

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

In the matter of: Christopher Pennick (6911)

Location: The offices of the Pharmaceutical Society NI, 73 University Street, Belfast, BT7 1HL. As a result of restrictions brought about by the coronavirus (COVID-19) pandemic, this hearing was held in person under strict Covid 19 procedures, by the agreement of the parties. Members of the public were facilitated to observe the hearing remotely.

Date: 1st September 2021

Committee: Mr Gary Potter (Chair), Mr Derek Wilson (Lay), Mrs Liz Kerr (Registrant)

Persons Present and Capacity: Mr Christopher Pennick (Registrant), Mr JonPaul Shields, Barrister, instructed by CFR Solicitors (PSNI's Legal Representatives)

Service

1. The Committee satisfied itself that service of the Notice of Hearing was properly effected. The Notice of Hearing, dated 20th July 2021, was sent to the Registrant's registered address on the same date. This was more than the 35 days' notice required to be given under regulation 18 of The Council of the Pharmaceutical Society of Northern Ireland (Fitness to Practise and Disqualification) Regulations (NI) 2012 ('the Regulations').

2. The Committee heard allegations of misconduct in respect of Mr Christopher Pennick, a registered pharmacist (the Registrant). The Registrant was in attendance and represented himself. The Pharmaceutical Society of Northern Ireland (the Society) was represented by Mr Jonpaul Shields, Barrister.
3. The Committee had a hearing bundle numbering page 1 to page 106. In the course of the hearing, the Committee admitted in evidence the following document;
 - Exhibit 1: Fitness to Practise Statement of Case by the Pharmaceutical Society NI, undated.

ALLEGATIONS

4. The Registrant faced the following allegations:

Misconduct:

1. *On various unknown dates between 1st January 2016 and 15th January 2020 you obtained and used testosterone, a prescription only medicine and a controlled drug listed within Schedule 4 Part II of The Misuse of Drugs Regulations (NI) 2002, other than in accordance with a prescription and administered it to yourself other than under the supervision, and in accordance with the directions, of a doctor.*

Police caution:

2. *On 3rd March 2021, you attended Musgrave Police Station and accepted a police caution in relation to the following offence - that on 15th January 2020 you sold or supplied a Prescription Only Medicine, namely Sustanon, otherwise than in accordance with a prescription given by an appropriate practitioner, in contravention of Regulation 214(1) of the Human Medicines*

Regulations 2012, contrary to Regulation 255(1)(a) of the Human Medicines Regulations 2012.

3. *For the purposes of paragraph 1(3) of Schedule 3 to 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 Professional Standards of Conduct, Ethics and Performance for Pharmacists in Northern Ireland (2016)) are regarded by the Pharmaceutical Society of Northern Ireland as relevant to the proceedings. Further, the Pharmaceutical Society of Northern Ireland alleges that you are in breach of these principles and associated obligations by reason of the misconduct and police caution particularised above.*

- *The general principle of registration as a pharmacist that requires you to act to promote and maintain public confidence in the pharmacy profession.*
- *Principle 2 – Provide a safe and quality service and, in particular, standard 2.1 and the associated obligations set out below.*
 - *Standard 2.1 – Provide safe, effective and quality care.*
 - *Standard 2.1.1 – Promote and ensure the safe, effective and rational use of medicines, medicinal products and therapies.*
 - *Standard 2.1.2 – Effectively control and manage the sale or supply of medicinal and related products paying particular attention to those with a potential for abuse or dependency.*
- *Principle 3 – Act with professionalism and integrity at all times and, in particular, standard 3.1 and the associated obligations set out below.*

- *Standard 3.1 – Act with honesty and integrity at all times.*
 - *Standard 3.1.1 – Adhere to accepted and acceptable standards of personal and professional conduct at all times both inside and outside the work environment.*
 - *Standard 3.1.2 – Maintain public trust and confidence in your profession by acting with honesty and integrity in your dealings with others. This applies to your professional, business and educational activities.*
4. *By your acts or omissions, it is alleged that you have (a) brought the profession into disrepute, (b) failed, on a professional basis, to observe the principles and obligations set out above and (c) undermined public confidence in the profession.*

