# OUTCOME OF FITNESS TO PRACTISE HEARING

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| **Case Number** | 2013/04 |
| **Name** | Alison Mary Kinghan |
| **Registration Number** | 2580R |
| **Date of Hearing** | 12th August 2013 |

**The Notice of Allegation**

The particulars of the deficient professional performance alleged against Alison Mary Kinghan are summarised as follows :-

1.1. She issued an instruction to a locum pharmacist to supply a Controlled Drug, which had already been assembled and entered into 'CD Register', without a valid prescription being available (Patient A).

1.2. She issued an instruction to a locum pharmacist, to dispense a Controlled Drug, Methadone, to an unsupervised patient when the prescription required that the patient be accompanied (Patient B).

1.3. She failed to properly complete PMR records for a patient in receipt of Suboxone in that:

(a) Records were not always made on foot of dispensing a valid prescription; and (b) Records completed did not accurately reflect the dates of supply endorsed on the corresponding prescriptions (Patient C).

1.4. She failed to dispense Diazepam to a patient in accordance with the prescription of the prescribing physician's instruction (Patient D).

1.5. She failed to dispense Diazepam to a patient on set days when directed to dispense twice weekly as was expected by the prescribing physician and in line with best practice (Patient E).

1.6. She failed to (a) maintain an accurate and contemporaneous record in the Controlled Drug Register of the supply of Fentanyl patches to a patient and (b) follow the dispensing directions as authorised by the prescribing physician (Patient F).

2. That she failed to comply with the following principles and associated obligations of the Pharmaceutical Society of Northern Ireland's Code of Ethics and Practice 2009;

2.1 The general principle of Registration as a Pharmacist that requires her to act to promote and maintain public confidence in the Pharmacy profession.

2.2 The Code acts to maintain patient safety and public confidence in the profession.

2.3 Principle 1 – Make the safety and welfare of patients your prime concern and associated obligation.

- Obligation 1.1 "Act in a manner that promotes wellbeing and safeguards the health welfare of patients."
- Obligation 1.2 "Take steps to safeguard the wellbeing of vulnerable individuals, both adults and children".
- Obligation 1.3 "Ensure the provision of high standard of professional service by you or those working under your direct supervision".

- Obligation 1.11 "Undertake regular reviews, audits and risk assessment"

2.4 Principle 4 – Exercise professional judgement in the interests of patients and public and the associated obligation.

- Obligation 4.1 "Consider and act in the best interests of individual patients and the public".

2.5 Principle 6 - Maintain and develop professional knowledge and competence and the associated obligations.

- Obligation 6.3 "Apply your knowledge and skills appropriately to your professional responsibilities"

2.6 Principle 8 – Provide a high standard of practice and care at all times and the associated obligations.

- Obligation 8.4 "Take responsibility for all work done by you or under your supervision. Ensure that individuals to whom you delegate tasks are competent and fit to practise and have undertaken, or are in the process of undertaking, the training required for their duties."
- Obligation 8.7 "Be satisfied that appropriate standard operating procedures (SOPs) exist, are adhered to and are monitored and revised as appropriate, and that clear lines of accountability and verifiable audit trails are in place".
- Obligation 8.8 "Take all reasonable steps to ensure that both you and those you employ or supervise comply with all legal and professional requirements and best practice guidance".
- Obligation 8.10 "Make sure that your actions do not prevent others from complying with their legal or professional obligations, or present a risk to patient care or public safety".

3. The Scrutiny Committee of the Pharmaceutical Society of Northern Ireland determined on 26 March 2013 that she be invited to make a written representation with regard to suggested undertakings but warned that should there be any failure to respond or comply with the agreed undertakings that the Scrutiny Committee may be minded to refer the original allegation to the Statutory Committee and treat the failure to comply as a separate allegation to the Statutory Committee. This was so determined by the Scrutiny Committee on 18 April 2013. Accordingly a further and separate allegation of misconduct is her failure to comply with the undertakings pursuant to Regulation 11 (2) (a) of The Council of the Pharmaceutical Society of Northern Ireland (Fitness to Practise and Disqualification) Regulations (Northern Ireland) 2012.

