

## OUTCOME OF FITNESS TO PRACTISE HEARING

<b>Case Number</b>	2014/01
<b>Name</b>	Mary Catherine McVeigh
<b>Registration Number</b>	3071
<b>Date of Hearing</b>	16 <sup>th</sup> May 2014
<b>The Notice of Allegation</b>	
<p>The particulars of the allegations (as amended) against the Registrant are as follows:-</p> <p>1. On 21st of September 2012 you pleaded guilty to and were convicted of theft, the particulars of which are as follows:</p> <p>1.1. On the 5th day of August 2010 in the County Court Division of Belfast, you stole Diazepam (5 mg) tablets of value, belonging to Niall McKay and McCoubrey Chemist Ltd, 154 Cavehill Road, Belfast, contrary to Section 1 of the Theft Act (Northern Ireland) 1969.</p> <p>2. The investigation associated with the criminal conviction cited above revealed the following misconduct: That whilst occupying the position of superintendent pharmacist in charge of the Cavehill Road branch of McCoubrey Chemist Ltd:</p> <p>2.1. On various dates between 4th of August 2010 and 3rd of September 2010, other than as particularised at 1.1 above, you stole or otherwise dishonestly took, acquired or obtained from pharmacy premises a Prescription only Medication, namely Diazepam (5 mg) tablets without having a valid prescription.</p> <p>3. 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 and Practice 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 criminal convictions particularised below:</p> <p>3.1 The general principle of Registration as a Pharmacist that requires you to act to promote and maintain public confidence in the Pharmacy profession.</p> <p>3.2 The Code to maintain patient safety and public confidence in the profession.</p> <p>3.3 Principle 1 – Make the safety and welfare of patients your prime concern and associated obligation.</p> <p>Obligation 1.1 “Act in a manner that promotes well-being and safeguards the health welfare of patients.”</p>	

3.4 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."

Obligation 7.4 "Do not abuse your professional position or exploit the vulnerability or lack of knowledge of others."

4. 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.

**Facts found**

Counsel for the Society referred to a bundle of documents that had been provided to the Committee and noted that it had not been agreed to by the Registrant. He invited the Committee, subject to the requirements of relevance and fairness, to receive documentary evidence pursuant to Regulation 26(2) (a) and witness statements pursuant to Regulation 26(3) of the Fitness to Practise Regulations respectively.

The Committee agreed to receive the documentary evidence in the bundle of documents pursuant to Regulation 26(2)(a) of the Fitness to Practise Regulations on the basis that it was relevant and it would not be unfair to the Registrant to do so taking into account that the documentary evidence which included a Certificate of Conviction of the Registrant also included e-mails from the Registrant to the solicitors for the Society, and the content of plea in mitigation made on her behalf at the Crown Court, both of which addressed the circumstances giving rise to her criminal conviction and to the Society's allegations against her.

In relation to the witness statement of Brendan Kerr (dated 31 March 2014) and four statements of Niall McKay (dated 4 and 13 September 2010 and two statements dated 23 September 2010 respectively), Counsel for the Society stated that, if necessary, Mr McKay would attend to give evidence and Mr Kerr, the Society's Registrar, was present at the hearing. The Committee was satisfied that the statements of the two witnesses should be received in evidence in accordance with Regulation 26(3) of the Fitness to Practise Regulations.

On consideration of the documentary evidence and the witness statements the Committee found the following facts:

1. In the period between 4 August 2010 and 3 September 2010 the Registrant, whilst employed as a Superintendent Pharmacist, misappropriated at least 700 Diazepam

tablets, a prescription only medication, from her employer Niall McKay and McCoubrey Chemist Ltd;

2. There was no evidence that these Diazepam tablets had been dispensed on foot of a valid prescription;
3. On 21 September 2013 at Belfast Crown Court the Registrant pleaded guilty to and was convicted of the theft of Diazepam (5 mg) tablets, belonging to Niall McKay and McCoubrey Chemist Ltd of 154 Cavehill Road, Belfast, contrary to Section 1 of the Theft Act (Northern Ireland) 1969; and
4. On 5 December 2013 at Belfast Crown Court the Registrant was sentenced to one year's imprisonment suspended for eighteen months.

In light of these findings of fact, and in particular finding numbered 1 above, the Committee invited Counsel for the Society to withdraw allegation 2.1 which he applied to do and this was granted by the Committee.

