

GENERAL PHARMACEUTICAL COUNCIL

FITNESS TO PRACTISE COMMITTEE

PRINCIPAL HEARING

25 Canada Square, London E14 5LQ

Tuesday 4 December 2018

Chairman: Mr Martyn Griffiths

Committee Members: Ms Melissa D'Mello
Ms Vaishally Patel

Legal Assessor: Mr Graeme Dalglish

Committee Secretary: Ms Zarina Ndemumana

CASE OF:

DESAI, Bipin
GPhC Registration No 2028648

MS SARAH DAVIES, Solicitor Advocate, appeared on behalf of the General
Pharmaceutical Council

MS NATASHA WONG, QC, instructed by Freemans, Solicitors, appeared on behalf
of Mr Desai, who was present

Transcript of the Shorthand Notes of T A Reed (Wiltshire) Ltd
Tel No: 01793 764614

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(The Determination was handed down)

DETERMINATION

Introduction and Background

1. This principal hearing before the Fitness to Practise Committee ("the Committee") relates to Mr Bipin Desai ("the Registrant"), a Pharmacist first registered on 18 July 1983 with the Royal Pharmaceutical Society of Great Britain and subsequently registered with the General Pharmaceutical Council ("the Council") under registration number 2028648.
2. This matter is governed by the Pharmacy Order 2010 ("the Order") and the General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010 ("the Rules").
3. It is alleged that Mr Desai's fitness to practise is impaired by reason of his conviction for criminal offences in accordance with Article 51 (1), (e), of the Order.
4. In August 2011, Mr Desai sold his pharmacy business, Vaughan James Pharmacy, Farnham, Surrey, ("the Pharmacy") to Mr Rohit Patel. Following the sale, Mr Desai continued to work in the pharmacy for three days per week, and was one of a number of pharmacists employed there by Mr Patel.
5. The following background reflects the findings of the sentencing Judge at Guildford Crown Court ("the Court") on 17 November, 2017.
6. Early in 2015, Mr Desai was ordering Oramorph for the pharmacy and made an error on the computer-generated order form. This caused a 30ml bottle of Oramorph to be delivered which was of a much higher

concentration than the 300ml bottle he had intended to order. Mr Desai concealed this error from his colleagues, stole the Oromorph, and took it home.

7. Mr A came to live with Mr Desai and his family in 2015. That was the culmination of an increasingly lonely period in Mr A's life. He had been living overseas and was widowed in 2003. His sole companion then was his pet dog who also died a few years later.
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX (Redacted).
8. He spent a number of years living with family in India, Zimbabwe and the UK XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX (Redacted).
8. Mr A had become increasingly fed up with life. In evidence before the Court, family members and others consistently spoke of a man who believed in an afterlife and often expressed wishes to "go upstairs" and "to see his wife".
9. In early August 2015 Mr Desai stole some insulin and some syringes from the Pharmacy and took them home.
10. For some time Mr A had been urging Mr Desai to help him die by giving him some medicine. In the week commencing 24 August 2015, Mr Desai's family went away, as a result, leaving him alone with his Mr A.
11. On the next day, the 25 August 2015, Mr Desai prevaricated but Mr A kept asking for help. He agreed with Mr A that on the following day he would give him some medicine.
12. On the 26 August 2015, Mr Desai was anxious but ultimately prepared a fruit smoothie and poured half the bottle of Oramorph into it. Mr Desai accompanied Mr A to his bedroom and placed the drink on the side table. Mr A said "thanks for everything you've done for me" and Mr Desai told Mr

A he loved him. Mr A took about two minutes to finish the drink. He got into bed and immediately went to sleep.

13. Shortly after, Mr Desai went back to Mr A and administered the insulin. He was with Mr A when he died.
14. On 27 August, Mr Desai attended work as normal. On his return home he called 999 and described a picture of a natural death to the emergency services.
15. Mr Desai's family returned and he was unable to conceal the true events. Three days later on Saturday 29 August 2015, he told his family what had taken place and he walked into Guildford Police Station and confessed to assisting in a suicide.
16. The Certificate of Conviction from Guildford Crown Court on 8 December 2016 shows that (Mr) Bipin Desai was convicted upon his own confession of *Intentionally doing an act capable of encouraging/assisting the suicide of another and two charges of Theft.*
17. Schedule 1 of the Certificate of Conviction shows that (Mr) Bipin Desai was sentenced to nine months imprisonment suspended for nine months and to pay a Victim Surcharge of £100. There was no separate penalty imposed with regard to the two Theft charges.

The Allegation

18. *That being first registered as a Pharmacist with the Royal Pharmaceutical Society of Great Britain on 18 July 1983 and subsequently with the General Pharmaceutical Council under registration number 2028648:*

1. *On 8 December 2016 you appeared before the Guildford Crown Court and were convicted of an offence of theft of a quantity of morphine to a value unknown belonging to Rohit Patel between 1 May 2015 and 31 May 2015, contrary to Section 1 (1) of the Theft Act 1968.*
2. *On 8 December 2016 you appeared before the Guildford Crown Court and were convicted of an offence of theft of a quantity of insulin to a value unknown belonging to Rohit Patel between 1 August 2015 and 28 August 2015, contrary to Section 1 (1) of the Theft Act 1968.*
3. *On 8 December 2016 you appeared before the Guildford Crown Court and were convicted of one offence of intentionally doing an act, namely preparing a lethal dose of morphine which was capable of encouraging or assisting the suicide of Mr A contrary to Section 2 of the Suicide Act 1961.*

By virtue of the matters set out above either individually or cumulatively your fitness to practise is impaired by reason of

i) Your Convictions

19. The Council was represented by Ms Davies. Mr Desai appeared before the Committee represented by Counsel Ms Wong QC, instructed by Freemans Solicitors. He admitted the allegations in full without qualification.
20. The Committee found the charges proven by Mr Desai's admission.

Impairment of Fitness to Practise

21. The Committee went on to consider if the convictions admitted by Mr Desai and the conduct giving rise to those convictions mean that his fitness to practise is currently impaired. Mr Desai gave live evidence to the Committee and was cross examined by Ms Davies. The Committee carefully considered the evidence given by Mr Desai; all associated references, testimonials and documentary evidence; submissions by Ms Davies on behalf of the Council and submissions by Ms Wong QC on behalf of Mr Desai. The Committee heard and accepted legal advice. The Committee reminded itself that there was no burden or standard of proof at this stage and that the decision on current impairment was one for the professional judgement of the Committee.

Mr Desai's evidence

22. Mr Desai gave evidence and read his Witness Statement. He described his childhood ambition to become a pharmacist. He came to the UK alone and graduated in 1982. He worked hard and by 1983 was appointed as Manager in a Pharmacy in north London. At a young age he carried responsibility for a large store and a staff of 6/7 people. In 1988 he married his wife, also a Pharmacist, and they purchased the Vaughan James Pharmacy in Farnham. They started a family and built a successful business over the following years. Mr Desai became very involved in the local community. He was able to refer to several testimonials which spoke of the high regard in which he is held by that community.
23. Mr Desai described the sacrifices which his parents had made to enable him to study for a career in pharmacy. XXXXXXXXXXXXXXXXXXXX (Redacted).
24. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX (Redacted).

