

General Pharmaceutical Council

Fitness To Practise Committee

Principal Hearing

remote by video link

Monday 8- Wednesday 10 January 2024

Registrant name:	Khalid Sayed
Registration number:	2224625
Part of the register:	Pharmacist
Type of Case:	Misconduct
Committee Members:	Julian Weinberg (Chair) Gail Curphey (Registrant member) Victoria Smith (Lay member)
Secretary:	Adam Hern
Registrant:	Present and represented by Aiden Carr
General Pharmaceutical Council:	Represented by David Sadeh, Case Presenter
Facts proved by admission:	All
Fitness to practise:	Impaired
Outcome:	Suspension Order for 9 months
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 8 February 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.

Introduction

1. Mr Khalid Sayed (“the Registrant”) is a Pharmacist registered with the General Pharmaceutical Council (“the Council”) with registration number 2224625.
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 of these regulatory proceedings are:

*“To protect, promote and maintain the health, safety and well-being of the public;
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.”*
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. This hearing of the Council’s Fitness to Practise Committee (“the Committee”) has been convened to consider an allegation that the Registrant’s fitness to practise as a Pharmacist is impaired by reason of misconduct. In summary, it is alleged that the Registrant dishonestly attempted to take a strip of 10 Tramadol capsules from Lloyds Direct Pharmacy (“the Pharmacy”) without a valid prescription.
6. The Council was represented by Mr David Sadeh. The Registrant attended the hearing and was represented by Mr Aidan Carr, Solicitor with Burton Copeland.
7. The Particulars of the Allegation are as follows:

You, a Registered Pharmacist,

1. *On 22 February 2022, attempted to remove one strip of Tramadol 10 capsules from Lloyds Direct Pharmacy.*

2. *Your actions were dishonest in that you;*

2.1. knew you did not have permission to remove medications from Lloyds Direct Pharmacy;

2.2 intended to remove medications from Lloyds Direct Pharmacy without making payment.

3. *You did not have a valid prescription for Tramadol.*

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

Preliminary application

Application to adjourn the hearing

8. At the outset of the hearing, Mr Carr made an application on behalf of the Registrant to adjourn the hearing.
9. He stated that his firm, Burton Copeland Solicitors, has for many years operated a paperless case management system, managed under contract with CTS, a leading UK IT manager.
10. He stated that on 21 November 2023, CTS was the subject of a cyber-attack and since then, Burton Copeland has effectively had no access to their case management systems or historic email traffic, including precedent libraries and stored case files. This, he submitted, has had a catastrophic effect upon his ability to manage his workload, and that of other fee-earners, as well as Burton Copeland support and admin staff.

11. He stated that the cyber-attack affected not just Burton Copeland but several hundred law firms.
12. He stated that CTS advised Burton Copeland that they have been working “24/7” since 21 November 2023 to restore the full range of IT services, but to date, this has not happened, although some functionality in relation to basic emails has been achieved.
13. The Registrant has been kept up to date with developments, but as of Wednesday of the week preceding this hearing, the Registrant has expressed concern that, given the continuing difficulties accessing the case management system, his case cannot be properly and fully advanced, should the hearing proceed.
14. Mr Carr shared those concerns, handicapped as he was by a lack of access to his precedent library of submissions regarding the law, good character, impairment and sanction.
15. He reminded the Committee that the Council's factual witnesses have all been agreed so that an adjournment would not cause those witness any inconvenience.
16. He stated that should the case proceed and result in an outcome with which, for whatever reason, the Registrant was dissatisfied, there would be a real risk that he would be left with an enduring sense of grievance and injustice, with all that that may entail.
17. He therefore submitted that, in fairness to the Registrant, and in order to ensure that justice is not only done, but also seen to be done, the hearing should be postponed / adjourned to a new date.
18. In response to questions raised by the committee, Mr Carr stated that, notwithstanding the CTS website shows that all CTS managed systems had been restored by 22 December 2023, his functionality nevertheless remained limited and

that he had a meeting with his IT department tomorrow regarding the updated position.

19. He stated that if the hearing were adjourned, it would enable him to:
 - Complete the Registrant's witness statement as he did not have the Registrant's case history;
 - Obtain up to date CPD records; and
 - Secure an updated medical report.
20. In response to a question raised by the Committee, Mr Carr was unable to explain why any updated medical report was not available as this could have been obtained in paper format irrespective of the IT issues encountered by Burton Copeland.
21. Mr Sadeh on behalf of the Council, was neutral in relation to the application. He reminded the Committee to have regard to Rule 37(3) regarding the need to exercise fairness. He confirmed that the matter had not previously been listed for hearing, that all the GPhC's witnesses statements had been agreed and that the Council was not intending to call any live evidence. He confirmed that no further defence evidence had been received to support the Registrant's case.
22. In reaching its decision, the Committee had regard to Rule 37 of the Rules which states:

(2) The Committee may, of its own motion or upon the application of a party, adjourn the proceedings at any stage provided that

 - (a) no injustice is caused to the parties; and*
 - (b) the decision to adjourn is made after hearing representations from the parties (where present).*

(3) In considering whether or not to grant a request for postponement or adjournment, the chair or the Committee must, amongst other matters, have regard to

 - (a) the public interest in the expeditious disposal of the case;*

(b) the potential inconvenience caused to a party or any witnesses to be called by that party;

(c) the conduct of the party seeking the postponement or adjournment; and

(d) fairness to the parties.

