

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

PHARMACEUTICAL SOCIETY OF NORTHERN IRELAND

AND

DAVID SAMUEL MCKEE (Registration Number 2816)

DETERMINATION FOLLOWING HEARING ON

6TH OCTOBER 2014

Service

The Committee is satisfied that service of the Notice of Hearing has been properly effected and that all reasonable efforts have been made to notify the Registered Person Concerned of the hearing. The Committee further determined that it would be appropriate for the hearing to proceed in the Registered Person's absence.

The reasons for this are as follows;

- The Registrant confirmed that he was aware that the hearing was scheduled to proceed on 28th September 2014.
- The Registrant confirmed that he did not intend to attend that hearing or be represented.
- The Registrant was notified by email from Anna McClimonds, Solicitor, on behalf of the Society of the postponement of the hearing to 6th October 2014.
- The registrant confirmed receipt of the notice of adjournment.
- No application has been made by the registrant for a postponement of this hearing.
- As there has been no suggestion made by the Registrant that he would attend a hearing on another occasion the Committee has decided that the clear public interest in an expeditious determination of the allegations outweighs the absence of Mr McKee.

Preliminary legal arguments

There were no preliminary legal arguments. Before the case was opened the Committee considered whether there were grounds upon which the hearing could or

should be conducted in private, but concluded that there were no reasons why the normal course of a public hearing should not be followed.

ALLEGATION

Two allegations are made against Mr McKee. One is that his fitness to practise is impaired by reason of misconduct. The other is that his fitness to practise is impaired by reason of various criminal convictions. The particular allegations in this matter are set forth in the Notice of Hearing lodged by the Pharmacy Society and dated 15 August 2014 and are as follows:-

1. On 8th April 2014 the registrant was arraigned, pleaded guilty to and was convicted of 5 separate counts of making an indecent photograph of a child contrary to Article 3(1) (a) of the Protection of Children (Northern Ireland) Order 1978 on dates between 12th September 2009 and 12th September 2012
2. On 9th May 2014 the registrant was arraigned, pleaded guilty to and was convicted of 1 count of making an indecent photograph of a child contrary to Article 3(1) (a) of the Protection of Children (Northern Ireland) Order 1978 on divers dates between 31st January 2008 and 17th October 2012.
3.
 - (a) That on 17th October 2012 the registrant was found to be in possession of indecent images of children ,namely 324 category 1 images, 21 category 2 images, 13 category 3 images, 17 category 4 images and 3 category 5 images of which
 - 1 category 1 image was found on a computer in the pharmacy, and
 - 42 category 1 images, 12 category 2 images, 1 category 3 images, 7 category 4 images and 3 category 5 images were found on a pen drive located on pharmacy premises.
 - (b) That on 17th October 2012 the registrant was in possession of an extreme pornographic image
 - (c) That on 19th December 2010 the registrant
 - Contacted or attempted to contact a child aged 16 via the internet
 - Engaged in inappropriate and sexually explicit conversation with a person who identified themselves to him as a child aged 16, and
 - Encouraged an individual who identified themselves as a child aged 16 to make, show send to him or otherwise distribute an indecent photograph
 - (d) That on 3rd January 2011 the registrant
 - Contacted or attempted to contact a child via the internet

Engaged in inappropriate and sexually explicit conversation with a person who reasonably be identified as a child, and

Encouraged an individual who could reasonably be identified as a child to make, show send to him or otherwise distribute an indecent photograph

(e) That on 30th January 2011 the registrant

Contacted or attempted to contact a child under the age of 16 via the internet

Engaged in inappropriate and sexually explicit conversation with a person who identified themselves to him as a child aged 14, and

Encouraged an individual who identified themselves to him as a child aged 14 to make, show send to him or otherwise distribute an indecent photograph

(f) That on 18th July 2011

Contacted or attempted to contact a child aged 16 via the internet

Engaged in inappropriate and sexually explicit conversation with a person who identified themselves to him as a child aged 16, and

Encouraged an individual who identified themselves as a child aged 16 to make, show send to him or otherwise distribute an indecent photograph

4. That the registrant failed to notify the Registrar in writing that he had been convicted of a criminal offence within a period of 7 days of the date of conviction as required by Regulation 3(2)(a) of The Council of the Pharmaceutical Society of Northern Ireland (Fitness to Practise and Disqualification) Regulations (NI) 2012.

