

COUNCIL OF THE PHARMACEUTICAL SOCIETY OF NORTHERN IRELAND
(FITNESS TO PRACTISE AND DISQUALIFICATION) REGULATIONS (NORTHERN IRELAND) 2012

THE PHARMACEUTICAL SOCIETY OF NORTHERN IRELAND

HEARING HELD AT SOCIETY HOUSE ON 15th September 2016 at 10 am

73 UNIVERSITY STREET

BELFAST, BT7 1HL

Decision Handed down on 15th September 2016

PHARMACEUTICAL SOCIETY OF NORTHERN IRELAND

-v-

MR CONOR MARTIN STEELE
(Registrant Number 5134)
(Registered Person Concerned)

APPEARANCES

COMMITTEE MEMBERS: MR KEVIN NEARY (CHAIR)
MS JAYNE LAUGHLIN
MR EOIN DOYLE

COMMITTEE SECRETARY: MS FIONA MURRAY

ON BEHALF OF THE SOCIETY: MR JONPAUL SHIELDS, BL
Instructed by: MS ANNA McCLIMONDS
CLEAVER, FULTON RANKIN

SOCIETY REGISTRAR MR BRENDAN KERR

DEPUTY CHAIR MR CONOR HEANEY (IN ATTENDANCE)

ON BEHALF OF THE REGISTRANT: Mr JOHN RAFFERTY BL

Instructed by KEVIN O'HAGAN MC KINTY & WRIGHT

**DETERMINATION FOLLOWING HEARING ON
15th September 2016**

Prior History of this matter

It was alleged that on 18th January 2016 The Registrant accepted and received a caution for the offence of theft contrary to Section 1 of the Theft Act (Northern Ireland) 1969 namely the theft of a television from a Tesco Supermarket in Carrickfergus. This caution was administered by a police officer acting on behalf of the Police Service of Northern Ireland and fact of this caution was referred to the Scrutiny Committee of Pharmacy Society of Northern Ireland

Reference of Matter to Statutory Committee

The Scrutiny Committee has, pursuant to Paragraph 6(3) of Schedule 3 of the Pharmacy (Northern Ireland) Order 1976, referred the following allegation above which is set out in more detail below to the Statutory Committee for its consideration arising from which it is alleged that the fitness to practise of The Registrant as a registered pharmacist may be impaired, pursuant to Paragraph 4(1)(g) of Schedule 3 of the Pharmacy (Northern Ireland) Order 1976 by reason of the Registrant having accepted and received a caution from the Police Service of Northern Ireland.

The particulars of the allegation from which it is alleged that impairment arises and as set out in the Notice of Reference to this Committee are as follows and I quote:

"1. That on 18 January 2016 you left a Tesco's store in Carrickfergus with a television, belonging to Tesco, without making or offering payment for the item.

2. That on 26 January 2016 you accepted and received a caution for the offence of theft contrary to Section 1 of the Theft Act (Northern Ireland) 1969. This caution was administered by a police officer acting on behalf of the Police Service of Northern Ireland.

3. That by agreeing to and then receiving a caution for theft, you accepted that you had committed this particular criminal offence. One of the essential ingredients of the offence of theft is dishonesty. Accordingly, your conduct on 18th January 2016 was necessarily dishonest.

4. That by your acts and/or omissions you have created a risk to the reputation of, and public confidence in, the Pharmacy profession.

5. For the purposes of Paragraph 1(3) of Schedule 3 of the Pharmacy (Northern Ireland) Order 1976 as amended and Regulation 26(11) of The Council of the Pharmaceutical Society of Northern Ireland (Fitness to Practise and Disqualification) Regulations (Northern Ireland) 2012, the following principles and obligations (contained in the Pharmaceutical Society of Northern Ireland's Code of Ethics (2009)) are regarded by the Society as relevant to the proceedings. Further the Society alleges that the Registrant is in breach of these principles and obligations by reason of the impairment particularised above.

- The general principle of Registration as a Pharmacist that requires you to act to promote and maintain public confidence in the pharmacy profession.*
- Principle 7 – Act with honesty and integrity and the associated obligations.*
- Obligation 7.1 “Maintain public trust and confidence in your profession by acting with honesty, integrity and professionalism.”*
- Obligation 7.2 “Demonstrate high standards of personal and professional conduct at all times”.*

6. By your acts or omissions you 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.

DETERMINATION ON FITNESS TO PRACTISE IN THIS MATTER

This is the decision of the Statutory Committee in respect of the Fitness to Practise module in the case of Conor Martin Steele, Registrant number 5314.

This is a hearing to consider the reference to the Committee dated 10th August 2016 concerning the registration of Conor Martin Steele, registration number 5314. We are grateful for the assistance of both counsel in helping us with reaching a determination in connection with this matter in considering whether Fitness to Practise has been impaired.