23. In considering the application, the Committee was mindful of the need to strike a proper balance between fairness to the Registrant and the public interest in the fair, economical, expeditious and efficient disposal of proceedings, having regard to the whole history of the proceedings: *Nabili v General Medical Council [2018] EWHC 3331 (Admin)*. An adjournment was “not simply there for the asking”: *Hussain v General Pharmaceutical Council [2018] EWCA Civ 22*. It has borne in mind that applications for an adjournment, and any supporting evidence should be subject to proper scrutiny: *Awan v Law Society [2002] EWCA Civ 1969*. In reaching its decision, the Committee was mindful that the onus was on the applicant for an adjournment to prove the need for an adjournment: *Teinaz v Wandsworth London Borough Council [2002] ICR 1471 CA*.
24. The Committee also bore in mind that it was held in the case of *Norton v Bar Standards Board [2014] EWHC 2681 (Admin)*, that in considering the application for an adjournment, the Tribunal should consider and apply the criteria as set out in the case of *R v Hayward, Jones & Purvis in the Court of Appeal [2001] EWCA Crim 168*.
25. Having done so, the Committee noted the following:
- That given time, Mr Carr could take a statement from the Registrant today, the Registrant having already provided a reflective statement;
 - That if the Registrant had further CPD certificates that he wished to rely on, these could be forwarded to Mr Carr today;
 - If a further medical report was to be relied on, this should have been completed and provided by today in any event, if necessary in a paper format, irrespective of Burton Copeland’s IT difficulties; and

- If a short adjournment were granted, this would allow Mr Carr, as a very experienced advocate, ample time to research any legal authorities upon which he wished to rely.
26. In the circumstances, the Committee agreed to adjourn the hearing until noon the following morning to allow Mr Carr to complete this additional preparation. The Committee concluded that by proceeding in this way, there would be no injustice to either party, and would effectively balance the needs of the Registrant with the need to hear cases expeditiously. Having heard from Mr Carr that he would be ready to proceed to enter pleas to the allegation by 9.30am the following day, the Committee agreed to adjourn until 9.30am on 9 January 2024.

Application for part of the hearing to be held in private.

27. The Committee invited the parties to consider whether those parts of the hearing that relate to the health and private life of the Registrant or his family should be held in private. Having invited representations from both Mr Sadeh and Mr Carr, both agreed that such matters should properly be heard in private.
28. The Committee was aware of the public interest in regulatory hearings being held in public. This public interest is reflected in Rule 39(1) which provides that *“Except as provided for in this rule, hearings of the Committee must be held in public.”* Rule 39(3)(b) provides that the Committee may hold the hearing in whole or in part in private if it *“is satisfied that the interest of the [Registrant] in maintaining their privacy outweighs the public interest in holding the hearing ... in public.”*
29. Having weighed the Registrant’s right to privacy regarding his health and private life against the public interest in open justice, the Committee was satisfied that the Registrant’s right to privacy outweighs the public interest. The Committee was satisfied that so far as it was intended to refer to the Registrant’s health or private life, that part of the hearing should be held in private.

Background

30. On 25th February 2022 the Council received an online concern from Mr 1, Superintendent Pharmacist at the Pharmacy. Mr 1 reported his concern that on 22 February 2022, the Registrant attempted to take 10 Tramadol capsules from the Pharmacy at the end of his shift. Due to a former colleague reporting a potential theft of 2 strips of Tramadol medication by the Registrant during his shift on 21 February 2022, the Registrant was searched at the end of his shift on 22 February 2022 by the manager on duty, Mr 2, and was found in possession of 10 Tramadol capsules.
31. Ms 3, Area Manager for the Pharmacy notes that the Pharmacy operates an online service, and professionals for the pharmacy work in a warehouse setting. She confirmed that the process at the Pharmacy is for waste medication to be 'immediately' thrown into the waste bin by the pharmacist.
32. On 22 February 2022 Ms 3 and Mr 2, Shift Manager at the Pharmacy, noticed a strip of Tramadol 10 capsules located on the Registrant's workstation under his monitor stand. This was reported to Mr 4, Operations Manager at the Pharmacy and a decision was made to review the Pharmacy's CCTV, particularly in light of the events of 21 February 2022.
33. Before leaving the Pharmacy, the Registrant was stopped by both Ms 3 and Mr 2 who conducted a search of the Registrant as per company policy, the Registrant having queried whether he could decline such a search. During this search the Registrant was found to be in possession of one strip of Tramadol, covered in blue paper in his pocket.
34. A review of the CCTV recording the Registrant's workstation was reviewed by Mr 4 on 23 February 2023. The Registrant can be seen wrapping something in a roll of blue paper.

35. Mr 4 conducted a disciplinary meeting with the Registrant on 28 February 2022. Notes from the meeting indicated that the Registrant described the events that occurred on 22nd February 2022 and said:

“End of the day, not feeling well the whole week. Towards end of shift feeling lightheaded, cleaning workstation, using blue roll, did not notice medication in the blue roll. The medication was in the blue roll, went to the toilet, asked to do a personal search and surprised to find the medication there. So sorry, completely accidental....Yes, completely accidental....100%, never stole anything in my life”.

36. The CCTV available captured the Registrant’s movements on 22 February 2022 from 10:29pm to 10:30pm. A transcript of the footage has also been made available. This recorded the Registrant standing at his workstation where he reached for something under his monitor and wrapped it in blue paper. He then proceeded to use the blue paper to clean his workstation.

