

**General Pharmaceutical Council**

**Fitness to Practise Committee**

**Principal Hearing**

Remote videolink hearing

**13-16 March 2023 & 6-8 June 2023**

<b>Registrant name:</b>	Abdalla Mohammed Abdallo
<b>Registration number:</b>	2083625
<b>Part of the register:</b>	Pharmacist
<b>Type of Case:</b>	Misconduct & Health
<b>Committee Members:</b>	Manuela Grayson (Chair) Pat North (Registrant member) Sara Atkins (Lay member)
<b>Clinical Adviser:</b>	Dr Jennifer Bearn
<b>Secretary:</b>	Gemma Walters
<b>Registrant:</b>	Present and not represented
<b>General Pharmaceutical Council:</b>	Represented by Kay-Marie Tomlinson, Case Presenter
<b>Facts proved:</b>	1, 1.2, 2.1, 3, 4.1
<b>Facts not proved:</b>	1.1, 2, 2.2, 2.3, 3.1, 3.2, 4, 4.2, 4.3
<b>Fitness to practise:</b>	Impaired
<b>Outcome:</b>	Suspension, 4 months with review
<b>Interim measures:</b>	Interim suspension

This decision including any finding of facts, impairment and sanction is an appealable decision under *The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010*. Therefore, this decision will not take effect until 7 July 2023 or, if an appeal is lodged, once that appeal has been concluded. However, the interim suspension set out in the decision takes effect immediately and will lapse when the decision takes effect or once any appeal is concluded

1. This is a Principal Hearing regarding Mr Abdalla Mohammed Abdallo (“the Registrant”), a Pharmacist first registered on 15 August 2014 with the General Pharmaceutical Council (“the Council”), under the registration number: 2083625.
2. The Notice of Hearing was sent to the Registrant on 9 February 2023.
3. This hearing procedure 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”).
4. The Registrant attended and was unrepresented. The Council was represented by Ms Kay-Marie Tomlinson.

### **The Particulars of Allegation**

5. The Registrant faced the following Allegation:

*“You, a registered pharmacist,*

*1. On 27 October 2020, whilst working as a locum pharmacist at Tuebrook Pharmacy, 503 West Derby Road, Liverpool, L6 4BW (“Tuebrook Pharmacy”) you;*

*1.1 ordered 4 x 200ml bottles of codeine linctus SF;*

*1.2 removed 4 x 200ml bottles of codeine linctus SF from Tuebrook Pharmacy without making payment.*

*2. Your actions above at 1.1 – 1.2 were dishonest in that you;*

*2.1 removed 4 x 200ml bottles of codeine linctus SF from Tuebrook Pharmacy without permission from the owner;*

*2.2 knew you did not have permission to take the codeine linctus;*

*2.3 knew you did not make payment for the 4 x 200ml bottles of codeine linctus SF;*

3. On 28 October 2020, whilst working as a locum pharmacist at Upton Rocks Pharmacy, 12A Cronton Lane, Widnes, WA8 5AJ (“Upton Pharmacy”) you;

3.1 ordered 4 bottles of 200ml codeine linctus BP;

3.2 removed 4 bottles of 200ml codeine linctus BP from Upton Pharmacy without making payment;

3.3 PRIVATE

4. Your actions at 3.1 – 3.2 were dishonest in that you;

4.1 removed 4 x 200ml codeine linctus BP from Upton Pharmacy without permission from the owner;

4.2 knew you did not have permission to take the codeine linctus;

4.2 knew that you did not make payment for the 4 x 200ml codeine linctus BP from Upton Rocks Pharmacy.

*By reason of matters set out above, your fitness to practise is impaired by reason of your misconduct and/ or health.”*

**Preliminary Legal Application - Application to Offer No Evidence for Allegation 3.3 and Ground of Impairment: Health**

6. PRIVATE

7. PRIVATE

8. PRIVATE

9. PRIVATE

10. PRIVATE

11. PRIVATE

12. *PRIVATE*

13. *PRIVATE*

14. *PRIVATE*

15. *PRIVATE*

16. *PRIVATE*

17. *PRIVATE*

18. *PRIVATE*

**Committee's Determination in relation to the preliminary application**

19. *PRIVATE*

20. *PRIVATE*

**The Particulars of Allegation (as AMENDED)**

*"You, a registered pharmacist,*

*1. On 27 October 2020, whilst working as a locum pharmacist at Tuebrook Pharmacy, 503 West Derby Road, Liverpool, L6 4BW ("Tuebrook Pharmacy") you;*

*1.1 ordered 4 x 200ml bottles of codeine linctus SF;*

1.2 removed 4 x 200ml bottles of codeine linctus SF from Tuebrook Pharmacy without making payment.

2. Your actions above at 1.1 – 1.2 were dishonest in that you;

2.1 removed 4 x 200ml bottles of codeine linctus SF from Tuebrook Pharmacy without permission from the owner;

2.2 knew you did not have permission to take the codeine linctus;

2.3 knew you did not make payment for the 4 x 200ml bottles of codeine linctus SF;

3. On 28 October 2020, whilst working as a locum pharmacist at Upton Rocks Pharmacy, 12A Cronton Lane, Widnes, WA8 5AJ (“Upton Pharmacy”) you;

3.1 ordered 4 bottles of 200ml codeine linctus BP;

3.2 removed 4 bottles of 200ml codeine linctus BP from Upton Pharmacy without making payment;

[3.3 DELETED]

4. Your actions at 3.1 – 3.2 were dishonest in that you;

4.1 removed 4 x 200ml codeine linctus BP from Upton Pharmacy without permission from the owner;

4.2 knew you did not have permission to take the codeine linctus;

4.3 knew that you did not make payment for the 4 x 200ml codeine linctus BP from Upton Rocks Pharmacy.

