

STATUTORY COMMITTEE OF THE PHARMACEUTICAL SOCIETY OF NORTHERN IRELAND

In the matter of: Ms Michelle McPeake (5097)

Location: Pharmaceutical Society of Northern Ireland's Offices, 73 University Street, Belfast, BT7 1HL

Date: 18 September and 3 October 2019

Committee: Mr Conor Heaney (Chair), Mr Paul Archer (Lay), Ms Jayne Laughlin (Registrant)

Persons Present and Capacity: Mr JonPaul Shields, Barrister and Ms Anna McClimmonds, Solicitor (PSNI's Legal Representatives), the Registrar of the PSNI.
Mr Adrian Harvey, Trevor Smyth Solicitors (Registrant's Legal Representative) appeared on 3 October 2019 only.

Order: **Strike Off**

NB: This is the private version. All matters in [...] should be redacted in the public version.

1. The Committee heard allegations of misconduct against Ms Michelle McPeake, a registered pharmacist.
2. The Pharmaceutical Society of Northern Ireland ('the Society') was represented by Mr JonPaul Shields. The Registrant was neither present nor represented on the first day of the hearing. She was represented on the second day by Mr Adrian Harvey.
3. The Committee had before it a hearing bundle numbering pages 1a-1e and 1-337. During the course of the hearing, the Committee received in evidence the following further documents:
 - Exhibit A: emails passing between the Society and the Registrant's legal representatives dated 17 September 2019;
 - Exhibit B: Statement of Case;
 - Exhibit C: emails passing between the Society and the Registrant's legal representatives dated 24 and 25 July 2019 and letters from the Society to the Registrant's legal representatives dated 9 and 13 August 2019;
 - Exhibit D: a statement agreed between the parties in respect of an assessment of the Registrant by the Probation Board for Northern Ireland on 13 February 2019;

- Exhibit E: a medical report from [REDACTED] in respect of the Registrant dated 1 February 2019; and
- Exhibit F: a medical report from [REDACTED] dated 6 March 2019.

SERVICE OF PROCEEDINGS

4. The notice of hearing, dated 13 August 2019, was sent to the Registrant's registered address on the same date. This was in excess of 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'). Although there had been compliance with regulation 18, the Committee was aware that the Registrant did not receive the notice of hearing at her registered address. This was because, the Committee was told by Mr Shields, the Registrant had been sentenced, in July 2019, to a year's imprisonment, to be followed by a year on licence.
5. In light of what it had been told, the Committee enquired of Mr Shields as to what, if any, steps had been taken by the Society to bring the details of the hearing to the Registrant's attention at the place where she was imprisoned.
6. The Committee noted that, in an email to the Society dated 25 July 2019, the Registrant's legal representatives confirmed that they had authority to accept service of papers in the case. On 9 August 2019, the Society served the Notice of Referral, the hearing bundle and other relevant documents on the legal representatives. On 13 August 2019, a further letter was sent to the legal representatives by the Society to advise of the listing date. On 17 September 2019, the legal representatives emailed the Society to confirm that the Registrant was happy for the matter to proceed on the hearing date without her being present or someone being present to represent her.
7. While the Regulations did not require proof that the Registrant had in fact received notification of the hearing, the Committee considered that this was an important matter to ascertain in this case. The notice of hearing had been sent to the Registrant's registered address in circumstances where she was not residing there and could only be reached at her prison address. The Committee was satisfied that the emails and letters passing between the Registrant's legal representatives and the Society demonstrated that all reasonable efforts had been made to bring the details of the hearing to her attention. Service had, for these reasons, been effected in accordance with regulation 18 of the Regulations.

PROCEEDING IN ABSENCE

8. The Committee considered whether it was fair and appropriate to proceed in the Registrant's absence. The Society received an email from the Registrant's legal representatives at 15.55 hours on 17 September 2019. The email confirmed that the solicitor instructed to attend the hearing could not do so, at the last minute, owing to another pressing professional engagement. It was also confirmed that the Registrant was content for the matter to proceed in her absence. In a further email on the same date to the Society, at 16.39 hours, it was confirmed by the legal representatives that the Registrant was happy for the hearing to take place without legal representation.

