

General Pharmaceutical Council

Fitness to Practise Committee

Principal Hearing

Remote videolink hearing

8-12 December 2023

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| Registrant name: | Kwao Frimpong |
| Registration number: | 2058169 |
| Part of the register: | Pharmacist |
| Type of Case: | Conviction and Misconduct |
| Committee Members: | Manuela Grayson (Chair) Leigh Settingington (Registrant member) Anne Johnstone (Lay member) |
| Committee Secretary: | Zainab Mohamad |
| Registrant: | Present and not represented |
| General Pharmaceutical Council: | Represented by Kay-Marie Tomlinson |
| Facts proved by admission: | 1 and 2 |
| Fitness to practise: | Impaired |
| Outcome: | Suspension for 12 months with a review |
| Interim measures: | 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 10 January 2024 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.

Particulars of Allegation (as amended)

You, a registered pharmacist:

1. On 24 June 2022, at Sheffield Crown Court, were convicted of the following offence:

1.1. Causing Death by Dangerous Driving, contrary to s.1 Road Traffic Act 1988. [ADMITTED]

2. Between 24 June 2022 and 1 July 2022 failed to declare to the GPhC that you had received the conviction in 1 above within seven days. [ADMITTED]

By reason of the matters set out above, your fitness to practise is impaired by reason of your conviction and misconduct.

Documentation

Document 1- GPhC hearing bundle, 175 pages

Document 2- GPhC skeleton argument, 23 November 2023

Document 3- Emails relating to the Registrant's deportation, various dates, December 2023.

Witnesses

The Registrant gave evidence at the impairment stage.

Determination

Introduction

1. This is the written determination of the Fitness to Practise Committee at the General Pharmaceutical Council ('the Council').
2. The hearing 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. The statutory overarching objectives for these regulatory proceedings are:

- a. To protect, promote and maintain the health, safety and well-being of the public;
 - b. To promote and maintain public confidence in the professions regulated by the Council; and
 - c. To promote and maintain proper professional standards and conduct for members of those professions.
4. The Committee also has regard to the guidance contained in the Council's *Good decision making: Fitness to practise hearings and sanction guidance* as revised March 2017.
 5. A Principal Hearing has up to three stages:
 - Stage 1. Findings of Fact – the Committee determines any disputed facts.
 - Stage 2. Findings of ground(s) of impairment and impairment – the Committee determines whether, on the facts as proved, a statutory ground for impairment is established and, if so, whether the Registrant's fitness to practise is currently impaired.
 - Stage 3. Sanction – the Committee considers what, if any, sanction should be applied if the Registrant's fitness to practise is found to be impaired.

Service of Notice of Hearing

6. The Committee has seen a letter dated 23 October 2023 from the Council headed 'Notice of Hearing' addressed to the Registrant. The Committee was satisfied that there had been good service of the Notice in accordance with Rules 3 and 16.

Application to amend the particulars of allegation

7. The Committee heard an application from Ms Tomlinson under Rule 41 to amend particular 2 in order accurately to reflect the relevant date between the Registrant's conviction and the date he was under a duty to report it to the Council.

8. The Registrant did not object to the Council's application.

9. The Committee was of the view that the proposed amendments did no more than clarify what both parties knew to be the mischief alleged at particular 1. It accepted the proposed amendment as it did not consider that it materially changed the allegations faced by the Registrant and it would not be unfair to him to do so.

Council's Application under Rule 28

10. Rule 28 of the Rules, in relation to alleged convictions, states:

(1) As regards any fitness to practise allegation before the Committee, if—

(a) the particulars of the allegation in the Notice of Hearing relate to more than one category of impairment of fitness to practise; and

(b) those particulars include a conviction or caution, the chair must ensure (by adapting the procedure for the hearing, where necessary) that at the principal hearing, the Committee makes its findings of facts in relation to the allegations that do not relate to the conviction or caution before it hears and makes its findings of fact in relation to the conviction or caution.

(2) In the circumstances set out in paragraph (1), the chair must also ensure (by adapting the procedure for the hearing, where necessary), that the Committee only makes its decision as regards impairment of fitness to practise once it has made its finding of fact in relation to all the allegations set out in the Notice of Hearing.

11. Ms Tomlinson submitted that the Registrant's criminal conviction is linked to the Registrant's misconduct, such that both matters are intrinsically linked. She invited the Committee to therefore hear evidence concerning both the misconduct and the conviction matter together and not to adapt the usual procedure for hearings in line

with Rule 28. The Registrant did not oppose the application and the Committee agreed to it.