4. By her acts or omissions she may (a) have brought the profession into disrepute, (b) have failed, on a professional basis, to observe the principles set out above and (c) have undermined public confidence in the profession.

**Facts found**

The Statutory Committee took into account the written statements of evidence of Brendan Kerr, John Stevenson and Anna McClimonds, and the oral evidence of John Stevenson and Anna McClimonds (together with the content of documents by those witnesses). The Statutory Committee found as follows:

In relation to patient A that the Registrant issued an instruction to a locum pharmacist on or about the 2nd of February 2012 to supply a controlled drug which had already been assembled and entered into the controlled drug register without a valid prescription being available.

In relation to patient B, the script for this patient required him to be accompanied when the medication was being dispensed; that this related to the time of in or about the 11th of February 2012 and concerns the controlled drug, Methadone; that on a date unknown , but between the date of issue of the underlying script and 11th of February 2012 the arrangement that the drug could not be prescribed or dispensed to him unless he was accompanied had been changed by the patient's general practitioner.

In relation to patient C, that on various dates between the 1st of November 2011 and the 31st of January 2012 the Registrant did not properly complete patient medication records for this patient who was in receipt of Suboxone, in that the records were not always made on foot of dispensing a valid prescription and, in addition, the records that she did complete did not accurately reflect the dates of supply endorsed on the relevant and corresponding prescriptions.

In relation to patient D, that on various dates between the 28th of June 2011 and the 26th of November 2011 the Registrant failed to dispense Diazepam daily.

In relation to patient E, that on various dates between the 23rd of December 2011 and the 9th of February 2012 the Registrant did not dispense the prescribed medication, namely Diazepam, to this patient on set days in each week.

In relation to patient F, that between the 29th of January 2012 and the 2nd of February 2012 the Registrant failed to maintain an accurate and contemporaneous record in the controlled drug register of the supply of Fentanyl patches to patient and also that the Registrant did follow the instructions as authorised by the prescribing physician in that period.

The Statutory Committee also found as a general finding relating to these six patients that in no case was the safety of any of these patients actually compromised.

**Determination of impairment**

In light of those findings of fact the Statutory Committee considered whether they amounted to the category of impairment pleaded (i.e. deficient professional performance).

Counsel for the Society drew attention to some of the legal commentary on deficient professional performance which is referred to at paragraph 4(1) (b) of Schedule 3 of the Pharmacy (NI) Order 1976. There is no legal definition of this, but the Statutory Committee took into account the comments of Mr Justice Jackson in Calhaem v GMC, (2007).

The Statutory Committee also specifically looked at this by judging the performance of the Registrant against the standard of the professional work that is reasonably to be expected of her as outlined in paragraph 2 of the Notice of Hearing and found that the circumstances amounted to evidence of deficient professional performance.

On the facts determined the Statutory Committee found as follows:

That allegation 1.1 (Patient A) was proven and that it was one example, and there were several in this case, of the Registrant's failure to maintain proper records, especially in relation to controlled drugs.

That allegation 1.2 (Patient B) was not proven on the balance of probabilities.

That allegation 1.3 (Patient C) was proven

That it could not draw any conclusion in relation to allegation 1.4 (Patient D) and that the allegation was not proven.

That allegation 1.5 (Patient E) was not proven. In this matter the Statutory Committee noted that the Registrant's employer did not have any standard operating procedures and it was unable to draw a conclusion adverse to her in those circumstances.

That allegation 1.6 (Patient F) was proven insofar as she failed to maintain an accurate and contemporaneous record in the controlled drug register of the supply of the Fentanyl patches to patient F.

The Statutory Committee dismissed the allegation set out in paragraph 3 of the Notice of Hearing.