37. The SOP for dispensing details the steps that should be taken when dealing with split packs and advises: *“discard the remaining quantity of the medication in the pharmaceutical waste bin (except for schedule 3 and 4 controlled drugs): Schedule 3 and 4 CD’s should be left in the basket for the accuracy checker.”*

38. The Pharmacy’s Standard Operating Procedures (SOPs) for Accuracy Checking and Dispensing confirms the steps that should be taken when dealing with split packs. The SOP for accuracy checking states that:

“For split pack controlled drugs, double check and count the number of dosage units dispensed: Ensure any schedule 3 and 4 controlled drugs left in the basket by the dispenser are discarded in the pharmaceutical waste bin before it is given to the dispatcher”.

39. Upon concluding their investigation, the Pharmacy wrote to the Registrant on 1 March 2022 notifying him of the termination of his employment. This decision was made after considering:

- *'You joined [the pharmacy] on 18th January, you are a new employee and have recently undergone training during your onboarding.*
- *You shared you are aware of the process regarding medical waste and chose not to follow it on this occasion.*
- *Witness statement provided on 21/02, witness reportedly observed you putting items in your pocket.*
- *22/01 following the witness statement, during a personal search medication was found in your pocket in highly unlikely accidental on both occasions.*
- *CCTV indicates this as an intentional act.*
- *Loss of trust to continue in your role as an employee of [the Pharmacy]."*

The Registrant's Response

40. In his overview statement, the Registrant apologised for his actions and expressed his *'shame and disgust'*. He describes the personal issues he was experiencing at the time and how this impacted on his mental state which he believes *'could have exacerbated my carelessness, lack of attention and my inability to focus'*.
41. [PRIVATE]
42. The Registrant suggested that as a result of [PRIVATE] he acted *'in some ways without the sense of consequences'*. He [PRIVATE] explained that he fully accepted *'that my action is the reason I am in this situation but these circumstances along with the repetitive and lonely nature of the role had exacerbated my symptoms which may be a contributing factor to why the incident occurred'*.
43. In advance of the hearing, the Committee had been provided with the following material:
- Copy witness statement of Mr 1;
 - Copy witness statement of Ms 3;
 - Copy witness statement of Mr 4;

- Copy witness statement of Mr 2;
- Transcript of CCTV footage from 22 February 2022;
- Bundle of apology letters;
- Reflective statement from the Registrant;
- Details of CPD courses undertaken;
- Treating Consultant Psychiatrist letter;
- Reference from the Registrant’s current employer.

44. The Council did not call any witnesses to give live evidence but relied on the contents of the statements produced and their respective exhibits.

Findings of facts

Allegations 1-3

45. At the outset of the hearing, the Registrant formally admitted all the factual allegations set out in the Particulars of the Allegation. The admissions were consistent with indications given on behalf of the Registrant in the statement of case and skeleton argument submitted to the Committee prior to this hearing. The Committee was satisfied that the admissions were unequivocal, and were consistent with his documentation provided to the Committee. It therefore found the factual allegations set out in paragraphs 1 – 3 proved on the basis of the Registrant’s admissions, pursuant to Rule 31(6) of the Rules.

Misconduct and Impairment

Council’s submissions on misconduct

46. Mr Sadeh, made oral submissions and also relied on written submissions in a further combined case statement and skeleton argument dated 20 December 2023. He reminded the Committee to take a two-stepped approach, firstly to consider whether the Registrant’s actions amounted to misconduct, and if so, to then consider whether

his fitness to practise was currently impaired. He referred the Committee to the case of *Roylance v General Medical Council (No. 2) [2000] 1AC 311* in which Lord Clyde described misconduct as:

“A falling short by omission or commission of the standards to be expected among [medical practitioners] and such falling short must be serious”

47. He also referred to the case of *R (on the Application of Remedy UK) v GMC [2010] EWHC1245 (Admin)*, which clarified that:

“Misconduct is of two principal kinds. First, it may involve sufficiently serious misconduct in the exercise of professional practice ... Secondly, it can involve conduct of a morally culpable or otherwise disgraceful kind which may occur outwith the course of professional practice itself, but which brings disgrace upon the doctor and thereby prejudices the reputation of the profession.

Misconduct within the first limb need not arise in the context of a doctor exercising his clinical practice, but it must be in the exercise of the doctor’s medical calling. There is no single or simple test for defining when that condition is satisfied.

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 of medicine into disrepute. It matters not whether such conduct is directly related to the exercise of professional skill”.

48. Mr Sadeh submitted that the Registrant’s conduct fell within the first limb of *Remedy*.

49. Mr Sadeh invited the Committee to conclude that the Registrant’s actions breached the following provisions of the Council’s *Standards of conduct, ethics and performance (2017)* (“the 2017 Standards”).

Standard 5 Pharmacy professionals must use their professional judgement

Standard 6: Pharmacy professionals must behave in a professional manner

Standard 9: Pharmacy professionals must demonstrate leadership

50. Mr Sadeh submitted that the Registrant's decision to conceal and remove Schedule 3 Controlled Drugs demonstrates a lack of professional judgement. The removal of a Prescription Only Medicine ("POM") without a valid prescription is a break of the legal supply chain of controlled medicines. Given that Tramadol is prone to abuse, misuse and overuse this could have resulted in a risk to the public.
51. Standard 6 requires a pharmacy professional to behave in a professional manner, at all times, not limited to the working day, extending beyond that of the workplace and with the expectation that pharmacy professionals are to be trustworthy, acting with honesty and integrity. He submitted that the Registrant failed to adhere to this standard when he concealed and removed POM medication he had not paid for, nor had a valid prescription. This could undermine public confidence in the profession.
52. Standard 9 requires pharmacy professionals to demonstrate leadership. Pharmacy professionals are expected to lead by example. Mr Sadeh submitted that Standard 9 was breached by the Registrant as a result of his dishonest actions linked to the abuse of his power as a pharmacist where he had access to controlled drugs. By virtue of this conduct, the Registrant has failed to set an example to other pharmacy professionals and people who work within the pharmacy.
53. He therefore submitted that the Registrant's conduct fell far below the standards expected of pharmacy professionals and had the potential to damage the public's trust and confidence in the profession. Members of the pharmacy profession would, he submitted, regard the Registrant's conduct as deplorable.