Application for the parts of hearing to be held in Private

12. Ms Tomlinson applied in accordance with Rule 39(3) for any parts of the hearing in which the victim of the accident was named or identified to be heard in private. The Registrant agreed with the application and the Committee consented to the application so as to protect the right to privacy of the deceased victim and his family.

Registrant's response to Particulars of allegation

13. The Registrant admitted particulars 1 and 2 in their entirety.
14. In the light of the above, and by the application of Rule 31(6) of the Rules, the admitted factual particulars were found proved.
15. The Committee then went on to consider whether the Registrant's fitness to practise is currently impaired which is a matter for the Committee's judgement.

Background

16. The background to the Particulars of Allegation, as summarised in the Council's Skeleton Argument, is set out below.
17. On 10 August 2022, the Council received a Self-Referral webform from the Registrant in which he disclosed that he had been involved in a Road Traffic collision resulting in the death of the "*opponent driver*". The Registrant went on to confirm that he was due to be sentenced on 19 August 2022 at Sheffield Crown Court.
18. The Council subsequently commenced an investigation into the concern and witness statements relating to the criminal offence were obtained from Police Constable 1; Police Constable 5; Witness E; and Witness B. The Police MG5 ("case summary") and

Record of Interview (“ROTI”), together with Crime Scene Images were also provided to the Council by the Police.

19. The Council also obtained from the Crown Court a copy of the Certificate of Conviction; transcripts of the prosecution opening; defence mitigation; and the Judge’s sentencing remarks.

Allegation 1: The Conviction

20. The Police case summary sets out that on Tuesday 9 March 2021 at around 07:50am the Registrant was involved in a “two-vehicle road traffic collision”. The Registrant who was driving a grey coloured Mercedes Benz motor vehicle (“Registrant’s car”) collided into a motor vehicle, namely a Mazda (“Victim’s car”) travelling in the opposite direction resulting in the death of a driver who is referred to as the Victim (“the Victim”). The Police case summary details that the Registrant was conducting an overtaking manoeuvre on several motor vehicles which were travelling in front of him prior to the head on collision with the Victim.
21. The Police case summary describes the Registrant travelling on “*Pleasley Road at the scene is a single carriageway road consisting of three traffic lanes, one lane for vehicles travelling towards Whiston and two traffic lanes for vehicles travelling towards Aughton*”. The carriageway road markings depending on the direction of travel forms a sweeping left hand or right-hand bend with a slight uphill and downhill gradient.
22. The Police case summary sets out the evidence of people who were present at the scene or witnessed the incident. One of the witness’s details that the “*Mercedes veered across road at high speed into the path of the Mazda.*” Another witness describes “*it felt like the driver was trying to squeeze through a space that wasn’t there. When she looked in her rear-view mirror it seemed to that the Mercedes had not gone back onto its own side of the road and it was still very much in the middle of*

the road, saw the Mercedes spin out, basically the car ended up with the bonnet facing the black and white bollards”.

23. The Police case summary sets out the preliminary findings from the Forensic Collision Investigation Report. The Police case summary details the evidence suggested the Registrant was at least in some part driving on the wrong side of the carriageway for its direction of travel and *“would suggest at least some part of the Mercedes vehicle has strayed across from its own traffic lane”.*
24. Witness E has provided a witness statement to the Police dated 9 March 2021. Witness E states that the *“there was nothing about the Mazda’s driving which caught my attention and the drive appeared completely normal and routine.”* Witness E goes onto detail the driving of the Registrant and describes him *“veer across the road at high speed and I the path of the Mazda”.* Witness E describes the Mercedes which is the car the Registrant was driving *“slam”* into the Mazda which is the car the victim was driving *“head on”.*
25. Witness B provided a witness statement to the Police dated 1 April 2021. Witness B describes the Registrant driving in a hurry and overtaking three cars on the outside chevrons resulting in the three cars needing to brake. At a later period of the morning Witness B details observing the same car had been involved in a crash and later learned that it was involved in the fatal road traffic collision.
26. Police Constable 5 detailed attending the scene of the road traffic collision. PC 5 describes two *“extensively damaged cars”.* PC 5 details the car of the Victim as having *“suffered extensive front impact damage, so much that the front of this vehicle was unrecognisable”.*
27. On 18 March 2021, the Registrant was interviewed under Caution at Shepcote Lane Police Station by Police Constable 1 (“PC 1”) and Police Constable 2 (“PC 2”). The Registrant was represented by a Solicitor. During the interview, the Registrant gave a prepared statement which was read to PC 1 and PC 2 via his Solicitor and then

proceeded to give a partial no comment interview and then answer some of the questions put to him by the Police.