25. XX (Redacted).
26. XXXXXXXXXXXXXXXXXXXX (Redacted)
27. Mr Desai is from the Hindu religion and described how suicide was a taboo subject. XXXXXXXXXXXXXXXX (Redacted).
28. Mr Desai said "I knew I would get into trouble but his wish outweighed my getting into trouble. I had never refused him anything. I felt guilty and inadequate that he was asking me to help him with his final wish and I was not helping him. My state of mind was one of turmoil and anxiety....I cannot repeat enough how this was playing on my mind... I simply could not refuse him".
29. Mr Desai described the circumstances in which he stole the Oromorph, it having been ordered in error. He fully accepted stealing the insulin from the Pharmacy. XXXXXXXXXXXXXXXX (Redacted). I have never stolen anything in my life before and would never have done so in any other circumstances. Nor will I ever do so again. My entire career as a pharmacist has been otherwise exemplary".
30. In terms of fitness to practise, Mr Desai said that he posed no risk to patients or to the public. The events in the case arose from unique circumstances. He said it was "a one off event, never to be repeated". He had addressed the conduct which led to the complaint. It had taken over two years XXXXXXXXXXXX (Redacted) to the conclusion of the criminal proceedings. He said XXXXXXXXXXXXXXXXXXXXXXXX (Redacted).
31. XX (Redacted).

32. Mr Desai said "there is no suggestion from any of the evidence presented to the Panel of any likelihood of any future dishonest behaviour on my part nor is there any evidence that I pose a present or future risk of harm to any patient or other person. Irrespective of my convictions, I believe that I am able to uphold proper standards of behaviour and maintain public confidence in the profession, as is evidenced by the support of all the prosecution witnesses, members of the local community and other health care professionals. All are aware of my conduct and support my return to a pharmaceutical role. Allowing me to return to practise with or without restrictions would not, in the particular circumstances of my case and given the personal ordeal I have experienced as a result of my actions, bring the profession of pharmacy into disrepute".

33. Mr Desai continued "I know I have done wrong and been punished for my actions in every way imaginable. I have to live with the knowledge that XX (Redacted).

34. Mr Desai described having been suspended since 2015. XXXXXXXXXXXXXXXXXXXXXXXX (Redacted). He said "I miss the profession more than I can possibly say and believe I still have much to offer in a community pharmacy".

35. Mr Desai described his commitment to the profession through his suspension and listed the various CPD course he had completed.

36. Mr Desai concluded "I fully accept and understand with hindsight that I should not have stolen the morphine or XX (Redacted). Consequently my actions were completely out of character and contrary to all my personal and professional ethics. XX (Redacted). That will never happen again. XXXXXXXXXXXXXXXXXXXXXXXX (Redacted). The thought of being unable to practise ever again is

extremely distressing and one I find extremely difficult to bear. I fully understand and respect that the Committee will make the final decision as to my future. I am fortunate to have been offered the possibility of future employment in a pharmaceutical role. I will always deeply regret letting down my profession and failing, on this one occasion, to uphold the standards that I hold so dear. In all the unique circumstances of my case, I urge the Committee to consider and make such findings as would allow me to return to practice”.

Cross Examination of the Registrant

37. Mr Desai was cross examined by Ms Davies for the Council. He accepted that he did not record the Oromorph in the controlled drug register at the point of delivery. He subsequently stole the Oromorph and took it home and he concealed it in his desk for some months. He accepted that this was wrong, and that he had therefore unlawfully removed and stored that medication contrary to the relevant regulations regarding recording and storage of Schedule 2 controlled drugs. Mr Desai agreed that the timescales involved in this concealment meant that the Oromorph had been kept in his home for around three months or more. He could not recall the dates precisely.
38. Under cross-examination, Mr Desai spoke about the likely impact of his actions on the pharmaceutical profession and he accepted that, contrary to the fundamental principles of that profession, he had prioritised Mr A over his professional duties and obligations. He accepted that he had premeditated and planned his actions and that he had fully considered the consequences at the time.
39. In relation to the General Pharmaceutical Council Standards of conduct, ethics and performance (2012), being those in force at the time, Mr Desai

accepted that his conduct had breached a number of standards. He accepted that he had breached the following standards :-

- 1.2 - Take action to protect the well-being of patients and the public
- 1.3 - Promote the health of patients and the public
- 6.1 – Act with honesty and integrity to maintain public confidence in your profession

40. Mr Desai accepted that his actions breached accepted fundamental aspects of his profession and his actions could be seen to be the opposite of caring and protecting patients and the public.

Submissions for the Council

41. On behalf of the Council, Ms Davies directed the Committee's attention to Rule 5 which provides guidance on the criteria the Committee must consider when seeking to determine fitness to practise.

42. The criteria at Rule 5(2) essentially echo the test recommended by Dame Janet Smith in the report to the Fifth Shipman Inquiry when considering impairment of fitness to practise. In relation to evidence about the conduct or behaviour of the registrant which might cast doubt on whether the requirements as to fitness to practise are met in relation to the registrant, the 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; or d) shows that the integrity of the registrant can no longer be relied upon.

43. Ms Davies submitted that only limbs (b) and (c) were engaged in this case.
44. XXX (Redacted).
45. Ms Davies made clear that the Council did not assert that Mr Desai poses an actual or potential risk of harm to patients or the public. Ms Davies emphasized that Mr Desai :-
 - a. Had failed to make appropriate records of a Schedule 2 controlled drug at the Pharmacy;
 - b. Stole prescription only medicines that included a controlled drug;
 - c. Stored these at his home; and
 - d. Used these medicines to assist a suicide.
46. Ms Davies submitted that by virtue of his conduct reflected in the convictions, Mr Desai has brought the profession of pharmacy into disrepute, as per Rule 5(2)(b). As a pharmacist he is expected to act as the gatekeeper of medicines in society. Stealing prescription only medicine, that included a Schedule 2 controlled drug, from the Pharmacy and administering the medication and assisting a suicide, as he did, represented not only a significant breach of his employer's trust in him, but also amounts to an unlawful supply of prescription only medication. Whilst Mr Justice Green held that Mr Desai's acts and assistance were "acts of pure compassion and mercy", it is inescapable that it is the very antithesis of what it means to be a registered pharmacy professional to deliberately cause the death of another. Mr Desai's actions therefore are capable of entirely undermining public trust and confidence in pharmacy professionals.
47. Ms Davies further submitted that Mr Desai's actions represented by the convictions also breached the fundamental principles of the profession.

The fundamental principles can be identified by reference to the July 2012 Standards of conduct, ethics and performance in place at the relevant time.

48. Ms Davies reminded the Committee that Mr Desai had accepted that he had breached those standards namely :

- 1.2 Take action to protect the well-being of patients and the public.
- 1.3 Promote the health of patients and the public.
- 2.2 Make sure that your professional judgment is not affected by personal or organisational interests, incentives, targets or similar measures.
- 3.9 Maintain proper professional boundaries in your relationships with patients and others that you come into contact with during the course of your professional practice and take special care when dealing with vulnerable people.

Regarding 2.2 and 3.9, Ms Davies invited the Committee to find that whilst Mr Desai was Mr A's main provider of care, his actions represented a clear breach of boundaries between his professional obligations and his personal desire to console and care for Mr A and ease his distress.

- 6.1 Act with honesty and integrity to maintain public trust and confidence in your profession.
- 6.3 Avoid conflicts of interest and declare any personal or professional interests you have. Do not ask for or accept gifts, rewards or hospitality that may affect or be seen to affect your professional judgment.

