

## PUBLIC HEARING

### Professional Conduct Committee Review Hearing

11 October 2024

**Name:** SUNTER, Richard Mark

**Registration number:** 156861

**Case number:** CAS-196040-T2S3T5

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**General Dental Council:** Sharmistha Michaels, Counsel  
Instructed by Carla Marie Clough, IHLPS

**Registrant:** Not Present  
Not Represented

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**Fitness to practise:** Impaired by reason of misconduct

**Outcome:** Conditions revoked and suspension imposed (with a review)

**Duration:** 2 Months

**Immediate order:** Immediate suspension order

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**Committee members:** Gaon Hart (Chair, Lay Member)  
Soheila Asabi (Dental Care Professional Member)  
Susan Stevens (Dentist Member)

**Legal Adviser:** Megan Ashworth

**Committee Secretary:** Lola Bird

1. This is a resumed hearing before the Professional Conduct Committee (PCC) pursuant to section 36Q of the Dentists Act 1984 (as amended) ('the Act').
2. The hearing is being conducted remotely by Microsoft Teams video-link.
3. The purpose of this hearing has been for the PCC to review a conditions of practice order currently in place on Mr Sunter's registration.
4. Mr Sunter is not present at these proceedings, and he is not represented in his absence. The Case Presenter for the General Dental Council (GDC) is Ms Sharmistha Michaels, Counsel.

#### **Preliminary Matter – Application to proceed in the absence of the registrant**

5. Ms Michaels made an application under Rule 54 of the GDC (Fitness to Practise) Rules Order of Council 2006 ('the Rules') to proceed with the hearing notwithstanding Mr Sunter's absence.
6. The Committee took account of Ms Michaels' submissions in respect of the application and the supporting documentation provided. It accepted the advice of the Legal Adviser in relation to service and proceeding in the absence of a registrant.

#### **Decision on service**

7. The Committee considered whether notice of the hearing had been served on Mr Sunter in accordance with Rules 28 and 65 of the Rules and section 50A of the Act.
8. The Committee had sight of a copy of the Notice of Hearing, dated 13 September 2024 ('the notice'), which was sent to Mr Sunter's registered address by Special Delivery and First Class post.
9. 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, the Royal Mail 'Track and Trace' receipt, also before the Committee, confirmed that the copy of the notice sent by Special Delivery was delivered and signed for on 14 September 2024. The Committee further noted that a copy of the notice was sent to Mr Sunter by email.
10. The Committee was satisfied that the notice sent to Mr Sunter complied with the 28-day notice period required by the Rules. It was further satisfied that the notice contained all the required particulars, including the date and time of the hearing, and that it was intended that the hearing would take place remotely by video-link. Mr Sunter was also advised that the Committee had the power to proceed with the hearing in his absence.
11. On the basis of all the information provided, the Committee was satisfied that notice of the hearing had been served on Mr Sunter in accordance with the Rules and the Act.

#### **Decision on proceeding in the absence of the registrant**

12. The Committee next considered whether to exercise its discretion under Rule 54 to proceed with the hearing in the absence of Mr Sunter. It took into account the factors to be considered in reaching its decision, as set out in the case of *R v Jones* [2002] UKHL 5, and as affirmed in the

joined regulatory cases of *General Medical Council v Adeogba* and *General Medical Council v Visvardis* [2016] EWCA Civ 162.

13. The Committee remained mindful that fairness to Mr Sunter was an important consideration, but it also took into account the need to be fair to the GDC. The Committee further considered the public interest in the expeditious review of the current order on Mr Sunter's registration.

14. In reaching its decision, the Committee took into account that Mr Sunter had been in regular contact with the GDC up until relatively recently. His last contact with the Council was on 23 September 2024, when he left a voicemail message asking for someone to call him back. The Committee received no information to indicate whether anyone from the GDC had called Mr Sunter back, but it noted that subsequent emails were sent to him with no response, including emails sent to him regarding this hearing by the Dental Professionals Hearings Service.

15. In light of the recent nature of Mr Sunter's lack of engagement, the Committee carefully considered whether it would be fair and appropriate to proceed in his absence. It bore in mind the overarching objective of the GDC, which includes the protection of the public, and it balanced the public interest with Mr Sunter's own interests.

16. The Committee took into account that there is a duty on Mr Sunter as a registrant to engage with his regulatory body. He has not provided any reason for his non-attendance today. The Committee also took into account its obligation to conduct a review of the current order on Mr Sunter's registration, which is due to expire tomorrow, 12 October 2024. It was the conclusion of the Committee, having taken all these factors into account that, on balance, it was fair, appropriate and in the public interest to proceed with the hearing in the absence of Mr Sunter.