28. On 24 June 2022, the Registrant appeared at Sheffield Crown Court and entered a guilty plea. The case was adjourned for sentence and a Pre-Sentence Report (“PSR”) was prepared on behalf of the Registrant by the Probation Service.
29. On 9 September 2022, the Registrant appeared at Sheffield Crown Court for sentence. Her Honour Judge Wright (“HHJ Wright”) sentencing the Registrant sets out that the evidence from other road users described the Registrant as driving at speed in the lead up to the collision. HHJ Wright commented *“You drove at speed, overtook cars, and positioned yourself in the opposite carriageway, causing oncoming vehicles in that lane to have to take evasion action”*. HHJ Wright went onto comment that the Registrant was travelling too fast and lost control of his vehicle. HHJ Wright had regard to the sentencing guidelines and set out the aggravating and mitigating features when sentencing the Registrant.
30. HHJ Wright considered the PSR and took a view that the Registrant had failed to accept full responsibility for his actions. It was determined that the Registrant’s driving was not a momentary lapse of concentration but a *“deliberate decision to drive at speed and perform a dangerous overtaking manoeuvre on the wrong side of the road, no doubt, I find, because you were concerned that you were late for work.”*
31. The Registrant was sentenced to a 3-year custodial sentence and disqualified from driving for 2 years together with an extended period of 18 months and until an extended driving test has been passed. The Registrant was also ordered pay a total amount of £190.00 within 6 months.

Allegation 2: Failure to Report the Conviction within 7 Days

32. A witness statement has been provided by Miss 1, Assessment Manager employed by the Council, dated 19 December 2022. Miss 1 sets out that a Registrant is required under the Rules referred above at paragraph 6 to notify the Council within 7 days of a specified event taking place. Miss 1 details that a specified event includes a conviction of any criminal offence.
33. Miss 1 sets out a Registrant should refer any concerns they have about themselves to the Council using a “self-referral” via a “webform” which is available using the Council’s public facing website.
34. Miss 1 details within her witness statement that on 10 August 2022 the Registrant submitted a self-referral form. The Registrant describes in the self-referral to the Council *“A face on collision in the process of my changing lane to overtake a bus ahead of me”*. The Registrant set out the date of the conviction as 22 April 2022 (which was incorrect) - and the date of sentence as 19 August 2022 (also incorrect).

Stage 2: The Committee’s Decision on Grounds and Impairment

35. Having found all the factual particulars proved, the Committee went on to consider whether those particulars amounted to the statutory grounds, and, if so, whether the Registrant’s fitness to practise is currently impaired.
36. The Registrant gave evidence. He read out the reflective statement he had provided to the Committee prior to the hearing. He expressed his regret and remorse for the conduct which led to his conviction and imprisonment. He told the Committee that he has successfully completed an Advanced Driver’s Course which included returning to the scene of the accident with his instructor to reflect on what happened and learn from his mistakes. He had got confused and wrongly interpreted the road markings. He assured the Committee that he would never allow himself to be involved in an accident again. He asked the Committee to accept that everyone can make mistakes and ought to be allowed forgiveness. He was doing and would

continue to do all he could to emerge from this experience a better version of himself. He said he had been informed of further courses for example relating to reflection, remediation and insight, which he would be keen to attend in order further to reflect and to increase his understanding.

37. The Registrant told the Committee that he was very sorry for the trauma, hardship and sorrow he had caused to the victim's family. He has been praying for the victim's family that God would give them the strength and energy to overcome their trauma.
38. In response to questions he confirmed that having taken into account all of the details and documentation now available to him about the circumstances of the accident, he had now reflected on what he said during his probation interview as recorded in the Pre-sentence Report: he would no longer say that his driving had "contributed" to the accident, he would admit that his driving "caused" the accident. He accepted his responsibility for the accident so that he could become a better version of himself and so that this incident would not happen again whatsoever in his life.
39. As for his personal circumstances, he told the Committee that he has only one profession or career in his life, that is being a pharmacist: it is what all his dreams and his life are based on. If he were not allowed to practise again as a pharmacist it would affect his health, his finances, and his family. There was a mortgage to pay and he was in danger of losing his home.

Submissions

40. Ms Tomlinson referred the Committee to the Council's Skeleton argument and to the relevant case law. She submitted that the Registrant's conduct did pass the threshold for a finding of misconduct; that it engaged Standards 6 and 9 of the Council's Standards for pharmacy professionals of 2017, and that Rule 5(2) (b) and (c) of the Rules were engaged. There was a need for a finding of impairment in the wider public interest.