Council's submissions on impairment

54. Mr Sadeh referred the Committee to Rule 5(1) of the Rules which states that the Committee should have regard to the criteria specified at paragraph 5(2) of the Rules which states:

“In relation to evidence about the conduct or behaviour of the Registrant which might cast doubt on whether the requirements as to fitness to practise are met in relation to the Registrant, the Committee must have regard to whether or not that conduct:

- (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.”*

55. He referred the Committee to principles derived from the cases of *Cheatle v GMC EWCA Civ 1390 [2007] 1 QB 462* and *Cohen v GMC [2008] EWHC 581 (Admin)*.

56. Mr Sadeh submitted that a finding of current impairment was necessary in order to maintain public confidence in the pharmacy profession. He reminded the Committee of the observations of Mrs Justice Cox in the case of *CHRE v NMC and Grant [2011] EWHC 927 (Admin)* in which it was said:

“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.”

57. Considering the above case law, when determining whether the Registrant’s fitness to practise is currently impaired, he invited the Committee should take into consideration the need to maintain public confidence in the profession in addition to maintaining proper standards of conduct.

58. Mr Sadeh submitted that it was the Council’s case is that the Registrant’s misconduct impairs his current fitness to practise. The Council submit that the Registrant’s conduct as particularised engaged grounds (a) to (d) of Rule 5(2) of the Rules.

59. The Registrant's actions in his attempts to dishonestly remove Schedule 3 Controlled Drugs in the absence of a legally valid prescription has the potential to seriously undermine public confidence in the profession. The Registrant, as a pharmacist is considered a gatekeeper of Controlled Drugs and the alleged conduct strikes at the core of a pharmacist's duties and further has the potential to bring the profession of pharmacy into disrepute.
60. He submitted that the Registrant has breached more than one of the fundamental principals of the profession. Standards 5, 6 and 9 of the "*Standards for Pharmacy Professionals*" are engaged, which provide that the Registrant must use his professional judgement, must behave in a professional manner, and must demonstrate leadership.
61. Mr Sadeh stated that the Registrant's integrity can no longer be relied upon as a result of his actions of attempting to remove prescription only medicine in the absence of a legally valid prescription. The Registrant knew that he did not have a legally valid reason when attempting to remove the medicines from the pharmacy and his actions recorded in the CCTV where he concealed the removal of the medication further demonstrates that he knew his conduct was wrong.
62. He drew the Committee's attention to the Council's "*Good decision making: fitness to practise hearings and sanctions guidance*" March 2017. The guidance sets out that when deciding on impairment, in particular paragraph 2.14 at page 11.
63. Mr Sadeh stated that the Registrant has indicated in his response to the Council that he has reflected on his actions and is deeply ashamed. He has also sent the Council a brief letter from Professor 1 dated 18 February 2023 [PRIVATE]
64. Mr Sadeh submitted that it is not clear whether the Registrant is currently subject to medical supervision [PRIVATE]. As Professor 1 has only relied on the Registrant's self-reporting that his symptoms have reduced, there appeared to be an absence of evidence to suggest [PRIVATE] or that his dishonest attitude has been appropriately remediated.

65. He submitted that a finding of impairment on the basis of the Registrant's misconduct is required to uphold public confidence in the profession. At this time the risk of repetition is high in the absence of evidence that the Registrant's conduct and attitudinal deficit have been remediated.

Submissions made on behalf of the Registrant

66. Mr Carr stated that he accepted the Council's position regarding current impairment. He stated that he had no specific submissions to make regarding misconduct or current impairment, but that he would reserve any submissions for the sanction stage of this hearing when it was his intention to adduce further written documentation including an updated medical report and further references.

The Committee's decision on misconduct and impairment

67. Article 51 of the Pharmacy Order 2010 provides that a person's fitness to practise is to be regarded as impaired by reason of one or more of a number of circumstances. These include, at (a), 'misconduct'.
68. The Committee first considered whether the Registrant's actions, as found proved, amounted to misconduct. The Committee recognised that in reaching its findings in respect of misconduct and impairment, there is no burden or standard of proof to be applied, but that it was a matter for the Committee to determine, exercising its independent judgment. The Committee was mindful that Mr Carr's concession regarding current impairment was not determinative of the issue but that it remained a matter for the Committee.
69. The Committee had regard to the case of *Roylance* in which it was said that:
- Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a ... practitioner in the particular circumstances. The misconduct is qualified in two*

respects. First, it is qualified by the word 'professional' which links the misconduct to the profession ... Secondly, the misconduct is qualified by the word 'serious'. It is not any professional misconduct which will qualify. The professional misconduct must be serious."

