

Section 29 Case Meeting

18 May 2021

157-197 Buckingham Palace Road, London SW1W 9SP



Mohamed Amir

Members present

Alan Clamp (in the Chair), Chief Executive, Professional Standards Authority
Mark Stobbs, Director of Scrutiny & Quality, Professional Standards Authority
Simon Wiklund, Head of Legal, Professional Standards Authority

In attendance

David Bradly, Counsel, 39 Essex Street Chambers

Observers

Remi Gberbo, Lawyer, Professional Standards Authority
Seun Fagbohun, Data Administrator, Professional Standards Authority
Rachael Martin, Team Coordinator, Professional Standards Authority

This meeting was held virtually in light of the current pandemic.

1. Definitions

- 1.1 In this meeting note, standard abbreviations have been used. Definitions of the standard abbreviations used by the Authority, together with any abbreviations used specifically for this case are set out in the table at Annex A.

2. Purpose of this note

- 2.1 This meeting note records a summary of the Members' consideration of the relevant decision about the Registrant made by the regulator's panel, and the Authority's decision whether or not to refer the case to the court under Section 29 of the Act.

3. The Authority's powers of referral under Section 29 of the Act

- 3.1 The Authority may refer a case to the relevant court if it considers that a relevant decision (a finding, a penalty or both) is not sufficient for the protection of the public.
- 3.2 Consideration of whether a decision is sufficient for the protection of the public involves consideration of whether it is sufficient:
- to protect the health, safety and well-being of the public
 - to maintain public confidence in the profession concerned, and

- to maintain proper professional standards and conduct for members of that profession.

3.3 This will also involve consideration of whether the panel's decision was one that a disciplinary tribunal, having regard to the relevant facts and to the object of the disciplinary proceedings, could not reasonably have reached; or was otherwise manifestly inappropriate having regard to the safety of the public and the reputation of the profession (applying *Ruscillo*¹).

4. Conflicts of interest

4.1 The Members did not have any conflicts of interest.

5. Jurisdiction

5.1 The Legal Advisor confirmed that the Authority had jurisdiction to consider the case under Section 29 of the Act. Any referral in this case would be to the High Court of Justice of England and Wales and the statutory time limit for an appeal would expire on 21 May 2021.

6. The relevant decision

6.1 The relevant decision is the Determination of the Panel following a hearing which concluded on 17 March 2021.

6.2 The Panel's Determination which includes the charges and findings is set out at Annex B.

7. Documents before the meeting

7.1 The following documents were available to the Members:

- Determination of the Panel dated 17 March 2021
- The Authority's Detailed Case Review
- Transcripts of the hearing dated 20 February 2020 – 17 March 2021
- Counsel's Note and addendum dated 18 May 2021
- Exhibits
- CE Case Bundle
- CE Decision Sheet
- The GDC's Indicative Sanctions Guidance
- The Authority's Section 29 Case Meeting Manual.

¹ CRHP v Ruscillo [2004] EWCA Civ 1356

7.2 The Members and the Legal Advisor were provided with a copy of a response from the GDC to the Authority's Notification of Section 29 Meeting.

8. Background

8.1 The allegations arose in connection with the Registrant's treatment of Patient A on a private basis between 17 December 2015-April 2016. In 2011, Patient A had been diagnosed with spinocerebellar ataxia type 3 (SCA3) an incurable progressive hereditary condition. Following the diagnosis, he had experienced a deterioration of his symptoms, particularly in regard to walking difficulties.

8.2 Patient A had been complaining of pain in his left temporomandibular joint and had an initial consultation with the Registrant on 17 December 2015. The Registrant's notes stated that *'Patient has tremor in both legs. Unable to walk getting worse. Has been diagnosed with SCA3 – History shows problems started soon after extraction of wisdom teeth at a young age. Symptoms getting worse. Now jaw and left ear hurts a lot. Breathing poor Retrognathic treatment explained 8k quoted.'*

8.3 Patient A had been referred to the Oral-Maxillofacial Unit at Northwick Park Hospital on 15 February 2016 which recommended no further treatment. A consultation for a second opinion at the Eastman Dental Hospital on 15 March 2016 found upon examination no restriction to his jaw movement and recommended a conservative management of soft diet, cold or heat massage and analgesic relief.

8.4 At his initial consultation with the Registrant, Patient A had told his wife (Person A, the complainant) that the Registrant had advised him that he would require treatment that would be lengthy, on-going and costly and that he had agreed to this treatment and *stated 'this was his last chance to regain full mobility.'* Patient A had been told by the Registrant that his face had a joint which was damaged and that this was the cause of his spinal condition and that the treatment that he would provide (by 'cranio-dental symmetry') would help to fix his jaw joint and that the end result would be that he would be able to walk again and that his arm would also work again with this treatment. Treatment involving the expansion of the Patient's upper arch with an upper removable dental appliance was commenced and continued until the Patient A's wife raised concerns about the treatment provided and the cost (£8,000).