### **Case background**

17. Mr Sunter is registered with the GDC as a dental technician. His case was first considered by the PCC at a hearing in November 2023. Mr Sunter was present at that initial hearing, and he represented himself.

18. The concerns in Mr Sunter's case were raised with the GDC in December 2020 by the Care Quality Commission. The matters related to Mr Sunter's dental laboratory business, which he co-owned.

19. The PCC in November 2023 ('the initial PCC') found proved, based on Mr Sunter's admissions, all the allegations brought against him by the GDC. Mr Sunter admitted, and the initial PCC found proved that, on or between 1 December 2020 and 8 June 2022, he offered and/or provided the following on his business website:

- Night guards
- Custom-made gum shields
- Cosmetic veneers (Overdentures)
- Tooth coloured clasps.

20. Mr Sunter admitted, and it was found proved that, by offering and/or providing the above appliances on his business website, he worked outside his scope of practice as a dental technician. This is because he was not permitted to design, plan or make any of the appliances without a prescription from a dentist or a clinical dental technician, nor was he permitted to fit any of the appliances. It was also found proved, based on Mr Sunter's admission, that he worked without holding adequate indemnity. It was noted that whilst he held indemnity as a dental technician, it would not have covered him in relation to procedures that were beyond his scope. Mr Sunter admitted, and it was found proved, that by virtue of his conduct, he put patient safety at risk.

21. Mr Sunter further admitted, and the initial PCC found proved that, on or between 12 November 2020 and 8 June 2022, his business website stated that he "*specialised in orthodontics*". Also, that on or between 12 November 2020 and 24 June 2021, Mr Sunter's business website stated that the business had a "*referring in-house dentist*". Mr Sunter admitted that his conduct had been misleading in relation to these advertising matters, and in relation to the fact that he worked outside his scope of practice as a dental technician.

22. The initial PCC determined that the facts admitted and found proved against Mr Sunter amounted to misconduct. It also determined that Mr Sunter's fitness to practise was impaired by reason of his misconduct, on both public protection and wider public interest grounds.

23. In its decision on impairment, which was addressed to Mr Sunter, the initial PCC stated that:

*"The Committee determined that your misconduct was mainly the result of a lack of understanding of GDC standards and their fundamental importance to clinical practice. You did not understand that your Scope of Practice as a dental technician precluded you from making and fitting night guards, custom-made gum shields, overdentures and tooth-coloured clasps without the appropriate prescription. You did not understand the risks to patient safety which could arise from making and providing such appliances without the clinical oversight of appropriately qualified members of the dental team. You did not understand that your indemnity arrangements would not cover you for work which was beyond your Scope of Practice. You also did not understand the GDC's standards on advertising in relation to the use of specialist titles and the requirement to ensure that any promotional material is not in any way misleading.*

*In the Committee's judgement, your attitudinal failings were confined to a failure to have familiarised yourself with relevant standards and to have applied them to your work. This is not a case where you had acted dishonestly in your misleading advertising (which you have now corrected) or where you had deliberately breached or flouted the professional standards to which your registration is subject. In those circumstances, the Committee considered that your misconduct is capable of remedy through further learning, reflection and evidence of embedded improvement in practice.*

*The Committee was satisfied that you have taken the first steps towards remediation. There had been full engagement by you in these proceedings and you made full admissions regarding the matters alleged against you at the outset of the hearing. You have worked under interim conditions since January 2021 in relation to those matters, which you stated had been helpful in facilitating your remediation. You have also undertaken relevant*

*Continuing Professional Development (CPD) activity and are currently studying at university to qualify as a clinical dental technician.*

*You expressed genuine remorse to the Committee and demonstrated an understanding of the importance, in principle at least, of adhering to the GDC's standards. Whilst there was a clear attitude of cooperation and reflection, you did not demonstrate to the Committee a fully developed understanding of the practical application of the GDC's standards or of the underlying ethical principles on which those standards are based.*

...

*You also gave the impression that you still had only a limited understanding of the clinical boundaries of your role as a dental technician...The Committee was satisfied that you show a real desire to carry out your work as a dental technician in strict accordance with GDC standards. However, you are yet to demonstrate that you fully understand those standards and that you have embedded them into your practice.*

*In those circumstances, the Committee determined that your insight and remediation is still developing..."*

24. By way of a sanction, the initial PCC imposed a conditions of practice order on Mr Sunter's registration for a period of 10 months. The order included a requirement for Mr Sunter to have a workplace reporter and to provide reports from his workplace reporter every three months (Conditions 5 and 6).

