General Pharmaceutical Council

Fitness to Practise Committee

Principal Hearing

Remote videolink hearing

7-9 February 2024

Registrant name:	Jason Davis
Registration number:	5010814
Part of the register:	Pharmacy Technician
Type of Case:	Misconduct
Committee Members:	Manuela Grayson (Chair) Leigh Setterington (Registrant member) Wendy Golding (Lay member)
Committee Secretary:	Zainab Mohamad
Registrant:	Not present
General Pharmaceutical Council:	Represented by Priya Khanna, Case Presenter
Facts proved:	1 and 3
Facts not proved:	2
Fitness to practise:	Impaired
Outcome:	Suspension for 12 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 March 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 pharmacy technician, and store manager, whilst working at Boots Pharmacy, 16 St Andrews Parade, Weston-Super-Mare, BS23 3SS ('the pharmacy')

1. Between February and March 2020, took an unknown amount of Co-codamol tablets twice a week from the pharmacy for personal use:

1.1. without permission and/or the consent of your employer

1.2. without a legally valid prescription. ***[PROVED]***

2. Between January 2017 and September 2020, took approximately 23577 Co-codamol tablets to an approximate trade value of £1912.83 from the pharmacy for personal use:

2.1. without permission and/or the consent of your employer

2.2. without a legally valid prescription. ***[NOT PROVED]***

3. Your actions at paragraphs 1 to 2 above were dishonest, in that you:

3.1. knew you did not have permission and/or consent of your employer

3.2. knew you needed a legally valid prescription in respect of co-codamol 30/500mg tablets. ***[PROVED in relation to the facts alleged and found proved at Particular 1]***

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

Documentation

Document 1- GPhC hearing bundle, 72 pages

Document 2- GPhC skeleton argument dated 23 January 2024

Document 3- Proof of Service Bundle, 3 pages

Document 4-Proceeding in Absence Bundle, 71 pages

Witness

Witness 1 - Fraud Investigations Lead, Boots Management Services Limited

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:

   I. To protect, promote and maintain the health, safety and well-being of the public;

   II. To promote and maintain public confidence in the professions regulated by the Council; and

   III. 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.

Service of Notice of Hearing

5. The Committee has seen a letter dated 12 December 2023 sent from the Council headed 'Notice of Hearing' addressed to the Registrant at his email address; and the same sent by post on 30 January 2024 at his postal address, both as set out in the Council's register. The Committee was satisfied that there had been good service of the Notice in accordance with Rules 3 and 16.

Application to Proceed in the Absence of the Registrant

6. Rules 25 of the Rules states that where the Registrant is neither present nor represented at a hearing and the Committee is satisfied that service of the Notice of Hearing has been properly effected, (which the Committee is, in this case), the Committee may nevertheless proceed to consider and determine the matter or allegation.

7. The Registrant was not in attendance at this hearing, nor was someone attending on his behalf.

8. The Council's Proceeding in Absence Bundle contained correspondence between the Council and the Registrant in relation to today's hearing. The Registrant was sent the draft hearing bundle by email on 19 January 2024; he was sent the Council's Skeleton Argument and bundle by email on 26 January 2024, and was then sent all the same documentation by post-dated 30 January 2024. It was signed for as received by the Registrant on 31 January 2024.

9. The Committee had before it an email from the Registrant sent to the Council's legal representative dated 5 February 2024 in which he stated the following:

"Good afternoon David,

I hope this email finds you well. I unfortunately won't be able to attend the hearing. I have only just collected the paperwork that has been sent to me with the dates of the hearing. [PRIVATE].

Apologies for any inconvenience caused.

Kind regards, Jason".

10. The Council's legal representative wrote to the Registrant the following morning, 6 February 2024 (yesterday) and informed him that the Council intended to apply for the hearing to proceed in the Registrant's absence. Nothing more has been heard from the Registrant.

11. The Committee heard submissions from Ms Khanna under Rule 25 to proceed in the absence of the Registrant. Ms Khanna submitted that the information before the Committee suggested that the Registrant, having been properly served with the documentation relied on by the Council and the Council's skeleton argument, had voluntarily absented himself from today's hearing. He had provided no independent medical evidence to support what he wrote [PRIVATE]. Ms Khanna reminded the Committee that there are two witnesses warned for today who would be inconvenienced if the hearing did not proceed.

