

**STATUTORY COMMITTEE OF THE PHARMACEUTICAL SOCIETY OF
NORTHERN IRELAND**

In the matter of: Dr John Kurtis Moffatt (5843)

Location: This hearing took place at the premises of the
Pharmaceutical Society NI, 73 University Street,
Belfast, BT7 1HL.

Date: 16 May 2024

Committee: Mr Gary Potter (Chair), Mr Paul Archer (Lay), Mrs
Liz Kerr (Registrant)

Persons Present and Capacity: Dr John Kurtis Moffatt (Registrant), Mr Barry Gibson
Barrister, instructed by MSM Solicitors, Mr JonPaul
Shields, Barrister, instructed by Ms Caitlin Brown,
CFR Solicitors (PSNI's Legal Representatives), Mr
Stephen Moohan Interim Registrar, Mr Alan Goleac,
Paralegal.

Service

1. There were no issues about service.

PRELIMINARY LEGAL ARGUMENT

2. There were no preliminary legal arguments.

BACKGROUND

3. The Committee reminded itself that this was a review hearing of the decision made at the principal hearing of 20th and 21st April 2023, which found the Registrant's fitness to practise to be impaired.

ALLEGATIONS

The Registrant faced the following allegations:

Misconduct:

1. *On 11th June 2021, whilst employed as a locum pharmacist for Bestway Belfast Chemists Ltd t/a Well Pharmacy, at 26 The Diamond, Rathcoole, Newtownabbey, and whilst undertaking the role of Responsible Pharmacist within that pharmacy, you abused your position as the Responsible Pharmacist and unlawfully obtained a controlled drug listed in Schedule 4 of Part 1 of the Misuse of Drugs Regulations (Northern Ireland) 2002 and in Schedule 2 to the Misuse of Drugs Act 1971, namely two boxes of Diazepam 5mg (28 tablets).*

Criminal Convictions:

2. *On 31st May 2022, at Laganside Courthouse, you pleaded guilty to and were convicted of three separate offences particularised below: -*
 - (i) *On the 8th day of June 2021, you stole toiletries to the value of £30.35 belonging to and Well Pharmacy contrary to Section 1 of the Theft Act (Northern Ireland) 1969;*

- (ii) *On the 11th day of June 2021, you stole Diazepam tablets belonging to and Well Pharmacy contrary to Section 1 of the Theft Act (Northern Ireland) 1969; and*
- (iii) *On the 11th day of June 2021, you unlawfully had in your possession a controlled drug of Class C of Schedule 2 to the Misuse of Drugs Act 1971, namely Diazepam in contravention of section 5(1) of the Misuse of Drugs Act 1971, contrary to Section 5(2) of the Misuse of Drugs Act 1971.*

3. *On 7th July 2022, you were sentenced to a Community Service Order requiring you to perform 150 hours of unpaid work.*

4. The Committee reminded itself that at the principal hearing, after considerations of evidence and submissions from both parties, it had concluded that the Registrant's fitness to practise was impaired. In reviewing the Committee's decision on impairment at the principal hearing, the Committee considered the following to be of particular relevance to the review.

5. The Committee reminded itself that the Registrant admitted the facts outlined in the statement of case which were:

- 1. *The Registrant is currently registered as a pharmacist with the Pharmaceutical Society of Northern Ireland ("the Society").*
- 2. *On 8th and 11th June 2021, the Registrant was working as a locum pharmacist for Bestway Belfast Chemists Ltd t/a Well Pharmacy, at 26 The Diamond, Rathcoole, Newtownabbey ("the Pharmacy"). The Registrant was also the responsible pharmacist on both occasions.*
- 3. *The Registrant, on 8th June 2021, was seen by staff members to take various items from the shop area of the Pharmacy. These goods were valued at £30.25. He took five items and placed them into a white carrier bag. He made no effort to pay for the items. These*

items were then placed into his own rucksack and removed from the Pharmacy. CCTV footage was checked and confirmed the theft.