8.5 Upon receipt of Person A's complaint, the Registrant refused to continue to provide treatment to Patient A.

8.6 At the GDC hearing the Panel found that the Registrant had failed to provide an adequate standard of care to Patient A in that he did not carry out sufficient diagnostic assessments including failing to take an adequate history of Patient A's presenting condition, not undertaking any adequate clinical examination of the jaw joints, not undertaking any adequate clinical examination of the muscles of mastication and not taking any adequate clinical examination of the patient's occlusion. It also found that the Registrant had not undertaken dental charting, soft tissue examination, Basic Periodontal Examination nor any special tests by way of radiographs of the jaw joint and radiographs to exclude dental pathology.

The Registrant had not adequately considered all potential diagnoses prior to commencing treatment and had not provided Patient A with any adequate treatment plan. The Registrant had failed to obtain informed consent by not providing Patient A with all appropriate treatment options, by not informing Patient A of all appropriate advantages and disadvantages of all appropriate treatment options and not informing Patient A of all material risks of the proposed treatment. It was further found proved that the Registrant had failed to maintain an adequate standard of record keeping and that the treatment provided did not have any adequate clinical justification.

- 8.7 The Panel found not proved that the Registrant had made statements to Patient A that the treatment he was able to provide would slow and/or improve the symptoms of SCA3 and that Patient A's symptoms were caused by a dysfunctional jaw joint and not SCA3 or words to that effect. It noted that these were charged as definitive statements and the Panel did not consider whether the Registrant might have been less definitive in his statements (for example, by using "may" or "might").
- 8.8 The related allegations that in doing so the Registrant had been misleading and/or dishonest were accordingly found not proven.
- 8.9 The Panel found proved that the Registrant had published statements on his website that 'cranio-dental symmetry' aims to restore balance to bodily systems bringing about a permanent and lifelong improvement in health and well-being. This was found not to be misleading and not dishonest.
- 8.10 The Panel found that the Registrant's website had included statements that a range of conditions could be attributed to jaw joint dysfunction, including asthma, ataxia, allergies, sciatic nerve pains, breathing problems, Crohns/Coeliac disease, depression and anxiety, learning difficulties, infertility and multiple sclerosis. This was found to be misleading but not dishonest.
- 8.11 The Panel found that the Registrant's actions amounted to misconduct and that his fitness to practise was impaired on both public protection and public interest grounds. The Panel directed that the Registrant be suspended for a period of three months with a review hearing to be held.

9. Applying Section 29 of the 2002 Act

- 9.1 The Members considered all the documents before them and received legal advice.
- 9.2 The Members discussed the following concerns about the decision:

Procedural irregularity

Detail of the charges and potential undercharging

- 9.3 The Members considered whether the allegations brought by the GDC and considered by the Panel fully captured the extent and gravamen of the Registrant's misconduct.

- 9.4 The Members were concerned that the allegations were narrow and did not capture the full extent of the misconduct which occurred. This led the Panel to take a narrow approach to its consideration of the case. The allegations did not capture that the treatment provided and offered by the Registrant to Patient A was not clinically justified and had created false expectations. The allegations did not address, and the Panel did not consider the motivation for the Registrant's representations about the efficacy of treatment he was offering in the particular context of Patient A's circumstances.
- 9.5 The Members considered the allegations at head of charge 6 and were mindful that even though the Registrant may not have claimed that the treatment *would* help Patient A's conditions, the Panel did not exclude the possibility that the Registrant could have used the word "may" or "might". Had the allegations at this head been drafted in such a way to capture this, it would have enabled the Panel to give further consideration to the claims made by the Registrant and their impact on Patient A.
- 9.6 The Members felt that the Panel ought to have considered the Registrant's general approach to dentistry and his treatment of Patient A, particularly given the evidence that the treatment was not clinically indicated.
- 9.7 The Members were further concerned by the disrespect the Registrant displayed at the hearing for evidence-based dental treatment. The Registrant also failed to fully acknowledge that Patient A was an individual who was patently vulnerable to whom he was offering an unconventional treatment regime.
- 9.8 The Members also considered whether the Panel failed to consider whether there was a link between the Registrant's clinical failings and the statements made to Patient A and the information on the Registrant's website. The Members considered that both what was said to Patient A and the content of information on the Registrant's website demonstrated that an unorthodox treatment that was not clinically justified was being offered.
- 9.9 The Members concluded that the Registrant's conduct in offering Patient A, a vulnerable patient, treatment which was not clinically justified for which he was proposing to charge £8000 was the crux of the misconduct and ought to have been fully particularised in the charges. The fact that the charges were narrow may have led the Panel to look at the case narrowly without taking into account the Registrant's views on evidence-based dentistry, the vulnerability of Patient A and the Registrant's possible motivation for the manner in which he offered treatment to Patient A.
- 9.10 The Members were further concerned that the failure to capture the full extent of the misconduct sent an inaccurate message to the public and profession about what the Registrant did wrong.