*By reason of matters set out above, your fitness to practise is impaired by reason of your misconduct.”*

#### **The Registrant’s response to the Particulars of Allegation**

21. The Respondent stated that in relation to the particulars at 1.1 and 3.1 of the Allegation, he had only ordered two bottles each time, not four bottles as was alleged. In relation to the allegations at 1.2, 3.2, and 4.3, the Registrant said he could not recall if he had paid for the bottles and therefore did not recall if he took them without paying. He denied all of the remaining factual particulars.

## **BACKGROUND FACTS as alleged by the Council**

### **Witness A – Dispenser at Tuebrook Pharmacy**

22. Witness A, a trainee Dispenser from Tuebrook Pharmacy details in her Witness Statement that on 27 October 2020, she worked at Tuebrook Pharmacy, Liverpool, L6 4BW, from 08:30 to 18:00, which was the same shift as the Registrant. During the shift, the Registrant spoke to Witness A and other colleagues *PRIVATE*, and he explained that he needed to order codeine linctus to help *PRIVATE*. The Registrant requested to have some bottles of the medication ordered. The request was granted on the expectation that he would pay for the items.
23. Witness A states that between 11:00 and 12:00, the Registrant ordered two bottles of codeine linctus.
24. The following day, Witness A thought about the orders that the Registrant had made on 27 October 2020. She spoke to her colleague who dealt with the Tuebrook Pharmacy counter and asked her if the Registrant had paid for the codeine linctus that he had ordered, but it was established that he had not paid for them.
25. In her Witness Statement Witness A stated that the Registrant acted strangely in the late afternoon, taking far too long to check medication.

### **Witness B – Dispenser at Upton Rocks Pharmacy**

26. Witness B, a Dispenser from Upton Rocks Pharmacy, Widnes, WA8 5AJ details in her Witness Statement that she worked at Upton Rocks Pharmacy with the Registrant on 28 October 2020. During this shift, she was asked by a colleague if the Registrant had paid for cough medicine which he had ordered and was not on the shelf. Witness B confirmed that she did not take payment from the Registrant.
27. Witness C, the Superintendent at Sharief Healthcare Limited and therefore of both pharmacies, was due to appear as a witness but was unable to do so due to health reasons. When making its determination as to the facts, the Committee therefore took no account

of the evidence contained in his Witness Statement which they had been provided with prior to the hearing. However the Committee accepted the invoices which he exhibited by way of hearsay evidence.

28. Witness C exhibited an invoice for four bottles of codeine linctus ordered on 27 October 2020, at Tuebrook Pharmacy, and also an invoice for four bottles of codeine linctus ordered at Upton Rocks Pharmacy on 28 October 2020.

### **Documentation Before the Committee**

29. Prior to the hearing, the Committee was provided with the following documentation:

- Council's 116 page Bundle of documents including witness statements; invoices for four bottles of codeine linctus on each of 27 and 28 October 2020 from the two pharmacies in question; and documentation from the Registrant including Registrant's response to allegations dated 27 February 2023, and screen shots of various medical correspondence in relation to members of his family. The Bundle also included the medical report of Dr James Barrett dated 22 October 2021 together with additional email correspondence between him and the Council, and the GP's medical report dated 9 February 2023.
- Combined Statement of Case and Skeleton Argument of 14 pages dated 3 March 2023 on behalf of the Council.

### **Witness evidence**

#### **Witness A**

30. Witness A who was a trainee dispenser at the time of the alleged events on 27 October 2020 gave evidence. She confirmed the contents of her Witness Statement and in answer to specific questions she confirmed that as far as she could recall the Registrant had asked if

he could order two bottles of codeine linctus. When shown the invoice for four bottles she could not explain the discrepancy. The pharmacy did not usually stock codeine linctus.

31. She confirmed that if two bottles of codeine linctus had been ordered twice prior to 12.45pm on the day then it would have shown on the invoice as one order for four bottles; she did not know whether the senior dispenser or the Registrant would have placed the order but she did recall that when he asked if he could make the order, the senior dispenser agreed for the order to be made. She said it was not usual for locum pharmacists to buy products from the pharmacy when working there. She did not know whether the Registrant had access to the till on the day in question.

#### Witness B

32. Witness B gave evidence and confirmed the contents of her Witness Statement. Her recollection was that at the end of the day on 28 October 2020, as they were walking to their cars, Witness C told her that the Registrant had asked permission to order 6 bottles of codeine linctus *PRIVATE*. Witness C asked Witness B whether the Registrant had paid her for the codeine linctus and she replied that he had not. This was the first Witness B had heard about the codeine linctus as she had been working upstairs for much of the day. Witness B recalled that she suggested to Witness C that they should deal with the matter on the next day.

33. Witness B stated that the pharmacy did not usually keep codeine linctus in stock and she did not see any in the pharmacy on 28 or 29 October 2020.

34. When asked by the Registrant if she recalled that there had been a power black out so the computers didn't work and things had to be done manually, and as the card printer was not working they had to take cash for sales, Witness B said she did not. She confirmed that the Registrant would have had access to the till (which did not have a method to record who had used it) to receive payment for prescriptions or purchases, and that the usual process if a locum or staff member bought things from the pharmacy, was for payment to be made to or overseen by another staff member.