- 4. On 11th June 2021, the Registrant, whilst working in the Pharmacy, was again observed stealing two boxes of Diazepam 5mg tablets (56). The Registrant had put two boxes of Diazepam into a white paper bag that would ordinarily be used to dispense prescriptions. This bag was sitting in the dispensary on the staff side of the counter. When the Registrant left the Pharmacy at approximately 5.30pm, he lifted his belongings and the Diazepam and left the Pharmacy. He had no authority to remove the Diazepam and had no prescriptions authorising the dispensing. This theft was also captured on CCTV.*
- 5. As the Registrant was not authorised to dispense the Diazepam, its removal from the Pharmacy and his possession of it and was unlawful.*
- 6. The matter was reported by staff members to the Area Manager. An internal investigation was commenced, which confirmed the actions of the Registrant, as described. On 16th June 2021, the incidents were reported to the police and the Registrant was investigated for the matters stated.*
- 7. The Registrant was interviewed and, in a prepared statement, accepted that he "did take some items from the pharmacy that were not paid for or processed properly". He made no further comment during the interview process.*
- 8. On 31st May 2022, at Laganside Courthouse, the Registrant pleaded guilty to, and was convicted of, three separate offences particularised below: -*
 - (i) On the 8th day of June 2021, he stole toiletries to the value of £30.35 belonging to [REDACTED] and Well Pharmacy*

contrary to Section 1 of the Theft Act (Northern Ireland) 1969;

- (ii) On the 11th day of June 2021, he stole Diazepam tablets belonging to [REDACTED] and Well Pharmacy contrary to Section 1 of the Theft Act (Northern Ireland) 1969; and*
- (iii) On the 11th day of June 2021, he unlawfully had in his possession a controlled drug of Class C of Schedule 2 to the Misuse of Drugs Act 1971, namely Diazepam in contravention of section 5(1) of the Misuse of Drugs Act 1971, contrary to Section 5(2) of the Misuse of Drugs Act 1971.*

9. On 7th July 2022, the Registrant was sentenced to a Community Service Order requiring him to perform 150 hours of unpaid work.

10. The actions of the Registrant in stealing items from the Pharmacy were (i) dishonest and (ii) a breach of trust.

11. As responsible pharmacist on 11th June 2021, the Registrant abused his position by unlawfully appropriating controlled drugs.

6. The Committee reminded itself at the principal hearing, that having considered written submissions and the Registrant's oral testimony the Committee did not believe that the Registrant had demonstrated sufficient insight. As to remediation, the offences were of dishonesty, which are serious offences. The Committee acknowledged that remediating dishonesty is very difficult. Further, given the facts giving rise to allegations, and an investigation, and the provision of a Warning by the Scrutiny Committee on 7th January 2016, this Committee could not be satisfied that there is not a risk of recurrence. In his evidence the Registrant did not demonstrate any insight into the potential impact of his actions on his former employers and their staff. He did not demonstrate any insight into the potential damage to the reputation of the Pharmacy profession. Nor did the Committee consider that there was sufficient insight into the cause or causes of the two offences of dishonesty.

7. The Committee reminded itself that under cross examination, the Registrant stated that he did not [REDACTED]
[REDACTED]. He also said that he did not know it was illegal to possess Diazepam without the necessary authority, a prescription. The Committee noted that the Registrant has been a qualified Pharmacist from 2014 and the Committee found this lack of fundamental knowledge surprising.
8. At the principal hearing the Committee felt that the Registrant's testimony was inconsistent and unclear at times. The Committee did not think that the Registrant had provided a clear and consistent history as to why he committed the offences, and in particular why he stole the Diazepam and what his intentions were with regard to a Class C of Schedule 2 drug. The Committee did not think that the evidence taken in its totality demonstrated sufficient insight. Nor did the Committee think that there was sufficient evidence of effective remediation.
9. The Committee were concerned as to the risks of recurrence the Committee was provided with details and documents relating to similar events which occurred in 2015. On 7th January 2016, a Scrutiny Committee issued a Warning to the Registrant with respect to the following conduct, (i) dispensing a POM without a valid prescription and without payment, (ii) making a false entry into a PMR, (iii) taking cash from the pharmacy, and (iv) improperly using vouchers. This misconduct occurred on 5th March 2015 when the Registrant was employed as a pharmacist by Boots in Newtownards. He was not regarded as having been dishonest on this occasion and asserted there was a personal reason to explain and excuse his conduct. This was put forward as an aberration that would never recur. The Scrutiny Committee warned the Registrant about repetition. In spite of the clear Warning provided by the Scrutiny Committee which the Registrant accepted, just over five years later in June 2021 the Registrant committed two offences of dishonesty, and was convicted of them in July 2022. In the circumstances the Committee could not be satisfied that there was not a material risk of repetition in the future in spite of the steps that the Registrant had taken to address his health issues, and alcohol issues, after the offences took place.

10. The Committee acknowledged general mitigating factors in relation to the Registrant's approach to the criminal and regulatory processes, [REDACTED] and his progress in an alternative employment setting. However, these factors are more relevant to consideration of the appropriate sanction at the principal hearing, the Committee concluded that on the evidence the Registrant's fitness to practise was currently impaired.