70. The Committee first considered whether there has been misconduct on the part of the Registrant.
71. The Committee recognised that for a finding of misconduct to be made, the Registrant's conduct would have to amount to a serious falling short of the standard expected of him. The kind of serious misconduct required was described in the case of *Nandi v GMC [2004] EWHC 2317 (Admin)* and *Meadow v GMC [2006] EWCA Civ 1390* as: "*a falling short by omission or commission of the standards of conduct expected among medical practitioners, and such falling short must be serious*" such that it would be "*regarded as deplorable by fellow practitioners*".
72. The Registrant dishonestly attempted to take Tramadol, a controlled drug. The Registrant would have been well aware that such drugs are solely intended for consumption by those for whom there is a valid prescription, and a failure to adhere to that principle, has the potential to divert medication to those for whom the drug is not prescribed. Such conduct has the potential to cause serious harm to others.
73. In the case of *GMC v Igwilo [2017] EWHC 419 (Admin)*, it was held that dishonesty constitutes a breach of a fundamental tenet of the profession. The case of *Patel v GMC Privy Council Appeal No.48 of 2002* determined that dishonesty was at the top end of the spectrum of the gravity of misconduct.
74. The Committee concluded that the Registrant's dishonest conduct, whilst unquestionably reflecting poor judgement on his part, could more properly be categorised as a breach of Standards 6 and 9. He failed to behave professionally by abusing his position and failed to lead by example. As such, the Committee concluded that the Registrant's conduct amounted to a serious breach of Standards 6 and 9 of the 2017 Standards.

75. In the circumstances, the Committee found that the Registrant’s dishonest conduct fell sufficiently short of the standard expected that it amounted to misconduct.
76. In relation to impairment, following the decisions in *GMC v Choudhary* and *GMC v Nwachuku [2017] EWHC 2085 (Admin)*, the Committee is mindful that it does not necessarily follow that a finding of current impairment must be made. However, it will be an unusual case where dishonesty is not found to impair fitness to practise *PSA v HCPC & Ghaffar [2014] EWHC 2723 (Admin)*. It is accepted that dishonesty encompasses a very wide range of different facts and circumstances, but that any instance of it is likely to impair a professional person’s fitness to practise *R (Hassan) v General Optical Council [2013] EWHC 1887*.
77. The Committee noted the guidance given on the meaning of ‘fitness to practise’ in the Council’s publication *Good decision-making* (revised March 2017). At paragraph 2.11, the guidance states:
- “A pharmacy professional is ‘fit to practise’ when they have the skills, knowledge, character, behaviour and health needed to work as a pharmacist or pharmacy technician 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 our various standards, guidance and advice”.*
78. There is no statutory definition of what amounts to impairment of fitness to practise. However, the Committee has had regard to Rule 5(2) of the Rules (set out above) which mirrors the comments of Mrs Justice Cox in the case of *CHRE v NMC and Grant [2011] EWHC 926 (Admin)*.
79. Principles in relation to honesty and integrity of Standards of Conduct, Ethics and Performance are fundamental principles of the pharmacy profession and are essential qualities to be expected of a Pharmacist if public confidence in the profession is to be

maintained. As set out earlier in its determination, diverting controlled drugs towards those for whom it was not intended without a valid prescription has the potential to cause significant harm, even if there was no evidence before the Committee that actual harm was caused in this case. The Committee therefore found the breaches of that principle engaged paragraphs a, b, c and d of Rule 5(2).

80. In the case of *Cohen v General Medical Council [2008] EWHC 581 (Admin)*, Mr Justice Silber noted that when considering the question of impairment, the Committee should give appropriate weight to the public interest, including the protection of the public, the maintenance of public confidence in the profession and upholding proper standards of conduct and behaviour. The Committee is mindful that it is relevant to consider whether the conduct is easily remediable, whether it has been remedied and whether it is highly unlikely to be repeated. The Committee notes that the questions posed in the Cohen case are not a test in which the answers determine the question of impairment, but are a part of the analysing process to be undertaken.
81. The Committee accepts that whilst it may not always be easy, dishonest behaviour is potentially remediable.
82. The first step towards remediation would be to show insight, which would involve demonstrating reflection, accepting the wrongdoing and showing genuine remorse. Such insight, if shown, reduces the risk of repetition of similar behaviour. In considering insight and risk of repetition, the Committee considered the contents of the Registrant's written reflective statement in which he stated:

"I am extremely embarrassed by my actions and know I have let myself down and also everyone around me.... Since that incident, all I've felt since then is shame and disgust. This incident occurred because I was being careless and I was lacking focus, concentration and I felt like I wasn't in the right frame of mind at that moment.

.... [PRIVATE]

I also decided to participate in two ethics courses to update myself on the standard best practices...My colleagues could have come under suspicion which could have affected their registration and most importantly it can affect the general public

because they would lose faith in pharmacies if they think the pharmacist is taking medication for themselves.

[PRIVATE]

83. The Committee noted that the Registrant's reflections that the workplace environment may have contributed to his behaviour were at odds with his comments made in his investigation meeting with the Pharmacy Superintendent in February 2022 in which he said:

" I just want to add that I love working here so much. I don't want to lose this position over something unintentional. I really don't want to leave I enjoy working with you and everyone....

....Love it here, favourite position.

....really love it here, this place has been an amazing place to work. Thank you for the Opportunity....

I really love working here...."

84. The Committee therefore rejected the Registrant's reflections that the work environment was a contributory factor in relation to his dishonesty. The Committee therefore found the Registrant's level of insight to be limited as he has not meaningfully taken personal responsibility for his behaviour, seeking instead to rely on a poor work environment, which he had earlier praised.
85. Whilst the Committee has also had sight of the Professor 1's letter dated 18 February 2023, the letter fails to specifically address, and the Registrant has not demonstrated, how he is now able to recognise triggers for, and address his dishonest / impulsive behaviour, such that the Committee can be satisfied that it was highly unlikely that his misconduct would not be repeated.
86. The Committee has taken into account the Registrant's two CPD courses attended on 'Probity and Ethics'.

