

Case Number	2014/01
Name	Alison Mary Kinghan
Registration Number	2580R
Date of Hearing	10th March 2014
The Notice of Allegation	
<p>The particulars of the alleged deficient professional performance as stated in the original Notice are set out as follows -</p> <ol style="list-style-type: none"> 1.1. That she issued an instruction to a locum pharmacist that was received by him on 2nd February 2012 to supply a Controlled Drug, which had already been assembled and entered into the 'CD Register', without a valid prescription being available. 1.2. That she issued an instruction to a locum pharmacist that was received by him on 11th February 2012 to dispense a Controlled Drug, namely Methadone, to an unsupervised patient when the prescription required that the patient be accompanied. 1.3. That on various dates between 1st November 2011 and 31st January 2012 she failed to properly complete Patient Medication Records for a patient in receipt of Suboxone in that - <ol style="list-style-type: none"> a. records were not always made on foot of dispensing a valid prescription; and b. records completed by her did not accurately reflect the dates of supply endorsed on the corresponding prescriptions 1.4. That on various dates between 28th June 2011 and 6th November 2011 she failed to dispense medication, namely Diazepam, to a patient in accordance with the prescription or the prescribing physician's instruction to dispense daily. 1.5. That on various dates between 23rd December 2011 and 9th February 2012 she failed to dispense medication, namely Diazepam, to a patient on set days when directed to dispense twice weekly when this would have been expected by the prescribing physician and in line with best practise. 1.6. That between 29th January 2012 and 2nd February 2012 she failed to <ol style="list-style-type: none"> a. maintain an accurate and contemporaneous record in the Controlled Drug Register of supply of Fentanyl patches to a patient; and b. she failed to follow the dispensing directions as authorised by the prescribing physician 	

2. 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 deficient professional performance particularised above.

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 obligations.

- Obligation 1.1 “Act in a manner that promotes well-being and safeguards the health welfare of patients.”
- Obligation 1.2 “Take steps to safeguard the well-being 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 her knowledge and skills appropriately to her 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 her or under her supervision. Ensure that individuals to whom she 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 she and those she 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 the 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

Submissions

Counsel for the Society submitted as follows:-

1. In view of the contents of the registrant’s letter of 1 March 2014 Counsel referred the Committee to paragraph 7(6) of Schedule 3 of the Pharmacy (NI) Order 1976 (as amended);
2. He noted that if the Committee determined that a Registrant’s fitness to practise was impaired solely by reason of adverse physical and mental health, it could not give a direction to strike the person’s name off the Register;
3. He contended that the Committee did not have any sufficient evidence to determine that the Registrant’s fitness to practise was impaired solely by reason of adverse physical or mental health;
4. That the Committee had four options; to do nothing, to strike the registrant off, to extend the period of suspension, or to impose conditions;
5. The registrant had asserted that she was unwell but had not furnished any supporting medical evidence;
6. There was no evidence of Continuing Professional Development, or remedial measures taken by the Registrant to address her shortcomings, no plan for a return to work and the lapse of time suggested there would be a degradation of skills since August 2013;
7. It was inappropriate for the Committee to take no action
8. It was impossible to determine any appropriate conditions without the Registrant’s engagement, the lack of which had frustrated the process;
9. 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 such as helping the Registrant to identify her problems and to take remedial action, bearing in mind that the Scrutiny Committee had originally sought to deal with this matter by way of undertakings, but it had escalated to this point through the Registrants non-engagement.

Decision of the Committee

Registrant suspended for 6 months

The Committee has reminded itself that the question of fitness to practise is a value judgement for the Committee to make. 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 included 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]

1. The Committee considered the history of this case including the background details set out in the transcript of the Committee's Hearing on 12 August 2013 and the reasons for its Decision on that date, including its finding that the Registrant's fitness to practise was impaired by reason of deficient professional performance. The Committee at its Hearing on 12 August 2013 noted that there was no evidence of before of any steps taken by the Registrant to address the issues which had arisen in this case other than she seemed to have turned her back on her profession, and it had been impossible to conclude that the Registrant had demonstrated any insight into the matter. In concluding its Decision on 12 August 2013 the Committee had indicated that the suspension would afford the Registrant the opportunity to persuade the Committee that there was another better way to deal with this matter.

2. The Committee notes that in their letter to the Registrant dated 29 January 2014, Cleaver Fulton Rankin, solicitors, specifically drew to the Registrant's attention that the Review Hearing offered her the opportunity to engage with the Committee and to raise anything which she felt might be relevant to her case including, by way of example but not exclusively:-

- 1) Any relevant medical evidence;
- 2) Evidence of any continuing professional development;
- 3) Evidence of any remedial measures taken to address the allegations found proven against her at the Hearing on 12 August 2013; and
- 4) Any other evidence which she felt might be relevant to her case.

3. In considering this matter the Committee notes that, apart from the Registrant's letter of 1 March 2014, there is no other evidence before it detailing her interest or desire to remain as a member of the profession including evidence of her continuing personal development, supportive testimonials or any other relevant evidence.

4. The Committee determines that paragraph 7(6) of Schedule 3 of the Pharmacy (NI) Order 1976 is not engaged as the Registrant's letter of 1 March 2014, by itself and without more, is insufficient evidence for the Committee to conclude that the Registrant's fitness to practise is impaired solely (emphasis added) by reason of adverse physical or mental health.

5. There are four options open to the Committee:-

- 1) To strike the Registrant off;
- 2) To extend her suspension for a period of up to twelve months;
- 3) To impose conditions; or
- 4) To do nothing.