9. The Registrant had clearly waived her right to attend or be represented. She did not ask for an adjournment to be present at a later date or to seek alternative representation. The Committee had no reason to suppose that an adjournment would serve any useful purpose. The Committee had evidence, submitted on the Registrant's behalf, to which it would have regard and on which it could place appropriate weight.
10. The allegations against the Registrant were serious. She had been convicted of offences relating to the possession and supply of drugs which had resulted in her imprisonment. The public interest was strongly engaged as a result.
11. The Committee considered that it was fair, appropriate and in the public interest to proceed in the Registrant's absence.

BRIEF BACKGROUND/ ALLEGATION

12. The Registrant registered as a pharmacist on 28 July 2010.
13. On 21 March 2016 the Society received a referral about the Registrant which confirmed that she had been arrested by police on 18 March 2016. In the referral, the Society was advised that the Registrant had been arrested and questioned about her alleged use of cocaine, the theft of prescription only medication from a pharmacy at which she was employed as a pharmacist and the possession and supply of controlled drugs. Subsequently, the Registrant was sentenced at the Crown Court on 3 July 2019 to a term of two years' imprisonment; one year to be spent in custody and the other on licence.
14. The Registrant faced the following Allegation:

It is alleged that your fitness to practise as a registered pharmacist may be impaired, pursuant to Paragraph 4(1)(a) and (d) of Schedule 3 to the Pharmacy (Northern Ireland) Order 1976 by reason of misconduct and relevant criminal convictions.

The particulars of the misconduct and the relevant criminal convictions from which it is alleged that impairment arises are as follows:

Criminal Convictions:

1. *That on 22nd January 2019 at the Crown Court at Laganside you were arraigned and pleaded guilty to 13 separate offences contrary to The Misuse of Drugs Act 1971, The Human Medicines Regulations 2012 and the Theft Act (NI) 1971 which are particularised below: -*
 - a. *There being two offences that on 16th March 2016, you unlawfully had in your possession controlled drugs (namely cocaine and diazepam) contrary to Section 5(1) of the Misuse of Drugs Act 1971.*
 - b. *There being two offences that on a date unknown between 14th April 2015 and 17th March 2016 you were unlawfully in possession of a controlled drug namely cocaine contrary to Section 5(1) of the Misuse of Drugs Act 1971.*

- c. *There being six offences that on a date unknown between 14th April 2015 and 17th March 2016 you unlawfully supplied to another controlled drugs (namely dihydrocodeine, diazepam and tramadol) contrary to Section 4(1) of the Misuse of Drugs Act 1971.*
 - d. *There being two offences that on a date unknown between 14th April 2015 and 17th March 2016 you had in your possession a medicinal product, namely pregabalin with intent to supply it otherwise than in accordance with a prescription contrary to Regulation 255(4) of the Human Medicines Regulations 2012, and*
 - e. *There being one offence that on a date unknown between 14th April 2015 and 17th March 2016 you stole 32358 tablets consisting of pregabalin, dihydrocodeine, diazepam and tramadol contrary to Section 1 of the Theft Act (NI) 1969.*
2. *That, consequent to your plea to these 13 offences, on 3rd July 2019 you were sentenced to a determinate custodial sentence of 2 years, with a custodial element of 1 year.*

Misconduct:

3. *That on various dates between 14th April 2015 and 17th March 2016 you obtained and consumed a controlled drug of class A, namely cocaine and throughout this period you were employed as a registered pharmacist.*

Professional standards:

4. *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 Ethics (2009)) 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 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 1 – make the safety and welfare of patients your prime concern and in particular obligation 1.1 and 1.6.*
 - *Principle 4 – exercise professional judgement in the interests of patients and public and in particular obligations 4.1 and 4.2.*
 - *Principle 7 – act with honesty and integrity and in particular obligations 7.1, 7.2, 7.4 and 7.5.*