The determination of this issue has been greatly shortened by the admission at the outset of the hearing by the Registrant that his conduct amounted to dishonesty. Consequently, we have not been required to determine facts as the admission of theft by way of a caution has been accepted by the Registrant as an act of dishonesty.

The Committee has had to consider whether this admission of dishonesty in the particular circumstances of the case and having regard to all of the evidence heard both in public and in camera justifies a finding of impairment. There is no definition provided of impaired Fitness to Practise. This is an issue for the Committee to determine as a value judgment.

As counsel for the Society has reminded us, the test to be applied is to be a forward looking one. As Cox J in *CHRE v NMC* and *Grant* reminds us, the question is as to whether the Registrant's current fitness to practise is impaired. Further, at paragraph 70 in that judgment he reminds us that an assessment of current fitness to practise will, nevertheless, involve consideration of past misconduct and of any steps taken by a practitioner to remedy it.

Again in *Grant* at paragraph 76 Cox J cites, with approval, the approach to determining the issue formulated by Dame Janet Smith in her Fifth Report from Shipman at para 25.6 of that report. She identified the following as an appropriate test for panels in considering impairment of a doctor's fitness to practice but, as Cox J says, in his view the test would be equally applicable to other practitioners governed by different regulatory schemes. The test to be applied as formulated by her was whether the determination on the facts shows that his or her fitness to practise is impaired in the sense that they have:

(A) in the past acted or are liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or

(B) Has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or

(C) has in the past and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

(D) has in the past acted dishonestly and/or is liable to act dishonestly in the future.

Cox J decides the test is readily accessible and readily applicable to all panels called upon to determine the questions of impaired Fitness to Practise.

This Committee adopts this approach as the correct one to be applied in this particular case.

The Committee notes the following:

- 1. The theft of a television to the value of £200 is a serious criminal offence which can result in, on conviction, to a lengthy custodial sentence. The Registrant admits that offence, which is dishonesty of a grave nature.**
- 2. The Committee has taken into consideration the prompt reporting of the offence to the Society and the Registrant's continued cooperation with the Society into the investigation of same. This cooperation has been readily acknowledged by the Society and is in marked contrast to many other cases the Committee has had to deal with.**
- 3. The Committee notes the extensive efforts on the part of the Registrant to deal with the events which, in his view, led up to the commission of the offence, and notes the actions he has taken to deal with its consequences which include the matters given in evidence in camera.**
- 4. The Committee has had the opportunity to hear the detailed evidence of the Registrant in person and his cross examination by counsel for the Society during which the exact circumstances of the incident at the Tesco supermarket were extensively examined. The Committee notes that on cross examination the Registrant continued to accept that he had been dishonest and accepted the consequences of his actions and did not seek to blame his acceptance of a caution on poor advice.**
- 5. The Committee finds that the Registrant in his admissions has shown insight as to their criminal and dishonest nature and has produced evidence as to how he will avoid any repetition of that conduct in the future.**

6. The conduct in this matter is not of a clinical nature and was committed outside the scope of the Registrant's employment.

7. The Society accepts that in looking at the test outlined above, the issue of risk to the general public is not a matter of concern to the Society in this particular instance.

8. This is a single incident of criminal behaviour and there has been no prior history of any behaviour of concern either to the police or to the Society. This does not appear to have been a premeditated or carefully planned theft and appears to have happened on the spur of the moment.

9. In giving evidence relating to the circumstances surrounding the incident the Committee accepted the Registrant has sought to explain and contextualise his acts rather than excuse them.

We accept that apart from the issue of risk the other limbs of the test as formulated by Dame Janet Smith do all fall for consideration in this particular case.

We find as follows in applying those remaining limbs of the test: As regards paragraph B of her test that the Registrant has brought the profession in disrepute by his conduct; as regards paragraph C that he has breached a fundamental tenet of the profession namely honesty; and as regards D, that he has acted dishonestly but we found no evidence that he is liable to act dishonestly in the future.

For these reasons we find the Fitness to Practise of the Registrant to be impaired and, having so found, it would now be appropriate to move on to the next limb of the hearing this afternoon.

SANCTION

This is the second module of the hearing in this case which is the sanctions section of the hearing.

The Committee has considered the submissions of counsel for the Registrant and for the Society as to the appropriate sanctions to be applied in this case having found that the Registrant's Fitness to Practise is currently impaired. It has considered the Indicative Sanctions Guide and considered it to be the appropriate reference point in reaching its conclusions.

The Committee appreciates that each case must be determined on its particular facts and on the particular mitigating factors in it. Whilst the guidance note is only guidance it is important that the Committee deliver consistent judgments which can be readily understood by the profession as a whole.

In determining the sanction in this matter the Committee has to balance the interests of the Registrant with those both of the profession and the general public. The fact that a particular

sanction will have a serious effect on the Registrant is of limited influence as the aim of the imposition of a sanction is not to punish the Registrant but to maintain the standards of the profession, protect the public and to maintain public confidence in the profession.