25. There was also a requirement for Mr Sunter to undertake training focused on the following: (a) the Scope of Practice of the Dental Technician; (b) risks to patients from working outside of Scope of Practice; and (c) GDC standards on the use of social media and advertising (Condition 7). As part of Condition 7, Mr Sunter was required to provide evidence of this training to his workplace reporter at least 21 days prior to any PCC review hearing.

26. Additionally, Mr Sunter was required to maintain a log detailing every case where he provided dental services to patients including in his own business (Condition 9).

27. In addition to the requirements of the conditions of practice order, the initial PCC made the following recommendations to Mr Sunter:

*"The reviewing Committee might be assisted by your updated CPD records and a detailed written reflective piece discussing your misconduct and your subsequent learning, including on: (i) why working within your Scope of Practice as a Dental Technician is necessary for the protection of the public; and (ii) on the importance of the GDC's standards and how you will continue to apply them to your practice".*

28. The initial PCC directed a review of the conditions of practice order shortly before the expiry of the 10-month period. It also imposed an immediate order.

### Today's resumed hearing

29. In comprehensively reviewing the conditions of practice order today, the Committee considered all the evidence presented. It took account of the submissions made by Ms Michaels on behalf of the GDC. The Committee accepted the advice of the Legal Adviser.

30. Ms Michaels reminded the Committee that, at this review, the persuasive burden is on Mr Sunter to demonstrate that his fitness to practise is no longer impaired. It was her submission that, in the absence of Mr Sunter and given his current lack of engagement, it would be difficult to assess the level of his insight and remediation, and whether he has continued to comply with the conditions on his registration.

31. By way of background, Ms Michaels told the Committee that on 23 September 2024, Mr Sunter's workplace reporter appointed under the conditions, contacted the GDC to say that he had to take a step back from his work for personal reasons. Mr Sunter had also contacted the GDC that day and left a voicemail message, in which he alluded to the issue in relation to his workplace reporter. Ms Michaels highlighted that a number of emails were subsequently sent to Mr Sunter to which he did not respond.

32. Ms Michaels submitted that there is limited information before the Committee in relation to Mr Sunter's practice since July 2024. She asked the Committee to note that his last work log was in relation to his work up until May 2024, and his last workplace reporter's report is from the end of June 2024 with little information within that report regarding Mr Sunter's understanding of the GDC Standards. Ms Michaels noted that Mr Sunter has not attended this hearing, so there has been no explanation about these matters from him. Ms Michaels submitted that what is clear is that Mr Sunter has not had an approved workplace reporter since September 2024.

33. Ms Michaels submission on the basis of the evidence was that Mr Sunter has failed to continue to comply with Conditions 6 and 9, which relate to the provision of workplace reporter reports and his work logs. She further submitted that Mr Sunter could potentially be in breach of Condition 5, which requires him to have in place an approved workplace reporter, given the absence of any information regarding Mr Sunter's current work arrangements.

34. It was Ms Michaels' submission that Mr Sunter's fitness to practise remains impaired on both public protection and wider public interest grounds. She submitted that Mr Sunter has further work to do in relation to demonstrating his understanding of the GDC Standards and how they should be applied in practice. She highlighted that no evidence had been provided by Mr Sunter in relation to his training requirement under Condition 7, nor has he provided a reflective statement in accordance with the recommendation of the initial PCC.

35. Ms Michaels submitted that in the circumstances, this Committee could not be sure, given Mr Sunter's lack of engagement, that he would comply with any conditions imposed. Also, given the concerns around his compliance with Conditions, 5, 6, 7 and 9, it may be considered that conditional registration is no longer workable.

36. Ms Michaels invited the Committee to replace the current conditions of practice order with a suspension order of between three and six months, with a review and recommendations for any reviewing Committee.

### **Decision on impairment**

37. The Committee considered whether Mr Sunter's fitness to practise remains impaired by reason of his misconduct. In doing so, it exercised its independent judgement. It had regard to the over-arching objective of the GDC, which is: the protection, promotion and maintenance of the health, safety and well-being of the public; the promotion and maintenance of public confidence in the dental profession; and the promotion and maintenance of proper professional standards and conduct for the members of the dental profession.

38. In reaching its decision on current impairment, the Committee considered what evidence it had before it in relation to Mr Sunter's remediation, insight and compliance with his conditional registration. The Committee took into account that the onus is upon Mr Sunter at this review to demonstrate that he has addressed his past impairment and is no longer impaired.