5. *For any particularised conduct which occurred on or after 1st March 2016, the following principles and standards (contained in the Pharmaceutical Society of Northern Ireland's Code (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 standards by reason of the misconduct particularised above.*
- *Principle 2 – Provide a Safe and Quality Service and in particular standards 2.1.1, 2.1.2 and 2.1.6.*
 - *Principle 3 – Act with Professionalism and Integrity at all times and in particular standards 3.1.1, 3.1.2, 3.1.6 and 3.2.2.*
6. *A fundamental duty of a pharmacist is to ensure the safe supply of medicines and you seriously breached this trust by diverting the supply of Prescription Only Medicines to vulnerable persons and the public at large. By your acts and / or omissions, it is alleged that you have: -*
- a. *created a significant risk to the safety of patients and the general public at large,*
 - b. *fundamentally brought the profession into disrepute,*
 - c. *failed to maintain public trust and confidence in your profession,*
 - d. *failed, on a professional basis, to observe the principles, standards and obligations set out above, and*
 - e. *failed to demonstrate honesty, integrity and professionalism.*

DECISION ON FACTS

15. The parties agreed, as relevant facts, a Case Statement as follows:

The Registrant, at the relevant time, was a registered pharmacist. She was employed by Paul Savage and worked as a pharmacist in his three pharmacies, namely, Cedar Pharmacy, Mount Eagles Pharmacy and Woodbourne Pharmacy. It is understood that the Registrant worked as a relief manager in Mount Eagles Pharmacy, 61 Mount Eagles Square, Belfast covering a maternity leave from 15 April 2015 to 24 February 2016. On 16 March 2016, the Registrant was working as a locum second pharmacist at Cedar Pharmacy, 471-473 Antrim Road, Belfast, BT15 3BP.

The Registrant was arrested by police on 16 March 2016 outside Cedar Pharmacy in relation to an allegation of Possessing a Class A Controlled Drug.

As a result of an investigation by police, the Registrant was prosecuted in the Crown Court for a number of offences (13 in total) contrary to The Misuse of Drugs Act 1971, The Human Medicines Regulations 2012 and the Theft Act (NI) 1971.

The offences were committed between 14th April 2015 and 17th March 2016.

On 22nd January 2019 at the Crown Court at Laganside the Registrant was arraigned and pleaded guilty to 13 separate offences detailed above.

The Registrant stole medication (32,358 tablets consisting of pregabalin, dihydrocodeine, diazepam and tramadol) from her employer valued at approximately £25,000. These are all drugs liable to be misused.

The Registrant thereafter allowed this medication to be wrongfully diverted as she gave it to a third party who was then at liberty to supply these drugs to the general public at large.

These actions represented a significant breach of trust both in terms of her employer and her profession.

Further, the Registrant was convicted of being in possession of cocaine, a class A controlled drug, on 16th March 2016, the date of her arrest. Also, by her admissions at police interview, she accepted that on various dates between 14th April 2015 and 17th March 2016 she obtained and consumed a controlled drug of class A, namely cocaine, and did so throughout this period when she was employed as a registered pharmacist.

The Registrant was convicted at the Crown Court at Laganside of 13 offences and was sentenced on 3rd July 2019 to a determinate custodial sentence of 2 years, with a custodial element of 1 year.

16. The Registrant admitted all of the facts contained in the Allegation. The admission was contained in an email sent on the Registrant's behalf by her legal representatives on 17 September 2019 at 15.55 hours to the Society. The email stated that the Registrant, *'fully accepts the case against her as contained within the relevant facts contained within the Statement of Case dated 13 September 2019.'*
17. The hearing bundle contained the certificate of conviction. In accordance with regulation 26(4) of the Regulations, the Committee admitted the certificate of conviction as conclusive proof of the Registrant's conviction for theft of medication, the possession and supply of controlled drugs and possession with intent to supply of a prescription only medication.
18. Accordingly, the Committee found the facts of the Allegation proved.