- 6.5 Meet acceptable standards of personal and professional conduct.
 - 6.6 Comply with legal and professional requirements and accepted guidance on professional practice.
49. Ms Davies submitted in respect of (d) that although theft inevitably involved dishonest conduct, that needed to be seen in the light of the unusual facts of the case. In view of those facts and the compelling character evidence accepted by the Judge at Guildford Crown Court, she submitted, the Council did not argue that Mr Desai's integrity cannot be relied on. On the contrary, Ms Davies submitted that Mr Desai was a man of honour and integrity.
50. Regarding the law, Ms Davies referred to the cases of *Cohen, Grant* and *Cheatle*.
51. On the point of remediation, Ms Davies directed the Committee to the guidance in *Cohen v General Medical Council* [2008] EWHC 581 (Admin) at paragraph 65: "*It must be highly relevant in determining if a doctor's fitness to practise 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*". She submitted that the conduct represented by the convictions is not easily, or indeed, at all capable of remedy. Ms Davies submitted that it was however highly unlikely to be repeated.
52. Ms Davies referred to *Cheatle v General Medical Council* [2009] EWHC 645 (Admin) where Cranston J at paragraphs 21-22 stated:

“There is clear authority that in determining impairment of fitness to practise at the time of the hearing regard must be had to the way the person has acted or failed to act in the past... In my judgment this means that the context of the doctor’s behaviour must be examined. In circumstances where there is misconduct at a particular time, the issue becomes whether that misconduct, in the context of the doctor’s behaviour both before the misconduct and to the present time, is such as to mean that his or her fitness to practise is impaired. The doctor’s misconduct at a particular time may be so egregious that, looking forward, a panel is persuaded that the doctor is simply not fit to practise medicine without restrictions, or maybe at all. On the other hand, the doctor’s misconduct may be such that, seen within the context of an otherwise unblemished record, a Fitness to Practice Panel could conclude that, looking forward, his or her fitness to practise is not impaired, despite the misconduct.”

53. On the public interest, Ms Davies referred to *CHRE v Grant* [2011] EWHC 927 (Admin) where Cox J noted at paragraph 74 of her judgment:

“In determining whether a practitioner’s fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.”

54. Ms Davies submitted that the need to uphold professional standards and maintain public confidence in the profession was paramount. She added that whilst there was no identifiable risk of repetition, and the conduct leading to the convictions occurred over three years ago, the serious nature of Mr Desai’s actions represented a significant departure from

acceptable standards of personal and professional conduct. The extent and gravity of which must, in her submission, be marked with a finding of current impairment of fitness to practice so as to restore public confidence in the profession and the regulator.

Submission for Mr Desai

55. On behalf of Mr Desai, Ms Wong QC submitted that it would be wholly artificial in the unique circumstances of this case not to go behind the facts of the convictions in the sense that it was important that the Committee understand the context in which the events took place. Ms Wong submitted that the Committee must gain insight into Mr Desai's state of mind at the relevant time and at present.
56. Ms Wong invited the Committee to take into consideration:-
- 1) Mr Desai's exemplary career and that he is, in the Council's own words "a man of honour and integrity";
 - 2) The sentencing Judge's assessment of Mr Desai;
 - 3) There being no suggestion that the Oromorph or insulin might fall into the hands of others;
 - 4) The evidence of Mr Rohit Patel (the owner of the Pharmacy) at the criminal trial and his positive character reference to the Committee;
 - 5) That the key question is whether Mr Desai's actions have brought or might undermine public trust and confidence in pharmacy professionals, not whether they are capable of doing so;
 - 6) The cases of *Bawa-Garba* and *Giele* as setting out the approach to issues of public confidence;
 - 7) The differing views held by the public on assisted suicide, and the many testimonials submitted on Mr Desai's behalf do not establish that Mr Desai's conduct has brought or might bring the profession into disrepute.

57. Regarding alleged breaches of fundamental principles of the profession, Ms Wong invited the Committee to consider:-

- 1) XXXXXXXXXXXXXXXX (Redacted);
- 2) XXXXXXXXXXXXXXXX (Redacted);
- 3) XXXXXXXXXXXXXXXX (Redacted);
- 4) The Council describe Mr Desai as a man with honour and integrity.

58. Dealing with case law Ms Wong submitted that *Cohen* was entirely distinct from this case as it concerned clinical practice. The remediability test therefore had little assistance for the Committee in this case. It was further submitted that *Grant* concerned a clinical context in which the practitioner had serious attitudinal issues. It was entirely distinct from this case on a factual basis.

59. Ms Wong concluded that whilst the need to uphold professional standards and public confidence in the profession is fully acknowledged and unequivocally accepted, she submitted that in all the circumstances (law and fact) Mr Desai's accepted conduct does not lead inevitably to a finding that he is currently impaired.

Decision on Impairment of Fitness to Practise

60. The Committee heard and accepted the advice of the Legal Adviser

61. The Committee considered Rule 5(2) which states: In relation to evidence about the conduct or behaviour of the registrant which might cast doubt on whether the requirements as to fitness to practise are met in relation to the registrant, the 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; or
 - d) shows that the integrity of the registrant can no longer be relied upon.
62. Mr Desai gave evidence before the Committee and was cross-examined by Ms Davies. He answered questions from the Committee which found Mr Desai to be an honest witness who did his best to assist them. His evidence was consistent in all material respects with previous statements. His answers to some questions were vague, particularly when recalling details of processes he would have carried out dealing with the controlled drugs. The Committee noted the passage of more than three years since the events occurred and did not hold these points against Mr Desai. He admitted his shortcomings and did not at any point seek to blame anyone other than himself. Overall, having observed Mr Desai give his evidence for two hours, the Committee found him to be a witness on whose evidence they could place reliance.
63. The Committee considered Rule 5(2) which it noted mirrors the formulation in *Grant*.
64. This case has never been put on the basis that Mr Desai poses any risk to patients or the public. The Council does not argue that there is any such risk and the Committee identifies no such risk. Within Rule 5(2) the Committee therefore finds (a) is not engaged.
65. The Committee finds that Mr Desai allowed the boundaries between professional practice and personal motivation to be blurred and he ultimately crossed them. It is accepted that Mr A expressed a consistent

wish to end his life. This persisted for at least four months. Mr Desai, on his own account, knew that what he was being asked to do was wrong. He realised that he was putting himself at risk personally and professionally. He knew that it was an illegal act and, we accept, that he wrestled with this issue for a long time. He failed to find an alternative resolution for Mr A's wish and, despite knowing it to be wrong, stole two prescription only medicines, including a Schedule 2 controlled drug, that he used to assist a suicide.

66. As such, the Committee finds that the person who should have been the gatekeeper of medicines, Mr Desai, chose to steal them to use to assist a suicide. The Committee has little doubt that Mr Desai acted out of humanity, as he saw it, but his actions, viewed in the round, do bring the profession into disrepute. The Committee finds that an "ordinary intelligent citizen" seeing a Pharmacist convicted in Crown Court for offences which were enabled through the practice of pharmacy does bring the profession into disrepute. When those events result in significant custodial sentences (albeit suspended) the gravity of the offending will be abundantly clear to that citizen. The Committee therefore finds that (b) is engaged.
67. The Committee notes the list of standards which Ms Davies submitted had been breached. In particular the Committee finds the following to be engaged in this case:- "1.2 Take action to protect the well-being of patients and the public"; and "1.3 Promote the health of patients and the public." By using his professional status to access prescription only medicine to make an unlawful supply to assist a suicide Mr Desai breached these standards.

"2.2 Make sure that your professional judgment is not affected by personal or organisational interests, incentives, targets or similar measures." The Committee finds that Mr Desai allowed his personal interests to override his professional judgement. There was no financial or other material gain

to Mr Desai, but his actions allowed him to meet Mr A's wishes that he, XXXXXXXXXXXXXXXX (Redacted, should act in a particular way. Mr Desai's actions led to the end of Mr A's incessant requests for help. It satisfied his personal desire to end his Mr A's suffering.

"3.9 Maintain proper professional boundaries in your relationships with patients and others that you come into contact with during the course of your professional practice and take special care when dealing with vulnerable people." Mr A was a vulnerable person. He knew XXXXXX (Redacted) was a pharmacist who had access to medicines, and could help him, and he pressed him to do so. Mr Desai could have sought other professionals to work with Mr A. He could have sought advice from colleagues to support Mr A but chose to absorb the pressures himself to the point that he gave in to them.