It is conceded in this case by the Society that the Registrant poses no risk to the public and that therefore only the other two principles are relevant in this case. In applying sanctions the Committee is obliged to consider what is the least sanction it can apply having regard to the particular facts of the case that will achieve the desired objectives which in the present case, as I have said, are maintenance of standards and the maintenance of public confidence in the profession.

In order of severity the Committee has had to consider the imposition of (a) a warning, (b) conditions on the Registrant's practice, (c) suspension and (d) removal from the Register.

The Society has accepted that this case can be characterised as one of common shoplifting which although is an offence of dishonesty is one of a different category, a different order of magnitude from the recent cases such as O'Kane where striking off was considered the only appropriate sanction given its particular facts in that case and the particularly egregious conduct of the registrant in that case.

The Committee notes the mitigating factors that are present in this case which include:

- (A) that the theft was unplanned, unpremeditated, and a spur of moment act;
- (B) that there was no concealment or repetition of the conduct to aggravate the initial dishonesty;
- (C) that the offence took place outside the scope of employment and outside the Registrant's practice as a pharmacist;
- (D) that there was no prior history of any criminal or regulatory misconduct on the part of the Registrant;
- (E) that this was an isolated incident;
- (F) that medical evidence setting the Registrant's conduct in context was presented;
- (G) that the Registrant fully cooperated with the Society;
- (H) that the Registrant self reported the incident immediately to the Society;
- (I) that the Registrant fully cooperated with the Society;
- (J) that the Registrant has shown insight and regret for his actions;

(K) that there was no potential harm to the public; (L) that the Registrant has undergone counselling and other treatment detailed in the evidence given to this Committee;

(M) that this is not a health case where different concerns might apply with regard to the Registrant if he was impaired by reason of his health;

(N) that the references given on behalf of the Registrant were excellent.

We now turn to the consideration of a warning. The Committee feels that, notwithstanding the mitigating factors detailed above, the present case is not an appropriate case for a warning as it would not adequately reflect the serious nature of the Registrant's conduct. Whilst the sole aggravating factor in this case is dishonesty, it is an extremely serious factor which cannot be minimised. Although this is a young man at the outset of his career his conduct cannot easily be explained or justified and a mere warning would send the wrong message both to the public and the profession.

In the circumstances, therefore, the Committee had to consider whether the imposition of conditions on the Registrant such as those suggested by counsel for the Registrant were appropriate. Those suggestions related to the health of the Registrant and neither those conditions as suggested nor indeed any of the other conditions in the Society's conditions bank when considered by the Committee were, in the view of the Committee, workable or likely to achieve any relevant objective when what is at issue here is the integrity and honesty of the Registrant.

The remaining two sanctions to be considered are suspension or removal from the Register. Having considered the Society's Indicative Sanctions Guide, we are of the opinion that this case falls somewhat short of a finding that the conduct of the Registrant is incompatible with his continued registration as a pharmacist. However, we consider that public confidence and the maintenance of standards in the profession demand no lesser sanction than a suspension. Accordingly, it is the determination of the Committee that the Registrant be suspended from practice for a period of three months.

The Committee declined to make an Interim Order in the matter

Advice

The Committee also wishes to give advice to Registrants that an act of gross dishonesty will be regarded with the utmost severity and as a consequence of a finding of impairment that the sanction imposed thereafter will be severe and may lead to a striking off

Chairman of the Committee: Kevin Neary

Signed _____ Kevin Neary _____ Date 15th September 2016

FURTHER INFORMATION

Transcript

A full transcript of the hearing is available

Appeal

Any appeal against an order of the Committee must be lodged with the relevant court within 28 days of the service of this notification. If no appeal is lodged, the order will take effect at the end of that period.

Professional Standards Authority

This decision will be reported to the Professional Standards Authority (PSA) under the provisions of section 29 of the NHS Reform and Healthcare Professions Act 2002. PSA may refer this case to the High Court of Justice in Northern Ireland as appropriate if they decide that a decision has been unduly lenient and/or should not have been made, and if they consider that referral is desirable for the protection of the public. PSA is required to make its decision within 40 days of the hearing (or 40 days from the last day on which a registrant can appeal against the decision, if applicable) and will send written confirmation of a decision to refer to registrants on the first working day following a hearing. PSA will notify you promptly of a decision to refer. A letter will be sent by recorded delivery to your registered address (unless PSA has been notified by the Society of a change of address).

Further information about the PSA can be obtained from its website at www.professionalstandards.org.uk or by telephone on 020 7389 8030.

Effect of orders for suspension or erasure

To practise as a pharmacist in Northern Ireland, or to take or use a description which implies registration or entitlement to undertake any activity which the law restricts to a registered person, may amount to a criminal offence once an entry in the register has been suspended or erased.

Contact

If you require any further information, please contact Ms Fiona P Murray, Pharmaceutical Society NI, 73 University Street, Belfast, BT7 1HL. Tel 028 90326927 Email: fiona.murray@psni.org.uk