DECISION ON IMPAIRMENT

19. In approaching the question of impairment, the Committee reminded itself that the test is expressed in the present tense: 'is impaired'. The Committee derived assistance from the guidance provided by the Court of Appeal in GMC v Meadow [2006] EWCA Civ 1319:

‘...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 practise. The [Panel] thus looks forward not back. However, in order to form a view as to the fitness 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.’

20. As for the factors to be taken into account at the impairment stage, the Committee also had regard to remarks of Silber J in Cohen v GMC [2008] EWHC 581 (Admin) and the guidance provided by Cox J in CHRE v NMC and Grant [2011] EWHC 927 (Admin).
21. The Committee considered whether the Registrant’s admission that on various dates between 14 March 2015 and 17 March 2016 she obtained and consumed cocaine, during a time throughout which she was a registered pharmacist, amounted to misconduct. The Committee had no hesitation in deciding that such conduct amounted to misconduct. She had fallen far below the standards to be expected of a registered pharmacist. It was a very serious matter indeed for a registered pharmacist, charged with upholding the law and safeguarding patients in her care, to obtain and consume an illicit substance. The Registrant’s actions, to the Committee’s mind, were deplorable.
22. The Committee next considered, by her actions, those elements of the professional standards which the Registrant had breached. The Committee recalled that with respect to Allegation 1(a), the offences having been committed on 16 March 2016, it was required only to consider ‘The Code: Professional Standards of conduct, ethics and performance for pharmacists in Northern Ireland’ (effective from 1 March 2016) (‘the Code’). With regard to the Code, the Registrant had breached the following Principles:
 - Principle 2 – Provide a Safe and Quality Service; and in particular the following standards: 2.1.1, 2.1.2, 2.1.6; and
 - Principle 3 – Act with Professionalism and Integrity at all times; and in particular the following standards 3.1.1, 3.1.2, 3.1.6, 3.2.2.
23. The Committee considered that the same provisions of the Code had been breached by the Registrant with respect of her actions which occurred on and after 1 March 2016 as covered by Allegation 1(b), 1(c), 1(d), 1(e) and 3.
24. For those elements of the Allegation which occurred before 1 March 2016, the Registrant’s actions were to be measured against the Code of Ethics issued by the Society (Issue: June 2009). With respect to Allegation 1(b), 1(c), 1(d), 1(e) and 3, the Registrant had breached:
 - The general principle of registration as a pharmacist that requires you to act to promote and maintain public confidence in the pharmacy profession;
 - Principle 1 – make the safety and welfare of patients your prime concern and in particular obligation 1.1 and 1.6;
 - Principle 4 – exercise professional judgement in the interests of patients and public and in particular obligations 4.1 and 4.2;
 - Principle 6 – maintain and develop professional knowledge and competence and in particular 6.6 limited to, ‘...Promptly inform the Society, your employer and other relevant authorities of any circumstances that may call into question your fitness to practise or bring the pharmacy profession into disrepute,

including: ill-health (including chemical dependence), impairing ability to practise...’;

- Principle 7 – act with honesty and integrity and in particular obligations 7.1, 7.2, 7.4 and 7.5; and
- Principle 8 – provide a high standard of practice and care at all times and in particular 8.10 limited to, ‘Make sure that your actions do not...present a risk to patient care or public safety’.

25. Regulation 4(2) of the Regulations required the Committee to consider whether the actions of the Registrant:

- (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.

26. While there was no evidence that the Registrant’s use of cocaine had impeded her clinical practice, the Committee was in no doubt that her actions had the potential to cause risk to patients and the public. She engaged in the obtaining of cocaine from a criminal associate who supplied her both at her place of work and away from it. In return for cocaine, the Registrant procured for her dealer a substantial quantity of medication from the pharmacy where she worked. By her actions, the Registrant had allowed controlled drugs and prescription only medication to be placed in the hands of criminal elements who were then at liberty to supply those drugs, for profit, to the general public. She had abused her trusted position to steal medication to feed her addiction to cocaine. She had failed to notify her employer or the police and was arrested a short distance from her workplace by police. The Committee was satisfied that the entirety of regulation 4(2) (a) to (d) was engaged by the circumstances of this case.

