

PHARMACEUTICAL SOCIETY OF NORTHERN IRELAND

PROCEEDINGS

at a

HEARING of the STATUTORY COMMITTEE

held at

73 University Street, Belfast, BT7 1HL

On

15 August 2014

Present:

Michael Wilson (Chair)

Miriam Karp (Lay Member)

Michael Hamill (Registrant Member)

Case of:

Alison Mary Kinghan

Nature of Hearing

In accordance with paragraph 38 of the Council of the Pharmaceutical Society of Northern Ireland Regulations (Fitness to Practise and Disqualification) Regulations (NI) 2012 ('the Fitness to Practise and Disqualification Regulations') these are the findings and reasons of the Statutory Committee ('the Committee') on the review of its decision made on 10 March 2014 to suspend the registration of the Registrant, Alison Mary Kinghan for a period of 6 months

Preliminary legal arguments

There were no preliminary legal arguments.

Attendance of Registrant

The Registrant did not attend and was not represented. Jonpaul Shields BL, Counsel on behalf of the Pharmaceutical Society of Northern Ireland ('the Society') instructed by Cleaver Fulton Rankin Solicitors, confirmed the Registrant's name.

Service

The Committee received in evidence the signed witness statement of Anna McClimonds dated 7 August 2014 which stated that she is a solicitor at Cleaver Fulton Rankin, the firm on record for the Society; In light of the contents of this statement, and in particular the detail it provided of the witness' written communications and direct contact with the Registrant, the Committee was satisfied that service of the Notice of Hearing had been properly effected, that the Registrant was aware of the hearing and that she had not requested a postponement of the hearing. The Committee considered that nothing would be achieved by an adjournment and that it was therefore appropriate for the hearing to proceed in the Registrant's absence.

Background

Counsel for the Society informed the Committee of the background to the case, and the sanction previously imposed on the Registrant. She had initially come before a Statutory Committee on 12 August 2013, when in her absence, her fitness to practise was found to be impaired on the basis of deficient professional performance and she had been suspended for a period of six months.

That decision had been reviewed by a Statutory Committee on 10 March 2014. Once again the Registrant did not attend and, following a finding that her fitness to practise remained impaired on the basis, she was suspended for a further six month period. Counsel noted that prior to that review hearing the Registrant had written to the Statutory Committee on 1 March 2014 indicating that she did not intend to attend or to participate at the hearing.

Counsel also noted that in its decision on 10 March 2014 the Statutory Committee had specifically listed a number of matters that it wanted to be addressed at the further review and that it had expected the Registrant to at least engage on her own behalf.

Counsel for the Society directed the attention of the Committee to a bundle of documents including copies of the papers and the transcripts of the hearings on 12 August 2013 and 10 March 2014 together with copies of the decisions of the Statutory Committees on those dates.

The Committee admitted in evidence these documents together with the statement of Anna McClimonds

dated 7 August 2014 for the purpose of this Hearing.

Submissions on Impairment

Counsel for the Society drew the Committee's attention to the findings of fact against the Registrant made at the hearing on 12 August 2013, the decision on impairment and the sanction imposed on the Registrant at that time and at the prior review hearing on 10 March 2014.

He observed that:

- the deficient professional performance that the Committee had found proven occurred over approximately a three month period;
- there no patient safety was actually compromised, and there was no evidence of actual harm as a result of the deficient professional performance of the Registrant;
- a risk was created to patients' wellbeing which could have been compromised; and
- because of the nature of some of the things that were done there was a potential to damage the standing of a colleague because the Registrant had endeavoured to have at least one colleague breach the Medicines Act by what she was asking or encouraging him to do.

Counsel did not propose to adduce any additional evidence in support of his submissions and said that the facts giving rise to the deficient professional performance and the finding of that remained the same. However there has been no correspondence or engagement by the Registrant since the date of the previous hearing and the last correspondence was her letter dated 1 March 2014 in which she had indicated that she would not be attending the review hearing on 10 March 2014, had alluded to a health issue that made it impossible for her to represent herself, and had stated that she was not working at that time and could not pay for representation. In addition the Registrant had made a number of observations in relation to her acceptance of some responsibility for what she had done and there was some acknowledgment that what she did was wrong and she indicated she was ashamed of herself.

Counsel said that there was no evidence that the Registrant had worked since she was dismissed from her employment; nor that there had been any maintenance of her pharmaceutical skills, nor any evidence of her continuing professional development or any remedial measures taken to counter the failings that had been identified.