Background to the allegations

On 17th October 2012 police conducted a search of Belmont Pharmacy, 50 Belmont Road, Belfast. The premises were the workplace of the registrant, David Samuel McKee. The police had received a complaint from a previous employee of the Registrant that she had observed indecent images of children on a computer in the pharmacy. A search of the premises was conducted under PACE warrant for items connected to possessing indecent images of children. The registrant was arrested and bailed on 17th October 2012. The Registrant's home address was also searched. Following these searches items of computer equipment including a tower computer, pen drive and laptop computers were seized and removed for investigation.

The registrant was interviewed by police. The committee was advised that no transcript was available of the initial interview but the registrant was accompanied on that occasion by his solicitor. The registrant's solicitor was also in attendance at the subsequent interview under caution by police held on 25th July 2013. The transcript of that interview was submitted to the committee and we were advised that this

interview was relied on by the Society in support of its allegations of misconduct by the registrant.

Findings in relation to the facts

The Committee is satisfied that the witness statements and documentary exhibits introduced by the Pharmaceutical Society prove all of the facts advanced by the Society to the required standard. Specifically the Committee found the following unadmitted facts proved on the balance of probabilities:

Allegation 3 (a) (1)

The committee is satisfied that a category 1 image was found on a computer seized by police from the registrant's pharmacy. The registrant confirmed in interview that the computer was his and that he was responsible for the image.

Allegation 3 (a) (2)

The committee is satisfied that a pen drive belonging to the registrant was recovered from the pharmacy by police. The pen drive contained 323 images of children which could be classified as indecent on the Oliver scale including 19 images at the most severe to extreme end of the scale.

Allegation 3 (b)

We are satisfied that the registrant was in possession of an extreme pornographic image. We note The registrant asserted in interview that he could not remember the image but acknowledged that he might have come across it.

Allegation 3 (c)

The committee is satisfied that on the 19th December 2010 the registrant used his internet account to contact a person he believed to be 16 and engaged that individual in wholly inappropriate and sexually explicit conversation. During this conversation the registrant invited someone he believed to be 16 to send him an indecent photograph.

Allegation 3 (d)

The committee is satisfied that on the 3rd January 2011 the registrant used his internet account to contact a person he believed to be 17 and engaged that individual in wholly inappropriate and sexually explicit conversation. During this conversation the registrant invited someone he believed to be 16 to send him an indecent photograph.

Allegation 3 (e)

The committee is satisfied that on the 30th January 2011 the registrant used his internet account to contact a person he believed to be 14 and engaged that

individual in wholly inappropriate and sexually explicit conversation. During this conversation the registrant represented that he had engaged in sexual intercourse with a 15 year old and stated a preference for children younger than 15. We are satisfied that the registrant invited a person he believed to be 14 to send him her picture and further invited her to send him a picture of her 10 year old sister.

Allegation 3 (f)

The committee is satisfied that on the 18th July 2011 the registrant used his internet account to contact a person he believed to be 16 and engaged that individual in wholly inappropriate and sexually explicit conversation. During this conversation the registrant sought details of sexual behaviour between a 16 year old girl and her 15 year old brother. The registrant expressly inquired if both were naked and asked her to send him a picture. When asked about this incident in interview the registrant stated:

“No I don’t remember any of them. .. I could have chatted and the next morning not remember the conversation. It was all just fantasy for me it was not anything.

Allegation 4

We are satisfied that on 22nd July 2014 the registrant was convicted of a number of criminal offences. These convictions are proved by the certificate of conviction dated 22nd July 2014 put before the Committee. Since that date the registrant has failed to notify the Registrar of the fact of these convictions contrary to his obligation as a registered pharmacist under Regulation 3 (2) (a) of The Council of the Pharmaceutical Society of Northern Ireland (Fitness to Practise and Disqualification) Regulations 2012 to notify the Registrar within the period of seven days from the date of conviction.

We are satisfied that on 22nd July 2014 the registrant was convicted of a number of criminal offences. These convictions are proved by the certificate of conviction dated 22nd July 2014 put before the Committee. In relation to the convictions therefore, no further consideration of grounds is required.

Findings in relation to misconduct

The Committee has heard submissions on behalf of the Society. In relation to the matters advanced as misconduct the Committee has determined that the facts found proved amount to misconduct. A registered pharmacist is required to maintain high standards of personal conduct, to behave with honesty and integrity and to make sure that his behaviour does not damage the public’s confidence in either himself or his profession. All these have been breached.

Findings regarding impairment

The Committee heard submissions on behalf of the Society.

Having found the allegations of misconduct proved against the registrant and that he has been convicted of criminal offences the committee considered whether his fitness to practise is impaired. There is no legal definition of when fitness to practise is impaired. It is very much a value judgment for us as a Committee to make. At this point we are not concerned with the civil standard of proof that we applied at stage 1. Our task is simply to determine whether either the convictions or the misconduct impairs the registrant's current FTP.