27. The Committee next considered the question of the Registrant’s insight and remedial action. It was noted that the Registrant had pleaded guilty at the first available opportunity in the criminal proceedings taken against her. She had made an early admission to the facts in these proceedings. There was also clear evidence from her police interviews that she accepted that what she had done was wrong and unacceptable. The Committee noted that a note from her probation assessment in the criminal proceedings (Exhibit D), the Registrant showed profound regret for her actions and ‘demonstrated a high level of insight into the impact of the index offences’. Set against this, however, the Committee noted the contents of Exhibit E. [REDACTED]

[REDACTED]. The Committee considered that, in spite of the actions which she had taken, the evidence demonstrated that the Registrant was at high risk of repeating the behaviour which had resulted in her misconduct and conviction.

28. The Committee concluded that, applying the tests set out in the formulation provided by Dame Janet Smith in her Fifth Report to the Shipman Inquiry (and referred to with approval in Grant), the Registrant, by reason of her misconduct and conviction:

- (a) Had in the past and was liable in the future to act in a manner as to put patients and the public at unwarranted risk of harm;
 - (b) Had in the past and was liable in the future to breach one of the fundamental tenets of the pharmacy profession; and
 - (c) Had in the past and was liable in the future to bring the pharmacy profession into disrepute.
29. The Committee was satisfied that the Registrant was impaired in her practice. Having regard to the nature of her misconduct and conviction which was directly related to her profession, the Committee considered that it was also necessary to make a finding of impairment in the public interest. Not to make such a finding, to the Committee's mind, would undermine trust and confidence which the public place in the pharmacy profession.
30. For these reasons, the Committee decided that the Registrant's fitness to practise is impaired.

DECISION ON SANCTION

31. The Committee heard a submission from Mr Shields. He submitted that the Registrant had departed fundamentally and significantly from her professional Code and that the pharmacy profession had been diminished by the Registrant's actions. Further, Mr Shields submitted that the Registrant's actions were at the most serious end of the spectrum of misconduct and that, while it was a matter for the Committee, a striking off order was a very real prospect in this case.
32. Mr Harvey made a submission to the Committee on the question of sanction. Mr Harvey candidly accepted that the Registrant anticipated that she would end up being struck off her professional register as a consequence of her offending and misconduct. The Registrant also accepted that [REDACTED]
[REDACTED] In the future, the Registrant considered that she was better suited to employment away from the pharmacy profession. The Registrant, through Mr Harvey, apologised to the Committee for her actions and the potential they had had to cause damage to the Society and the profession in general.
33. The Committee considered the Society's Indicative Sanctions Guidance document (effective from 27 March 2019) ('the Guidance'). In considering what sanction to impose, if any, the Committee had regard to the principle of proportionality and the need to balance the public interest against the Registrant's interests. The Committee also bore in mind that the purpose of a sanction was not to be punitive but to protect members of the public, maintain public confidence in the profession and the Society and to declare and uphold proper standards of conduct and performance.
34. The Committee first considered the seriousness of the Registrant's actions. It had regard to Sections 2.10 to 2.16 of the Guidance, with regard to mitigating and aggravating factors.
35. The Committee looked at the mitigating factors and noted:
 - The Registrant had no previous adverse findings against her;
 - She had shown insight;
 - She had made an early admission to the facts in these proceedings;

- The Registrant had been co-operative to a significant degree during the police investigation into her actions. She had pleaded guilty at the earliest stage possible in the criminal proceedings brought against her;
- There was limited evidence in respect of the Registrant's physical and mental health issues in general and during the time over which the offences were committed.