"6.1 Act with honesty and integrity to maintain public trust and confidence in your profession." Mr Desai's actions at the time were clearly dishonest. For a period spanning around four months he stole two prescription only drugs, including a Schedule 2 controlled drug, from the pharmacy and devised a plan to get the lethal dose of Oromorph (morphine) to Mr A. By returning to work the next day and representing it as a natural death he compounded his dishonesty. That was a period of a few months preceded by an unblemished career in excess of thirty years. That period of dishonesty was followed by the stark realisation that he had done wrong, his conscious troubled him and he was unable to sleep. Mr Desai concealed his actions as he did not want to "get in to trouble with the authorities", but following the return of his family he went to the Police Station and confessed. He subsequently made admissions before the criminal trial and in these regulatory proceedings. XXXXXXXXXXXXXXXX (Redacted). He is contrite and remorseful.

"6.5 Meet acceptable standards of personal and professional conduct."

“6.6 Comply with legal and professional requirements and accepted guidance on professional practice”. Mr Desai’s shortcomings in these areas have been covered above but the Committee notes his knowing disregard for good practice in the safe keeping of medicines, including controlled drugs. Mr Desai was fully aware of the proper processes in terms of legal requirements and good practice around medicines management and he chose to subvert them.

68. The Committee finds the breaches of these fundamental principles engages 5(2)(c).
69. Within the formulation of Rule 5(2) and *Grant*, the Committee has found (b) and (c) to be engaged. The concepts of remediation, as set out in *Cohen*, are difficult to apply in a formulaic way in the unusual circumstances of this case. The Committee however reaches the end point in *Cohen* of finding, as submitted by both sides, that repetition is highly unlikely. In part this is because the circumstances are unique and cannot be repeated. It is remotely conceivable that XXXXXXXXXXXXXXXXXXXX (Redacted) and ask for his help, but the Committee found Mr Desai’s evidence compelling in that he would not act again in such a way. The series of proceedings he has encountered in the past three years and the impact on XXXXXXXXX (Redacted), career XXXXXXXXX (Redacted) are things which lead the Committee to conclude that he will not put himself and them through again.
70. Turning to the wider public interest the Committee has asked itself if a finding of impairment is needed to declare proper standards of conduct and maintain confidence in the profession and the regulatory process. We are clear that such a finding is necessary. We can see no circumstances in which stealing prescription only medicines, including a Schedule 2 controlled drug from a pharmacy, can be met with other than

condemnation and a finding of impairment of fitness to practice.

Thereafter, using those stolen drugs to commit an act which is against the law, being convicted and gaining a suspended custodial sentence, cannot be subject to other than criticism from a regulator, and from the public. Any pharmacist must be clear that such conduct will meet with the full force of law and the regulator will need to review the standing of such a registered person.

71. The Committee accepts that Mr Desai acted out of compassion Mr A. It appears to have been an act motivated by his humanity. However, the Committee is clear that the public interest requires a finding of current impairment to uphold and declare proper standards and to maintain confidence in the profession and the regulator.

GENERAL PHARMACEUTICAL COUNCIL

FITNESS TO PRACTISE COMMITTEE

PRINCIPAL HEARING

25 Canada Square, London E14 5LQ

Friday 1 March 2019

Chairman: Mr Martyn Griffiths

Committee Members: Ms Melissa D'Mello
Ms Vaishally Patel

Legal Assessor: Mr Graeme Dalglish

Committee Secretary: Ms Zarina Ndemumana

CASE OF:

DESAI, Bipin
GPhC Registration No 2028648

DAY FIVE

MS SARAH DAVIES, Solicitor Advocate, appeared on behalf of the General
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MS NATASHA WONG, QC, instructed by Freemans, Solicitors, appeared on behalf
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Determination on Sanction

1. The hearing resumed on 28 February 2019 to consider the matter of sanction. At the resumed hearing Mr Desai (“the Registrant”) once again attended and was represented by Ms Wong QC. The General Pharmaceutical Council (“the Council”) was again represented by Ms Davies.

Application to admit new evidence

2. An application was made by Ms Wong pursuant to Rule 24 for the Committee to receive evidence from a number of witnesses. The Committee had been alerted to the possibility that these witnesses would be called at the time of the adjournment. The matter had also been dealt with at a case management teleconference which took place on 14 February 2019. The application in summary was that the evidence of eleven witnesses be admitted, seven were to be appearing live and four were to be read. In addition the Registrant provided a further statement.
3. On behalf of the Council, Ms Davies set out the relevant rules. She accepted that the evidence was relevant and that it was fair to admit such evidence. Ms Davies drew the Committee’s attention to the provisions of Rule 18(5) which requires that only in exceptional circumstances can such evidence be admitted.
4. The Committee heard and accepted the advice of the Legal Adviser.
5. The Committee finds these statements to be highly relevant in that they speak to the character and professional experience of the Registrant. They are made by a wide range of individuals who have known him for very

A many years in some cases. The Committee finds that it is fair to admit this
evidence, as both sides and the Committee have been aware for some
time that this evidence may be called and it is in no sense a surprise. The
interests of justice require this material to be before the Committee. The
B circumstances of this case are exceptional. The subject matter in the case
is unique dealing as it does with the death of a parent by assisting their
suicide. The course of the case is more familiar, but it is of relevance here
that many of the witnesses chose to attend proceedings in the Crown
C Court and are therefore very familiar with the evidence presented there.
These witnesses now have the opportunity to comment on the Registrant
in full knowledge of our determination at the impairment stage.

D 6. The Committee therefore allowed the application and received evidence
from the eleven witnesses concerned.

Evidence called by the Registrant

E The following seven witnesses attended the hearing to give live evidence, offered
themselves for cross examination and to questions from the Committee.

F 6a Witness PP - this witness is a Pharmacist who has known the Registrant in
a professional capacity for 35 years. He had been one of the Registrant's
tutors in his pre-registration year. More recently the Registrant had been a
member of a pharmacy buying group covering eighty Pharmacist members
for which this witness was Vice-Chairman. The witness was fully aware of
the convictions and these proceedings. This witness said that the
G Registrant was "someone of immense value to the profession". In the
event that the Registrant was permitted to continue in practice the witness
confirmed that he would employ him and would accommodate any
conditions imposed on his registration.

H

A | 6b | Witness GD - this witness is also a Pharmacist and has known the
B | Registrant for more than 35 years. He had employed him as a pre-
C | registration student. This witness was the Chairman of the buying group
referred to above and confirmed that the Registrant had been a member
of that group. The witness said that the eighty Pharmacist members of
this group were all aware of these proceedings and all found it
unbelievable and supported the Registrant. This witness currently owns
two pharmacies and confirmed that he would employ the Registrant either
in those pharmacies or within the buying group itself. This witness
commented on how difficult it was these days to recruit good Pharmacists.

D | 6c | Witness RP - this witness was also a Pharmacist and had purchased the
E | Vaughan James business in Farnham from the Registrant in 2011.
F | Following the acquisition he retained the services of the Registrant as a
G | Pharmacist working three days a week. He described how this was a clear
benefit to him because of the Registrant's experience and knowledge of
the business, customers and the staff. It was this witness from whom the
Registrant had stolen the drugs which were at the heart of the criminal
case. The witness described how the Registrant had repaid the value of
the stolen items in full and of his own volition as soon as he was able to
do so. This witness also confirmed how he would be prepared to employ
the Registrant saying "he was an excellent Pharmacist and an honest
person and he made that one mistake in his professional life". He
continued "giving (the Registrant) another chance to be involved with
pharmacy practice will not bring the profession into disrepute. He can
offer positive good service to the public and community as he has done in
the past".