41. The Registrant accepted that a finding of impairment would be useful to demonstrate that the professional organisation for pharmacists had not swept the matter under the carpet.

The Committee's Determination

42. The Committee took account of the guidance given to the meaning of 'fitness to practise' in the Council's publication "*Good decision-making*" (Revised March 2017). Paragraph 2.11 states:

"A pharmacy professional is 'fit to practise' when they have the skills, knowledge, character, behaviour and health needed to work as a pharmacist...safely and effectively. In practical terms, this means maintaining appropriate standards of competence, demonstrating good character, and also adhering to the principles of good practice set out in your various standards, guidance and advice."

Grounds

43. Article 51(1) of the Order set out the possible grounds or "gateways" to a finding of impairment. The relevant gateways in this matter are:

- "*conviction for a criminal offence*" (Article 51(1)(e) in respect of particular 1); and
- "*misconduct*" (Article 51(1)(a), in relation to particular 2).

44. The Committee considered each of the relevant grounds.

Decision on Misconduct

45. The Committee took into account the cases of Forz Khan v Bar Standards Board [2018] EWHC 2184 (Admin), and Remedy UK Ltd v General Medical Council [2010] EWHC 1245 (Admin). In Khan, the judge said:

“behaviour must be "seriously reprehensible" before it can amount to professional misconduct”.

46. The Judge in the case of Remedy set out 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...Conduct falls into the second limb if it is dishonourable or disgraceful or attracts some kind of opprobrium; that fact may be sufficient to bring the profession ...into disrepute. It matters not whether such conduct is directly related to the exercise of professional skill.”

47. The Registrant’s conduct took place outside of the course of the Registrant’s professional practice, and therefore, falls within the second limb of the principles set out above.

48. In relation to the Council’s Standards for Pharmacy Professionals (May 2017), the Committee accepted the submissions of Ms Tomlinson and it determined that the Registrant breached standards 6 and 9.

- (i) **Standard 6:** Pharmacy professionals must behave in a professional manner...Behaving professionally is not limited to the working day.

The standard states that the privilege of being a pharmacist and the

importance of maintaining confidence in the profession calls for appropriate behaviour at all times. The Registrant's actions resulting in his criminal conviction including the subsequent period of imprisonment imposed and his failure to declare his conviction to the Council, amounted , in the Committee's judgement, to breaches of this standard.

- (ii) **Standard 9: Pharmacy professionals must demonstrate leadership...taking responsibility for their actions and leading by example.** The Committee accepted Ms Tomlinson's submissions. It was of the view that the Registrant failed to lead by example as a result of his actions resulting in his criminal conviction, and his subsequent failure to notify the Council of his conviction within the requisite 7 days.

49. The Committee bore in mind that the Standards may be taken into account when considering the issues of grounds and impairment but that a breach of the Standards does not automatically result in a finding of misconduct (Rule 24(11) of the Rules).
50. The Committee took into account all of the evidence before it. The Registrant's driving was clearly egregious and indefensible. He caused multiple road users to abandon their own manoeuvres over fears for their safety and unfortunately his dangerous attempts to overtake other drivers on that morning led to a head on collision causing the death of the opposite driver. The seriousness of his conduct was marked by an immediate sentence of imprisonment for 3 years.
51. Furthermore, the Committee has found that by his failure to declare within the specified time frame, the Registrant failed to lead by example. It noted that the Registrant admitted in his oral evidence that he was aware that he needed to do so but he said he was so frustrated and devastated by what had happened, and his emotions got hold of him. It also noted that he did notify the Council about a month

after his conviction, however by providing the wrong dates. The Registrant volunteered no explanation for that.

52. The Committee accepted the submissions of Ms Tomlinson to the effect that Members of the public would regard the Registrant's particularised conduct to amount to serious professional misconduct, and members of the pharmacy profession would regard the Registrant's conduct as deplorable. The Committee was satisfied that it was serious enough to amount to the ground of misconduct.

Conviction

53. The Committee determined that the ground of conviction was established on the basis of the copy Certificate of Conviction dated 26 September 2022.
54. Accordingly, the Committee concluded that both the alleged grounds, of conviction and misconduct, were established by the proven facts of this case.

Decision on Impairment

55. Having found that the grounds of conviction and misconduct were established, the Committee went on to consider whether the Registrant's fitness to practise is currently impaired.
56. Guidance on this issue, (echoed the Council's Guidance at Paragraph 2.14), was set out by Mr Justice Silber in Cohen v General Medical Council [2008] EWHC 581 (Admin) at paragraph 65:

"It must be highly relevant in determining if a [practitioner's] fitness to practise is impaired that first ... his conduct that led to the charge is easily remediable, second that it has been remedied and third that it is highly unlikely to be repeated".

