

PHARMACEUTICAL SOCIETY OF NORTHERN IRELAND

PROCEEDINGS

at a

HEARING of the STATUTORY COMMITTEE

held at

73 University Street, Belfast, BT7 1HL

on

24 July 2014

Present:

Michael Wilson (Chair)

Carol Ackah (Lay Member)

Sheelagh Hillan (Registrant Member)

Case of:

Victor James Doran Sterling

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 23 July 2013 to suspend the registration of the Registrant, Victor James Doran Sterling for a period of 12 months.

Preliminary legal arguments

There were no preliminary legal arguments.

Attendance of Registrant

The Registrant did not attend and was not represented. Counsel on behalf of the Pharmaceutical Society of Northern Ireland ('the Society') confirmed the Registrant's name.

Service

The Committee received in evidence the signed witness statement of Patrick Fleming dated 23 July 2014 which stated that he is a solicitor at Cleaver Fulton Rankin, the firm on record for the Society; that he had received a telephone call from a person identifying himself as the Registrant; that he was phoning in relation to a letter received from a colleague of Mr Fleming relating to the hearing; and that he did not intend to attend the hearing. In light of this the Committee was satisfied that service of the Notice of Hearing has been properly effected, that the Registrant was aware of the hearing and that it was appropriate for the hearing to proceed in his absence.

Background

Counsel for the Society informed the Committee of the background to the case, and the sanction previously imposed on the Registrant. Counsel for the Society also directed the attention of the Committee to a bundle of documents including copies of the original papers and the transcript of the hearing on 23 July 2013, and the decision of the Committee at that stage. The Committee noted that in Patrick Fleming's statement he stated that in his telephone discussion with him the Registrant 'agreed the entirety of the papers sent to him'.

The Committee admitted these documents together with the statement of Patrick Fleming in evidence 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 23 July 2013, the decision on impairment and the sanction imposed on the Registrant. He noted these were set out in the Society's letter to the Registrant dated 29 July 2013.

Counsel stated that there was no real dispute in relation to the background of the case when it was

originally considered by the Committee. He said that the case was self-explanatory and essentially there had been a difficulty over a period of 10 months in relation to the supply of medicines by way of compliance aids to vulnerable patients. Prescriptions had not been routinely obtained prior to medicines being dispensed. In relation to one patient, Patient B, where one medication had been withdrawn by the GP, the Registrant had not noticed this for a period of 10 months. There were also ancillary issues in relation to the update of his patient medication records, and a concern about how he had responded to a formal investigation. The earlier Committee had been referred to the Adverse Incident Report form which had been completed by the Registrant in which the Registrant essentially did not see that the pharmacy had done anything wrong. He had not identified any improvements that needed to be made and essentially blamed the General Practitioner for not telling him, whereas in fact it would have been his responsibility to get the prescription and to make sure that he was dispensing only and solely in accordance with that prescription.

Counsel said that when interviewed the Registrant admitted that there were between 15 and 17 other patients who would have been receiving compliance aid, all of whom he had dealt with in a similar way; i.e. that he would have dispensed prior to having the prescriptions. Counsel noted the facts identified by the Committee in July 2013 its determination that as of 23 July 2013 the Registrant's fitness to practise was impaired.

Counsel informed the Committee that he did not propose to adduce any additional evidence apart from the bundle of material that was before it.

In relation to the Registrant's current fitness to practise Counsel observed that there had been no change since July 2013; that there had been a deskilling of the Registrant – he had not addressed his CPD requirements; no steps appeared to have been taken to deal with any of the deficiencies identified by the previous Committee which required to be remediated and rectified; there was a fundamental issue in relation to the Registrant's insight and the seriousness of the failings that have been identified; there was no evidence before the Committee that that has either improved or changed in any shape or form; that all of the same concerns that led to the case being brought were still relevant and extant and had not been addressed; the registrant had sold his pharmacy at the end of August 2012 and he had not practised since that time, and in summary the Registrant's fitness to was likely to have deteriorated over the past year and that he was 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 and is not based upon any civil or other burden of proof. Impairment of fitness to practise can be demonstrated in a number of ways. In this matter the relevant provision is

found at paragraph 4(1)(b) of Schedule 3 to the Pharmacy (NI) Order 1976 (as amended) which provides that a person's fitness to practise can be regarded as impaired by reason of deficient professional performance (which includes competence). In addition, when considering whether fitness to practise requirements are met 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 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 has also kept in mind the fundamental public interest requirements of:

'...the need to protect the public and ...to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession' Calhem -v- GMC [2007].

