

<b>Case Number</b>	2013/01
<b>Name</b>	Paul John Tallon
<b>Registration Number</b>	3560
<b>Date of Hearing</b>	5 <sup>th</sup> 6 <sup>th</sup> and 14 <sup>th</sup> June 2013
<b>The Notice of Allegation</b>	
<p>The Chairman of the Statutory Committee received a complaint from the Registrar of the Pharmaceutical Society of Northern Ireland providing information from which it was alleged Mr Tallon's fitness to practice as a registered pharmacist may be impaired, by reason of misconduct.</p> <p>The particulars of the alleged misconduct were set out as follows.</p> <p>That between September 2011 and 13 January 2012 at The Medical Hall, 17 Main Street, Sixmilecross he did dishonestly falsify 104 prescriptions to Eli Lilly and Co to obtain quantities of medicines for resale in his wholesale business for profit.</p> <p>That between August 2011 and January 2012 at The Medical Hall, 17 Main Street, Sixmilecross he did dishonestly falsify 5 prescriptions to Healthcare at Home to obtain quantities of medicines for resale in the wholesale business for profit.</p> <p>That he failed to comply with the following principles and associated obligations of the Pharmaceutical Society of Northern Ireland's Code of Ethics and Practice 2009;</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 <i>"Act in a manner that promotes well being and safeguards the health welfare of patients."</i></p> <p>Obligation 1.3 <i>"Ensure the provision of high standard of professional service by you or those working under your direct supervision."</i></p> <p>Obligation 1.6 <i>"Promote the safe, effective and rational use of medicines by controlling the sale or supply of all medicinal and related products, especially those with a potential for abuse or dependency."</i></p> <p>Obligation 1.11 <i>"Undertake regular reviews, audits and risk assessment"</i></p>	

3.4 Principle 2 – Respect and protect confidential information.

Obligation 2.1 *“Respect the confidentiality of information, professional or otherwise, acquired in the course of professional practice and only use it for the purposes for which it is given and in compliance with current legislation.”*

3.5 Principle 3 – Show respect for others.

Obligation 3.7 *“Obtain consent for patient information you use in any other context.”*

3.6 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.”*

3.6 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.”*

3.7 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 8.8 *“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.”*

#### **Admissions**

The registrant admitted misconduct in relation to charges one and two

## Impairment

The committee found the registrant to be currently impaired. See determination below

### Law

There is no legal definition of fitness to practise. 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)(a) 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 misconduct. In addition, when considering whether fitness to practise requirements are met we must have 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 we have noted the approach to impairment set out in *Meadow v General Medical Council* [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 admissions of those who are not fit to practice. The [fitness to practice panel] thus looks forward and not back. However, in order to form a view as to the fitness to practise of a person to practice 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 Statutory Committee is also obliged to consider the risk of repetition by the registered person and any steps taken to militate against that risk. In our consideration of that we must take account of evidence or submissions on whether the failing is easily remediable and/or whether it has already been remedied. Case law reminds us that some types of misconduct, for example involving clinical issues, may be more capable of remedy than others, for example, dishonesty. Furthermore in some cases due to the serious nature of the allegations we may still find impairment regardless of the action taken by the registered person to remedy the failing - see *Yeong v General Medical Council* [2010] as referred to by representatives of the parties.

In contemplating this issue we must also keep in mind the fundamental public interest requirements:

"... 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 & Midwifery Council (Grant)* [2011].

### Consideration

Both Counsel for the Society and the Solicitor for the registered person have referred us to the relevant authorities and we have carefully considered the Grant and Yeong cases already noted in this decision as well as *Cohen v General Medical Council* [2008]. In short, Counsel for the Society contends that bearing in mind the nature of the misconduct and taking into account the need to maintain public confidence in the profession, the impairment remains current because it is difficult to conceive what remedial action can be taken.

The Solicitor for the registered person argues that looking at the particular facts of this case the

misconduct is not only easily remediable, but that it was remedied once the registered person ceased wholesaling, and there is a very low or negligible risk of the misconduct being repeated.

The category of impairment pleaded by the Society is that of misconduct, which has been admitted in relation to allegations 1 and 2 and which amount to an acceptance by the registered person of dishonest falsification of prescriptions for profit.