### **Determination of impairment**

#### **Law**

The question of fitness to practise is a value judgment for the Committee to make and unlike its determination of the facts it is not required at this point to apply the civil standard of proof. Impairment of fitness to practise can be demonstrated in a number of ways. In this matter the relevant provisions are found at paragraphs 4(1)(a) and (d) of Schedule 3 to the 1976 Order which provide that a person's fitness to practise can be regarded as impaired by reason of misconduct and a criminal conviction respectively. In addition, when considering whether fitness to practise requirements are met the Committee must have regard to the mandatory 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 adopts 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 also took into account the principles outlined by Mr Justice Jackson in Calhem -v- GMC [2007] which are of general application in a consideration of cases of misconduct and adopted an objective approach in determining whether or not the Registrant was deficient in her professional performance when judged against the standard of professional work that is expected of her. The Committee has 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'*

and to consider

*'...not only whether the registrant continued to present a risk to members of the public, but whether the need to uphold proper professional standards and public confidence in the registrant and in the profession would be undermined if a finding of impairment of fitness to practise was not made'* -see CHRE -v- Nursing and Midwifery Counsel (Grant) [2011].

In cases involving misconduct the nature of the misconduct is relevant as are as the steps taken by the Registrant to remedy it, the extent of the Registrant's insight and the risk of recurrence.

Finally, in considering whether or not the Registrant's fitness to practise is impaired the Committee may under Paragraph 1(3) of Schedule 3 of the 1976 Order take into account whether the Registrant is in breach of any principle or obligation contained in the Society's Code of Ethics and Practice 2009 by reason of the misconduct alleged against her.

### **Consideration**

Counsel for the Society put forward the following as relevant circumstances for consideration:

- The criminal conviction covered a period of approximately 1 month;
- It was not an isolated one-off incident but a continuing course of conduct;
- The conviction confirmed dishonesty and evidenced an intention to take property belonging to another;
- The behaviour was deliberate if not pre-meditated;
- There was no evidence that the Registrant failed to observe appropriate standards in any other aspect of her pharmacy practise;
- The conviction related to the Registrant's profession, the offence was committed on pharmacy premises and thus there was a direct link between the behaviour that led to the conviction and the Registrant's professional life;
- There was a clear breach of trust
- There was limited evidence of insight.

This is a case where the Registrant was engaged for a period in serious acts of dishonesty which led to a criminal conviction in the Crown Court and to a sentence of imprisonment, albeit suspended. These actions amount to serious misconduct. The Respondent was employed as a Superintendent Pharmacist and was in a position of responsibility, leadership, and trust which she deliberately abused for her own ends.

The facts found demonstrate a serious lack of integrity by the Registrant and that cannot be other than a matter of clear public concern. The underlying events were not a one-off occurrence but took place over a period of time. In addressing the issue of impairment occasioned by dishonesty, and whether or not it remains current, the Committee acknowledges the great difficulty faced by any Registrant to establish a sufficient degree of remediation.

When we look at the Registrant's insight, we have her limited admissions as to the amount of medication she stole notwithstanding the plea of guilty in the Crown Court and our finding that at least 700 Diazepam tablets were misappropriated by her. As noted in the statement of Brendan Kerr dated 31 March 2014 the Registrant undertook to Society on 6 January 2011 that she would not practice and that the words '*not currently practising*' should be publically displayed against her name on the Society's Register. This undertaking was reconfirmed by the Registrant in writing in December 2012. The Committee has been informed by the Society that there are no other complaints against the Registrant and we note her guilty plea in the Crown Court. Against this the Committee has read the Registrant's recent e-mail correspondence dated 14 May 2014 with the Society's solicitors which sought to deflect blame to other parties and to row back on her admissions of guilt. The Committee is therefore concerned that the Registrant has not fully appreciated the seriousness of the matters before the panel.

The Registrant did not attend the hearing and the Committee has received no medical or other evidence which might shed light on the underlying issues in this case, including potential self-medication and dependency, and other background issues which arise from the Crown Court transcript of her Counsel's plea in mitigation. On balance the Committee considers that the Registrant has not demonstrated an understanding of the seriousness of her actions, shown remorse, or demonstrated any learning, reflection, or genuine insight into these matters.

In all the circumstances, and mindful of the public interest in maintaining public confidence in the profession, the Committee is of the view that the Registrant's fitness to practise is currently impaired

### **Sanction**

In coming to our decision as to what sanction is appropriate, we have exercised our own independent judgement and have taken into account the Indicative Sanctions Guidelines. The purpose of our decision is not to be punitive, but to protect members of the public and the public interest in maintaining the reputation of the profession and upholding proper standards of professional conduct. In our deliberations we have also taken account of the principle of proportionality and have weighed the interests of the public with the interests of the Registrant.