H | 6d | Witness MP - this witness was a customer at the Registrant's pharmacy in
Farnham and had known him for about 30 years. She described him as "a
meticulously careful, hard-working and upright man, always concerned to
do the right thing". She described how in particular he went out of his way

A to look after elderly customers. She gave examples of what she described
as "his quiet, unassuming service and thoughtful care for his customers".
XX (Redacted) the witness
B said "He was and still is very highly regarded by his former customers as a
very knowledgeable and reliable man who often went out of his way to
help them in a time of trouble." Looking forward, she said "It would not
adversely affect my perception of professional pharmacy if (the Registrant)
were allowed to continue to practise, with or without restrictions."

C 6e Witness VP - this witness had known the Registrant for 14 years. She
began working as a shop assistant in the Registrant's business in 2004
when she was 16 years old and did so for two years until going to
University, thereafter she returned to work during University holidays. She
D and her family are friends of the Registrant's family. She described how
she "could not have asked for a better boss. He had very high standards
and was extremely professional but also very kind and generous." She
described his hard-working nature and said "I respected and admired him
E and I know that others in the community did also." She described the
many acts of kindness she had observed from the Registrant towards
members of the local community. She concluded "I'm lucky that my first
experience of working life was under the management of such a good
F person. I've yet to work for someone I have such high regard for." The
witness made clear that she was fully aware of the Committee's findings
and commented upon the reputation of the profession. She said "I would
go as far as to say that my perception would be negatively affected if he
were not allowed to continue, as a profession we would be losing a
G brilliant pharmacist."

H 6f Witness JK - this witness has known the Registrant for a number of years
having been a customer at his pharmacy and now family friend. The
witness said that prior to Mr A's death she had seen the Registrant about
four times a week and that subsequent to Mr A's death she had found him

A very upset and in her opinion was still grieving. She described him as a thoroughly good man who was extremely kind.

B 6g Witness JW - this witness is a Vicar in Surrey. Prior to becoming a priest she had practised as a Nurse for over 23 years. She came to know the Registrant in 2015 having been alerted by a parishioner to the death of the Mr A. In the period following Mr A's death she described how she had found the Registrant XX (Redacted). The witness told the Committee how the Registrant had become more involved with the Church community and had carried out a lot of voluntary work, in particular refurbishment of the Church and maintaining church gardens. She concluded "I'm fully aware of the reasons why he is appearing before the Committee and my opinion of him as a kind and compassionate person has not changed... although I did not know him as a Pharmacist..." "I am confident that he is just the type of community Pharmacist that any community would need and benefit from having."

E The following four witnesses did not appear in person, and their statements were read.

F 6h Witness OA - this witness was Practice Nurse Manager of a local general practice, her responsibilities included purchasing medical supplies which, for a period of 16 years, she did from the Registrant's pharmacy. This entailed contact with the Registrant on a weekly basis. The witness "found him to be professional, committed to his work, reliable and a man of complete integrity. He provided an efficient service to the practice and is always helpful and prepared to offer advice when asked". She expressed the view that if the Registrant were not allowed to return to practice she would "consider this to be a considerable loss to the pharmacy profession". In full knowledge of all the matters concerning the Registrant

A the witness would have no hesitation in working with him as a Pharmacist in the future.

B 6i Witness WP - this witness had been a patient who visited the Registrant's pharmacy regularly since June 1988. Over time the two families became friendly. She described how he would "go the extra mile for his customers whoever they were". On a more personal note she described how the two families enjoyed a warm supportive genuine friendship. As a Pharmacist she said he was "diligent and conscientious as well as being most kind and compassionate with a gentle unassuming manner". The witness had attended the Registrant's trial at the Crown Court and had been able to read the Committee's decision on current impairment. In possession of all the facts she said "I do not believe that if (the Registrant) were allowed to continue to practice by the GPhC, with or without any restrictions, that it would adversely affect the perception of them by the general public".

D 6j Witness RM - this witness was a retired Nurse who had used the Registrant's pharmacy for nearly 25 years. In her statement she spoke of knowing a young man in the local area who she said would not be alive today had it not been for the Registrant's help and advice in a professional capacity. She stated that she was fully aware of the allegations concerning the Registrant and said "This does not change my faith in this diligent, utterly reliable and caring professional man". She had attended the court hearing at Guildford Crown Court on each day. She said "I heard nothing during the trial which changed my opinion of (the Registrant) and nothing would change my perception of the pharmacy profession if (the Registrant) were allowed to continue to practice without any restrictions."

E 6k Witness DF - this witness is now retired and has been active in the Surrey community for over 30 years. She claims to have known the Registrant for about eight years and were family friends. Through the Church she had offered support to the Registrant and his family, having come to hear

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Mr A's death. She said "During this time it became crystal clear to me that (the Registrant) was one of the most highly principled people I have ever met." The witness, who had attended every day of the court case in November 2017, said "Nothing I heard in court has changed my view that (the Registrant) is a trustworthy, considerate and honest person, this despite the theft of medication from the pharmacy and my full knowledge of his convictions. My support to him remains unwavering. I continue to know him to be a kind, caring and loving family man, who I trust implicitly. This applies to his personal life and in his professional role as a Pharmacist." She offered the view that the profession would not be brought into disrepute if the Registrant were allowed to continue to practise.

The Registrant's further evidence

7 The Registrant gave further evidence under oath having had the opportunity to read the Committee's determination on impairment. He told the Committee that he had been subject to an interim order of suspension which had been in force continuously since 5 October 2015 and which was due to expire on 4 April 2019. In determining sanction the Registrant invited the Committee to take into consideration the fact that he has been suspended for nearly 3 ½ years. This had provided a further period of self-reflection and reinforced how much it meant to him to practise as a Pharmacist.

8 The Registrant acknowledged that he now knew he should not have taken the steps he did and assured the Committee that he would not further bring the profession into disrepute should he practise in the future. He expressed the view "it is evident to all that I deeply regret the course of action that I took and it is, I believe, acknowledged by all, what happened was a one-off never to be repeated again".

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX (Redacted). He assured

A the Committee that it could safely find that in the future he will not bring the profession into disrepute.

B 9 The Registrant suggested that this was a unique case and invited the Committee to make a disposal which was also unique. He suggested that this might include restrictions such as the Committee thought necessary; a probationary period where he could work under supervision or a restriction meaning that he had no involvement in working with controlled drugs. The Registrant described roles which he could undertake and how he would propose to be supervised within the workplace.

C 10 He reminded the Committee of his earlier evidence which was that he wanted to return to his profession which he loved dearly "...not from a monetary motivation but simply because of my love for the job". The Registrant requested that the Committee make a finding in the full knowledge and confidence that he would not bring the profession into disrepute nor damage public confidence in the future.

D 11 In cross examination when asked what he would do if he was suspended for twelve months the Registrant noted that he had already been suspended for three years and that he had kept up his professional knowledge. He said that he would maintain his CPD and be more incentivised. He described how he had filled this time during his suspension by way of various sporting activities and voluntary work in the locality, for example at the Church.

E 12 With regard to working in a Pharmacy environment, the Registrant said that he had visited pharmacies owned by the witnesses who had appeared before us where he had observed staff at work. He had however felt it inappropriate to undertake any form of work within a pharmacy environment.

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A 13 In response to questions from his representative, the Registrant described
how for a long period of time he had been fully absorbed in defending the
criminal proceedings. He had been in no condition to work during that
B period but now felt able to return to work. When asked what he missed
most about work he said it was everyday contact with the general public,
colleagues and other health professionals. He felt he still had a lot to give.

C 14 In response to panel questions the Registrant described how he had been
attending meetings of the purchasing group of which he had formerly
been a member but on a voluntary basis. He described having visited a
number of pharmacies on two or three occasions for an hour or so where
he had been able to observe the day-to-day working of those businesses.

D 15 When asked about what he thought a well-informed member of the public
or pharmacy professional who does not know him would make of this
case, he told the Committee he was confident they would understand the
unique circumstances he was in. He said he knew it was wrong.