57. The Committee carefully considered all of the evidence before it in light of the above principles. It took into account the Registrant's written reflections, the multiple positive testimonials both in relation to his professional standard of practice (which is not in question in these proceedings) and also to his general good character and personal qualities. It appreciated that this is the Registrant's first conviction and it also appreciated that he has taken steps to remediate his conduct. It took into account that the Registrant went back to the scene of the accident with his driving instructor to reflect on and learn from what he did. The instructor on his Advanced Driving Course concluded that his driving was "low risk". The Registrant expressed regret and remorse for the accident, both in his written reflection and in oral evidence: he now accepts fully that it was he who caused and was responsible for the accident.
58. Applying the principles in the Cohen case, the Committee was of the view that the Registrant's conduct which led to the fatal accident is highly unlikely to be repeated. Having concluded earlier that the Registrant's misconduct in not reporting his conviction within the required time limit was linked to his conviction, it follows that the risk of the Registrant repeating the misconduct as demonstrated by the proved facts at particular 2 is low.
59. The Committee next turned to consider whether any sub-particulars of Rule 5(2) of the Rules are engaged by the Registrant's conviction and misconduct.
60. Rule 5(2) of the Rules provides:

"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.”

61. Having concluded that the risk of repetition is low, the Committee did not consider that Rule 5(2) (a) and (d) were engaged by the findings of fact in this case.
62. The Committee next carefully considered Ms Tomlinson’s submissions to the effect that sub-particulars (b) and (c), which reflect principles within the wider public interest, are engaged.
63. Given the seriousness of the Registrant’s conviction, which was of course reflected by his sentence of imprisonment, the Committee was satisfied that by his conviction, the Registrant has brought the profession of pharmacy into disrepute (Rule 5(2)(b); and he has breached one of the fundamental principles of the profession of pharmacy, namely the expectation that he will behave professionally including during his personal life (Rule 5(2) (c)).
64. The Committee bore in mind the well- known case of CHRE v NMC and Grant [EWHC] 927 (Admin), in which Mrs Justice Cox stated that a panel must consider whether *“the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances”* of a case.
65. Taking all of the evidence before it into account, which demonstrates that this was a case of the utmost seriousness in which an innocent victim was killed due to the Registrant’s dangerous driving one morning, the Committee is satisfied that members

of the public if they were fully appraised of the facts of this case, would be shocked if a finding of impairment were not made. In the words from the case of Grant set out above, the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances”.

66. For all the reasons set out above, the Committee finds the Registrant’s fitness to practise is currently impaired in the wider public interest, that is, in order to promote and maintain public confidence in the professions regulated by the Council; and to promote and maintain proper professional standards and conduct for members of those professions.

Adjournment

67. The Registrant was deported to Germany during the weekend following the first day of this hearing. Submissions had been heard in relation to sanction at the end of the day on Friday. On Monday 11 December 2023, the Committee adjourned the hearing until Tuesday, having been informed by the Committee Secretary that the Registrant wished to attend on Tuesday from Germany, and that Ms Tomlinson agreed this was the appropriate course of action.

Stage 3: Decision on Sanction

68. Having found impairment, the Committee has gone on to consider the matter of sanction. The Committee’s powers are set out in Article 54(2) of the Order. The Committee should consider the available sanctions in ascending order from least restrictive, take no action, to most restrictive, removal from the register, in order to identify the appropriate and proportionate sanction that meets the circumstances of the case.

69. The purpose of the sanction is not to be punitive, though a sanction may in fact have a punitive effect. The purpose of the sanction is to meet the overarching objectives of regulation, namely the protection of the public, the maintenance of public confidence and to promote professional standards. The Committee is therefore entitled to give greater weight to the public interest over the Registrant's interests.

Submissions on behalf of the Council

70. Ms Tomlinson drew the Committee's attention to the case of Law Society v Brendan John Salsbury [2008] EWCA Civ 1285 which quoted the well-known case of Bolton v Law Society (1994) 1 WLR 512 CA (Civ Div) to the effect that:

"The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price".