In his helpful submission counsel for the society reminded us that the test we must apply is a current, forward looking one. In our application of that test :
"An assessment of current fitness to practise will nevertheless involve consideration of past misconduct and of any steps taken subsequently by the practitioner to remedy it."

Given our findings of fact our primary concern was the wider public interest to be considered when determining questions of impairment as defined in Regulation 4 of The Council of the Pharmaceutical Society of Northern Ireland (Fitness to Practise and Disqualification) Regulations (Northern Ireland) 2012.

The committee was firmly of the view that the registrant's misconduct and his criminal convictions have brought pharmacy profession into disrepute. The particular quality and nature of his misconduct in relation to children constitute an egregious breach of Regulation 4(2)(b).

Registrants are expected and obliged to uphold the fundamental principles of the pharmacy profession as defined in the standards. By his conduct the registrant acted in total disregard of his obligation under Principle 7(1) to maintain public trust and confidence in his profession. In downloading and storing indecent images of children and engaging in sexually explicit and inappropriate conversations with children via the internet he acted in a manner wholly incompatible with the high standards expected of a pharmacist. This was manifested by the fact that the registrant's conduct brought the police to the door of his pharmacy and resulted in them finding evidence of his behaviour stored on the pharmacy computer and recovering a pen drive with over three hundred indecent images from the pharmacy premises. The committee was struck by this gross and obvious breach of the obligation to demonstrate high standards of personal and professional conduct at all times.

In light of the evidence the committee was firmly of the view that the registrant's convictions in relation to possession of indecent images of children render him a

potential risk to patients or the public. The committee is mindful that pharmacists are now required to diagnose and treat an increasing range of minor ailments which may require a degree of physical examination in private of patients including children.

For the reasons we have outlined the committee is satisfied that the registrant's fitness to practise is currently impaired.

Sanction

The Committee has heard submissions on sanction from Mr Sheils on behalf of the Society. We have read and had regard to the Society's Indicative Sanctions Guidance.

The committee did not have the benefit of any representations from the Registrant. Counsel for the society properly reminded us that the registrant co-operated with the police investigation and made admissions in interview. We are also mindful that the registrant pleaded guilty to his charges and that there have been no concerns raised about his professional competence as a pharmacist. The committee had no information about the personal circumstances of the registrant save that he is married and the father of two young children. We were advised that the registrant had at a previous interim order hearing indicated that his marriage had broken down. We had no information about the registrant's financial circumstances although we were advised that the pharmacy business has now been sold.

The Committee has considered whether it would be appropriate to issue a warning. We rejected this on the grounds that the issues raised were so serious, such that this sanction would not adequately meet the situation, having regard to the large number of indecent images viewed, the nature and quality of the conversations online with children and maintaining public confidence in the profession of being a pharmacist.

The Committee next considered imposing a Conditions of Practice Order but concluded that there were no suitable or workable conditions which could be imposed that would meet the wider public interest.

We then considered imposing a suspension order for up to 12 months, but rejected this on the basis that the seriousness of the case meant that a suspension order would not adequately provide for the level of public protection required. Neither would a suspension order begin to redress the very significant damage to the profession inflicted by the particular misconduct of the registrant. The committee also noted that the Registrant will be on the Sex Offender's Register for a period of 5 years and is subject to a Probation Order for 3 years and the maximum possible Community Sentence of 100 hours.

The Committee next considered imposing a striking off order. The committee gave due regard to all the information available about the registrant., We determined that the seriousness of the conviction and the specific nature of the registrant's misconduct are incompatible with continuing registration and that a striking off order is the only sanction which is sufficient to protect the public and the public interest and is the proportionate response required in this case.

In all the circumstances of this case the committee concluded that the need to uphold proper professional standards and maintain public confidence in the pharmacy profession and the Pharmaceutical Society as a regulator could not be sustained if the registrant's name was not removed from the register.

Immediate Order

The Committee heard submissions on behalf of the Society. The committee was advised that the Registrant had sought to have his name removed from the register by electing not to fulfil his CPD obligations. The registrant was advised by the Registrar that notwithstanding his failure to comply with his CPD obligations his name would remain on the register until the Statutory Committee considered his case.

Although the Registrant is not currently 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 practise remains impaired. 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 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.

Revocation of Interim Order

The Committee hereby revokes the interim order for suspension of registration that was made by the High Court on 28th April 2014.

Gillian McGaughey

8th October 2014

Gillian McGaughey
Chair of Statutory Committee