### **Application to Admit hearsay evidence of Witness C**

35. Ms Tomlinson made an application for a statement of Witness C which was taken for the purposes of the pharmacy's internal investigation, signed and dated 29 October 2020, to be admitted in evidence. She submitted that the Committee has a discretion to admit hearsay in accordance with Rule 27 of the Rules, if it is satisfied that the evidence is relevant to the issues to be decided and considers that it would be fair to admit it. Ms Tomlinson submitted, by reference to a series of emails and file notes from the Council, that the Council had made all reasonable efforts to secure the attendance of Witness C but she had refused to engage, for "personal reasons".
36. The Registrant submitted that it would not be fair to admit the statement as he would not have the opportunity to ask questions of Witness C, although he accepted that some of the contents of the statement were helpfully corroborative of the events he said had occurred.
37. The Committee took into account the submissions of Ms Tomlinson on behalf of the Council, and those of the Registrant. It carefully considered the contents of the statement of Witness C in the light of the principles to be applied when considering whether to admit hearsay evidence which are set out in Rule 27 and in the case of *Thorneycroft v NMC* [2014] EWHC 1565 Admin. It took into account that the statement was not the sole evidence in relation to the facts alleged and that the witness did not have any reason, as far as the Committee knew, for fabricating her evidence. It considered that the allegation of dishonesty was serious. It was satisfied that the Council had made all reasonable efforts to secure Witness C's attendance at the hearing.
38. The Committee was of the view that the contents of the statement were relevant to the matters before it. It contained Witness C's account of what she said happened in relation to the Registrant's alleged ordering and removal of bottles of codeine linctus by the Registrant, from Upton Rock Pharmacy on 28 October 2020, without paying for them.

39. However, the Committee was of the view that it would not be fair to admit the statement as evidence in circumstances where the Registrant would not have the opportunity to cross-examine Witness C as to her recollection of what happened, nor to put to her his version of events which might differ in significant respects from what was written in her statement. The Committee therefore refused Ms Tomlinson's application and determined not to admit the statement of Witness C as hearsay evidence. The Committee determined to put the contents of the statement out of its mind when, at the relevant time, it would consider and make determinations on the facts.

#### **Application to Admit invoices exhibited by Witness C as hearsay evidence**

40. The Council had been intending to produce a third live witness, Witness C, however, he did not attend as expected on day 2 of the hearing. On day 3, the Council received medical evidence from him which showed that he was unable to attend. Ms Tomlinson therefore made an application to admit two invoices which had been exhibited to his Witness Statement. She submitted that they ought to be admitted in the same way as documentary evidence may be admitted in criminal courts under the Criminal Justice Act 2003 section 117, which allows for documents created or received by a person in the course of business to be allowed in evidence in circumstances where the person who would have exhibited them is unable to do so due to a medical condition. In addition, she drew the Committee's attention to Rule 27 of the Rules and submitted that the invoices were key to the facts alleged and given that the Registrant had been given good notice of the Council's intention to produce them, it was fair to admit them.

41. The Registrant submitted that the invoices did not reflect the number of bottles he had asked for, but he made no objection to the application.

42. The Committee carefully considered Ms Tomlinson's submissions in light of the information received about Witness C's non-attendance, the invoices and the relevant law. It was satisfied that the Council had made reasonable efforts to secure the witness's attendance and was of the view that the invoices were relevant to the allegations. Given that the

Registrant had been aware for a significant period of time that the invoices formed part of the evidence bundle to be provided by the Council, the Committee determined that it would be fair to allow Ms Tomlinson's application and it therefore accepted the invoices as hearsay evidence in the case. It determined that it would decide what weight, if any, to place on the invoices in due course when making its determination on the alleged facts.

### The Registrant's Oral Evidence

43. The Registrant gave oral evidence. He submitted that his employer's investigation had been unfair *PRIVATE*, they also concluded that he must have intended to take the codeine linctus without paying. He said the employer never asked him for his side of the story.

44. *PRIVATE*

45. *PRIVATE*

46. *PRIVATE*

47. The Registrant explained that there were also a lot of issues at work on 28 October 2020 due to power cuts. He said that on both days he asked the staff members he was working with whether he could order two bottles of codeine linctus and on both occasions a staff member (he did not know their names) placed the order via the computer. On both days, when the bottles arrived he was given wrapped packages and he took them away in his car without unwrapping them. When he opened the package from the 27 October, there were four bottles and he gave them *PRIVATE* in groups of two over two weeks. *PRIVATE*.

48. In relation to whether he made payment for the two orders, the Registrant said that he was so stressed and overwhelmed by his family issues at the time that he could not recall at the time for sure whether he had paid for them. He thought however that he had done. He would have put money in the tills as miscellaneous items. The pharmacy never contacted him to remind him to pay; the first he heard was when he was contacted by the Council

following the pharmacy's referral. He was so stressed at that time he didn't know what to do, he had so many family issues to deal with that this was something he could not deal with. As the only member of his family with a degree and a profession, he has not been able to tell anyone about this process, he was isolated and had no one to take advice from.

### **Submissions**

49. Ms Tomlinson on behalf of the Council summarised the witness evidence heard by the Committee and reminded the Committee that in accordance with Rule 42 the Council bore the burden of proof and the standard was the balance of probabilities. In relation to the allegation of dishonesty she reminded the Committee in the Skeleton Argument of the test for dishonesty set out in the case of Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67. She highlighted that the Registrant had admitted throughout that he was clearly aware that he ought to pay for the codeine linctus he ordered *PRIVATE*. Ms Tomlinson said that even after the Registrant received correspondence from the Council about the matter alerting him that payment had not been made, he still did not make any effort to pay for the items, and she submitted that this was dishonest.

50. *PRIVATE*

51. The Registrant explained that he is not currently working *PRIVATE*. He said he did not intend not to pay for the items he took from the pharmacies on 27 and 28 October 2020. Having left the pharmacies he had not been provided with an opportunity by anyone at the pharmacies to do so. He thought the staff drew conclusions *PRIVATE* and thereafter just assumed he intended not to pay.

### **The Committee's determination on the Facts Alleged**

52. The Committee reminded itself that, in accordance with Rule 42 of the Rules, the burden of proving the facts rests on the Council and the civil standard of proof applies, that is, the balance of probabilities.

53. The Committee took into account all of the evidence before it, both written and oral, including the Witness Statements and oral evidence of Witness A and Witness B, the written response and oral evidence of the Registrant, and the invoices accepted as hearsay evidence.