39. The Committee took into account that the initial PCC considered Mr Sunter's misconduct to be remediable. In considering the issue of remediation for the purposes of this review, the Committee noted that for the majority of the 10-month period, Mr Sunter was complying with the conditions imposed on his registration. He had an approved workplace reporter, and he submitted a number of reports from his workplace reporter to the GDC, along with a number of logs in respect of the dental services he had been providing over the periods in question. Therefore, there is some evidence of compliance and remediation before the Committee, although it noted, as highlighted in the GDC's submissions, that some of the workplace reports contain relatively limited information, particularly in relation to any specific remedial activities undertaken by Mr Sunter.

40. Notwithstanding, Mr Sunter's considerable period of engagement with his conditional registration, the evidence before the Committee today is that he has not been in communication with the GDC since 23 September 2024. As at that time, Mr Sunter no longer had a workplace reporter for the reasons previously explained. On 23 September 2024, he contacted the GDC and left a voicemail message asking to be called back. There is no information before the Committee as to whether the GDC did in fact call Mr Sunter back, but a number of emails were subsequently sent to him by the Council, including an email on 24 September acknowledging his voicemail message, to which he did not respond.

41. As a consequence of Mr Sunter's ongoing lack of engagement with the Council, the evidence of his remediation is limited. The last set of logs Mr Sunter provided cover his work up until May 2024, and although he appears to have had a workplace reporter in place up until September 2024, the last reporter's report received by the GDC is dated 26 June 2024. There is no evidence of Mr Sunter's compliance with his conditions following that last report. Whilst the Committee noted from communications sent by his former workplace supervisor to the Council that Mr Sunter may not have been working for a period of time in or around May/June 2024, it has received no details of those circumstances. Further, there is no information before the Committee in relation to Mr Sunter's current work situation, including whether he has had a workplace reporter in place since September

2024. The Committee has also not been provided with any evidence to indicate that Mr Sunter has completed the training required of him as part of his conditional registration.

42. In all the circumstances, the outstanding matters that have been identified, the Committee concluded that Mr Sunter has not fully complied with Conditions 5, 6, 7 and 9. These are the requirements relating to workplace reporting, the training that he was required to undertake in relation to the GDC Standards, and the provision of logs.

43. In addition to its concerns surrounding Mr Sunter's compliance with his conditions and the extent of his remediation, the Committee considered that there was no evidence before it in relation to the current level of his insight. Mr Sunter has not attended this hearing. Furthermore, although not a formal requirement of his current conditions, the Committee noted that it was recommended by the initial PCC that Mr Sunter consider providing a reflective statement for this review. No such statement has been received by this Committee.

44. This Committee considered, as did the initial PCC, that it is unlikely that Mr Sunter would repeat his misconduct, given the salutary lesson imposed by these proceedings and the consequences for his registration. However, given Mr Sunter's present lack of engagement, the limited evidence of his remediation and the absence of any evidence of current insight, the Committee could not conclude that the risk of repetition is so low that no action needs to be taken to protect the public.

45. In reaching its conclusion, the Committee took into account the initial PCC's determination that Mr Sunter's misconduct had arisen because of his lack of understanding about his scope of practice as a dental technician, the GDC Standards and how they applied to his work. In the absence of sufficient evidence to suggest that Mr Sunter has addressed the identified limitations in his knowledge and understanding in these areas, and that he has embedded his learning into his practice, the issue of patient safety continues to be a concern. Accordingly, the Committee determined that a finding of impairment is necessary for the protection of the public.

46. The Committee also determined that a finding of impairment is in the wider public interest. These were serious breaches of fundamental standards in this case, which had the potential to put patients at a risk of harm and which were capable of bringing the profession into disrepute. Whilst the Committee acknowledged that Mr Sunter's misconduct was found to be inadvertent, he has not fully complied with the conditions imposed on his registration to address his past failings. The evidence in relation to his remediation and insight remains relatively limited. The Committee concluded that public confidence in the dental profession would be undermined if a finding of impairment were not made in all the circumstances. It also considered that such a finding is necessary to uphold and declare proper standards of conduct and behaviour.

47. The Committee therefore determined that Mr Sunter's fitness to practise remains impaired by reason of his misconduct.



### **Decision on sanction**

48. The Committee next considered what action to take in respect of Mr Sunter's registration. It had regard to section 36Q(2) of the Act, which sets out the options available to it at this review. The Committee also took into account the 'Guidance for the Practice Committees including Indicative Sanctions Guidance (effective from October 2016; last revised December 2020)'. It noted that the purpose of any sanction is not to be punitive, although it may have that effect, but to protect the public and the wider public interest. The Committee applied the principle of proportionality, balancing the public interest with Mr Sunter's own interests.