87. However, in all the circumstances, the Committee concluded that, whilst the Registrant's failings were capable of remediation, it could not conclude that his failings had been fully remediated and were therefore highly unlikely to be repeated. As a result, it considered that there remained an ongoing risk of harm to the public. In the circumstances, the Committee found that the Registrant's fitness to practise is currently impaired on public protection grounds.

88. The Committee has borne in mind the overarching objective of fitness to practise proceedings in that it should consider, not only the need to protect the public, but the need to uphold the reputation of the profession and to declare and uphold proper standards of conduct and behaviour. In doing so, the Committee has borne in mind the comments of Mrs Justice Cox in the case of *Grant*, in which she said:

"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 proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances."

89. The Committee has taken into account that the Registrant behaved dishonestly in the course of his work. The Committee considered that the Registrant's actions will have had a negative impact on public confidence in the pharmacy profession and would bring the profession into disrepute.

90. Given the seriousness of the misconduct found proved, the Committee is satisfied that a finding of impairment is required to uphold proper professional standards and public confidence in the profession, as failure to do so would undermine that confidence.

91. The Committee has also taken account of the overarching objective of fitness to practise proceedings in that it should consider, not only the need to protect the public, but the need to uphold the reputation of the profession and to declare and

uphold proper standards of conduct and behaviour. In doing so, the Committee has borne in mind the comments of Mrs Justice Cox in the case of *Grant*, in which she said:

“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 proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.”

92. Given the nature and seriousness of the misconduct found proved, the lack of sufficient insight, and the identified ongoing risk of harm to the public identified, the Committee is satisfied that a finding of impairment is also required to uphold proper professional standards and that public confidence in the profession would be undermined if no such finding were made.
93. For these reasons, the Committee concluded that the Registrant’s fitness to practise as a Pharmacist is also currently impaired by reason of his misconduct on public interest grounds.

Sanction

Council’s submissions

94. The Committee first heard submissions from Mr Sadeh. He referred to his written skeleton argument regarding how the Committee should approach this stage of the hearing. He reminded the Committee of the aggravating features of this case and identified a number of mitigating factors. He informed the Committee that he was not aware of there being any previous regulatory findings against the Registrant.
95. Mr Sadeh reminded the Committee of its powers as set out in Article 54(2) of the Pharmacy Order which provides:

“If the Fitness to Practise Committee determines that the person concerned’s fitness to

practise 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 must 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 person concerned be removed from the register;

(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 interest of the person concerned.”

96. He reminded the Committee to have regard to the need to protect the public, to maintain public confidence in the profession and to maintain proper standards of conduct.
97. He reminded the Committee to have regard to the Council’s *Good decision making: Fitness to practise hearings and sanctions guidance*. In doing so, he identified the aggravating factors for the Committee to take into account:
- a) The Registrant was found to be in possession of prescription only medicine;
 - b) The Registrant’s actions were pre-planned;
 - c) The Registrant’s conduct had the potential to put patient safety at risk.
98. By way of mitigating factors, he identified:
- a) The Registrant states he has sought professional help although the extent of his treatment regime is currently unknown;
 - b) The Registrant has no other fitness to practise concerns.

99. Given the above, he submitted that it was not appropriate to take no action. Similarly, neither a warning nor the imposition of conditions would be workable or address the issues identified. As such, he submitted that the appropriate and proportionate sanction to impose was a period of suspension of up to 12 months. The Registrant's actions were a deliberate rather than an impetuous act. Furthermore, he submitted that his actions were inherently dishonest and linked to the abuse of his power as a Pharmacist, where he has unmonitored access to controlled drugs.
100. A period of suspension would reflect the seriousness of the Registrant's misconduct, and would provide him with an opportunity to ruminate his conduct, reflect on his practice and reduce the risk of repetition. Only such a sanction, he submitted, would reflect the seriousness of the misconduct, the lack of remediation and therefore meet the overarching objective.

Registrant's submissions

101. In relation to sanction, Mr Carr reminded the Committee to take a proportionate approach to the imposition of any sanction. He reminded the Committee to first consider the least restrictive sanction to arrive at what it concludes is the appropriate and proportionate sanction to impose.
102. In mitigation, the Registrant provided an up to date reference from the Registrant's current employer. He also provided a further character reference from Ms 5, albeit undated and unsigned and which made no reference to her being aware of the nature of the allegation faced by the Registrant. A reference from Mr 6 has also been provided.
103. Mr Carr has also produced a number of prescriptions and prescription receipts for the Committee.

104. He submitted that he agreed with the Council's view that a sanction of suspension was appropriate, but invited the Committee to impose the shortest period of suspension possible to reflect the following mitigating factors:

- the Registrant engaged with his regulatory body from the outset;
- he made early apologies to all of the staff involved at the Pharmacy;
- he admitted the allegations at the outset of this hearing;
- he admitted impairment;
- the incident took place over a period of no more than 24 hours [PRIVATE]
- the incident took place against the background of the COVID pandemic and the pressure therefore arising to all healthcare professionals concerning the risk of infection and serious complications;
- an absence of a previous regulatory history;
- the Registrant's youth / naivety;
- that there was no harm, albeit there was potential harm to patients;
- his conduct, according to the Metropolitan Police, did not cross the threshold justifying a prosecution;
- there was no financial gain;
- an acknowledgement in his reflective statement that what he did was wrong and had the potential to call his profession into disrepute and to implicate his colleagues;
- his CPD which was focused on probity and ethics;
- the insight he has developed into his misconduct as evidenced by his full admissions during this hearing;
- the reference from his current employer;
- [PRIVATE]
- the absence of any falsification of documentation;
- the Registrant's dishonesty was at the lower end of the scale; and
- he is the main breadwinner of his household. Any suspension for whatever period will have an adverse consequence not only for the Registrant but for his mother and brother.

