

Case Number	2013/05
Name	Victor James Doran Sterling
Registration Number	2308
Date of Hearing	23 rd July 2013
The Notice of Allegation	
<p>The particulars of the alleged relevant misconduct are set out hereafter.</p> <p>That on various dates on or between 4th June 2010 and 8th April 2011 at Sterling's Chemist, Dromore, County Down he caused, allowed or permitted the supply of a prescription only medicine namely Paroxetine to Patient B in circumstances corresponding to a retail sale in contravention of Section 58(2)(a) of the Medicines Act 1968, in that he supplied the said drug without a prescription contrary to Section 67(2) of the Medicines Act 1968.</p> <p>That on various dates on or between 4th June 2010 and 8th April 2011 at Sterling's Chemist, Dromore, County Down he caused, allowed or permitted the concurrent supply to Patient B of two separate antidepressant prescription only medicines, namely Paroxetine and Venlaflexine, in a Monitored Dosage System Cassette, and allowed Patient B to take both medicines despite Paroxetine having been discontinued, without properly communicating with the prescribing General Practitioner, without properly considering the clinical appropriateness of the concurrent supply without raising any, or any proper, concern about the clinical appropriateness of the concurrent supply, and without any, or any proper, regard for the patient's welfare.</p> <p>That on various dates on or between 4th June 2010 and 8th April 2011 at Sterling's Chemist, Dromore, County Down he dispensed unknown prescription only medicines to at least 15 patients by way of a Monitored Dosage System without having a valid prescription in circumstances corresponding to a retail sale in contravention of Sections 58(2)(a) and 67(2) of the Medicines Act 1968.</p> <p>That he failed to:</p> <ol style="list-style-type: none"> 1. Promptly engage with an investigation into the incident conducted by the Health and Social Care Board; 2. Properly engage with an investigation into the incident conducted by the Health and Social Care Board; 3. Recognise any deficiency in internal pharmacy procedure or practise, and 4. Follow standard operating procedures. <p>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</p>	

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 misconduct particularised above.

Principle 1 – Make the safety and welfare of patients your prime concern and associated obligation.

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”

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.”

Principle 6 - Maintain and develop professional knowledge and competence and the associated obligations.

Obligation 6.3 “Apply your knowledge and skills appropriately to your professional responsibilities”

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.”

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 8.7 “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 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.”

By his acts or omissions he 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

CHAIR: we find the following facts:

We find as a fact that between the 4th of June 2010 and the 8th of April 2011 the Registrant dispensed Paroxetine, a prescription only medication, to patient B without a prescription. We are satisfied that between the 4th of June 2010 and the 8th of April 2011 the Registrant dispensed two separate antidepressant prescription only medications, namely Paroxetine and Venlafaxine in a Monitored Dosage System cassette to patient B despite the fact that Paroxetine had been discontinued in May 2010. We find that the Registrant failed to display any proper regard for patient B's welfare, in particular by a failure to engage in proper communication with prescribing general practitioner. We find that the Registrant failed to consider the clinical appropriateness of the long-term concurrent supply of two prescription only antidepressant medications to patient B. We find that the Registrant failed to raise any concern about the clinical appropriateness of the long-term concurrent supply of these medications with the prescribing GP. We also find that the Registrant failed to update the patient medicine record for patient B by cross-reference to the prescriptions when received. We find as a fact on the basis of the Registrant's admissions in interview under caution that he adopted the same processes for other patients using the Monitored Dosage System. We find that there was a protracted failure to engage with the investigation into the incident conducted by the Health & Social Care Board. We are satisfied on the evidence before us that the Registrant failed to recognise any deficiencies in the Standard Operating Procedures applied by him in his Pharmacy. And those are our findings of fact.

Determination of impairment

CHAIR: regarding our determination of the question of whether on the facts which we have found, the Registrant's fitness to practise is impaired. We note that this question is a valued judgment for us as a Committee to make and unlike our determination of the facts we are not required at this point to apply the civil standard of proof. What we must decide, as Mr Shields reminded us, is whether the Registrant's fitness to practise is impaired by reason of the misconduct we have found proved. We have reminded ourselves that the test is a current, forward looking one. In the helpful phrase of Mr Justice Cox at paragraph 69 of CHRE-v-NMC & Grant the question is: Is Victor Sterling's current fitness to practise impaired? We have had regard to Regulation 4(2) which provides in relation to evidence about the conduct or behaviour of the registered person which might cast doubt on whether the requirements as to fitness to practise are met in relation to the registered person, the Statutory Committee must have regard to whether or not that conduct or behaviour (a) presents

an actual or potential risk to patients or to the public, (b) has brought or might bring the profession of Pharmacy into disrepute, (c) has breached one of the fundamental principles of the profession of Pharmacy as defined in the standards.

We note and accept the helpful clarification from Mr Shields that the Society does not suggest that the fourth factor which provides that the integrity of the registered person can no longer be relied upon is relevant in the present case. We have been assisted in our determination of whether the Registrant's fitness to practise is impaired by the articulation of the test at paragraph 25.67 of the 5th report in the Shipman case prepared by Dame Janet Smith as were proved by Mr Justice Cox at paragraph 76 of the Grant case.