#### Particular 1

*You, a registered pharmacist,*

*1. On 27 October 2020, whilst working as a locum pharmacist at Tuebrook Pharmacy, 503 West Derby Road, Liverpool, L6 4BW ("Tuebrook Pharmacy") you;*

54. The Committee found the stem of particular 1, set out above, proved, in accordance with Rule 31(6) of the Rules, on the basis that the Registrant admitted that he was working as the locum Responsible Pharmacist at Tuebrook Pharmacy on the relevant date.

#### Sub-Particular 1.1

*1.1 ordered 4 x 200ml bottles of codeine linctus SF;*

55. The Committee carefully considered the evidence in relation to this sub-particular. Witness A stated in her Witness Statement at paragraph 6:

*"The Registrant ordered two bottles of codeine linctus between 11:00am and 12:00pm. When they arrived I did not personally see him take the bottles of codeine linctus".*

In oral evidence Witness A confirmed that on the pharmacy ordering system it is possible to check what has been ordered at what time and she checked the next day with a colleague and that is how she knows it was two bottles. She said that she did not see the contents of the order when they had arrived, and she could not remember seeing the Registrant take

what he had ordered. When asked by the Committee whether it could have been four bottles, she replied: "As far as I remember, I remember it being two".

56. The Registrant also stated both in his written response and in evidence to the Committee that he had ordered two bottles. He had asked permission from the staff members and they had acquiesced. He said it was not him that placed the order on the computer but another colleague whose name he did not know.
57. The Committee took into account that the relevant invoice showed that four bottles of codeine linctus were ordered on 27 October 2020. It also took into account Witness A's evidence that if the four bottles had been ordered on the same day but not all together then the total order of bottles would have shown on the invoice as four. It was aware that there was no evidence before it to explain why the total ordered on the day in question was four since both the Registrant and Witness A said that he only ordered, or asked for, two.
58. Given the evidence before it the Committee was of the view that the Council had not discharged its burden of proof in relation to the number of bottles alleged to have been ordered by the Registrant and the Committee therefore found this sub-particular not proved.

#### Particular 1.2

*1.2 removed 4 x 200ml bottles of codeine linctus SF from Tuebrook Pharmacy without making payment.*

59. The Committee took into account that the Registrant's response to this sub-particular at the start of the hearing was that he admitted having removed the items but he could not recall if he had paid for them. The Committee also took into account the evidence of Witness A which was that her colleague asked her if she had taken payment from the Registrant for the cough mixture, codeine linctus, which he had ordered and Witness A said she had not. Her colleague then checked on 28 October 2020, and discovered that he had not paid. The Committee considered the Registrant's oral evidence, to the effect that due to significant stress caused by personal and family events at the time, he was not sure that he paid but

he thought that he had done so. It was of the view that the Registrant's recollection that he thought he had paid was not sufficiently clear to be relied on, and it therefore preferred the evidence of Witness A. In coming to this conclusion it also noted that the Registrant stated that he only ordered two bottles so he could not have paid for four bottles at the time. It therefore found this sub-particular proved in that, by his own admission he had removed the items, however, he did so without making payment.

## Particular 2

*"Your actions above at 1.1 – 1.2 were dishonest in that you;*

*2.1 removed 4 x 200ml bottles of codeine linctus SF from Tuebrook Pharmacy without permission from the owner;*

*2.2 knew you did not have permission to take the codeine linctus;*

*2.3 knew you did not make payment for the 4 x 200ml bottles of codeine linctus SF;*

60. In relation to the allegation of dishonesty, the Committee, applied the test set out in the Supreme Court case of Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67. A fact-finding tribunal should first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts, and thereafter decide whether, by the (objective) standards of ordinary decent people, that conduct was honest or dishonest. The reasonableness or otherwise of their belief is a matter of evidence (often in practice determinative) going to whether they held the belief, but it is not an additional requirement that their belief must be reasonable; the question is whether it is genuinely held. There is no requirement that the Registrant must appreciate that what they have done is, by those standards, dishonest.

61. The Committee took into account that the Registrant admitted he had removed the four bottles, on the basis that although he had asked to order two, he in fact removed four which were wrapped in a package at the time so he did not see them. He said that when he later unwrapped the package he realised he had taken four bottles. It found sub-particular 2.1 proved, in that the Registrant did remove the four bottles of codeine linctus, and, since he

had not paid for them (as found by the Committee at sub-particular 1.2 above), he did not have permission to do so.

62. In relation to sub-particulars 2.2 and 2.3, applying the test in *Ivey*, the Committee considered all the evidence before it to make a judgement as to the Registrant's state of knowledge or belief as to the facts at the time. It accepted that he had very significant family matters pressing on his mind, which he has described to the Committee, and that this might have led to him forgetting to pay for the items on the day. The Committee also considered that it was unlikely he would have intended not to pay for the products he ordered given that he asked permission to order them and the cost involved was small.

63. *PRIVATE*

64. Taking all of the available evidence into account, the Committee considered that, at the time that he removed the bottles, the Registrant did not realise he had not paid for them. It follows that he did not know that he did not have permission to remove them (2.2), nor was he aware that he did not make payment (2.3). Accordingly, the Committee found sub-particulars 2.2 and 2.3 not proved, and therefore the allegation of dishonesty in the stem of particular 2, not proved.

### Particular 3

*3. On 28 October 2020, whilst working as a locum pharmacist at Upton Rocks Pharmacy, 12A Cronton Lane, Widnes, WA8 5AJ ("Upton Pharmacy") you;*

65. The Committee found the stem of particular 3, set out above, proved, in accordance with Rule 31(6) of the Rules, on the basis that the Registrant admitted that he was the locum Responsible Pharmacist at Upton Rocks Pharmacy on the relevant date.