This case involves a Registrant who, whilst employed as a superintendent pharmacist, acted dishonestly by stealing prescription only medication from her employer. The details of her misconduct have been set out earlier in this Decision, in particular in our consideration of Impairment. Her actions were deliberate and premeditated and she was subsequently convicted of theft at Belfast Crown Court and received a suspended custodial sentence. These are significant aggravating factors. A registered member, who is found to have acted dishonestly, is always going to be at severe risk of having his or her name erased from the Register (*Parkinson -v- NMC* [2010]).

In mitigation, the Committee notes that the Registrant has no prior disciplinary history. It also notes the Registrant has appeared to comply with the undertakings given to the Society. There are no testimonials or character references apart from the comments of the Registrant's Counsel at her sentence hearing at Belfast Crown Court.

Looking at the available sanctions the Committee is readily of the view that a warning is not appropriate in view of the serious nature of the misconduct, the interests, and concerns of the public, and the position and responsibility of the Registrant at the relevant time.

The Committee has considered the possibility of imposing Conditions but has found that it is not possible to impose Conditions that would address the serious public protection concerns in this case, not least in view of the lack of positive engagement by the Registrant and the need to reassure and protect the public and to maintain confidence in the profession.

The Committee has also considered the option of imposing a period of suspension on the Registrant. However, the Committee is concerned that a period of suspension would not meet the public interest in this case involving dishonesty and where the Committee has determined that there is a lack of insight by the Registrant into her failings and the reasons for those failings. Although there appeared to be some acknowledgement of wrongdoing, as evidenced by the guilty plea at the Crown Court, the level of that seems to have diminished in light of the Registrant's recent e-mail correspondence with the Society's solicitors which sought to deflect blame to other parties and to row back on her admissions of guilt. In considering a suspension the Committee has to balance the public interest, especially in a case of criminal conviction and dishonesty as well as the importance of maintaining public confidence, with the interests of the Registrant. The Committee struggles to see what could be achieved by a period of suspension or that it would be a meaningful or appropriate sanction in this case.

Striking-off is a very severe sanction. However, in this case the Committee considers that it is a sanction that should be imposed in the public interest as there was and would otherwise continue to be a risk to the public and possibly to the Registrant herself. In coming to this decision the Committee has balanced the rights and interests of the Registrant with those of the public and when we look at a striking off order, which we consider to be in the public interest, we are entitled to conclude that the interests of the Registrant are secondary, especially in a case of dishonesty where there is nothing to help the Committee to elevate the Registrant's interests or to persuade the Committee that a striking-off is not appropriate.

The balance between aggravating and mitigating factors is very heavily weighed in favour of aggravating factors in this case. The Committee began by reminding itself that it is not here to punish the Registrant, but in a case of a superintendent pharmacist who has been convicted of the theft of prescription only medicines and who has acted dishonestly, such behaviour is fundamentally incompatible with remaining on the Register.

The Committee has considered whether in view of its finding on sanction it needs to impose interim measures in the intervening period between the decision being issued and becoming effective. We are mindful that if we were to impose interim measures we have to do so on the basis that it is necessary for the protection of the public or other otherwise in the public interest or in the interests of the Registrant. We note that those requirements to some extent coincide with issues that we have considered in our finding on sanction in determining that a strike-off is appropriate. Weighed against that, we take into account the fact that the Registrant has given,

and indeed has extended, an undertaking to the Society, albeit it is a non-statutory undertaking. The Committee has been informed by the Society that the undertaking has not been breached, that it is noted against her registration, and that the Registrant is not currently in practice. The Committee also notes that the undertaking has carried through from the old legislative disciplinary regime to the current one. However, in our view, and particularly in view of the nature of the sanction that has been imposed, we think that there should be interim measures and interim measures should be that of suspension with immediate effect.

<b>Time Scale for Enactment</b>	28 days from 2nd June 2014 the date of FTP notification, striking off to occur on 30 <sup>th</sup> June 2014, subject to any appeal by the registrant. Registrant is suspended until the completion of the period of appeal.
<b>Chair of Committee</b>	Mr Michael Wilson [Legal Chair]
<b>Members of the Fitness to Practise Committee</b>	Mr Michael Hamill [Registrant Member] Mr Eoin Doyle [Lay Member]
<b>Society Counsel</b>	Mr Jon Paul Shields, instructed by Ms Anna McClimonds (Clever Fulton Rankin)
<b>Registrant Counsel</b>	Registrant did not attend and was not legally represented.
<b>Clerk of Committee</b>	Mrs Claire Williamson