6. There is no new evidence before this Committee to suggest that there has been any positive change or improvement in the Registrant's condition so far as it relates to her professional performance. This Committee has taken account of the allegations found against the Registrant at the Hearing on 12 August 2013 and considers that they raised serious issues of the Registrant's failure to adhere to proper professional standards to such an extent that public confidence in the registered person and in the profession would be undermined if a finding of impairment of fitness to practise was not made.

7. At the present Hearing there is no evidence before the Committee of the Registrant having addressed on any basis the need to maintain and/or improve her skill levels or continuing professional development; there is no evidence of any remedial measures having been taken by her; there is limited evidence of insight.

8. The Registrant's letter of 1 March 2014 which has come very late in the process offers little by way of detail or explanation; the Registrant has not engaged to any meaningful extent with the Society

and although her letter of 1 March 2014 offers an apology and evidence of some remorse, it has not been possible for the Committee to tie the Registrant's understanding or insight of matters (such as they may be) to the specific findings of the previous Committee in relation to patients identified as A, C and F in the Decision.

9. Accordingly, the Committee has no alternative other than to conclude that the Registrant's fitness to practice remains impaired.

10. In finding that the Registrant remains impaired, and in looking at the options open to the Committee, we have already determined (above) that this Committee is not prevented from striking off the Registrant solely because of adverse physical or mental health.

11. In view of the finding of on-going impairment, we would not be upholding proper standards of conduct or maintaining public confidence in the profession if we were simply to take no action and to let the existing suspension lapse.

12. So far as the imposition of conditions is concerned the reasoning of this Committee, as set out in the Decision of 12 August 2013, continues to reflect the view of this Committee. The lack of substantial or meaningful engagement by the Registrant renders impossible the imposition of meaningful, workable, measurable or proportionate conditions.

13. The Committee considers that there is a proper basis for imposing a further period of suspension given that the Registrant has, albeit belatedly, made a start in engaging with the Committee and the Society. In addition, the Committee has concerns about the nature of the health issues facing the Registrant even though they have not been substantiated by detailed medical evidence at this stage. However, the Committee finds that it would be unfair to the Registrant not to afford her an opportunity to address this issue and to remedy her deficient professional performance. If the Registrant engages with the Society then it might be possible to frame and impose appropriate and workable conditions but this cannot be done at present.

14. We have also looked at the possibility of striking the Registrant off at this stage. The Committee has taken into account that the Scrutiny Committee, although it is not a decision making body of fact, initially, but unsuccessfully, sought to deal with the Registrant by way of conditions or undertakings. This Committee is of the view that the matter has escalated from there due to the non-engagement of the Registrant. The only change to that has been her letter of 1 March 2014. In considering the possibility of imposing the sanction of striking off, this Committee is however mindful that no patient was harmed as a consequence of the Registrant's actions, that there is no continuing risk of harm to members of the public, and that the Department of Health, Social Services and Public Safety did not proceed with an investigation against the Registrant. Taking into account the contents of the Registrant's letter of 1 March 2014, we consider that it would be unfair, unreasonable and disproportionate to the interests of the Registrant, when balanced with the interests of the public and the need to maintain confidence in the profession, to strike her off at this stage.

15. The Committee considers that there is a proper basis for imposing a further period of suspension given that the Registrant has, albeit belatedly, made a start in engaging with the Committee and the

Society. In addition, the Committee has concerns about the nature of the health issues facing the Registrant even though they have not been substantiated by detailed medical evidence at this stage. However, the Committee finds that it would be unfair to the Registrant not to afford her an opportunity to address this issue.

16. The Committee concludes that the Registrant's suspension should continue for a further period of six months, with a direction that it be reviewed after five months.

17. In coming to this decision, the Committee wishes to draw to the Registrant a number of matters which will assist the Committee at the Review Hearing including:-

- 1) Detailed medical evidence of the Registrant's physical and/or mental health;
- 2) Evidence of her on-going professional development;
- 3) Evidence that the Registrant has addressed the adverse findings made against her on 12 August 2013.
- 4) Evidence of how those adverse findings are being remediated; and
- 5) Any other evidence which the Registrant she considers relevant in assisting the Committee in its deliberations.

18. The Committee stresses to the Registrant that in determining to extend the suspension of her registration, it is affording her an opportunity to engage meaningfully with the Society, and to take professional advice and/or take the counsel of a professional colleague. The Committee notes that in her letter of 1 March 2014 the Registrant stated that she was not financially in a position to deal with this matter. The Committee would urge the Registrant to consider whether she has the benefit of any insurance policy under which she may be entitled to obtain advice or support; or whether this is available to her through her membership of the Society. The Committee draws to the Registrant's attention that matters referred to above will help to inform the Committee at the next Review Hearing, when the matter will be considered afresh, and so the Committee can make a decision which is meaningful and informed in relation to her fitness to practise.

In light of the above the Committee is satisfied that the decision to extend the suspension of the Registrant is sufficient and proportionate, weighing the interests of the public with the interests of the Registrant.

Time Scale for Enactment	Six months from 13 th March 2014 the date of FTP notification, completion on 13 th September 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 Ms Miriam Karp	Registrant member Lay member

Society Counsel	Mr Jon Paul Shields, instructed by Ms Anna McClimonds (Cleaver Fulton Rankin)
Registrant	Registrant did not attend and was not legally represented.
Clerk of Committee	Mrs Claire Williamson