E 16 He told the Committee how removal would effectively end his career.
XX (Redacted).

Submissions on behalf of the Council

F 17 On behalf of the Council, Ms Davies referred the Committee to the written
G skeleton argument provided at the adjourned hearing. She submitted that
the powers available to the Committee derived from Article 54 and were
that the Committee could issue a warning; advice to another party;
impose conditions for up to three years; suspend the Registrant's
H registration for up to one year or direct removal from the register. She
added that removal should be reserved for the most serious cases and
that the practical consequence of such an order would be the Registrant
would not be able to reapply for admission to the register for five years.

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18 Reference was made to the case of *Kamberova v NMC* [2016] EWHC 2955 (Admin) and the fact that the Registrant had been subject to interim suspension for a period which now in aggregate was three years and four months, an initial 18-month order having been twice extended by the High Court. This order, she submitted, will otherwise expire on the 4 April 2019. In the event that the Committee suspended the Registrant's registration then this long interim order would be clearly relevant to consider.

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19 Ms Davies submitted that the Committee should have regard to the principles of proportionality weighing the interests of the public against those of the Registrant. The public interest considerations include protecting the public, maintaining public confidence in the profession, and maintaining proper standards of behaviour. Ms Davies directed the Committee to the Council's publication "Good decision making: Fitness to practise hearings and sanctions guidance" (the Guidance) of March 2017. Within that document the public interest was set out at 5.7 and 5.2 provided some assistance to the panel, in her submission, in setting out factors which needed to be considered.

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20 In her submission the correct approach was to begin with the least restrictive sanction moving upwards until a sanction was reached which in the context of this case properly reflected the public interest. It would be good practice then to look at the next most serious sanction and to say why the imposition of that sanction would be disproportionate, a lesser sanction having been identified.

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21 Ms Davies submitted that taking no action or offering advice had no applicability in this case. A warning in her submission would not mark the gravity of the case. With regard to conditions she submitted that these would be neither proportionate nor appropriate. In the Council's view there were no clinical concerns identified in respect of the Registrant so

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A conditions would not be appropriate. In such circumstances, the
imposition of conditions would not restore public confidence. Ms Davies
submitted that the need to highlight to the profession that the Registrant's
conduct was unacceptable and to maintain public confidence demands no
B lesser sanction than twelve months suspension with a review. She
submitted that the behaviour of the Registrant in this case giving rise to
the three convictions was fundamentally incompatible with him remaining
on the register and the Committee therefore should direct removal.

C 22 Ms Davies directed the Committee to the factors which had been identified
by the Judge at the Crown Court and which were set out in paragraph 29
of his sentencing remarks. In the following paragraph she noted the
comments of Mr Justice Green that "this case sits at the very lowest level
D of seriousness of cases involving a death".

E 23 There was, in Ms Davies submission, a very unusual situation in this case
where in the light of the obvious dishonesty associated with two
convictions for theft, the Council's position was nevertheless that there
were no concerns as to the Registrant's integrity. It was noted by
Ms Davies that Mr Justice Green was clearly sympathetic to the Registrant
and that we as a Committee may indeed feel the same way but she urged
we should have a different focus in regulatory proceedings to those which
F would obtain in a criminal court.

G 24 Ms Davies suggested a number of aggravating features in the case which
were the extent of the error in judgement shown by the Registrant
demonstrated by his decision to steal the morphine, its initial removal and
its retention at his home address and ultimate administration some
months later to end life. Matters were compounded by his dishonesty she
submitted, the Registrant having failed to make the appropriate records
thus concealing the loss and by the element of preplanning in the case. He
H had a number of months to reflect and stop what he had put into action

A but chose to prioritise Mr A's needs. He was fully aware of the implications but still went ahead.

B 25 These were to be balanced against mitigating features which it was submitted included the Registrant's co-operation with investigations into the criminal matters and regulatory proceedings despite an initial period of concealing his wrongdoing. The initial over-ordering of the Oromorph had been an accident. Ms Davies submitted there have been no prior concerns regarding the Registrant who has been contrite and remorseful. There is no risk of repetition.

C 26 The issue before the Committee today is that of the public interest.

D 27 The Committee was directed to the case of *Bawa-Garba v GMC* [2018] EWCA Civ 1879. The Committee was invited to look at matters from the perspective of "a well-informed ordinary intelligent citizen". Whatever opinion those who know the Registrant well might have expressed, it was Ms Davies submission that the Committee needed to look objectively at the facts of the case.

E 28 Regarding insight it was Ms Davies submission that the panel had not yet made a clear finding as to what if any insight the Registrant was displaying. She questioned whether or not the Registrant had really understood the damage to the reputation of the profession which had been caused by his convictions. She submitted that analysing his insight would help us in terms of proportionality.

F 29 It was submitted on behalf of the Council that suspension was the very least order which could be imposed and was effectively a starting point. Although there can be no presumption of removal having regard to the authority of *Bawa-Garba*, matters in the case are so serious that the

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- A Registrant's position is fundamentally incompatible with ongoing registration.
- B 30 Ms Davies submitted that paragraph 6.8 in the guidance would provide the Committee with useful assistance when considering dishonesty. That makes clear that there is again no presumption of removal in all cases involving dishonesty and it is for the Committee to determine how serious the evident dishonesty is in this case.
- C 31 Ms Davies finally addressed the impact of any sanction on the Registrant. In view of his age she submitted that if removed he may well not reapply for admission to the register and the impact upon him would therefore be very significant. Nevertheless she directed the Committee to the
- D comments of Sir Thomas Bingham MR in *Bolton v Law Society* [1994] 2 All ER 486 on the very serious consequences for any professional which flow from findings of dishonesty.
- E 32 Reference was made to the case of *Bijl v GMC* [2007] EWHC 3257 (Admin) where it was emphasised that the role of regulation was not blame and punishment. Ms Davies noted the Registrant had been a credit to his profession for 35 years.
- F **Submissions on behalf of the Registrant**
- G 33 Speaking on behalf of the Registrant, Ms Wong acknowledged that this was a very difficult case. Dealing with points raised by the Council it was agreed that the dates put forward for the interim order were correct. Ms Wong accepted that *Kamberova* was good law and should be taken into account when determining the nature and length of our sanction although this may be limited in its assistance should removal be the
- H outcome.

A 34 Ms Wong summarised the bottom line position as being that the Registrant posed no risk at all to the public. He posed no danger or threat and there was no prospect of repetition.

B 35 In terms of dishonesty this case was completely different, in Ms Wong's submission, to most regulatory cases as the Council accepts that the Registrant is a person of integrity.

C 36 Dealing with the evidence put forward by the 11 witnesses, Ms Wong submitted that it was "abundantly clear that a cross-section of the public, knowing all the facts, do not feel that allowing him to practice will bring the profession into disrepute". No witness called by the Council had put a contrary view.

D 37 Ms Wong submitted that the "public" is not a clearly defined concept. The view held must be informed and reasonable and from those who appreciate the sanction and the other issues in the case. It was highly significant, in her submission, that Mr Justice Green gave serious consideration to an unconditional discharge in the criminal case having found that the prosecution should not have been brought.

E 38 Ms Wong submitted that whatever views, if any, the Committee members might hold on assisted suicide, we must put those to one side. Specifically on the suicide point she reminded the Committee of the Registrant's evidence to the effect that within the Hindu faith, suicide was very much a taboo subject XX
F (Redacted).
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H 39 Dealing with insight, the Registrant's level in her submission was "the highest degree it is possible to demonstrate... Coming from the most painful and tortuous experience". Ms Wong drew the Committee's attention to Mr Justice Green's comments describing the impact of criminal proceedings on the Registrant. As a person with over 30 years' experience

A the Registrant was, in her submission, in no doubt as to what the
profession might think of him. In assessing his insight the Committee
should have regard, she submitted, to four years of proceedings in
B criminal and regulatory matters which had made the Registrant profoundly
aware and insightful. His insight should be examined not just in terms of
the words used but his demeanour and his actions.

