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Hearing held in private on the papers
PUBLIC DETERMINATION

Summary	
Name:	**FITZGERALD, James [Registration number:48461]**
Type of case:	**Health Committee (review)**
Outcome:	**Suspended indefinitely**
Date:	**25 May 2018**
Case number:	**173840**

At this hearing the Committee made a determination that includes some private information. That information shall be omitted from any public version of this determination and the document marked to show where private material is removed.

Service and proceeding in absence

This is the resumed Health Committee (HC) hearing of Mr Fitzgerald's case which is being held in accordance with Section 27C of the Dentists Act 1984 (the Act). Mr Fitzgerald is neither present nor represented today. In his absence, the Committee first considered whether the Notification of Hearing had been served on Mr Fitzgerald at his registered address in accordance with Rule 28 and Section 50A(2) of the Act. The Committee has received a bundle of documents which contains a copy of the Notification of Hearing dated 6 April 2018, addressed to Mr Fitzgerald's registered address and which contains a track and trace barcode at the top of the letter. The Royal Mail track and trace receipt confirms that it delivered the item with the same barcode shown on the Notification of Hearing to Mr Fitzgerald's registered address on 7 April 2018 and that the item was signed for by "Fitzgerald". The Committee is satisfied that the Notification of Hearing set out the information required by Rule 28 and that it was sent to Mr Fitzgerald's registered address more than 28 days in advance of today's hearing, also in accordance with Rule 28. The Committee also notes that the GDC sent notification of today's hearing to Mr Fitzgerald by email on 6 April 2018. The Committee, having heard the Legal Adviser's advice, is satisfied that service has been effected in accordance with Rule 28 and Section 50(A)(2) of the Act.

The Committee went on to consider whether to proceed in the absence of Mr Fitzgerald and on the basis of the papers, in accordance with Rule 54. It has considered the GDC's written submissions dated May 2018 which invites the Committee to do so. The GDC submits that all reasonable steps have been taken by the GDC to send notification of the hearing to Mr Fitzgerald and that there would be little benefit in adjourning today's hearing as there is nothing to indicate that he would attend at a future hearing, were it to be relisted. Furthermore, the GDC reminded the Committee that the current suspension order needs to be reviewed before its expiry on 6 June 2018.

The Committee has noted the absence of any response from Mr Fitzgerald in connection with today's hearing. He has not requested an adjournment of today's hearing and there is nothing before the Committee today to suggest that Mr Fitzgerald might attend the hearing on a future occasion. Indeed, the Committee notes that he did not attend the review hearing in May 2016 or the second review hearing in May 2017. In these circumstances, the Committee has concluded that Mr Fitzgerald has voluntarily absented himself from today's hearing. In

addition, the Committee considers that there is a clear public interest in reviewing the order today given its imminent expiry. Accordingly, the Committee has determined that it is fair to proceed with today's review hearing on the basis of the papers and in the absence of both parties.

Application to hear matters in private

The GDC made an application under Rule 53(2) that Mr Fitzgerald's hearing be heard in private since the matters before it relate to his health. The Committee, having heard the advice of the Legal Adviser, has acceded to the GDC's request given that the matters under consideration relate to Mr Fitzgerald's health. It decided that it was necessary to conduct the whole hearing in private.

Background

This is the third review hearing of Mr Fitzgerald's case before the Health Committee (the Committee). [Private]

The Committee determined that Mr Fitzgerald's fitness to practise was impaired by reason of his adverse health. It directed an order of conditional registration for a period of 12 months.

An early review hearing took place on 5 May 2016 following Mr Fitzgerald's non-compliance with that order. Mr Fitzgerald did not attend that hearing. The Committee noted Mr Fitzgerald's limited compliance with the conditions that had been imposed, as well as the correspondence from him, indicating that he no longer wished to practise dentistry. Voluntary removal forms were sent to Mr Fitzgerald but had not been completed at the time of the hearing. The Committee determined that Mr Fitzgerald's fitness to practise remained impaired by reason of his adverse health and that he had breached the order of conditions. It considered that conditions were no longer appropriate in this case and directed that Mr Fitzgerald's registration be subject to an order of suspension for a period of twelve months, with a review before the conclusion of that period.

A further review took place on 19 May 2017. Mr Fitzgerald did not attend that hearing and the Committee decided to proceed to review the order on the basis of the papers before it and in the absence of the parties. [Private]

It determined that Mr Fitzgerald's fitness to practise remained impaired by reason of his adverse health. The Committee decided to continue the order of suspension for a further period of 12 months.

Today's review hearing

The Committee has comprehensively reviewed the suspension order today. In reaching its decision it has had regard to the information before it contained in the GDC's bundle, as well as the written submissions made by the GDC. The Committee has accepted the advice of the Medical Adviser and that of the Legal Adviser.

[Private] It has determined that Mr Fitzgerald's fitness to practise remains impaired by reason of his adverse health.

The Committee next considered what action, if any, to take in respect of Mr Fitzgerald's registration. It has borne in mind its duty to protect the public and safeguard public confidence in registered dental professionals. In all its deliberations it has had regard to the principle of proportionality. The Committee has had regard to its powers under Section 27C of the Act.

The GDC invited the Committee to make a direction that Mr Fitzgerald's registration be suspended indefinitely. The Committee was advised that the period of suspension would have lasted for two years when any such direction takes effect. Further, any such direction being made today would have been made not more than two months before 6 June 2018. The

Committee was advised by the Legal Adviser that it has the power to make such a direction under Section 27C(1) of the Act.

The Committee first considered whether Mr Fitzgerald's registration should be subject to an order of conditional registration. The Committee decided that this would not be sufficient for the protection of the public or workable. [Private]

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 Fitzgerald's indication to the GDC in 2016 that he no longer wishes to practise as a dentist, as well as his continuing lack of engagement with the GDC to agree to undergo any health assessments. In these circumstances, the Committee has concluded that a further period of suspension of 12 months would serve no useful purpose and that an indefinite period of suspension is the appropriate and proportionate outcome. The Committee is satisfied that the provisions of sections 27C(1)(d)(i) and (ii) of the Act have been made out in this case in view of the advice given by the Legal Adviser. Accordingly, the Committee directs that Mr Fitzgerald's registration be suspended indefinitely.

The effect of the foregoing direction is that, unless Mr Fitzgerald 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 the current order of suspension under the provisions of Section 33(3) of the Act.

The Committee would also highlight to Mr Fitzgerald that should his condition sufficiently improve, he can apply to the GDC for a review of the indefinite suspension order two years after the direction for indefinite suspension takes effect. That concludes the case for today.