### Particular 3.1

*3.1 ordered 4 bottles of 200ml codeine linctus BP;*



66. The Committee took into account that the relevant invoice showed that four bottles of codeine linctus had been ordered on 28 October 2020. It also noted that the Registrant stated that he only ordered two bottles; Witness B recalled being told by her colleague that he had ordered six bottles.

67. Taking all of the evidence into account, the Committee was of the view that the Council had not discharged its burden of proof in relation to the number of bottles ordered by the Registrant and the Committee therefore found this sub-particular not proved.

### Particular 3.2

*3.2 removed 4 bottles of 200ml codeine linctus BP from Upton Pharmacy without making payment;*

68. The Committee took into account the evidence of Witness B which was that she was working upstairs for much of 28 October 2020 and at the end of the day her colleague, the other dispenser working on that day, told her that the Registrant had ordered six bottles of codeine linctus and asked if she had taken payment for them, which she had not. Witness B stated in her Witness Statement:

*“There was only one other dispenser .., and myself using the till that day; and neither of us took payment from [the Registrant] for [the codeine linctus].”*

69. The Committee also had regard to the Registrant’s responses. At the start of the hearing in relation to this sub-particular, he admitted having removed the items but he could not recall if he had paid for them. Later in oral evidence he said that he thought he had in fact paid. He also said that he would have expected the pharmacy to contact him and ask him for payment if they had discovered that he had not paid.

70. The Committee also took into account the Registrant’s personal health and family circumstances at the time.

71. PRIVATE

72. The Committee took into account that the Registrant was not sure that he paid but he thought that he had done so. It was of the view that the Registrant's recollection that he thought he had paid was not sufficiently clear to be relied on, and it therefore preferred the evidence of Witness B. It therefore found this sub-particular proved in that, by his own admission he had removed bottles of codeine linctus from the pharmacy, however the Committee was satisfied that he did so without making payment.

Particular 4

*4. Your actions at 3.1 – 3.2 were dishonest in that you;*

*4.1 removed 4 x 200ml codeine linctus BP from Upton Pharmacy without permission from the owner;*

*4.2 knew you did not have permission to take the codeine linctus;*

*4.3 knew that you did not make payment for the 4 x 200ml codeine linctus BP from Upton Rocks Pharmacy.*

73. In relation to the allegation of dishonesty, the Committee again applied the test set out in *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67.

74. The Committee took into account that the Registrant admitted he had removed the bottles, having been given them by one of the dispensers. He said they were wrapped up together and he never in fact opened the package before disposing of it, so he did not know how many there were. The Committee noted that the Registrant said he ordered two, and Witness B said the other dispenser had told her that he ordered six. However, the relevant invoice recorded an order for four bottles of codeine linctus on 28 October 2020. The Committee concluded that it was more likely than not that the package which the Registrant removed from the pharmacy contained the four bottles which had been ordered according to the invoice. Accordingly, the Committee found sub-particular 2.1 proved, in that the Registrant did remove the four bottles of codeine linctus, and, since he had not paid for them (as found by the Committee at sub-particular 4.1 above), he did not have permission to do so.

75. In relation to sub-particulars 4.2 and 4.3, applying the test in Ivey, the Committee considered all the evidence before it to make a judgement as to the Registrant's state of knowledge or belief as to the facts at the time. It accepted that on 28 October 2020, he had very significant family matters pressing on his mind, had not slept the night before and had not had breakfast.

76. *PRIVATE*

77. The Committee was satisfied that these matters, taken together, could explain how and why he may have forgotten to pay for the items on the day, and also why he could not afterwards be sure whether or not he had in fact paid for them. The Committee also considered that it was unlikely he would have intended not to pay for the products he ordered given that he asked permission to order them and the cost involved was small.

78. Taking all of the available evidence into account, the Committee considered that, at the time that he removed the bottles, the Registrant did not realise he had not paid for them. It follows that he did not know that he did not have permission to remove them (4.2), nor was he aware that he did not make payment (4.3). The Committee found sub-particulars 4.2 and 4.3 not proved, and therefore the allegation of dishonesty in the stem of particular 4, not proved.

### **IMPAIRMENT STAGE**

79. Having made its findings in relation to the facts, the Committee went on to the second stage of the proceedings, that is, to determine whether or not the Registrant's fitness to practise is impaired.

80. Consideration of impairment must be undertaken in two stages, as was explained in the case of Cheatle v GMC [2009] EWHC 645 (Admin). Firstly, the Committee has to consider whether, on the facts found proved, one or more "gateways" to impairment are made out.

Secondly, the Committee must consider whether, as a result, the Registrant's fitness to practise is *currently* impaired.

81. Article 54(1) of the Order sets out the possible "gateways" to a finding of impairment. In this case, the Council alleged that the Registrant's fitness to practise is impaired by reason of misconduct, which is one of the reasons, or grounds, which can open the "gateway" for a finding of impairment, as provided for by Article 51(1)(a) of the Pharmacy Order 2010 ("the Order").

82. Guidance on fitness to practise is provided in Rule 5 of the Rules. Rule 5(2) provides:

*"(2) 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 on".*

83. The Registrant gave evidence and made submissions in relation to impairment. He stated that he understood the findings of the Committee, however, he maintained that he did pay for the medication by putting cash in the tills – and due to Covid-19 at the time he did not do it in the presence of colleagues. He reminded the Committee that he asked permission on both days and this was never denied by the witnesses. He never thought the matter would escalate to this point; he would have expected the pharmacy to contact him if they were concerned and then he could have explained how he had paid. This process had been really hard on him, he had tried to look after his health and various family issues but he had been under a lot of pressure.