FACTS

5. The Pharmaceutical Society of Northern Ireland (“the Society”) and the Registrant made submissions that the facts of the case, as laid out in paragraphs 1 and 2 of the allegations, were accepted and agreed by the parties. Paragraphs 1 and 2 of the allegations being as follows:

Misconduct:

1. *On various unknown dates between 1st January 2016 and 15th January 2020 the Registrant obtained and used testosterone, a prescription only medicine and a controlled drug listed within Schedule 4 Part II of The Misuse of Drugs Regulations (NI) 2002, other than in accordance with a prescription and administered it to himself other than under the supervision, and in accordance with the directions, of a doctor.*

Police caution:

2. *On 3^d March 2021, the Registrant attended Musgrave Police Station and accepted a police caution in relation to the following offence - that on 15th January 2020 the Registrant sold or supplied a Prescription Only Medicine, namely Sustanon, otherwise than in accordance with a prescription given by an appropriate practitioner, in contravention of Regulation 214(1) of the Human Medicines Regulations 2012, contrary to Regulation 255(1)(a) of the Human Medicines Regulations 2012.*

DECISION ON FACTS

7. As the Registrant accepted the facts as set out in paragraph 6, the Committee found the facts proved by reason of that admission under Regulation 34(6) of the Council of the Pharmaceutical Society of Northern Ireland (Fitness to Practise and Disqualification) Regulations (Northern Ireland) 2012, (the Regulations).
8. Accordingly, the Committee found the allegations proved.
9. The Committee then moved to consider the issue of impairment of Fitness to Practise. The Committee received a Fitness to Practise Statement of Case, by the Pharmaceutical Society NI, Exhibit 1, and oral submissions on behalf of the Society from Mr Shields. The Committee received oral submissions from Mr Pennick.

DECISION ON IMPAIRMENT OF FITNESS TO PRACTISE

10. In this case, misconduct has been admitted by the Registrant.
11. The committee has considered relevant case law, and in particular,
 - (a) In GMC –v- Meadow 2006 EWCA CIV1319 the Court of Appeal said,

“The purpose of FTP procedures is not to punish the practitioner for past misdoings but to protect the public against the acts and omissions of those who are not fit to practice. The (Panel) thus looks forward not back. However, in order to form a view as to the fitness 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.”

- (b) In *CHRE –v- NMC & Grant* 2011 EWHC 927 the Court confirmed the test to be applied was a current, forward looking one, confirming the question that the committee has to ask itself and determine was:

“Is this registrant’s current fitness to practice impaired?”

- (c) Further, in *Cohen –v- GMC* the Court said,

“As assessment of current fitness to practice will nevertheless involve consideration of past misconduct and of any steps taken subsequently by the practitioner to remedy it;”, and

“It must be highly relevant in determining if a doctor’s fitness to practice is impaired that first his or her conduct which led to the charge is easily remediable, second that it has been remedied and third that it is highly unlikely to be repeated.”

12. The Committee considered the provisions of Regulation 4(2) of the Council of the the Regulations. They provide mandatory criteria that this Committee must have regard to when considering whether or not a person’s fitness to practice is in fact currently impaired. Regulation 4(2) states;

“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 practice 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, or
- (d) Shows that the integrity of the registered person can no longer be relied upon."

13. Having considered the relevant legal position, the Committee then looked at the Registrant's past misconduct, the steps, if any, he has taken to remediate, whether there is any evidence of insight, and whether there are risks of recurrence.

14. The Committee acknowledged that the Registrant admitted the allegations 1, concerning misconduct and 2, concerning a Caution, and admitted the facts as set out in the Statement of Case by the Society, paragraphs 1-23 inclusive.

15. Submissions were received on behalf of the Society from Mr. Shields. Submissions were also received from Registrant himself. Whether or not submissions had been made to the Committee, the Committee is nevertheless required to make an independent decision about whether the Registrant's Fitness to practise is impaired.