40 C Commenting on the case of Bawa-Garba, Ms Wong reminded the
Committee that even with a death, removal is not a presumption. In this
case there is simply no risk of repetition. There were clear similarities, in
her submission between that case and that of the Registrant in that both
were highly competent in their professions and had unblemished records.
D She described the Registrant as clearly of impeccable character, a highly
skilled Pharmacist and an honest one. She submitted that he has been
spoken of by others in glowing terms and his references could be
considered exemplary.

E 41 Looking at the sanctions themselves, Ms Wong agreed that to take no
action, issue advice or a warning, were not realistic options in the case. It
was her submission that conditions could be appropriate. In the
circumstances of such a unique case she submitted that the Committee
might wish to think creatively and that various conditions could be seen as
F appropriate for example a degree of supervision: not to be involved in
ownership or management of a pharmacy: limitation to certain services:
restriction in regards to controlled drugs, and restriction in his hours of
work. There had been clear indications from witnesses that such
G conditions could be accommodated.

H 42 If the imposition of conditions did not find favour with the Committee then
Ms Wong accepted the Committee would give consideration to a further
period of suspension but in her submission we should ask ourselves what
purpose further suspension would serve? The Committee was reminded of

A the need to look at what was appropriate in the circumstances. If he were
removed from the register Ms Wong submitted that this would devastate
the registrant. Ms Wong invited the Committee to contrast his appearance
B in these proceedings which she said had been very quiet, rather down in
mood in sharp contrast to the description we had received from so many
witnesses about him in the pharmacy. This she submitted goes to show
how much his profession means to him and that he means a lot to the
public he has served.

C 43 Ms Wong posed the question "would it really impact on public perception
to let him practice?" She submitted that it would not.

Legal Advice to the Committee

D 44 The Committee heard and accepted the advice from the Legal Adviser. He
endorsed the comments made by both representatives on the general
approach to be adopted and on the specific cases which had been
E mentioned. The Committee was recommended to refer to the published
guidance document.

F 45 The Legal Adviser reminded the Committee of what it had already found -
that this was a unique case: the Registrant was a man of integrity; there
was no risk to patients or the public and that repetition was highly
unlikely. It had been found that the profession has been brought into
disrepute and this is therefore purely a public interest case. Within the
G normal definitions of public interest, the Committee need not be
concerned with risk to the public in view of its earlier findings. The
sanction imposed must be proportionate and the least restrictive one
which properly meets the remaining public interest demands.

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A 46 He reminded the Committee of the caselaw on public interest which requires it to be judged by the reasonable, intelligent, well-informed member of the public.

B **Reasons of the Committee for Sanction**

C 47 The Committee first considered the witnesses from whom it had heard at this stage. The Committee recognised that these were all friends and professional colleagues of the Registrant and were not in that sense independent. The Pharmacists who gave evidence to the Committee were all long-standing members of the profession and without exception or qualification they spoke of the Registrant's professional work in the most positive terms. All indicated their ongoing support for him and their willingness to offer employment as a Pharmacist in one form or another in the future. The Committee reminded itself of witness GD's evidence about the Registrant having broad support within the buying group.

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E 48 The members of the public who gave evidence described with great consistency their positive impressions of the Registrant. The Committee was left recognising the very positive impact which the Registrant has had on his community in the course of his long career. His care particularly for elderly and vulnerable patients does him great credit. To have made such a success of his Pharmacy business in a locality where there was apparently considerable competition is testament to the high regard in which he has been held for many years by that community.

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G 49 Some witnesses had only known the Registrant as a result of these unfortunate circumstances but the characteristics of him which they described were entirely consistent with the observations of those who have known him for much longer. It is clear to the Committee that the Registrant impressed all who came into contact with him as a modest, very caring individual who had been affected very deeply by these events.
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50 The Registrant once again gave evidence to the Committee, was cross-examined on that evidence and answered questions from Committee members. As was the case at the earlier stage, the Committee found the Registrant to be a witness of truth who, despite appearing hesitant at times, did his best to recall details accurately and to answer questions directly. The Committee does not take this to be other than his behaviour under considerable stress which has now gone on for some time. Having observed the Registrant give his evidence over long periods of time and on separate occasions the Committee has no reason to doubt his integrity and honesty. His regret, remorse and contrition are abundantly clear and genuine.

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51 The Committee has carefully reviewed all the evidence in this case and identified a number of aggravating and mitigating features. We note above what the sentencing judge referred to as factors relevant to sentence and have considered the extent to which these are relevant to these regulatory proceedings which we recognise is a different forum with a different function. We have also identified features within the more familiar regulatory context.

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52 The Committee has identified a number of features which it considers to be aggravating-

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- The element of preplanning in that the Oromorph was retained for a number of months, supplemented later by the insulin, and finally given to Mr A.
- The Registrant acted despite being fully aware of the implications of what he was doing

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- He initially attempted to conceal his actions
- He subjugated his professional responsibilities in order to implement Mr A's wishes

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- He displayed a knowing disregard for the appropriate handling of controlled drugs
- 53 In terms of mitigation, the Committee identified the following-
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- The Registrant was a highly respected member of his profession
 - He has enjoyed a career of 35 years of unblemished service
 - He is consistently spoken of by professionals, customers and community leaders in the most positive terms
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- Having disclosed matters to the police he co-operated fully with their investigations and has engaged in a similarly open fashion with his regulator and the regulatory process.
 - He has displayed remorse and contrition.
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- 54 The Committee had regard to the factors set out in paragraph 5.2 of the Council's guidance. We find that the extent to which the Registrant breached the standards which we have set out in the earlier part of this determination was very significant. The criminal behaviour set out in the
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- allegations and fully admitted by the Registrant was only possible through his practice as a Pharmacist. Items were stolen and used at an opportune moment with the consequence that a life was lost.
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- 55 The public interest in this case is very significant, indeed it is only on the public interest that the Registrant is impaired. The Committee notes the three limbs which are often used to express the public interest specifically protecting the public; maintaining public confidence in the profession and maintaining proper standards of behaviour. For the reasons set out above protecting the public is not an issue remaining in this case. The Registrant has never acted to the detriment of a patient or the public more broadly. His actions in this case were solely directed at Mr A and indeed were
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- actively encouraged by Mr A. In giving in to Mr A's pressure and failing to observe the proper boundaries of practice, the Registrant has damaged

A public confidence in the profession and has not demonstrated proper standards of behaviour. It is on those two areas of the public interest that his sanction is based.

B 56 That public interest is weighed against the Registrant's interests which are, so far as relevant to these proceedings, his wish to return to practice. He wishes to continue working as a Pharmacist so that he can continue work which he has loved, has gained an outstanding reputation for and which has been the basis of very successful career.

C 57 It is also apparent to the Committee there is a large area of shared common interest between the Registrant and the public. It is plainly in the public interest to return to practice someone who has been described as, D and who we find to have been, an exemplary practitioner other than for the events in late 2015 which gave rise to the criminal cases.

E 58 As a regulatory Committee we recognise that the role of the GPhC is to protect promote and maintain the health, safety and well-being of members of the public by upholding standards and public trust in Pharmacy.

F 59 There is considerable mitigation in this case which can be exercised in favour of the Registrant. We have found earlier in these proceedings that the Registrant acted entirely out of humanity, as he saw it, in acquiescing to Mr A's wishes. He was wrong to do that, a point which he now fully recognises. The impact of his actions over a period now in excess of three G years has been unimaginable. It has had a devastating effect professionally, personally XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX (Redacted). The Committee notes that these are all capable of resolution and we have seen positive indicators in that respect. For example H professional colleagues continue to stand by him and to be supportive of him in the future. He enjoys the support of his wife and family and this

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has been evident to the Committee throughout these proceedings.
XX (Redacted) he now feels
able to contemplate a return to practise.