Counsel noted that no medical evidence had been furnished by the Registrant although she had been encouraged to do so by the Statutory Committee in its decision on 10 March 2014 and as appeared from the bundle of papers admitted into evidence the Registrant had been written to by the Society's solicitors and likewise encouraged to provide materials to assist in her own case, or to seek advice from either a colleague or somebody else who could have guided her but she had not done so. In those circumstances there was, in Counsel's submission, no material improvement in her position and there may have been a lessening in relation to her skill set and, in summary, the Registrant's fitness to was likely to have deteriorated over the past year and that she was therefore currently unfit to practise.

Decision on Impairment

The Committee's task is to determine the issue of whether the Registrant's Fitness to Practise is currently impaired. It is a valued judgment which is not based upon any civil or other burden of proof. Impairment of fitness to practise can be demonstrated in a number of ways and the Committee has had regard to the

provisions at paragraph 4(1)(b) of Schedule 3 to the Pharmacy (NI) Order 1976 (as amended) ('the 1976 Order') which provides that a person's fitness to practise can be regarded as impaired by reason of deficient professional performance. In addition, the Committee has had regard to the Fitness to Practise criteria set out in Regulation 4(2) of the Fitness to Practise and Disqualification Regulations. Although impairment is not defined the Committee noted the recognised legal approach to impairment set out in Meadow -v- GMC [2006]:

'...the purpose of [fitness to practise] proceedings is not to punish the practitioner for past misdoings but to protect the public against acts or omissions of those who are not fit to practise. The [fitness to practise panel] thus looks forward and not back. However, in order to form a view as to the fitness to practise of a person to practise today, it is evident that it will have to take account of the way in which the person concerned has acted or failed to act in the past'.

The Committee had also kept in mind the fundamental public interest requirements of the need to protect the public and to uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession (see Calhem -v- GMC [2007]).

The Committee has considered the submissions of the Society against the background of the information available to the Statutory Committees at the Hearing in August 2013 and the first review hearing in March 2014. The position essentially remains as it was in August 2013. There was some additional evidence contained in the statement of Anna McClimonds which was helpful insofar as it enabled the Committee, for example, to determine to proceed in the absence of the Registrant at this review hearing today.

The Committee noted that at the Hearing in March 2014 the Registrant's attention was expressly drawn to a number of matters which would have assisted the Committee at this review hearing. There were five matters in order:

1. The provision of detailed medical evidence of the Registrant's physical and/or mental health which reflected a comment in her letter of 1 March 2014. No such evidence or information has been provided to the Committee.
2. Evidence of the Registrant's ongoing professional development. There was no evidence of this and the Committee was entitled to conclude that there was likely to have been a further deterioration in the skill level of the Registrant.
3. The Registrant was advised that the Committee would want to be informed or provided with evidence that she had addressed the adverse findings made against her at the original Hearing on 12th August 2013, but again there is no evidence of this.
4. Evidence of how the adverse findings against the Registrant on 12 August 2013 were being remediated. Once again there was no evidence of this available to the Committee.
5. The Registrant was urged to provide any other evidence which she considered relevant in assisting the Committee. Nothing had been provided and the Committee also noted the efforts made by the Society and its solicitors to reinforce the five points set out in the review hearing

decision on 10 March 2014.

The Committee concluded that none of the Registrant's deficiencies that had been previously identified had been addressed. In those circumstances the Committee had concerns about the Registrant's ability to practise and therefore it determined that her fitness to practise remained impaired.

Submissions on Sanction

Counsel for the Society referred to the background evidence contained in the bundle of documents, including the statement of Anna McClimonds dated 7 August 2014 and submitted as follows:-

1. Despite the encouragement of the Society and its solicitors the Registrant had not engaged in the process.
2. The Registrant had not submitted her continuing professional development portfolio.
3. The Registrant had not engaged with the Scrutiny Committee at a time when matters could have been dealt with through the use of undertakings and the matter had then been unavoidably escalated by being referred to the Statutory Committee.
4. It was inappropriate given the background to the case for the Committee to take no action and allow the suspension to lapse.
5. It was impossible to determine any appropriate conditions without the Registrant's input.
6. At the review hearing on 10 March 2014 the Statutory Committee had allowed the Registrant another opportunity to address her deficiencies essentially because of her letter of 1 March 2014 and had given her specific directions in relation to how she could engage and what was expected of her, so there could be no equivocation or ambiguity but she had not availed of that opportunity.
7. A further extension to the period of suspension might be appropriate, and an alternative to striking off, only if the Committee believed it would achieve something.
8. It was difficult to see what other option was available to the Committee other than to remove the Registrant from the register.