71. Ms Tomlinson proposed a number of aggravating and mitigating factors which the Committee should take into account and submitted that removal was the appropriate sanction. The Registrant's conduct, and subsequent conviction for causing death by dangerous driving, was deplorable and completely incompatible with the Registrant's continued registration. She reminded the Committee of the well-known case of CRHE v (1) General Dental Council (2) Alexander Fleischmann [2005] EWHC 87 (Admin), in which Newman J stated that *"as a matter of general principle, where a Registrant had been convicted of a serious criminal offence, he should not be permitted to resume his practice until he has satisfactorily completed his sentence"*.
72. Ms Tomlinson submitted that it would not be in the public interest to allow the Registrant to remain on the Register without properly completing his sentence and to allow otherwise would not meet the overarching objectives of the Regulator.

Submissions of the Registrant

73. The Registrant confirmed that he had read the Council's Sanctions Guidance. Referring to the guidance on suspension, he asked the Committee to carefully consider whether removal was necessary in this case. He fully appreciated the seriousness of the breaches he had committed. He reminded the Committee that he is due to be deported from the UK on Sunday (in 2 days' time). If removed from the register, he told the Committee, that would be the end of his career. He would not be able to resume practice in Germany, where he was going to be sent. The children of his siblings depended on the funding he provided for their education; everything he has worked for, would come to an end. He urged the Committee to take into account that he was serving a three year sentence of imprisonment as punishment for his offence, and to consider the consequences that would follow both for him and for those who depend on him for financial support, if he was removed from the register. He said he had learned a lot from this experience and he believed he should be given a second chance to put the pieces of his life back together.

The Committee's Decision

74. The Committee had regard to the Council's 'Good decision making: Fitness to practise hearings and sanctions guidance' (2017) to inform its decision, and carefully considered the submissions of both parties.
75. The Committee first considered what, if any, aggravating and mitigating factors there may be.
76. The Committee identified the following aggravating factors:
- As was clear from his criminal conviction, the Registrant killed a man by driving dangerously.
77. The Committee identified the following mitigating features:

- The behaviour appears to be an isolated, one off incident;
- The Registrant has successfully completed an Advanced Driving Course with particular attention to the accident he caused;
- He pleaded guilty at court and has fully engaged with these regulatory proceedings;
- The Registrant had provided positive testimonials from 16 people, the majority of whom were registered pharmacist colleagues;
- The Registrant has no previous fitness to practice concerns or findings against him.

78. The Committee next turned to consider the sanctions available to it in ascending order of severity.

79. Take no Action: The Committee first considered whether it would be appropriate to take no action, however it was of the view that this outcome would not be sufficient to protect the wider public interest by sending out a message to the profession and the public about the seriousness of the Registrant's conduct and how deplorable the regulator considers his breach of the standards of conduct expected of him to have been.

80. Warning: The Committee next considered whether issuing a warning would be appropriate but it decided that, for the same reasons as above, a warning would be inappropriate.

81. Conditions of Practice. The Committee next considered whether to impose conditions of practice. The Sanctions Guidance states that conditions may be appropriate where there is evidence of poor performance or of significant shortcomings in a registrant's practice. However, the Committee was of the view that conditions would not be appropriate or relevant in this case since the particulars of allegation include his conduct outside the workplace and his ensuing criminal conviction. Whilst conditions could be formulated to reinforce his responsibility to comply in future with notification regulations and thereby reflect the Committee's findings in relation to particular 2 of the Allegation, the Committee was unable to

formulate conditions which could deal with the more significant issue of his conviction for causing death by dangerous driving. In any case, an order for conditions would not be sufficient, in the Committee's view, to send out a clear message, both to practitioners and to the public, of the gravity of the findings in this case.

82. Suspension Order. The Committee next considered whether suspension would be a proportionate sanction. The Committee took into account that the Registrant had asked the Committee to carefully consider whether, given the particular circumstances of his case, an order of removal, which was the preferred sanction of the Council, was in fact necessary.

83. The Council's Sanctions Guidance indicates that suspension may be appropriate where:

"The Committee considers that a warning or conditions are insufficient to deal with any risk to patient safety or to protect the public, or would undermine public confidence. It may be required when necessary to highlight to the profession and to the public that the conduct of the registrant is unacceptable and unbecoming a member of the pharmacy profession. Also, when public confidence in the profession demands no lesser sanction."

84. The Committee has already determined that the Registrant's practice does not need to be restricted to protect public safety; and also that the risk of repetition of the Registrant's dangerous driving is low. The question for the Committee is whether a suspension order is necessary - and sufficient - to deal with the wider public interest.

85. The Committee has taken into account the Registrant's criminal sentence, as set out in the Certificate of Conviction. He is serving a three year custodial sentence, which began on 9 September 2022, and it will therefore continue in place until September 2025. He has been

disqualified from driving for 3.5 years.