60 The testimonials and character references given by many people and the
evidence which many of them have given in person to the Committee has
been very impressive. Many of those supporting the Registrant also
attended part or all of the Crown Court hearing. Many referred directly to
our earlier findings in this case. We are in no doubt that all were fully
aware of the circumstances and context and the Registrant’s openness
and candour in that regard is greatly to his credit. The comments from
those providing these references and testimonials are well-informed and
universally positive. They are consistent with the narrative of events as we
understand it and consistent with each other.

61 We have considered the matter of insight and find that the Registrant has
indeed substantial insight into these circumstances. We say that in part
because of what he has said in evidence to us but we fully acknowledge
the observation that his answers may not have always been in the terms
that are often used to articulate these opinions. Taking account of all the
evidence including his actions and his conduct we are in no doubt that the
Registrant has learnt a salutary lesson from his experiences. Insight to the
extent that it’s necessary is established and clear in this case.

62 The Committee has had regard to paragraph 6.8 to 6.10 in the guidance
which deals with dishonesty. In the view of the Committee, the dishonesty
in this case is made more serious because it was exercised within the
practice of Pharmacy. Had the Registrant not been in a position to access
the drugs in this case he quite simply could not have committed the thefts
he did. In terms of dishonesty however this is a most unusual case. The
thefts were not for any material gain to the Registrant. The thefts of
controlled drugs in particular in regulatory cases is more often seen to

A support addiction or as part of some unlawful supply and those matters
alone call into question the status of any Registrant. In this case the thefts
provided the foundation for assisting the suicide in the way and with the
motives described above. In light of those motives, the thefts, though
B significant, are not the central feature of this case.

63 The Committee in this case is faced with a situation which it finds unique
in that the Council positively asserts the Registrant is a man of integrity
despite the convictions. Reflecting on the exceptional circumstances of this
C case, the Committee completely accepts that submission. We note that
although serious, dishonesty does not bring with it a presumption of
removal. Moving on to the specific sanctions, we adopt that point.

D 64 The Committee has looked at the available sanctions and consistent with
the legal advice given approaches these starting with the least restrictive.
We have taken account of all the evidence in this case and submissions
made on behalf of both sides.

E 65 To take no action would be manifestly inadequate in the circumstances of
this case. There is no risk to the public but the strong public interest at
play requires that some action must be taken.

F 66 To give a warning to the Registrant would not adequately meet the
serious nature of this case. It would not serve to restore public confidence
in the profession nor would it assist maintaining proper standards of
behaviour.

G 67 The Committee gave serious consideration to the imposition of conditions
which had been strongly urged on it by Ms Wong. The Committee
challenged its perhaps more traditional approach to conditions of practice
and asked itself if the public would feel that an appropriate sanction had
H been made by the regulator in such a course of action. After very careful

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consideration the committee rejected conditions of practice as a sanction. There is no criticism whatsoever of the Registrant as a practitioner and so any condition, such as those advocated by Ms Wong or indeed others which the Committee thought of, would have no proper basis in practice. If members of the public felt such conditions were relevant and appropriate then as a Committee we respectfully feel the public would be mistaken by that perception. We do not doubt that the Registrant would respond positively to conditions or that he could find employment which would allow such conditions to be implemented. We do not consider conditions appropriate or proportionate simply because they do not address any relevant regulatory concern about the Registrant's practice.

68 The Committee next considered a period of suspension. In our view public confidence in the profession demands no less a sanction than suspension. It must be made plain to the profession and the public that the behaviour of the Registrant in this case is unacceptable and unbecoming a member of the Pharmacy profession. We repeat that the sanction is not being considered on the basis of public protection which is itself not necessary in this case.

The Committee has been taken to the case of Kamberova because the Registrant has already been suspended for a period in excess of three years. That is an unusually long period and came about because quite properly these regulatory proceedings fell in behind criminal matters which were themselves delayed in part due to
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX (Redacted). The Committee fully appreciates that a further period of suspension will mean that the Registrant has been effectively suspended for a very long time indeed. That is clearly against the Registrant's interests. The public interest however takes precedence in our view. Having now found the Registrant to be impaired based on his convictions, it is in our view

A essential that a further period of suspension take place in order to restore faith in the profession and to uphold confidence in the regulatory process.

B 69 The Committee regards the public interest in this case as strong. It is a highly unusual case and one in which the public interest has clearly been engaged. A period of suspension for twelve months is found by the Committee to be the appropriate and proportionate sanction. Given the seriousness of the case, the Committee does not consider that anything less than the maximum period of suspension is appropriate.

C 70 The Committee seriously considered removing the Registrant's registration. We noted that removal of registration is reserved for the most serious conduct, and asked ourselves if the conduct in this case was the most serious of its type. We were assisted by the sentencing remarks of D Mr Justice Green, where he says that "this case sits at the very lowest level of seriousness of cases involving a death". In terms of the two theft matters we find that although theft from a Pharmacy by a Pharmacist must always be regarded as serious the very particular factors and context E in this case and the Registrant's motivation do not make these the most serious thefts.

F 71 The attention of the Committee was drawn to the case of Bawa-Garba and indeed we find some similarities between the two cases. In both cases the practitioner was well-regarded and in both cases as a result of their actions a life was lost. In both cases there was no significant risk of repetition. It was held in that case that striking off the Doctor was G inappropriate despite the most serious outcome. On our analysis, the outcome in this case is less serious.

H 72 The Committee finds it would be disproportionate to order the removal of the Registrant in the circumstances before us. His behaviour took place in a particular and unique context and, serious as it was, is not

A | fundamentally incompatible with ongoing registration balanced against his
exemplary long career. We therefore confirm our view that suspension is
the appropriate and proportionate sanction in this case.

B | 73 In the very particular circumstances of this case we do not feel that it is
necessary for a further review hearing take place. We have asked
ourselves what information or evidence the Registrant might be expected
C | to furnish to such a review and what would be the purpose of it. Given
that there are no concerns whatsoever about the Registrant's practice and
no concerns about public protection we find that the residual public
D | interest concerns will be adequately met by a twelve month period of
suspension. By that point the Registrant will have been suspended for in
excess of four years. Part of that will have been on an interim order basis
E | and part based on proven impairment of fitness to practise. It is open to
the Registrant to find his way back into practice using the support of the
many witnesses who offered him employment. The Committee reminded
itself of the Registrant's response to a question from Ms Davies asking
F | about the effect upon the suspension. The Registrant commented that he
has kept up his knowledge and will maintain his CPD. He will be more
incentivised in the context of a suspension. We have no doubt that the
Registrant will see this as a positive way forward. He will want to liaise
G | with the registration department at the Council so that he can be quite
clear what administrative matters he will need to deal with before he
H | returns to practice and we urge him to do so.

DETERMINATION ON INTERIM MEASURES

THE CHAIRMAN: The Committee heard from Ms Davies and Ms Wong QC. It took account of all the evidence and submissions before it. The Committee accepted the advice of the Legal Adviser. He reminded it that it is necessary to balance the interests of the Registrant with the need to protect the public and the wider public interest. He referred the Committee to Article 60(2) of the Pharmacy Order 2010.

The Committee has made a determination as to impairment and sanction and it determined that that it would be wholly incompatible with those findings, and with the sanction imposed, to conclude that an interim measure is not necessary in the public interest. The Committee accordingly find that an interim measure is in the public interest to maintain confidence in the profession and in the regulator, and to uphold proper standards. Given its earlier findings the Committee determined that it is appropriate that an interim suspension order be imposed.

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