Decision on sanction

105. The Committee has paid due regard to its powers under Article 54(2) of the Pharmacy Order 2010 and the Council's "*Good decision making: Fitness to practise and sanctions guidance*" in considering its approach to its determination on sanction, having particular regard to those parts of the Guidance dealing with dishonesty and a Registrant's duty of candour.

106. The Committee then considered whether to impose a sanction, and if so, which one. The Committee has had regard to the public interest, which includes the need to protect the public, to maintain confidence in the profession and to declare and uphold proper standards of conduct and behaviour. The Committee has carefully considered all the evidence and submissions made during the course of this hearing. It has borne in mind that the purpose of imposing a sanction is not to be punitive although it may have a punitive effect. It has taken into account the Registrant's interests and the need to act proportionately, in other words, that the sanction should be no more serious than it needs to be to achieve its aims. It has taken into account any aggravating and mitigating factors identified. The Committee has exercised its own independent judgement. In considering which sanction to impose, the Committee started by considering the least restrictive sanction, and whether that is appropriate, and if not, continuing until the appropriate and proportionate sanction is reached.

107. The Committee has reminded itself of the principle derived from the case of *Bolton v Law Society [1991] 1 WLR 512 CA* in which it was said 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 part of the price."

108. In considering the sanction appropriate in this case, the Committee first gave consideration to the mitigating and aggravating features of the facts found proved

which amounted to misconduct, and also to the personal mitigation advanced by the Registrant, and the testimonials provided by him.

109. The Committee has borne in mind that it was held in the case of *GMC v Armstrong [2021] EWHC 1658 (Admin)* that the impact on public confidence in cases involving dishonesty, in particular in a regulatory regime, is not diminished even where the practitioner in question is unlikely to repeat their dishonesty.
110. The Committee was mindful that: *“The effect of dishonesty by professionals as far as public confidence in the public is concerned...is a primary consideration for a Fitness to Practise panel”*: *Siddiqui v GMC [2013] EWHC 1883 (Admin)*. It has also borne in mind the principle from the case of *PSA v Nursing and Midwifery Council, Mr D Wilson [2015] EWHC 1887 (Admin)* where it was held that the public interest outweighs the Registrant’s interest, and the effect of sanction on a registrant was very much of secondary importance. In that case, it was said that: *“The overriding factor ... was the public interest in maintaining the reputation of the profession. The [NMC] and the public are entitled to the highest standards of honesty and integrity from the Registrants...”* However, the Committee has borne in mind that care should be taken to determine, where, on a properly nuanced scale of dishonesty, the misconduct falls (*Lusinga v NMC [2017] EWHC 1458 (Admin)* and *Watters v NMC [2017] EWHC 1888 (Admin)*).
111. The Committee has identified the following aggravating factors:
- The Registrant’s dishonesty was deliberate, particularly when seen in the context of the Registrant’s actions the day before the incident in question;
 - The Registrant was in a position of trust within the Pharmacy, being responsible for the accurate administration and dispensing of controlled drugs;
 - When initially interviewed about the matter, the Registrant demonstrated a lack of candour by stating that his actions were accidental, when he now accepts that he acted dishonestly;
 - As set out earlier in its determination on impairment, whilst the Registrant has demonstrated some insight into his failings, it is limited.

112. Having heard Mr Carr's submissions, the Committee has nevertheless identified only the following mitigating factors:

- The Registrant has engaged in the regulatory process and made admissions to all the factual allegations at the outset of the hearing, did not seek to argue that his actions did not amount to misconduct, and conceded that his fitness to practise is currently impaired;
- These incidents represented out of character behaviour in an otherwise unblemished career;
- The Registrant suffered from a health condition at the time. The Committee has however, had regard to the principle derived from the case of *Sun v GMC [2023] EWHC 1515 (Admin)* in identifying the Registrant's health history as a potential limited mitigating factor, but recognising the absence of evidence that would be sufficient to excuse or exonerate the Registrant's dishonesty, or explain how the health condition specifically impacted on the Registrant at the time;
- The Registrant has produced up to date testimonials attesting to the Registrant's character and competence. The Committee has however attached little weight to Ms 5's reference as it is unsigned, undated and she does not state that she is aware of the allegations against the Registrant;
- The Registrant has sought professional help. However, the Panel has not been assisted by an up to date medical report setting out the extent to which the Registrant is, in practice, managing his health condition;
- He has undertaken relevant CPD courses;
- The Registrant's misconduct has not been repeated in the intervening period and that he has continued to practise without complaint.

113. Having considered the above, and particularly taking into account that the matters found proved relate to one isolated incident in relation to a low quantity of POMs, albeit that they were controlled drugs, the Committee concluded that the Registrant's dishonesty fell towards the centre of the spectrum of dishonesty.