The Committee has considered the background information to the consideration of the Committee in July 2013. That remains as it was in July 2013 and the only additional matter of fact is the evidence of Patrick Fleming which was helpful in the committee's consideration of this issue.

The Committee has taken into account the comments and the conclusions of the original Committee insofar as they considered on the same facts as to whether the Registrant's fitness to practise was then currently impaired. Mr Fleming's statement is significant in noting the Registrant's intention not to attend the hearing, and his intention not to complete any CPD returns (in respect of which the Society has begun separate proceedings against him). Whilst the Registrant may be seeking his removal from the Register that is not a fact which has influenced the Committee in relation to its conclusion on impairment. But the Committee is entitled to take into account that it has no evidence of any efforts by the Registrant to remediate the deficiencies found by the original Committee, nor any attempt to identify the underlying problems. It leads the Committee inevitably to conclude that the deficiencies that were previously identified have not been addressed and the Committee has concerns about his ability to practise and, therefore, it determines that the Registrant's fitness to practise is currently impaired.

Submissions on Sanction

Counsel for the Society referred to the background and to the statement of Patrick Fleming and submitted as follows:-

1. The previous Committee had found as a fact that the Registrant had sold his pharmacy in August of 2012, that was a previous finding that was made by the Committee in July of last year, and whilst he had now evidenced a clear intention and desire to leave the Register that was not, for the purposes of these proceedings, determinative of the issue as a Fitness to Practise hearing involved wider public interest issues that needed to be considered.
2. It was inappropriate for the Committee to take no action and allow the suspension to lapse.
3. It was impossible to determine any appropriate conditions without the Registrant's input.
4. Referring to the previous Committee's decision to suspend the Registrant there was an expectation by that Committee that he would take the opportunity to attempt to remediate the failings that had been identified. The Committee had indicated that it did not consider that this was a case which required the Registrant to be struck off. There was no dishonesty, nor in the view of the Committee was his behaviour fundamentally incompatible with registration. It was satisfied that there was, in the context of a misconduct case, deficient performance and that the Registrant posed a significant risk to patient safety if the suspension was not put in place. The Committee concluded that the Registrant had demonstrated sufficient, if limited, insight to justify the view that there was a potential for remedy through re-training, and that seems to have been the rationale for its decision to suspend. The Registrant was given an opportunity to re-train if he so chose, and there was some sliver of hope that he could remediate the issues that had brought him before the Committee.
5. A further extension to the period of suspension might be appropriate, and an alternative to striking off, if the Committee believed it would achieve, or have a reasonable chance of achieving, some objective but this would not be appropriate if it was done to avoid wrestling with the main issue which was the fact that there has been no engagement by the Registrant.
6. The only option left to the Committee in the light of the Registrant's actions, and one necessary to protect the public, was to strike him off 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 his interests. But 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 circumstances of this matter are unchanged from the original hearing in July 2013, save insofar as are reflected in the written statement of Patrick Fleming, the continuing lack of engagement by the Registrant, his apparent wish to be removed from the Register, and his CPD compliance issues.
4. The Registrant's desire for removal, or indeed any process by the Society against the Registrant for a failure to comply with CPD requirements, are not factors which are determinative of the Committee's decision.
5. The Committee has had regard to paragraph 7(3) of Schedule 3 to the principal Order. The first option is simply 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. There were serious issues which have not been addressed and there is very limited insight by the Registrant, and his non engagement with the process means it would not be appropriate simply to let the suspension lapse.
6. The Committee which dealt with the matter in July 2013 was not able to conceive of conditions that would be workable, appropriate, enforceable, or in any way meaningful. That remains the position and this Committee is unable to fashion conditions which might help the Registrant address his serious failures. The Registrant's non engagement with this process also means that conditions are not an appropriate sanction.
7. 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 by the Committee at the July 2013 hearing to the Registrant to address his deficiencies through a period of suspension has not in any way been taken up by him and concludes a further period of suspension would not be appropriate.
8. That leaves the Committee with the option of striking off the Registrant. The Committee believes that it is the only course of action appropriate at this time, bearing in mind that the matters which have informed the Committee that the Registrant is currently impaired are serious and if anything the Committee's concerns have been heightened by the passage of time, by the deskilling of the Registrant, by his failure to engage, and by the CPD issues.
9. 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 external trust and confidence in the

profession must also be matched internally so that appropriate standards are maintained. The Committee has no option, other than to direct that the Registrant be struck off. It is not disproportionate to his rights or his interests in any way to do so in this particular case.

10. Although the Registrant is currently not in practice the Committee is also satisfied that an Interim Order is appropriate in all the circumstances of this case because of the serious underlying issues and 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. Accordingly the Committee has determined 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