86. The Committee was aware that, applying the “general principle” set out in the case of Fleischmann, it should not allow the Registrant to resume practise until his sentence of imprisonment is completed. At paragraph 54, Newman J stated:

“Only circumstances which plainly justify a different course should permit otherwise. Such circumstances could arise in connection with a period of disqualification from driving or time allowed by the court for the payment of a fine. The rationale for the principle is not that it can serve to punish the practitioner whilst serving his sentence, but that good standing in a profession must be earned if the reputation of the profession is to be maintained.”

87. Even if the Committee were to impose a 12- month suspension, which is the longest period of suspension available to it, the Registrant would (if he were in the UK), still have one third of his prison sentence left to serve, even if partly in the community, alongside a continuing driving disqualification. It carefully considered whether it would be appropriate to impose a suspension order in the knowledge that at the expiry of that order, the Registrant would still be serving his sentence.
88. The Committee had regard to the observations of the sentencing Judge who had said that the Registrant’s driving created a substantial risk of danger as he was driving at speed and dangerously overtaking for some distance. The Registrant completely disregarded the safety of other road users. By way of mitigation, however, no alcohol or drugs were involved, and the Registrant was a licenced and insured driver of a roadworthy vehicle.
89. The Committee’s role at this hearing was to assess, taking into account all of the evidence before it, what sanction was appropriate and

proportionate in view of the Regulator's overriding objective; it was not to punish him further for his dangerous driving. The testimonials before it confirmed that he was judged by the writers, most of whom were registered pharmacists, to be a very good practitioner. They all stated, moreover, that they considered he had expressed genuine and deep-felt remorse for his conduct, and, as one referee put it, *"a day will not pass by without his reflection on the harm he has caused. That will be tormenting him for the rest of his life"*.

90. In considering whether a suspension was proportionate in this case, the Committee took into account the likely repercussions and the distress a removal order would be likely to cause to members of the Registrant's family who, the Committee had been told, depend on him for financial support. It also took into account that the Registrant has now been deported from the UK to Germany.
91. The Committee also took into account recent case law which, taken together, suggests that removal ought not to be automatic in cases where registrants are convicted of a variety of motoring offences including dangerous driving, and that the appropriate and proportionate regulatory sanction depends on the specific facts of a case. These include the case of Isaghehi v NMC [2014] EWHC 127 (Admin), in which a nurse was sentenced to 15 months' imprisonment for dangerous driving in a case of road rage where the other vehicle turned over (12 months' suspension); and the case of Hariharan v GMC [2018] EWHC 3358 (Admin), in which a consultant surgeon pleaded guilty to driving with excess alcohol and dangerous driving (three months' suspension).
92. The Committee considered the nature and gravity of the Registrant's offence. It carefully considered the extent to which the Registrant's conviction, was likely to bring the profession into disrepute or to undermine confidence in the profession.

93. The Registrant's case was not one of road rage, and, as has been said, no substance abuse was involved. However, the consequences were so serious that it caused the death of a fellow driver, whose dog was also killed. The seriousness of the Registrant's conduct was reflected in his three year prison sentence which exceeds the longest period of suspension which this Committee can impose.
94. The Committee turned to consider whether this was a case in which it was necessary, as the Council had submitted, to impose the most serious sanction, that of removal. 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*".
95. Taking all of the evidence before it into account, the Committee was of the view that the Registrant's conviction for causing the death of a fellow driver by his dangerous driving was not fundamentally incompatible with being a registered professional. The Committee is persuaded that, as was expressed by his many referees, the Registrant's conviction is not representative of his character overall. Whilst the Registrant quite properly, in accordance with the general principle in Fleischmann, ought not to be permitted to return to practice whilst still serving his criminal sentence, the Committee considers that this is a case in which, due to its specific facts, and the relevant mitigating factors, it would be disproportionate to order his removal from the register today. In coming to this conclusion, the Committee considered that this case can be distinguished on the facts from the case of Fleischmann (in which a 12- month suspension was replaced, on appeal, by Mr Fleischmann's removal from the register). In the Fleischmann case (a sex offence case), there were issues of public protection which the committee could not know would be resolved at the end of the 12 month suspension. The question for this Committee at this sanction stage relates only to the requirement to protect the wider public interest.
96. The Committee is satisfied that a long period of suspension will appropriately and proportionately reflect the seriousness of the Committee's findings, maintain

professional standards, and demonstrate to fellow professionals and to the public that the regulator takes seriously such serious breaches of the Registrant's professional standards.