The registered person created false documents based on valid prescriptions, and used his pharmacy premises and equipment over a four and a half month period for this purpose. Although there was no risk to patients his actions amounted to an abuse of his privileged position which have brought his profession into disrepute and he has also fundamentally breached his professional obligations to act with honesty and integrity. The registered person manipulated the operation of the quota system for personal gain.

Accordingly we also find in relation to allegation 3.1 that points 3.6 (referring to principle 7) 1 and 7 are proven against the registered person. It is beyond doubt that the requirements of provisions in Regulation 4(2)(b) and (c) of the Fitness to Practise and Disqualification Regulations have been satisfied.

Although the registered person has acknowledged that his fitness to practise is currently impaired, and this is also contended for by the Society, it nonetheless remains a matter for us to determine.

Taking into account the facts admitted and found proven, together with the submissions of the parties' legal representatives, we have concluded that the registered person is currently impaired. The proven or admitted allegations against the registered person are serious and his misconduct continued over a period of several months until discovered by a third-party, and we do not consider that his misconduct has been remedied. A consequence of dishonesty is that it makes it more difficult to establish whether the misconduct in question can be remedied and, if it can, whether or not it has been. Simply stopping wholesaling, which in itself is a lawful activity, cannot be enough. The registered person's wholesaling activities merely facilitated his misconduct which was based upon the dishonest falsification of prescriptions. In any event, given the serious nature of the misconduct, involving dishonesty and a fundamental breach of principle 7 of the Code of Ethics, we consider that the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment was not made in this case.

That is the decision of the Committee on this issue

## Sanction

The committee suspended the registrant's registration for three months. See determination

CHAIRMAN: Having determined that Paul John Tallon's fitness to practise is impaired we have considered the appropriate sanction taking into account and giving careful consideration to all of the evidence presented, including four signed contemporary references, the letter from Tom Scott, dated 31 May 2013 referred to above, and the sworn evidence of Paul John Tallon. In the course of that evidence he testified to a number of matters including:

1. The circumstances surrounding the purchase of his pharmacy business in May 2008.
2. Some of the arrangements with the bank which provided finance for the purchase of the pharmacy and the subsequent changes to more onerous repayment terms.
3. His background experience in pharmacy.
4. His reasons for deciding to become a community pharmacist.
5. The circumstances under which he engaged in the dishonest falsification of prescriptions.
6. The surrender of the wholesale dealer's licence operated by him through a limited liability company which he controlled and directed.
7. His frank acknowledgment of his honest and shameful conduct.
8. Evidence of his personal and financial circumstances.

Counsel on behalf of the Society properly drew our attention to the indicative sanctions guidance and the requirement that any sanction imposed should be the least possible measure necessary to achieve the purpose of the sanction. He added that whilst the interests of Paul John Tallon must come into the balance they have to be weighed up against the maintenance of public confidence in the profession and the maintenance of proper standards of behaviour. In this case counsel for the Society contended that Paul John Tallon had acted dishonestly, had abused his position of trust, had engaged in misconduct over a period of time, and disregarded the Society's code of ethics, had sought to conceal his wrongdoing, and that his misconduct was that of a person in charge of a pharmacy premises. He stated that the Society did not believe that any effective conditions, such as the appointment of a superintendent pharmacist, could be imposed to satisfy the public interest. The Society did not otherwise recommend a particular sanction to us. For Paul John Tallon has acknowledged by his solicitor that we have to take into account the importance of maintaining public confidence in the profession and the wider public interest. He then urged us to consider the imposition of conditions including:

1. A condition limiting or restricting Paul John Tallon's engagement in wholesaling activities for a defined period.
2. That Paul John Tallon could not hold or seek to obtain a wholesaler dealer's licence for a defined period.