36. The Committee looked at the aggravating features and noted:

- The Registrant's offending and referral to the Society concerned wrongdoing directly related to her profession as a pharmacist;
- She had abused her trusted position as a pharmacist. The Registrant had stolen a very significant quantity of legal prescription only medication from her employer in order to procure illegal drugs for herself;
- The Registrant had facilitated the wrongful diversion of legal medication, via criminal associates, to the general public;
- The Registrant had played an instrumental and pivotal role in causing legal medication to be distributed to the general public in an uncontrolled manner for the gain of criminal associates;
- The Registrant's actions had the very real potential to cause harm to the public;
- The Registrant had acted dishonestly.
- The Registrant's actions were deliberate, formed a pattern of behaviour and took place over a prolonged period.

37. The Committee then considered the range of available sanctions in ascending order of severity.

38. The Committee first considered whether it was appropriate to take no further action or to conclude the proceedings by imposing a Warning on the Registrant's registration. Such an outcome, to the Committee's mind, would be wholly inappropriate given the findings which the Committee had made in respect of the Registrant and the identified risk of repetition. Taking no further action or issuing the Registrant with a Warning would also serve to undermine public trust and confidence in the pharmacy profession.

39. The Committee next considered placing conditions on the registration of the Registrant. It was recalled that the referral did not raise issues of concern in respect of the Registrant's clinical competence or areas of concern in her practice that were in need of improvement. Quite apart from the impracticability of such a measure, owing to her incarceration, the Committee considered that, given the seriousness of the misconduct identified, conditions were inappropriate and inadequate to protect the public.

40. Next, the Committee considered whether the public would be protected, and the public interest upheld, by suspending the Registrant from the Register. This required an assessment of whether the seriousness of the Registrant's misconduct was such as to be fundamentally incompatible with continued registration as a pharmacist. The Committee recalled the remarks of the Judge who sentenced the Registrant in the Crown Court. It was stated:

'In your case...there has been a breach of trust. It's a two-fold breach of trust. There is a breach of trust in relation to the relationship with your employer. In other words you were placed in a position of trust effectively managing a shop on behalf of your

employer. The goods were stolen from that shop and you were in breach of trust that you, as an employee, held for your employer and as I say approximately £25,000 worth of goods were stolen. There is however another breach of trust and that essentially is the public's trust that is placed in pharmacists. The public expect a high duty from those involved in the medical professions. Pharmacists are given permission to possess and control drugs and they in turn have to do that appropriately and you sadly were in significant breach of that trust that was placed in you by the public and indeed by the government and your regulatory authority.'

41. The Committee agreed with and endorsed the sentencing remarks made by the Judge in the Registrant's case. There was no evidence that she was unsafe in her clinical practice. However, the Registrant had acted in a reprehensible manner. She had fundamentally subverted the role of the professional pharmacist. The Registrant had failed to uphold the law and had been found by the Committee to have committed significant and wide-ranging breaches of her professional Code. The Committee was left in no doubt that the Registrant's misconduct was fundamentally incompatible with continued registration. The Committee concluded that a Suspension Order was inappropriate and would not adequately protect the public.
42. The Committee therefore directed the Registrar, in the public interest, to strike the name of the Registrant off the register held by him in accordance with the Pharmacy (NI) Order 1976, as amended. The Committee considered that this was the only appropriate and proportionate sanction to apply in light of the serious nature of the misconduct, the risk of repetition identified, the need to protect the public and the requirement to declare and uphold proper standards of conduct and performance in the pharmacy profession. The Committee also considered that to impose any lesser sanction would undermine trust and confidence in the profession of pharmacy and the Society in its regulatory function.

ORDER

43. The Committee, in accordance with paragraph 7(2)(c) of Schedule 3 of the Pharmacy (NI) Order 1976, as amended, directs that the name of Ms Michelle McPeake (5097), be struck off the register held by the Registrar in accordance with article 6(1) of the said Order.

INTERIM MEASURE

44. Pursuant to Paragraph 12 (2) of Schedule 3 of the Pharmacy (Northern Ireland) Order 1976, as an interim measure, a period of suspension is ordered until the period of appeal has expired, or in the event of an appeal being lodged, that the suspension be extended until the end of the appeal period.

COSTS

45. There was no application for costs.

Conor Heaney

Deputy Chair

3 October 2019