16. After consideration, the Committee concluded that the Registrant's fitness to practice is impaired. In reaching this conclusion, the Committee has taken particular note of the following:

The Registrant:

- (a) Obtained and supplied a controlled drug and a POM, namely Sustanon, to himself for his own use;
- (b) Obtained this medication without there being any valid prescription, and without lawful authority;
- (c) Abused his position as a pharmacist to obtain and supply this medication to himself;
- (d) Accepted a police caution for this act which contravened provisions of the Human Medicines Regulations;

- (e) Accepted, when being interviewed by the MRG, that he had previously obtained and used the controlled drug testosterone for a number of years;
- (f) Asserted that he had obtained testosterone as a performance enhancer from a supplement shop without difficulty; and sourced illicit supplies of testosterone, circumventing the normal controls and safeguards that are in place to prevent this type of sale and supply.

17. In respect of Regulation 4(2), the Committee agree with the submissions of the Society that Regulations 4(2)(b) and (c) are clearly relevant and applicable. In terms of Regulation 4(2)(a), the Committee heard from Mr Shields and the Registrant as to whether the Registrant's conduct presented a potential risk to patients or to the public. The Committee is satisfied that Regulation 4(2)(a) is engaged in that the Registrant has demonstrated by his conduct, an attitude to the acquisition of a controlled drug. That was of concern to the Committee. The Committee accepts the submission that Regulation 4(2)(d) is not relevant in this case.

18. The Committee looked at the relevant provisions of the Code and agreed that the following provisions are of particular relevance:

- Standard 2.1.2 – Effectively control and manage the sale or supply of medicinal and related products paying particular attention to those with a potential for abuse or dependency.
- Standard 3.1.1 – Adhere to accepted and acceptable standards of personal and professional conduct at all times both inside and outside the work environment.
- Standard 3.1.2 – Maintain public trust and confidence in your profession by acting with honesty and integrity in your dealings with others. This applies to your professional, business and educational activities.

The Committee considered that the wider public interest dictated that there should be a finding of impairment.

19. In respect of past misconduct, the Committee took into consideration:

- (a) the nature, seriousness and extent of the misconduct;
- (b) that the Registrant's conduct resulted in the commission of a criminal offence that resulted in a police caution;
- (c) that the Registrant displayed an unprofessional attitude to the acquisition of a controlled drug from an unregulated source;
- (d) that the Registrant circumvented normal safeguards relating to the acquisition of a controlled drug;
- (e) that the misconduct was not isolated or a one off but occurred over a period of time;

20. As to remediation, insight and risk of recurrence, the Committee took into consideration that the Registrant fully co-operated, and made full admissions, when dealing with his employer, the MRG and the Society. The Committee also acknowledged that the Registrant sought and underwent medical assessments and promptly complied with medical advice. The Committee noted the concession on behalf of the Society that these steps were relevant and that the Registrant dealt with his employer, the MRG, and the Society on his own without any assistance, support from a Trade Union, representative, or legal advice, and that he dealt with matters in a proper and appropriate manner. Nevertheless, the need to uphold proper professional standards and public confidence in the profession still requires a finding of impairment to be made in this case.

DECISION AS TO SANCTION

21. The Committee considered the Pharmaceutical Society of NI Indicative Sanctions Guidance, published in January 2019 with effect from the 27th March 2019, "(The Guidance)". In considering what sanction to impose, if any, the Committee had regard to the principle of proportionality, and of the need to balance the public interest against the Registrant's own interests.

22. The Committee acknowledges that the purpose of a sanction is not to be punitive, but to protect the public interest. The sanction imposed should pose no greater restriction

upon the Registrant than is absolutely necessary to achieve its objectives. When considering proportionality, and the public interest, the Committee notes that it is entitled to give greater weight to the public interest, and to the need to maintain public confidence in the profession, than to the consequences to the Registrant of the imposition of a sanction. The Committee also notes that the public interest in the context of a case such as this includes addressing issues of protection of the public, maintaining public confidence in the profession of Pharmacists, and maintaining proper standards of behaviour.