114. The Committee is mindful that the Registrant was not prosecuted by the Police. However, as was stated in the case of *Bawa-Garba v GMC [2018] EWCA Civ 1879*, the decisions of the criminal courts and a regulator are taken by different bodies, with different functions, addressing different questions at different times.
115. The Committee first considered taking no action but considered that, given the aggravating factors in this case and the identified ongoing risk to members of the public, taking no action would not restrict the Registrant's practice in any way and would therefore be insufficient to protect the public and the public interest and uphold confidence in the profession. Such an outcome would not involve any public marking of this Committee's findings and was therefore neither an appropriate nor proportionate sanction to impose.
116. The Committee then considered imposing a Warning. Such an outcome may be appropriate where there is a need to demonstrate to a Registrant, and to the wider public, that the Registrant's conduct fell below acceptable standards. It may also be appropriate where there is no continuing risk to the public and where there is need for there to be a public acknowledgement that the conduct was unacceptable.
117. The Committee considered that, given the aggravating factors and the ongoing risks identified, the Registrant's misconduct, which related to his dishonest behaviour in relation to controlled drugs, was too serious for such an outcome. Imposing a warning, fails to address the public protection and public interest concerns identified as the Registrant's practice would not be subject to any restriction.
118. The Committee next considered whether to impose a period of conditional registration. The Committee noted that the sanctions guidance indicates that conditions may apply where:
- "There is evidence of poor performance, or significant shortcomings in a Registrant's practice, but the committee is satisfied that the Registrant may respond positively to retraining and supervision.*

There is not a significant risk posed to the public, and it is safe for the Registrant to return to practice but with restrictions.”

119. In its determination on misconduct and impairment, the Committee identified that the extent to which the Registrant presents an ongoing risk to the public and to the public interest. The Committee was satisfied, given the Registrant’s limited insight and lack of demonstrable remediation, it was not possible to formulate workable and practicable conditions that would adequately address the nature of the misconduct found proved. In reaching that decision, the Committee noted that the Registrant had attended two Probity and Ethics CPD courses prior to this hearing, yet he was still unable to demonstrate a sufficiently high level of insight, nor fully accept personal responsibility for his failings. The Committee therefore concluded that the risks identified could not be properly managed through conditions.

120. The Committee then went on to consider the imposition of a period of suspension. The Committee noted the guidance 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 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.”

121. Having regard to all the circumstances of this case, the Committee concluded that this was the appropriate sanction to impose. Such an outcome, it considered, would reflect the seriousness of the misconduct found proved and send the appropriate message to the Registrant and the profession generally, that such behaviour is wholly unacceptable. The Committee considered that a nine month period of suspension is the appropriate period of suspension to impose having balanced all aggravating and mitigating factors in this case. Such a period of time would enable the Registrant to meaningfully reflect on, and evidence that he had remediated, his misconduct.

122. The Committee considered whether removal was appropriate, but, having balanced all the relevant factors identified above, considered that such an outcome was neither appropriate nor proportionate. The Committee concluded that such a sanction should be reserved for the most serious cases. As it has identified, the Registrant's actions, whilst dishonest, related to one incident in relation to a low quantity of drugs. It therefore concluded that to impose such a sanction would be unduly punitive.
123. The Committee considered whether a review of the order for suspension was required prior to the end of the period of suspension. Given that the Committee has identified that there remains an ongoing risk to members of the public, and that the Registrant has yet to develop full insight or demonstrate that he has remediated his failings, the Committee concluded that this order should be reviewed in order for him to demonstrate that he is fit to return to unrestricted practice.
124. An order of suspension would meet all three limbs of the overarching objective and would ensure that, with a review being directed, the Registrant would not be permitted to return to unrestricted practice until a reviewing Committee had determined that he was fit to do so.

Review Hearing

125. The Committee considered that a review hearing was required to ensure that, given the ongoing risks identified, the Registrant does not return to unrestricted practice until a review Committee has determined that he has addressed his failings and that he is fit to do so. A review hearing will be arranged towards the end of the nine month period.
126. The Committee considers that any reviewing Committee would be assisted by the following:
- a) the Registrant's further reflections on this Committee's misconduct finding;
 - b) an up-to-date reference / testimonials in respect of any work, paid or unpaid;
 - c) an up to date health report;

- d) any other information the Registrant considers might assist him in returning to unrestricted practice; and
- e) the Registrant's attendance at a review hearing.

Interim Measures

127. The decision to impose a period of suspension will not take effect until 28 days after the Registrant is formally notified of the outcome, or until any appeal, if made, is concluded. The Committee sought submissions on whether interim measures should be imposed to cover this period.
128. Mr Sadeh stated that he was instructed to apply for interim measures to be imposed pursuant to Article 60 of the Pharmacy Order 2010, pending the coming into force of the Committee's substantive order. The application was made on the grounds that, given the Committee's earlier findings, reflecting an ongoing risk of repetition of the Registrant's misconduct, it was necessary to protect the public and was otherwise in the public interest and would otherwise be inconsistent with the Committee's substantive findings.
129. Mr Carr on behalf of the Registrant opposed the imposition of interim measures. He reminded the Committee that he has been working in the interim without concern, as supported by the references provided by his employer. Imposing an interim order would, in effect, extend the period of suspension by a further month.
130. He submitted that any member of the public would not be concerned if the Registrant were permitted to work in the interim period.
131. The Committee has carefully considered the submissions made and has considered them in the light of its earlier determinations. In imposing its substantive sanction, the Committee has identified that only a period of suspension was sufficient to address the ongoing risk to the public and the public interest. That, the Committee concluded, was essential to protect both the public and the public interest for the reasons set out in its determination on sanction.

132. Should interim measures not be put in place, that objective would be undermined as the Registrant would be able to practise without restriction pending not only the appeal period, but for an extended period of time if the decision of this Committee is appealed. That, the Committee concluded would not meet the overarching objective as set out earlier in this determination.
133. The Committee was therefore satisfied that an interim measure of suspension is necessary for the protection of the public and is otherwise in the public interest in order to maintain public confidence in the pharmacy profession and the regulatory process. The Committee imposes the interim measure of suspension for the same reasons as it imposed a period of suspension in its substantive decision on sanction.
134. There is no interim order to revoke.
135. This concludes this determination.