mr Jhalli. This is a discretion which must be exercised with great care and caution, particularly as the Committee could potentially be giving consideration to a direction for indefinite suspension were the hearing to proceed and current impairment of fitness to practise found.

The Committee was satisfied that the GDC had made all reasonable efforts to send notice of this hearing to Mr Jhalli. The notification of hearing stated:

...In accordance with Rule 28 of the Rules you are required to confirm whether you will be attending the hearing and/or whether you will be represented. Please do so by **Friday, 28 January 2022**.

Please note that the hearing may start later than the time stated above. You should still ensure you are available for the time stated. If you have difficulties attending the hearing, please contact me as soon as possible so that alternative arrangements may be considered.

The hearing will take place remotely, via Microsoft Teams. The Council's Hearings Team will send you a link to access the hearing. This is usually sent one day before the hearing is scheduled to start. The Hearings Team will contact you to arrange a test call. This will be between five and one day(s) prior to the hearing.

I enclose two guidance documents which provide information about how remote hearings are conducted. Please read these documents carefully. They include steps you may need to take in preparation for the hearing. The second guidance document provides information on how to connect to Microsoft Teams...

In breach of the requirements of Rule 28, Mr Jhalli had not responded regarding his attendance at the hearing, whether by 28 January 2022 or at all. As already set out, the Committee understands there to have been no response or engagement from him since February 2020. There is no application for an adjournment or postponement of today's hearing and there is nothing to suggest that an adjournment would make his engagement or attendance any more likely in the near future. This is because of his lack of a response, his non-engagement in these proceedings over a period of years and his non-attendance at the previous review hearings. The current period of suspension will expire on 7 March 2022 and must be reviewed by that date if the PCC is to retain its jurisdiction over this case.

The Committee gave careful consideration to the statement contained in the notification of hearing that "*The Council's Hearings Team will send you a link to access the hearing. This is usually sent one day before the hearing is scheduled to start.*" In fact, no link to access the hearing had been sent to Mr Jhalli. This is because the GDC's practice is not to send a link in cases where the hearing is listed to be held on the papers. This is regardless of whether the parties agree to the hearing being held on the papers or where (as is the case here) the respondent to the proceedings is not responding or engaging at all in the proceedings.

Not sending a link to the parties where both parties are in agreement that the hearing should be held on the papers may be a pragmatic approach. However, not doing so in circumstances where the registrant is not engaging is more problematic.

The Committee first considered whether the failure to send a link to Mr Jhalli meant that the hearing should not proceed in his absence. On reading the terms of the notification as a whole,

the Committee determined that it was reasonable to conclude that the paragraph referring to the sending of a link to access the hearing, was dependant on Mr Jhalli having complied with the terms of the preceding paragraph, namely to confirm his attendance or otherwise by 28 January 2022, as required under Rule 28 of the Rules. In the absence of any response from him, the Committee was satisfied that there was not an obligation to send him the link. Nonetheless, the GDC may consider it to be good practice in future to send a link to the respondent in any event.

The Committee then considered whether not sending the link would have likely contributed to Mr Jhalli not attending. It noted that the Committee Secretary confirmed that no contact had been received from Mr Jhalli regarding attending today's hearing. In the Committee's judgment, not sending the link was of no consequence. Had Mr Jhalli decided to attend the hearing today, then he need only have contacted the GDC by telephone using the details provided in the letter of notification and he would have been provided with a link to join the virtual hearing room immediately.

The Committee also considered the history of Mr Jhalli's persistent non-engagement with these proceedings.

Having regard to all the circumstances, the Committee determined that Mr Jhalli had voluntarily absented himself from this hearing and that it would be fair and in the interests of justice to proceed, notwithstanding his absence. The Committee further determined that it would be appropriate to accede to the GDC's request also to proceed in its absence and to review the interim order on the papers.

#### *Decision on review*

The Committee had regard to all the material contained in the main bundle and to the GDC's written submissions.

The Committee had regard to the *Guidance for the Practice Committees, including Indicative Sanctions Guidance* (October 2016, last revised December 2020).

The Committee accepted the advice of the Legal Adviser.

There has been no material change in circumstances since the initial hearing before the PCC in June 2019. This is because of Mr Jhalli's disengagement from the proceedings and his failure to provide any evidence or information indicating any insight, remorse or reflection on his misconduct. It was anticipated by the PCC in June 2019 that he would attend a review hearing some three months later with a written reflective statement "*on the importance of working within his scope of practice, engaging with his professional regulator and holding appropriate indemnity*". Over two years later he still has not provided any such statement and has not otherwise addressed these matters in any sense whatsoever. The failings leading to the finding of misconduct were relatively narrow and were, as commented on by the initial PCC, capable of remedy. It is regrettable that Mr Jhalli has not engaged in the proceedings to demonstrate any remedial steps and that this reviewing Committee now finds itself considering a submission from the GDC for indefinite suspension.

The first consideration for the Committee was whether Mr Jhalli's fitness to practise as a dental technician continues to be impaired by reason of his misconduct. In the Committee's judgement his fitness to practise continues to be impaired for the same reasons identified by the initial PCC. There has been no change since that time. The seriousness of his misconduct and the impairment of his fitness to practise has not diminished with the passage of time and the concerns of the initial PCC still remain today. There is nothing before the Committee on which it could determine that Mr Jhalli had addressed those concerns in any way following the initial PCC hearing. The Committee determined that Mr Jhalli's fitness to practise continues to be impaired on wider public interest grounds. Owing to Mr Jhalli's lack of engagement and the resulting lack of any evidence of any remediation whatsoever, a continued finding of

impairment is necessary to declare and uphold proper standards of conduct and behaviour and to maintain public confidence in the profession.

The initial PCC did not find impairment on public protection grounds. However, the last reviewing PCC in February 2021 appears to have found that there was a risk to the public, in addition to the wider public interest considerations. The Committee today was not satisfied that there is a risk to the public. There is no material on which the Committee could properly conclude that Mr Jhalli poses a risk to the public (just as there is no material on which the Committee could properly conclude that his fitness to practise is no longer impaired on wider public interest grounds). The Committee today agrees with the assessment of the initial PCC that the risk of Mr Jhalli repeating his misconduct is low and that he therefore does not pose a risk to the public.

Accordingly, the Committee finds current impairment on wider public interest grounds alone.

The next consideration for the Committee was what action, if any, to take in respect of Mr Jhalli's registration. The Committee determined that the public interest requires the continued restriction of his registration owing to his complete failure to have demonstrated sufficient insight or remedial steps in respect of his misconduct. The Committee could not identify any conditions of practice which could be formulated to be workable, measurable and proportionate owing to the nature of Mr Jhalli's misconduct and his lack of engagement in these proceedings. The Committee noted that the conditions originally imposed on Mr Jhalli's registration simply required him to comply with basic standards to which he was already subject and to demonstrate insight by producing a written reflective piece for the review hearing.

In the Committee's judgment, the continued suspension of Mr Jhalli's registration remains necessary and proportionate. There is no information before the Committee to indicate that he will engage in these proceedings within the next 12 months: any reviewing Committee is unlikely to be in any different a position from that of the Committee today and to the previous three reviewing Committees over the past two years. There is therefore nothing to suggest that imposing a period of suspension for up to 12 months with a review would serve any purpose. Further, mindful of the time and expense involved in regulatory proceedings, the Committee is satisfied that the only proportionate and appropriate sanction is an order of indefinite suspension. Accordingly, the Committee gives a direction for indefinite suspension.

That concludes this hearing.