23. The Committee first considered the seriousness of the Registrant's actions, and had regard to the mitigating and aggravating circumstances section of the Indicative Sanctions Guidance at sections 2.10 to 2.16, and to the submissions of Mr Shields and the Registrant himself as to mitigating and aggravating circumstances in their respective submissions on sanction.

24. The Committee looked at the mitigating factors and noted;

- (a) There is no evidence that the Registrant made an attempt to conceal his behaviour;
- (b) The Registrant made full and frank admissions to his employer, the MRG, and the Society at the earliest opportunity;
- (c) The Registrant cooperated at all stages with his employer, the MRG and the Society;
- (d) The Committee noted that the Registrant self-referred to the Society before his employer had made contact with the Society themselves;
- (e) In his submissions to the Committee, the Registrant demonstrated insight into his conduct and the impact that it would have on public perception;
- (f) In terms of remediation the Registrant indicated that he had ceased taking the substance in April 2020, he attended his GP, and had voluntarily, and at his own expense, undergone various medical assessments;
- (g) The Committee gave considerable weight to the reference of Dr Mark Timoney, a highly experienced practitioner, who indicated, with knowledge of the Registrant's conduct, that from February 2020 the Registrant has worked with him and his staff in the role of Responsible Pharmacist on a locum basis, that

the Registrant was considered to be attentive to patients' healthcare needs and was open and honest in practice, with a regard for accuracy;

- (h) The Registrant agreed to and complied with Interim Order Conditions from the 9th March 2020 to 23rd November 2020;
- (i) The Committee also took into consideration that the Registrant is a young man at the start of his career with a 3-year old child to care for;
- (j) The Committee heard from the Registrant that he has now been provided with a full-time position, after being a Locum, being employed in a reputable chain of pharmacies, that he has weekly performance discussions with his manager, which the Committee anticipates will be continued.
- (k) On several occasions in his submissions the Registrant displayed clear remorse, indicating that his unacceptable behaviour would not be repeated again;
- (l) These proceedings have been hanging over the Registrant's head from February 2020, during which period he has had a considerable amount of time to reflect on his conduct.
- (m) The Committee heard that the Registrant is keen to continue at work and with his professional development to provide a service to the public;
- (n) The Committee considers that the person most affected by his conduct was the Registrant himself.

25. The Committee looked at the aggravating factors and noted that his conduct displayed a fundamental error of professional judgement.

26. The Committee acknowledges that in making its decision it will have regard to the full range of sanctions available to it, starting with the lowest, and decide if it is appropriate to this case. If not, the Committee shall consider the next sanction, until it decides which appropriate sanction is appropriate.

27. First, the Committee considered whether it was appropriate to take no action. The Committee did not think that this was an appropriate or proportionate step and not in the public interest.

28. The Committee then considered whether it was appropriate to give the Registrant a Warning. Taking into consideration all relevant matters, the Committee considered that the most proportionate sanction, in order to meet the regulatory objective, was

that of a Warning. Having heard the submissions in the case, the Committee did not think that there was a risk to the public. The Committee considered that there was a need to demonstrate to the Registrant and more widely to the profession and the public that the conduct fell below acceptable standards and that this could be achieved by a Warning, which would be recorded against his name on the Register for a period of 3 years, in the terms set out in the Schedule below.

29. Then, the Committee considered whether to place Conditions on the Registrant. Having carefully considered Conditions as a possible and appropriate sanction the Committee did not feel that Conditions were likely to be workable.

30. The Committee did not consider that a suspension or removal from the Register were appropriate or proportionate sanctions in the circumstances of this particular case.

COSTS

31. There was no application for costs.

Gary Potter

Chair of the Statutory Committee

1st September 2021

SCHEDULE

Warning

The Statutory Committee has issued a Warning for a period of 3 years in respect of the Registrant's need to follow the principles and obligations of the Conduct, Ethics and Performance (2016), relating to both his personal and professional conduct, to maintain public confidence in the profession.