The Statutory Committee noted that the deficient professional performance of the registrant covered a period of approximately three months; that there was evidence of a continuing failure to observe appropriate standards, particularly in relation to controlled drugs; that its findings related to her profession and professional ability, and taken together, suggested a professional deficiency on

the Registrant's part; that although no patient's wellbeing was actually compromised there was a risk that a patient's wellbeing could have been compromised by these failings; and the Statutory Committee took into account that the failings of the Registrant had the potential to damage the professional standing of her colleagues with whom she worked, particularly the locum pharmacist and other pharmacists employed in the business.

The Statutory Committee noted in relation to allegation 1.1 (Patient A) that what was happened could well have breached the Medicines Act 1968 and that it was to the good fortune of the Registrant that her colleague and prevented an actual offence taking place.

The Statutory Committee was satisfied that there was deficient professional performance by the Registrant and that as such her fitness to practise was impaired and currently remained impaired. There was no evidence before the Statutory Committee of any steps taken by the Registrant to address the issues which arose in this case, other than that she seemed to have turned her back on the profession, but that was not an answer to an allegation that her fitness to practice currently remained impaired.

**Sanction**

Registrant suspended for 6 months

CHAIR

"The Committee has reminded itself of the sanctions and guidelines available to it. We also are conscious that our purpose is not to punish the Registrant, even in her absence and with her non-cooperation, but rather we are tasked to protect the public and gain the public confidence in the profession and to ensure that proper standards of behaviour are maintained by Registrants.

The difficulty in this case was caused by the lack of engagement by the Registrant at the various stages of the process. As we look at the sanctions that are open to us it is not our view that under any circumstances a warning to this Registrant would have been sufficient. We run into more difficulty if we look at conditions, but conditions have to be proportionate and workable, they have to be measurable and they require the engagement of the Registrant. So in this case we find it simply impossible to impose appropriate conditions. We are very conscious of our need to be fair, to be proportionate in what we do, and to act reasonably. We are very conscious of our obligation to impose the least possible measure.

We certainly would not consider striking off this Registrant, but because conditions are unworkable we are left with the sanction of suspension.

In this case it is impossible to conclude that the Registrant has demonstrated insight, we have simply no idea what she feels about this matter. We do acknowledge that within the sphere of her employment, and the process of terminating that employment, there was some recognition by her of her shortcomings. There is nothing that really helps us to determine whether and how she felt

about her professional obligations to the Pharmaceutical Society. We do give her credit for not putting obstacles in the way of either this process or her employer's process, but that's not much help to us when we try to ascertain whether she has demonstrated any insight into what has happened, we simply do not know. There are potentially some aggravating factors in this case.

It was acknowledged by Mr Stevenson, and the Committee is of the view that no patient was actually harmed by what happened, but there was the potential for harm and also to have put perhaps less robust members of her profession, colleagues, and persons for whom she was responsible or supervising into a difficult professional position. So these are aggravating factors.

As such they again highlight why we cannot find conditions that are workable to address the issues in this case.

We have determined to suspend the Registrant for a period of six months and to review the suspension before the expiry of that period. That may yet afford the Registrant the opportunity to persuade us that there is some other or better way to deal with this matter, but it is not possible for us to determine that today."

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| **Time Scale for Enactment** | 28 days from Wednesday, 14 August 2013 the date of FTP notification, commencing on 12th September 2013 completion on 11th March 2014, subject to any appeal by the registrant | |
| **Chair of Committee** | Mr Michael Wilson | legal chair |
| **Members of the Fitness to Practise Committee** | Ms Catherine Wilkinson<br>Ms Ms Carol Ackah | registrant member<br>lay member |
| **Society Counsel** | Mr Jon Paul Shields, instructed by Ms Louise Coll (Cleaver Fulton Rankin) | |
| **Registrant** | Registrant did not attend and was not legally represented | |
| **Clerk of Committee** | Mrs Claire Williamson | |