84. He reassured the Committee that the conduct found proved won't happen again because in future, no matter what the issue, he would not intervene to assist a family member but would direct them to speak to their GP, other health professionals, or call 111.
85. He said that he is quite well known in his community as a pharmacist and no-one knows about this, there have never been concerns before; and it would be quite damaging to him as a professional if it were known.
86. In answer to questions from Ms Tomlinson the Registrant stated that he does find the facts to be serious but he explained that his own position is that he did pay. He said he understood that "it doesn't look good to be honest, on me and the profession". He accepted the findings of the Committee however he maintained that he had paid for the bottles. He said he thought it was only affecting himself but he realised that if the public or other members of the profession became aware of what happened, "it doesn't look good". He stated that in the eyes of the dispensers he was working with, he could have been a bit clearer about paying because it wouldn't really look good if they think he behaved like that.
87. In relation to remediation, he stated that he didn't think he was allowed to contact the pharmacy or ask the Council about it once the fitness to practise investigation began. He thought it would end when it was discovered that he had in fact paid. He didn't know how to approach it.

#### **Submissions on behalf of the Council**

88. Ms Tomlinson, on behalf of the Council, referred to the case of Khan v Bar Standards Board [2018] EWHC 2184 (Admin) which sets out that misconduct consists of conduct which amounts to "seriously reprehensible" conduct. She referred to the case of Remedy UK Ltd v General Medical Council [2010] EWHC 1245 (Admin) in which the Court reviewed several authorities in relation to misconduct and derived a number of principles which included the following at paragraph 37:

*“Misconduct is of two principal kinds. It may involve sufficiently serious misconduct in the exercise of professional practice such that it can properly be described as misconduct going to fitness to practise. Second, it can involve conduct of a morally culpable or otherwise disgraceful kind which may, and often will, occur outside the course of professional practice, but which brings disgrace upon the doctor and thereby prejudices the reputation of the profession”.*

89. Ms Tomlinson submitted that the Registrant’s conduct took place during the course of the Registrant’s professional practice, and therefore the Standards for pharmacy professionals (May 2017) were applicable to the facts of this case. She submitted that the Registrant, in removing four bottles of codeine linctus on two consecutive days without paying for them, breached Standard 9 of the Council’s Standards for Pharmacy Professionals (May 2017), and this amounted to misconduct.

90. In relation to current impairment, Ms Tomlinson submitted that Rule 5(2) (b) and (c) were engaged in that the Registrant’s conduct might bring the profession of pharmacy into disrepute; and also, in breaching Standard 9, the Registrant had breached one of the fundamental principles of the profession.

91. Ms Tomlinson drew the Committee’s attention to the relevant case law, namely the cases of Cohen and Grant, and submitted that whilst the conduct found proved was capable of remediation, and whilst the Registrant had shown some insight in acknowledging that his conduct would not look good to the public or other professionals, his lack of acceptance of the Committee’s full determination, in that he said that he had in fact paid for the medication by putting cash in the till, suggested that he did not have full insight into the seriousness of the Committee’s findings. He had repeated the conduct on the second day, and had made no effort to repay the pharmacies at any stage during this process. He had provided no evidence of remediation. In these circumstances there remained a risk that he would repeat his conduct again and there was a need for a finding of current impairment of fitness to practise in order to uphold proper professional standards and maintain public confidence in the profession.

## **The Committee's determination in relation to Grounds and Impairment**

92. The Committee took account of the law and also of the Council's "Good decision making: Fitness to practise Hearings and Sanctions Guidance (March 2017). It took into account all the evidence and the submissions made by Ms Tomlinson on behalf of the Council and by the Registrant.

### **Misconduct**

93. The Committee first considered whether the facts found proved amount to misconduct. It had found that the Registrant, on two consecutive days, namely 27 and 28 October 2020, had removed four bottles of codeine linctus from the pharmacies where he was working as the locum Responsible Pharmacist, without paying for them.

94. In relation to whether the Registrant has breached professional standards by his conduct, the Committee accepted the submissions of Ms Tomlinson on behalf of the Council and found that the Registrant had breached Standard 9: Pharmacy professionals must demonstrate leadership. The standard goes on to say:

*"Leadership includes taking responsibility for their actions and leading by example".*

The Committee considered that the Registrant, as Responsible Pharmacist, working on both days with other colleagues including dispensers (and, at Tuebrook pharmacy, with a trainee dispenser), had a professional responsibility to lead by example. This included a responsibility to ensure that if he asked to order some bottles of medication for his aunt, he should ensure that he paid for them. The witnesses explained that staff including locums were required to follow procedures if they wished to purchase something which included ensuring that they were seen to pay by another member of staff. The Registrant ought to have known the procedure and if he did not, he had a professional responsibility to check what the procedure was. Instead, he took the bottles, did not pay, and as a consequence the other members of staff were so concerned that they reported him to the employer.

95. The Committee was also of the view that the Registrant breached Standard 8: Pharmacy professionals must speak up when things go wrong. The standards says they should:

*“say sorry, provide an explanation and put things right when things go wrong”.*

96. The Registrant explained that he did not think he could contact the pharmacy. He has asserted that it was their responsibility to contact him themselves and ask him what happened. He said that if they had done so then he could have explained everything to them. The Committee however was of the view that the Registrant had a professional duty himself to speak up and explain the situation from his point of view, either when he realised he had taken four bottles instead of two, or later when alerted by the Council to the concerns raised. The Committee was satisfied that by not speaking up and clarifying the situation, the Registrant breached Standard 8.

97. The Committee considered its findings in the light of the principles established by the cases of Roylance and General Medical Council (No.2) [2000] 1 A.C. 311, Meadow v General Medical Council [2007] 1 All ER 1, and Shaw v General Osteopathic Council [2015] EWHC 2721 (Admin). In summary, these cases establish that when assessing whether conduct found proved amounts to misconduct, a committee should consider whether that conduct falls short of what would be proper in the circumstances; whether it was “serious professional misconduct”; and whether it was morally blameworthy, such as would convey a degree of opprobrium to the ordinary intelligent citizen.