Decision on Sanction

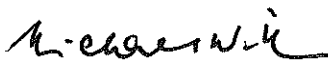
1. In considering the appropriate sanction to impose in this case the Committee has taken into account the Sanctions Guidelines.
2. The Committee is conscious that its function is not to punish the Registrant, and it must act in a manner which is proportionate to her interests but at the same time the Committee has to ensure that public confidence in the profession is maintained, that the public is protected, and that the standards of those operating within the profession itself are upheld.
3. The factual background to the matter was of concern to the Committee in the sense that the

allegations as originally formulated were not the most serious, and indeed, the Scrutiny Committee had endeavoured to deal with the matter at a relatively low level. However the matter has gone beyond that and was now before a Statutory Committee for the third occasion and this escalation was entirely due to the non-engagement of the Registrant

4. The Committee was concerned to protect the public, to ensure confidence in this profession was maintained, and also that the standards of those who were operating within the profession were upheld.
5. The factual circumstances were essentially unchanged from the original Hearing in August 2013 and the subsequent first review Hearing in March 2014.
6. The Committee noted the letter of 1st March 2014 received from the Registrant, and the reasons why a further period of suspension was imposed in March 2014 and the indication given to the Registrant of what would be helpful to this Committee in dealing with the matter.
7. The Committee also noted that the Registrant had now been out of practice for over two years, the documents suggested that she was dismissed from her employment in about May 2012 and there is no evidence before the Committee that she has worked since then.
8. The Committee took into account the continuing lack of engagement by the Registrant, and noted her apparent wish to be removed from the Register, and that that she appeared to have CPD compliance issues with the Society.
9. The Registrant's desire for removal, or indeed any process by the Society against the Registrant for a failure to comply with CPD requirements, were not of themselves factors which would be determinative of the Committee's decision.
10. In its decision dated 10 March 2014 the Statutory Committee determined that paragraph 7(6) of Schedule 3 of the 1976 Order was not engaged as the Registrant's letter of 1 March 2014, by itself and without more, was insufficient evidence for the Committee to conclude that the Registrant's fitness to practise is impaired solely (*emphasis added*) by reason of adverse physical or mental health. There is no additional information before this Committee and therefore we also determine that this provision does not apply.
11. In determining the appropriate sanction the Committee has had regard to paragraph 7(3) of Schedule 3 to the 1976 Order. The first option is to let the existing Suspension Order lapse. This is not appropriate in view of the factual background and the Committee's finding that the Registrant's fitness to practise remains impaired. The issues which have affected this Registrant have not been addressed. There is very limited evidence of any insight by the Registrant, and her non engagement with the process, and the manner in which it has been allowed to escalate, would not make it appropriate to let the suspension lapse.
12. The Statutory Committees which dealt with the matter in both August 2013 and March 2014 were not able to conceive of conditions that would be workable, appropriate, enforceable, or meaningful. That remains the position and this Committee is unable to produce conditions

which would support the Registrant and protect the public. The Registrant's non engagement with this process also means that conditions are not an appropriate sanction.

13. To impose a further period of suspension would require a sufficient reason or a purpose. Any further suspension has to be both an aid to the Registrant, as well affording protection to the public, and maintaining public confidence in the profession. The Committee notes that the opportunity given to the Registrant by the Statutory Committee at the review hearing on March 2014 to address her issues and to assist this Committee at this subsequent review. This has not been taken up by her and therefore the Committee cannot foresee a sufficient reason or purpose for imposing a further period of suspension.
14. That leaves the Committee with the option of striking off the Registrant. The Committee considers that this is the only course of action appropriate at this time, bearing in mind that those matters which have informed the Committee in its finding that the Registrant is currently impaired. There is a risk to the public from the continuing impairment of the Registrant's fitness to practice. That risk and the Committee's concerns are heightened by the passage of time, by the deskilling of the Registrant, which has been exacerbated by her continuing failure to engage and in addition by CPD issues.
15. The Committee has an obligation to maintain public trust and confidence in the profession, and to ensure that members of the public are protected. The Committee also has the obligation to ensure that appropriate standards are maintained by the profession. The Committee has no option, other than to direct that the Registrant be struck off and does not consider that it is disproportionate to her rights or her interests in any way to do so.
16. Although the Registrant is currently not in practice the Committee is also satisfied that an Interim Order is appropriate in view of the reasons given in concluding that the Registrant's fitness to practice remains impaired and underlying issues of her non engagement. The Committee recognises the need to ensure the protection of the public and that public confidence in the profession is maintained. For the reasons already given in relation to the Committee's determination on sanction an Interim Order imposing conditions would not be appropriate. Therefore that there will be an Interim Order of suspension with immediate effect which will continue until the Committee's decision to strike off the Registrant comes into effect.



Michael Wilson
Chair of Statutory Committee