49. Given its outstanding concerns, the Committee determined that it would be inappropriate to terminate the current order of conditions and take no further action or to allow the order to lapse. Such a course would not protect the public, nor would it serve to promote and maintain public confidence or professional standards.

50. The Committee carefully considered whether a substantive order of conditions remains appropriate and sufficient to safeguard the public and the wider public interest. It took into account that Mr Sunter appears to have been complying with the requirements of Conditions 5, 6 and 9 up until May/June of this year, and that he had been engaging with the GDC up until 23 September 2024, which is just over two weeks ago.

51. However, the Committee also bore in mind the overarching objective of the GDC, and that the purpose of any sanction is to protect the public and the wider public interest. The Committee considered that whilst there may well be a reason for Mr Sunter's current lack of engagement with the Council, no explanation has been provided. Therefore, as of today, looking forward, the Committee concluded that there was insufficient evidence to reassure it that conditional registration remains workable, and that Mr Sunter would comply with any conditions imposed on his registration. Accordingly, an order of conditions would not be adequate to protect the public or to uphold the wider public interest.

52. In all the circumstances, the Committee determined to revoke the current conditions of practice order and replace it with an order of suspension for a period of two months. In deciding on the two-month period, the Committee took into account the extent of Mr Sunter's engagement since the initial PCC hearing. This Committee considered that a suspension order for two months is proportionate in the context of this case. The suspension order will provide adequate protection to the public and, in the Committee's view, satisfy the wider public interest. The Committee also considered that this short suspension would bring to the attention of Mr Sunter his duty to re-engage with his regulatory body.

53. The Committee directs that a review of the suspension order should take place at a resumed hearing to be held shortly before the end of the two-month period. Mr Sunter will be informed of the date and time of that resumed hearing.

54. This Committee considers that any reviewing Committee may find it helpful to receive the following:

- Evidence of Mr Sunter's re-engagement with the GDC.
- Evidence of Mr Sunter's updated Continuing Professional Development (CPD) records.
- A detailed written reflective piece in which Mr Sunter discusses his misconduct and any learning he has undertaken, including on: (i) why working within his Scope of Practice as a Dental Technician is necessary for the protection of the public; and (ii) on the importance of the GDC's standards and how he would apply them to his practice.

55. Unless Mr Sunter exercises his right of appeal, his registration will be made subject to a suspension order for a period of two months, 28 days from the date that notice of this direction is deemed to have been served upon him.

56. The Committee now invites submissions from Ms Michaels as to whether an immediate order of suspension should be imposed on Mr Sunter's registration.

### **Decision on an immediate order**

57. In considering whether to impose an immediate order of suspension on Mr Sunter's registration, the Committee took account of the submissions made by Ms Michaels on behalf of the GDC that such an order should be imposed.

58. The Committee also heard advice from the Legal Adviser, who confirmed the relevant statutory test for imposing an immediate order, as set out at section 36U of the Act.

59. The Legal Adviser also referred the Committee to the case of *Aga v GDC* [2023] EWHC 3208 (Admin). In doing so, the Legal Adviser noted that the GDC is currently in the process of appealing the *Aga* judgement, but she stated that she was obliged to advise the Committee on the law as it currently stands. Therefore, in accordance with the current law, the Legal Adviser advised that if the Committee determined to impose an immediate order on your registration, the effect of *Aga* is that both the immediate order and the substantive order would start at the same time, and that the time served under the immediate order would be offset from the substantive period, which in this case is a period of two months.

60. Having heard from Ms Michaels and having heard and accepted the Legal Adviser's advice, the Committee determined that the imposition of an immediate order of suspension on Mr Sunter's registration is necessary for the protection of the public and is otherwise in the public interest.

61. The Committee has identified an ongoing risk to patients in its substantive determination. In its view, there would be a risk to the public if Mr Sunter had the opportunity to return to unrestricted practice during the 28-day appeal period, or for potentially longer, in the event of an appeal. An immediate order is therefore necessary to protect the public.

62. The Committee was also satisfied that an immediate order is required in the wider public interest. It considered that immediate action is necessary in this case to maintain public confidence in the dental profession and to uphold proper professional standards.

63. In terms of the running of the immediate order, the Committee accepted the advice of the Legal Adviser regarding the law as it currently stands in light of the judgment in *Aga*.

64. Accordingly, the immediate order and the foregoing substantive order will run concurrently on Mr Sunter's registration, with the time spent under the immediate order offset from the substantive period of two months.

65. That concludes this determination.