97. In coming to this conclusion, the Committee has taken into account that the Registrant has been deported. Whilst this means he cannot return to work in the UK for many years, and therefore removal might be considered practical, the Committee was of the view that it would be unfairly punitive, given the consequences which might follow for him abroad if he were to have a removal order on his professional record.

New Information received after Commencement of Handing Down

98. Upon the Chair informing the parties that the Committee had decided to suspend the Registrant, but before the Chair read out the provisions of its determination relating to review, the Committee was informed by the Registrant that he is not in prison custody in Germany. He explained that he is now free in the community and will not now be serving any part of his UK sentence, including licence, because no provisions of the sentence imposed in the UK are applicable in Germany. He said this was due to the situation post-Brexit.
99. Ms Tomlinson initially submitted that the Council's position was that the UK criminal sentence was still effective and he would be on licence in Germany. She conceded that there was a conflict between the position of the Council on this matter and that of the Registrant. She reminded the Committee that it had been made aware of the Registrant's deportation on Sunday following the first day of this hearing. She submitted that if the Committee considered that something new had come to light then it was open to the Committee to reconsider its decision on sanction.
100. Having taken further instructions, Ms Tomlinson submitted the following on behalf of the Council: "We cannot comment on the intricacies of the

jurisdiction in Germany". She reminded the Committee that, irrespective of the position in Germany, the Registrant's criminal sentence remained effective in this country so that if he were to return to the UK before its expiry in September 2025, then he could be detained.

101. The Registrant submitted that the hardest part for him, namely applying to return to the professional register in Germany, was yet to come, given all that had happened in the UK.
102. The Committee accepted that it was aware the Registrant had been deported, however it had not been informed, nor had any submissions been made, in relation to the fact that the Registrant would not be immediately placed in prison custody in Germany and required to serve the remaining portion of his UK prison sentence. It noted that submissions on behalf of the Council had been made solely on the basis of the UK position and an assumption that he would continue to serve his criminal penalty on his deportation to Germany. That, indeed, was the implication of Ms Tomlinson's first set of submissions today (summarised at paragraph 99 above).
103. The Committee carefully considered the implications of the new information before it today. Whilst it could not resolve the conflict between what the Registrant said, and the Council's position, it was clear at any rate, that he was no longer in prison custody. If he had stayed in the UK, he would have remained in custody for another approximately three months before being let out into the community to serve the remaining 18 months of his sentence on licence.
104. The Committee asked itself whether, given this new information, it ought to re-open its consideration of sanction. It took all of the new information into account. This included the fact that its decision to suspend the Registrant had been based on an incomplete and incorrect understanding

of the position once he was deported.

105. The Registrant had in fact served 15 months of the 18 -month custody portion of his sentence in prison, and had therefore been let out three months earlier than would have been in the case if he had stayed in the UK. Balanced against that, the Committee took into account that he had now been deported from the UK, where he had been working for many years and where, it understood, he owned a home.
106. The Committee took into account that the UK sentence remained effective, and in any case, the Registrant would not be permitted to return to the UK for the foreseeable future.
107. In all the circumstances, the Committee remained satisfied that the wider public interest, namely the need to maintain confidence in the professions and uphold professional standards, would be properly reflected by a 12- month suspension order today.
108. The Committee therefore orders the Registrar to suspend the Registrant from the register for a period of 12 months.

Review

109. The Committee orders that a review must take place before the expiry of the suspension at which time the Reviewing Committee will need to consider the matter afresh. Whilst this Committee cannot tie the hands of the future Reviewing Committee, it reminds the Registrant that as he will still be serving his sentence in the UK, it is highly unlikely that he will be permitted to return to practice in the UK at that stage.
110. A Reviewing Committee might benefit from the Registrant providing up to date information about his professional situation and any work he has

undertaken during the period of suspension, together with any up to date personal and professional testimonials.

Decision on Interim Measure

111. Ms Tomlinson made an application on behalf of the Council 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 given the seriousness of his conviction for dangerous driving in which a man and his dog were killed, an interim measure of suspension was otherwise in the public interest to cover the duration of the appeal period.
112. The Registrant submitted that an interim measure would mean he might never be able to practise in Germany because the regulator of his profession in Germany would need to investigate the matter. He had demonstrated insight, remorse and remediation and, having been deported, he would not return to practise in the UK.
113. The Committee carefully considered the Council's application and the Registrant's submissions. 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. The Committee also took into account the Council's Sanctions Guidance of 2017.
114. The Committee considered that the public would expect an interim measure of suspension to be put in place from today's date in accordance with Article 60, as is otherwise in the public interest, given the seriousness of its findings in relation to the Registrant's conviction.

115. 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.