98. The Committee considered that the facts found proved were serious. Pharmacists are given privileged access to medications and to tills when working in a pharmacy on the basis that they can be relied upon, if they wish to purchase any, to pay for them. The Committee is satisfied that the Registrant’s conduct in removing eight bottles of codeine linctus over two days without paying for them fell short of what would be expected and as such, amounted to misconduct.



## **Current Impairment**

99. In relation to the question of current impairment, the Committee applied the test set out by Mr Justice Silber in Cohen v General Medical Council [2008] EWHC 581 (Admin) where he said:

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

100. The Committee considered that the Registrant’s conduct was remediable. It took into account that the Registrant had acknowledged in evidence that it would not look good if the public or other pharmacists were to know the facts found proved. The Committee also took into account his assertion that he would never repeat his conduct because he would refuse to assist family members if they came to him in future. However, the Committee considered that the evidence as a whole suggested that although the Registrant has shown some insight into his misconduct, he has not fully remedied it. He made no effort to contact the pharmacies either when he realised after the first day that he had taken four bottles of codeine linctus instead of the two he had asked for, (two of which he may have thought he had paid for).

101. The Committee considered that his understanding of the failings found proved was vague at best – he said it would “not look good” – but he did not provide the Committee with any assurance that he properly understood why it would not look good, nor an understanding of his professional responsibility to lead by example, and how he had failed to do so. It considered that his assertion that he would in future refuse to assist family members if they came to him for help did not adequately demonstrate that he understood what he had done wrong. He showed no understanding of the fact that whilst there was no reason he should not have asked to purchase the codeine linctus for his relative, he ought to have ensured that he followed pharmacy processes when doing so, and ought to have paid for it. He showed little understanding of the consternation he caused amongst his colleagues, nor of

how his conduct would be perceived by fellow professionals and the public beyond stating that it “would not look good”.

102. In these circumstances, the Committee concluded that the Registrant had insufficient insight into his conduct and had not remedied it. The Committee could not be sure that it was highly unlikely to be repeated.

103. Turning to consider Rule 5(2) of the Rules, the Committee accepted Ms Tomlinson’s submissions in relation to Rules 5(2)(b) and (c) regarding the Registrant’s misconduct. The Committee was satisfied that the Registrant’s conduct in taking eight bottles of codeine linctus from the pharmacies over two days without paying for them might bring the profession of pharmacy into disrepute. The Committee also agreed with Ms Tomlinson that, in breaching Standard 9, the Registrant had breached one of the fundamental principles of the profession.

104. The Committee next considered the guidance in the High Court case of CHRE v NMC and Grant EWHC 927 (Admin) where Mrs Justice Cox noted (at Para 74):

*“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.”*

105. As a registered pharmacist, the Registrant was in a privileged position to access medicines. Members of the public and fellow members of the profession would be concerned to hear that the Registrant removed eight bottles of codeine linctus from a pharmacy over two days, whilst carrying out locum shifts without making payment for them. The Committee has taken into account that the Registrant stated that he took the medication to assist a family member who was unwell, and also it has taken into account that he was under significant personal stress at the time, however, this would not have made it acceptable for him to

take it without paying. The pattern of behaviour of the Registrant would, in the Committee's opinion, have the potential to significantly undermine public confidence. The Committee considers that 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 of this case.

106. The Committee therefore finds that the Registrant's fitness to practise is currently impaired by reason of his misconduct.

### **SANCTION STAGE**

107. Having found that the Registrant's fitness to practise is currently impaired, the Committee turned to consider the question of what, if any, sanction it should impose.

108. The Committee's powers in relation to sanction are set out Article 54(2) of the Pharmacy Order 2010 as follows:

*"(2) If the Fitness to Practise Committee determines that the fitness to practise of the person concerned is impaired, it may—*

*(a) give a warning to the person concerned in connection with any matter arising out of, or related to, the allegation and give a direction that details of the warning be recorded in the Register;*

*(b) give advice to any other person or other body involved in the investigation of the allegation on any issue arising out of, or related to, the allegation;*

*(c) give a direction that the entry in the Register of the person concerned be removed;*

*(d) give a direction that the entry in the Register of the person concerned be suspended, for such period not exceeding 12 months as may be specified in the direction; or*

*(e) give a direction that the entry in the Register of the person concerned be conditional upon that person complying, during such period not exceeding 3 years as may be specified in the direction, with such requirements specified in the direction as the Committee thinks fit to impose for the protection of the public or otherwise in the public interest or in the interests of the person concerned."*

109. In addition, the Committee should have regard to the Council's "Good decision making: Fitness to Practice Hearings and Sanctions Guidance" (2017) ("the Sanctions Guidance").

110. Prior to hearing submissions on sanction, the Committee revoked the interim suspension order, which was in place in respect of the Registrant, pursuant to Article 56(10) of the Pharmacy Order 2010.

#### **Submissions on behalf of the Council**

111. Ms Tomlinson summarised the law and drew the Committee's attention to the Council's Sanctions Guidance. She set out on the Council's behalf, a list of mitigating and aggravating features which she submitted the Committee should take into account when considering sanction. She also drew the Committee's attention to the case of Kamberova v NMC [2016] EWHC 2955 (Admin) in relation to appropriate length of suspension. Ms Tomlinson submitted that the proportionate and appropriate sanction in this case was a short period of suspension in order to uphold professional standards and maintain confidence in the pharmacy profession.

#### **Submissions by the Registrant**

112. The Registrant submitted that a warning was an appropriate and proportionate sanction. He said he did understand the seriousness of the findings, but at the time of the events, he

thought he had paid. He acknowledged that he should have taken extra caution and should have gone to the pharmacy to pay for the extra items after he realised that he had removed more bottles than he intended. He explained that, as he has said, he was going through a hard time, and was very isolated and he didn't know what to do. If he had more guidance, even from the Council, he would have tried to make amends for the error. He acknowledged that he did feel within himself that it was serious and felt remorse and he told the Committee that he would never do the same thing again.