11. The Committee considered the following paragraphs of the decision on Sanction at the principal hearing to be particularly relevant:

At paragraph 49 the Committee said,

"If the Committee were to impose Conditions, it is reminded that the Conditions have to be workable in that they are appropriate to remediate the reasons for the Registrant's current impairment, that they have a realistic chance of being met by the Registrant, that they are capable of being verified by the Statutory Committee on completion, and that they are appropriate to protect the public. The Committee was invited to consider the imposition of Conditions, however, the Committee felt that Conditions would not be workable and would be difficult to verify in this case. The Registrant gave evidence that he was not intending to return to the profession in the foreseeable future and Conditions concerning supervision or the manner in which he practiced would quite simply not be workable. The imposition of Conditions would be suitable to a case where it was necessary to remedy deficient clinical practice. Here, the Registrant had been involved in two incidences of dishonesty. In these circumstances the imposition of Conditions is unlikely to meet the regulatory objective, and protect the public"

And at paragraph 50 the Committee,

"then considered the sanction of Suspension and whether this sanction would maintain public confidence in the pharmacy profession and be in the public interest. The Committee noted that a Suspension may be required to highlight to the profession as a whole, and to the public in general, that the conduct of a Registrant is unacceptable and unbecoming a member of the pharmacy profession. The Committee did consider that Suspension for a period of 12 months was the most appropriate and proportionate sanction, that protected

the public interest, and met the regulatory objective. This sanction should highlight to the profession and the public at large that the dishonest conduct of the Registrant is unacceptable and unbefitting a member of the pharmacy profession. However, taking everything into consideration, the Committee felt that the conduct fell just short of being fundamentally incompatible with continued registration”.

12. At paragraph 51 the Committee set out a number of expectations it hoped the Registrant would address before the suspension was reviewed.

The Committee expected;

- a) That the Registrant should, at his own expense, [REDACTED]
[REDACTED] to address all the issues that have arisen in this case, including:
 - i. Deficiencies in his insight
 - ii. How to deal with stress in his personal and or professional life
- b) That the Registrant should produce a detailed report for [REDACTED]
[REDACTED]
- c) That the Registrant should [REDACTED]
[REDACTED]
[REDACTED] Committee in advance of the review.
- d) That the Registrant should produce a personal written reflective piece, which demonstrates insight into his significant breach of professional standards and the personal actions he has taken to remediate during the year.

DECISION ON REVIEW

13. The Committee reminded itself that its role in a review hearing is not to reassess the appropriateness of the original sanction, but to examine the Registrant’s actions since the principal hearing, and to consider whether the Registrant’s fitness to practise is no longer impaired or remains impaired. The Committee was reminded of the words of the Supreme Court in the case of *GPhC v Khan* (2016) UKSC 64 which emphasised:

“the focus of a review is upon the current fitness of the registrant to resume practice, judged in the light of what he has, or has not, achieved since the date of the suspension. The review committee will note the particular concerns articulated by the original committee and seek to discern what steps, if any, the registrant has taken to allay them during the period of his suspension. The original committee will have found that his fitness to practise was impaired. The review committee asks: does his fitness to practise remain impaired?”

14. The Committee also noted the words of Blake J in the case of *Abrahaem v GMC* (2008) EWHC 183 where he said:

“the review has to consider whether *all* the concerns raised in the original finding of impairment through misconduct have been sufficiently addressed to the Panel's satisfaction. In practical terms there is a persuasive burden on the practitioner at a review to demonstrate that he or she has fully acknowledged why past professional performance was deficient and through insight, application, education, supervision or other achievement sufficiently addressed the past impairments. ”

15. Having heard the submissions of Mr. Shields for the Society and Mr. Gibson KC for the Registrant, and having received new material provided by the Registrant, the Committee considers that the Registrant's fitness to practise remains impaired.

REASONS

16. The Committee acknowledged the detailed Declaration of Insight document compiled by the Registrant. The Committee acknowledged that this document satisfies its expectations at paragraph 51 (d) of the original determination. The document does demonstrate insight into his significant breach of professional standards and the steps that he has taken to remediate.

17. However, at page 13 of that document he acknowledged that he has become de-skilled having not practiced as a Pharmacist from June 2021, nearly three years ago now.

He said, “while I am keen and willing to return to Pharmacy, I anticipate challenge and a gradual return, and I advocate the need for any necessary sanctions or professional supervision to necessitate and re establish trust. Following potential restoration, I will approach each day as an opportunity for improvement, and will be dedicated to continuous learning, clinical education and professional development, actively seeking constructive feedback, while upholding excellence in professional standards, striving to become the best Pharmacist I can be for my patients and the community.”