We have reviewed the evidence in this case and our findings of fact and we note:

1. That the misconduct covered a period of approximately 10 months and relates to a total of 16 patients;
2. That this was not an isolated one-off incident but a continuing failure to observe appropriate standards;
3. That the misconduct relates to the Registrant's management and supervision of Moderated Dosage System cassettes;
4. That the misconduct involved a fundamental failing concerning the supply of prescription only medicines without being in receipt of a valid prescription;
5. The Registrant permitted two antidepressant prescription only medicines to be dispensed and supplied to patient B without any assessment of the clinical appropriateness of that supply.

We have reviewed the misconduct related to the Registrant's profession and his professional ability and it was committed on the Pharmacy premises that there was a potential risk created to patients, although we acknowledge that happily there is no evidence of harm to patient B. We note that the Standard Operating Procedures were not followed and that the patient medical record was not updated in respect of patient B. We also have regard to the fact that there was a failure to promptly or properly engage with the Health & Social Care Board's investigation. The Registrant failed to demonstrate any significant degree of insight into the source of his misconduct and we have no evidence before us to suggest either the cause of the problem which prompted this referral has been remedied or what other steps the Registrant may have taken to address this issue.

For all these reasons, and I am mindful of the need to ensure that proper professional standards are upheld and public confidence in the profession is maintained, we have determined that the fitness to practise of Victor Sterling is currently impaired.

Review of the Interim conditions order

The committee lifted the interim conditions order which was made on Mr Sterling on 13th May 2013

Sanction

Registrant suspended for 12 months including appeal period

CHAIR: In determining the sanction in this case the Committee has made extensive reference to the Sanctions Guidance. We have also had regard to the fact that as a Regulatory Body our purpose is not to punish the Registrant, but rather to protect the public, maintain public confidence in the profession and, thirdly, to ensure that proper standards of behaviour are maintained by Registrants. We have had regard to the views of Lord Justice Laws in *Rashid & Fatani-v-GMC* where it is stated that *"the fact that a sanction may have a punitive effect does not make such a sanction inappropriate where its purpose is to achieve one or more of the three objectives of the sanctions which we have identified."*

In determining the appropriate sanction in this case we have considered the following aggravating factors: The prolonged nature of the misconduct, secondly, the protracted failure to cooperate with the initial investigation by the Health & Social Care Board and the lack of insight into the gravity of the allegations displayed by the Registrant in his formal written responses to that investigation. To his credit, the Registrant did cooperate when interviewed by the Department and even made admissions against interest by volunteering that he adopted the same procedures with 15 other patients in receipt of the MDS system. However, the Committee has been deeply concerned to note the lack of acknowledgment of the potential risk of harm to his patients caused by the dispensing practices admitted by the Registrant. The Registrant has maintained this position even in the most recent correspondence lodged on his behalf for the Hearing today. We have also, in fairness to the Registrant, had regard to the fact that he comes before us with a clear disciplinary record and we acknowledge that he has proffered information regarding the acute personal circumstances arising from the breakdown of his marriage, and which he did say formed the context in which these issues arose. We have no evidence to suggest that the Registrant has been anything other than compliant with the terms and conditions of the Interim Order imposed in May 2013. We are also advised and accept that the Registrant sold his pharmacy business in August 2012.

For the reasons described we do not consider that a warning would be a sufficient sanction in this case. We have given very detailed consideration as to whether this is a case in which conditions may be appropriate. However, we have reluctantly concluded on the evidence available to us that it is not possible to formulate appropriate, realistic and verifiable conditions in this case. The conditions imposed by the Interim Order were designed to address a different test and to promote public trust and confidence pending the investigation and hearing of the allegations. We do not consider this to be a case which requires the Registrant to be struck off the Register. There is no dishonesty on his part, nor in our view is his behaviour fundamentally incompatible with registration. We are satisfied that the deficient performance of the Registrant poses a significant risk to patient safety if suspension is not put in place. We have concluded that the Registrant has demonstrated sufficient, if limited, insight, to justify our view that there is potential for remedy through retraining. Dispensing prescription only medicines without a prescription, failing to consider the clinical implications of dispensing two antidepressants to a patient for a prolonged period, and failing to update the patient's medication records, are all clear evidence of professional performance which calls into question the continued ability of the Registrant to practise safely. Such conduct is unacceptable and in our view a message needs to be sent to the profession and the public that it falls far short of the standards expected of persons registered with the Pharmaceutical Society of Northern Ireland.

For all these reasons we are directing that the Registrant be suspended from the Register for a period of 12 months.

The Committee has considered the position with regard to interim measures and we are, I am grateful for the submissions from Mr Shields outlining, reminding us not just what our powers are. We are of the view that the suspension should take immediate effect, that there should be interim measures and that that suspension will remain in force until such times as either the period of appeal lapses or any appeal is determined. And our reasons for that are we feel it is appropriate to have that measure in place to protect the public from any risk of the Registrant resuming practice, albeit that the information we have in this Hearing is that he is not currently doing so.

This order will be reviewed prior to the end of its formal date of expiry on a date to be advised.

Time Scale for Enactment	28 days from 29 th July 2013 the date of FTP notification, commencing on 29 th August 2013 completion on 28 th August 2014, subject to any appeal by the registrant Note the registrant was also suspended for the duration of the appeal period
Chair of Committee	Ms Gillian McCaughey [legal chair]
Members of the Fitness to Practise Committee	Ms Sheelagh Hillan [registrant member] Ms Ms Carol Ackah [lay member]
Society Counsel	Mr Jon Paul Shields, instructed by Ms Louise Coll (Cleaver Fulton Rankin)
Registrant Counsel	Registrant did not attend nor did legal
Clerk of Committee	Mrs Claire Williamson