### **The Committee's decision on sanction**

113. The Committee applied the relevant law and took into account the Council's sanctions guidance. The Committee took into account the submissions of Ms Tomlinson on behalf of the Council, and those of the Registrant. It took into account all of the documentation before it.

114. The Committee was aware that the purpose of sanction in regulatory proceedings is not to punish registrants, but to protect patients and the wider public interest. However, the effect of some sanctions may be punitive. The Committee should balance the public interest against the Registrant's own interests and should apply the principle of proportionality. However, in accordance with the words of Lord Bingham in the case of the *Bolton v The Law Society [1994] 2 All 486*, confirmed as good law in the case of *Law Society v Brendan John Salisbury [2008] EWCA Civ 1285*, the Committee is entitled to give greater weight to the public interest and the need to maintain public confidence in the profession than to the consequences for the Registrant of imposing any particular sanction.

115. The Committee considered that the mitigating features in this case include:

(a) *PRIVATE*

(b) *PRIVATE*

(c) The Registrant has properly and fully engaged with the fitness to practise proceedings.

116. The aggravating features include:

- (a) The Registrant removed items on two consecutive days without paying for them when he was in a position of responsibility and leadership.
- (b) He did not attempt to put right the problem when he unwrapped the packet he had taken on the first day when he would have realised that he had removed more bottles than he asked for.

117. The Committee considered the sanctions available to it in ascending order of severity. It first considered whether it should take no action or impose a warning. The Committee considered the Registrant's submission which was that a warning would be proportionate and appropriate, however it concluded that neither of these outcomes would be appropriate as they would not adequately reflect the public interest in restoring and maintaining confidence in the profession and the regulatory process. Both would be insufficient to reflect the seriousness of the misconduct.

118. The Committee's view was that conditions would not be appropriate for the facts of this case as it did not concern the Registrant's practice.

119. The Committee next turned to consider whether a suspension would be a proportionate sanction. It took into account Page 22 of the Sanctions Guidance which states, in relation to suspension,

*"It may be required when necessary to highlight to the profession and the public that the conduct of the registrant is unacceptable and unbefitting a member of the pharmacy profession. Also when public confidence in the profession demands no lesser sanction".*

120. The Committee was of the view that an order of suspension was the appropriate and proportionate sanction to send an appropriate and clear message to professionals and to the public of the seriousness with which the Regulator takes the Registrant's misconduct.

This will ensure that the public can continue to have confidence in the profession, uphold professional standards and maintain the public's confidence in the Regulator itself.

121. Having concluded that an order of suspension was likely to be sufficient and proportionate in all the circumstances of the case, the Committee briefly turned to consider whether this was a case in which the most serious sanction, that of removal, was appropriate. The Sanctions Guidance states that removal is "*reserved for the most serious conduct*" and that it should be considered "*when the registrant's behaviour is fundamentally incompatible with being a registered professional*". The Committee concluded that removal would be disproportionate given the facts of this case and the Committee's conclusion at the impairment stage that the misconduct found proved was remediable.
122. The Committee therefore resolved to give a direction that the Registrant's entry in the Register be suspended.
123. In relation to the appropriate length of suspension, the Committee took into account the Registrant's difficult personal circumstances at the time. The Committee has already expressed the view that these matters do not excuse his misconduct, however they are mitigating factors. The Committee has also taken into account the principles set out in the case of *Kamberova*, in which it was said that in appropriate cases, a period of interim suspension, particularly if there appear to have been delays in bringing a case to hearing, may be a relevant factor when determining the proportionate sanction, including any period of suspension. The Committee has taken into account that the Registrant has been subject to interim orders for over two years, and for the majority of that time he has been subject to interim suspension.
124. The Committee has therefore decided that a short period of suspension of four months is appropriate and proportionate in all the circumstances.
125. The Committee considers that this is a case in which a review ought to be held before the expiry of the period of suspension, so that the Registrant can demonstrate to a reviewing

committee that he has developed his insight further and fully into his failings, and demonstrate how he will guard against repeating his conduct in future.

126. The Committee considers that the reviewing committee would be assisted by the Registrant providing the following:

- i) A reflective document demonstrating the Registrant's full insight into the seriousness of his misconduct; explaining that he understands what he should have done at the time or soon after, in order to ensure that he paid for the codeine linctus which he took; and explaining how he will avoid repeating his conduct by ensuring that he pays for any medication or other supplies which he takes from any employer, for example if someone he knows asks him to do so.
- ii) Evidence of CPD or other study undertaken during the period of suspension.

#### **DECISION ON INTERIM MEASURE**

127. Ms Tomlinson, for the Council, made an application for an interim measure of suspension to be imposed on the Registrant's registration, pursuant to Article 60 of the Pharmacy Order 2010, pending the coming into force of the Committee's substantive order. She submitted that such an order was necessary to protect the public and was otherwise in the public interest.

128. The Registrant did not oppose the application.

129. The Committee carefully considered the Council's application. It took account of the fact that its decision to order the suspension of the Registrant's name from the register will not take effect until 28 days after the Registrant is formally notified of the outcome, or until any appeal is concluded.

130. The Committee has found that the Registrant's misconduct merits an order of suspension, not only because there remains a risk that the Registrant might repeat his conduct, but also given the public interest issues which the Committee has found to be engaged by the



facts of this case. It is satisfied that it is therefore necessary for an interim measure of suspension to be in place from today's date.

131. The Committee therefore hereby orders that the entry of the Registrant in the register be suspended forthwith, pending the coming into force of the substantive order.