18. The Committee also acknowledged that the Registrant had responded to the Committee’s expectations set out in paragraph 51 (a) to (c). [REDACTED]

[REDACTED] that the Registrant stated openly that if reinstated , he will undertake robust and rigorous study in order to uphold excellence in expected professional standards.

[REDACTED] noted that the Registrant said,

“ If given the privilege to be reinstated on the register, [REDACTED]
[REDACTED] While I am keen and willing to steadily return to Pharmacy, I am aware and advocate the need for professional supervision for the re establishment of trust by the Pharmaceutical community, but additionally to reestablish my own confidence in my own ability to practice.”

19. Accordingly, whilst the Registrant has made very good progress since the principal hearing, the Registrant has quite properly acknowledged through the documentation he has submitted and through his own Counsel at the review hearing given his time away from practice that he needs time and supervision to practice competently as a Pharmacist. Given these issues the Committee considers that it is in the public interest, and in order to protect the public that a finding of current impairment is made at this time.

SANCTION

20. The Committee had regard to the Indicative Sanction Guidance and reminded itself that its decision must be proportionate.
21. The Committee acknowledges that the purpose of the sanction is not to be punitive, but to protect the public interest, and that the sanction it determines should impose no greater restriction on the Registrant than is absolutely necessary to achieve regulatory objectives.
22. The Committee is entitled to give greater weight to issues of public interest, and to the need to maintain public confidence in the profession, than to the consequences to the Registrant himself of the imposition of the appropriate sanction.
23. The Committee has to take into consideration issues of protection of the public, maintenance of public confidence in the profession and the maintenance of proper standards of professional behaviour.
24. As is required, the Committee considered all the potential sanctions available to it, starting with the lowest potential sanction, to decide which was the most appropriate and proportionate sanction in the circumstances of this particular case.
25. Having heard submissions from Counsel and having considered all new documentation the Committee felt that the imposition of Conditions would now be appropriate and proportionate, and would meet the regulatory objective. The Committee felt that the impositions of conditions would help address the concerns that the Committee have that the Registrant has been de-skilled having been suspended for nearly three years up to this time. The Registrant has indicated that he is willing to engage and meet conditions. At this time the Committee considers that the Conditions set out in the Schedule to this determination have a realistic chance of being met by the Registrant, and that they are capable of being verified by the Statutory Committee on completion. These Conditions are appropriate to protect the public, achieve the regulatory objective and uphold professional

standards. These Conditions will be imposed for a period of 18 months, after the present suspension period expires, and will be reviewed by the Committee prior to the expiration of the period of Conditions.

26. The Committee, on the further evidence in this case, does not consider that a further Suspension should be imposed. The Committee considers that the imposition of these Conditions, which are workable and which can be verified, should allow the Registrant the opportunity to remediate the reasons for the finding of impairment. At this stage of the case the Committee does not believe that a Suspension is either proportionate or is necessary to protect the public interest, or adequately addresses the Registrant's professional development needs.
27. The Committee, on the evidence, did not consider removal to be appropriate or proportionate on the evidence.

SCHEDULE OF CONDITIONS

- (i) To identify the name and contact details of a Supervisor, who must be a Pharmacist registered with the Pharmaceutical Society of Northern Ireland ("the Society"), with the Society, 14 days prior to recommencing practice, with such person to be approved by the Society.
- (ii) To place yourself and remain under the close supervision of this Supervisor at all times.
- (iii) Not to work as a Responsible Pharmacist, Superintendent Pharmacist or sole Practitioner during the period of these conditions.
- (iv) To work with the Supervisor to formulate a personal development plan designed to address the deficiencies in the Registrant's practice particularly around the five broad principles and regulatory professional standards. i.e.

1. Always putting the patient first
 2. Provide a safe and quality service
 3. Act with professionalism and integrity at all times
 4. Communicate effectively and work properly with colleagues
 5. Maintain and develop knowledge skills and competence.
- (v) To forward a copy of the personal development plan to the Society within two months of the recommencement of practice.
- (vi) To undertake an audit of your Pharmacy practice and to provide evidence in writing to show that you have reflected on your professional practice particularly in areas where further development has been identified by you and your Supervisor.
- (vii) To arrange for your Supervisor to send a written report to the Society every six months after the recommencement of your practice, and a final report from the Supervisor in advance of the review hearing.

COSTS

28. No costs application was made by the Society.

Gary Potter, KC

Chair of the Statutory Committee

16 May 2024