Finding of dishonesty

- 9.11 The Panel found that the statement published on the Registrant's website that '*Cranio-dental symmetry aims to restore balance to bodily systems, bringing about a permanent and lifelong improvement in health and well-being*' was not misleading but was a '*simple declaration*' of the Registrant's aims and

was not controversial or contentious and that a reader would not be likely to be misled.

- 9.12 The Members noted the Panel's acceptance that the Registrant believed that he had a basis for his ideas on dentistry and 'cranio-dental symmetry' and considered whether the Panel had properly applied *Ivey*² when considering dishonesty. The Members were mindful that the Registrant was offering treatment not clinically justified and his course of conduct suggested that he was apply his treatment philosophy regardless of an individual patient's presentation. The Registrant had also made misleading public statements about what he could achieve. This caused the Members to doubt the Panel's conclusion that as the Registrant believed what he saying this necessarily meant he was not dishonest.
- 9.13 The Members were concerned that the Panel again appeared to have taken an overly narrow approach and misdirected itself in finding this statement not to be misleading and the other online statements not to be dishonest. These findings meant the Registrant's misconduct was treated less seriously.

Sanction and aggravating and mitigating factors

- 9.14 The Members considered that the Panel failed to adequately consider the aggravating factors in the case. The aggravating factors taken into account by the Panel did not appear to address the concerns identified by the Panel at the earlier stages, including the risk of harm to a patient, breach of trust, vulnerable patient, blatant and wilful disregard for regulator and lack of insight.
- 9.15 The Members also considered remediation and were concerned by the Panel's assessment that the Registrant's misconduct was remediable given his attitude to conventional and evidence-based dentistry. While the Registrant had removed some offending material from his website, this did not address the essential philosophical approach that he had articulated which was antithetical to appropriate dental practice.
- 9.16 The Members also considered that the Panel failed to address the ISG in sufficient detail. The Panel's decision did not consider the option of erasure or give reasons why this was disproportionate or not necessary to protect the public. Good practice would have been for the Panel to have gone on to consider the next sanction up from suspension to demonstrate that it had arrived at a proportionate decision to protect the public. Furthermore, within the ISG there are a number of factors indicating where erasure would be an appropriate outcome which were relevant in this case and it was not clear to Members whether the Panel had looked at or considered these factors. Had the Panel identified these factors, the Members considered it likely the Panel would have decided that this is a case where erasure was at the least a possibility.

Conclusion on insufficiency for public protection

- 9.17 The Members concluded that the Panel's decision to impose a suspension order was insufficient for public protection given the insufficient detail in the charges that were brought and undercharging by failing to bring additional

² *Ivey v Genting Casinos (UK) Ltd. t/a Crockfords* [2017] UKSC 67

charges which stopped the Panel from inquiring into the wider conduct of the Registrant and considering the attitudinal problems displayed by the Registrant. The Members were also concerned by the Panel's conclusions that the Registrant's conduct was capable of remediation given his lack of insight which the Members considered difficult to remediated given his complete disregard to fundamental dental practices.

10. Referral to court

- 10.1 Having concluded that the panel's Determination was insufficient for public protection, the Members moved on to consider whether they should exercise the Authority's discretion to refer this case to the relevant court.
- 10.2 In considering the exercise of the Authority's discretion, the Members received legal advice as to the prospects of success and took into account the need to use the Authority's resources proportionately and in the public interest.
- 10.3 Taking into account those considerations, along with advice on the prospects of success, the Members agreed that the Authority should exercise its power under Section 29 and refer this case to the High Court of Justice of England.



Alan Clamp (Chair)

20/8/21

Dated

11. Annex A – Definitions

11.1 In this note the following definitions and abbreviations will apply:

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| The Authority | The Professional Standards Authority for Health and Social Care |
| The Panel | A Professional Conduct Committee of the General Dental Council |
| The Registrant | Mohamed Amir |
| The Regulator | General Dental Council |
| GDC | General Dental Council |
| The Act | The National Health Service Reform and Health Care Professions Act 2002 as amended |
| The Members | The Authority as constituted for this Section 29 case meeting |
| The Determination | The Determination of the Panel sitting on 17 March 2021 |
| The Court | The High Court of Justice of England and Wales |
| The ISG | Regulator’s Indicative Sanctions Guidance |