3. That he would not act as a superintendent pharmacist for a defined period.

He also drew our attention to a number of matters in mitigation of Paul John Tallon's behaviour, including:

1. He accepted from the outset the substance of the allegations against him.
2. He took no procedural points in relation to the complaints or the proceedings.
3. He acknowledged that his fitness to practise was currently impaired.
4. He was open and frank from the outset with those investigating the matter.
5. When interviewed under caution he made critically important concessions and gave a full account of his activities.
6. He had demonstrated a genuine degree of insight into his behaviour.
7. He gave evidence to the Committee.
8. He had ceased his wholesaling activities as a means of remedying what had happened.
9. He had acknowledged his dishonesty and had demonstrated he was committed to ensuring this would not recur.
10. He was a person of previous good character.
11. There were no concerns as to his clinical competence, a point which the Society through its counsel also accepted.
12. There was no financial loss either to the wholesaler or the public purse.
13. Paul John Tallon had not been prosecuted as a consequence of this matter.
14. The testimonials provided demonstrated that each of the authors was fully aware of the nature of the allegations against him.

The solicitor for Paul John Tallon urged upon the Committee the imposition of conditions through the engagement of a superintendent pharmacist and a restriction of prohibition on Paul John Tallon applying for or holding a wholesale dealer's licence.

#### Determination on sanction

In exercising our decision as to what sanction is appropriate we have exercised our own independent judgment 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 taken account of the principle of proportionality and have weighed the interests of the public with the interests of Paul John Tallon. We have had the opportunity to hear and see Paul John Tallon and are satisfied that his remorse is genuine and that his expressions of sadness, shame, regret and anger with himself are also honest and sincere. He has acknowledged his wrongdoing in a public forum and accepted that he abused his privilege as a member of the profession. We have also taken into account the fact that there was no financial loss to either Eli Lily & Co or Healthcare at Home, to the public purse, or to individual patients. We acknowledge the strength and diversity of the testimonials he has provided from two pharmacists, a retired public servant, and an elected political representative.

We first considered whether it would be appropriate to conclude this matter by imposing a warning. However, in our approach to this matter we cannot disregard the underlying dishonesty and the public interest. We do not consider it would be sufficient to impose a warning in a case involving dishonesty which must be regarded as an aggravating factor.

We next considered whether it would be appropriate to impose conditions on Paul John Tallon's registration. Any conditions would have to be appropriate, proportionate, workable and measurable. We have determined that it would be insufficient to impose conditions given the nature and seriousness of the misconduct and that we would not in any event be able to formulate effective or meaningful conditions in this case, particularly in relation to the engagement of a Superintendent Pharmacist who would in effect be an employee, whether directly or indirectly, of Paul John Tallon. A condition restricting or preventing wholesaling would not of itself be an adequate sanction as we are of the view that Paul John Tallon's misconduct was because of the dishonest falsification of prescriptions and was not wholesaling per se.

We then considered whether it would be appropriate and proportionate to impose a suspension on Paul John Tallon. A registered member who is found to have acted dishonestly was always going to be at severe risk of having his or her name erased from the Register (see *Parkinson v NMC 2010*). In this case, however, the removal of Paul John Tallon's name from the Register would be disproportionate and would not be necessary to satisfy the need and to protect the public and maintain confidence in the profession. In appearing before us Paul John Tallon frankly acknowledged his serious failings and the shame he has brought upon himself. We accept that he is a committed community pharmacist, as evidenced by his testimonials, and although it is difficult to remedy the events which have occurred we nonetheless consider that a short period of suspension is appropriate.

Although this case involves dishonesty, we have already noted that the dishonesty had not had a negative financial impact on any other person or organisation or the public purse. In all of the circumstances we have concluded that Paul John Tallon should be suspended for a period of three months. In view of the period of the suspension we do not intend that there should be a formal review.

That is the decision on sanctions

<b>Costs</b>	
Costs were agreed and to be paid to the society to the value of £750.00	
<b>Time Scale for Enactment</b>	28 days from 24 <sup>th</sup> June 2013 the date of notification of determination, suspension commencing on 22 <sup>nd</sup> July 2013 completing on 21 <sup>st</sup> October 2013, subject to any appeal by the registrant
<b>Chair of Committee</b>	Mr Michael Wilson [legal chair]
<b>Members of the Fitness to Practise Committee</b>	Ms Catherine Wilkinson [registrant member] Ms Miriam Karp [lay member]
<b>Society Counsel</b>	Mr Jon Paul Shields, instructed by Patrick Fleming Moore (Cleaver Fulton Rankin)
<b>Registrant presenter</b>	Mr Conor Heaney (Conor Heaney Solicitors)
<b>Clerk of Committee</b>	Mrs Claire Williamson