12. The Committee adjourned for a short while having invited Ms Khanna to make efforts on behalf of the Council to contact the Registrant and see if he could advise whether he wished to apply for a postponement. She returned about two hours later and informed the Council that the Registrant had been contacted by phone three times and messages left, and also by email. There had been no response from him.

13. The Committee took into account the documentation before it and Ms Khanna's submissions. It applied the principles set out in the relevant case law, bearing in mind that fairness should be its overriding consideration.

14. The Committee noted that the Council has two witnesses ready to give evidence. It also took into account the reason for the Registrant's absence today, and it was of the view that in the distressing circumstances it might not have been practicable for the Registrant to be expected to provide independent medical evidence [PRIVATE]. The Committee was satisfied that the Registrant was not present today for reasons which were plainly unavoidable and due to no fault on his part.

15. The Committee took into account that if the hearing proceeds today the Registrant will not be able to cross examine the witnesses, nor to make his own submissions, however, it was satisfied that the Registrant had been given a fair opportunity to inform the Council if he wished to apply for a postponement of the hearing. It concluded that he had voluntarily absented himself: he had known since December 2023 that the hearing was due to go ahead today, and it concluded that he expected it to do so despite his absence.

16. Taking all of the information before it into account, the Committee concluded that it should proceed with the hearing today in the absence of the Registrant. In coming to this conclusion, the Committee considered the regulator's overarching objective of protecting the public, including the public interest in the expedition of fitness to practise proceedings, and was satisfied that the Registrant's interest in a fair hearing was outweighed by the public interest in proceeding with the hearing today.

Application to Amend the Particulars of the Allegation

17. Ms Khanna made an application to amend the Particulars of Allegation, pursuant to Rule 41 (1) of the General Pharmaceutical Council (Fitness to Practise and Disqualification Rules) Order of the Council 2010 ["the Rules"]. She informed the Committee that the Registrant was given notice of the proposed amendment to the Particulars of Allegation, on 19 January 2024, by email, in the following terms:

"Further to the service letter sent to you on 18 August 2023 which enclosed the case against you including the particulars of allegation, we propose to make an application at the PH to amend the allegations. Please can I refer to you page 10 and 11 of the bundle. Please can you confirm whether you agree or oppose the proposed amendments. The Council's position is amendment simply better reflects the evidence."

18. She submitted that the Registrant had had sufficient time to consider the proposed amendment in advance of the Principal Hearing. There has been no response from the Registrant to the correspondence referred to in paragraph 7 above.

19. The Committee carefully considered the amendments proposed by the Council in light of the evidence contained within the bundle. It determined that the proposed amendments did not materially aggravate the particulars of allegation but served better to express the evidence available. The Committee was satisfied that it would not be unfair to the Registrant to accept the Council's proposed amendments, and it therefore agreed to them.

Background, as set out in the Council's Skeleton Argument

20. On 2 July 2020, the Registrant emailed his GP with a request for medication. The Registrant mentioned he had registered with the Practice in January 2020, when he moved house, but *"for some reason i was then taken of you list in February and i sent in another registration form 6 weeks ago, i've not heard anything so i hope this request is ok"*. Among the medications requested, there was a specific request for *"co-codomol 30/500 eff x 200"*.

21. The GP surgery sent a response to the request, later the same day. It was made clear in this communication that the Registrant was required "*to discuss meds with gp as according to our system you have not had them in over a year thanks"*.

22. In 2020, the Boots Fraud Analytics Team detected a stock loss of co-codamol tablets over a three-year period.

23. Witness 1 provided two witness statements. His role as Fraud Investigations Lead was to *"deter and detect colleague theft by monitoring different systems"* available to him. The system in question is called *"Columbus"* which *"involves the comparison of the supply of medication received into Boots pharmacies against any outgoing supply (such as the dispensing of medication to patients)"*. Witness 1 explained that *"this can highlight variances between the two figures which can suggest a suspicious pattern which is then investigated to establish the reasons behind the variance."*

24. Witness 1 prepared a Drug Risk Analysis, which comprises data obtained from (a) the Boots Columbus Dispensing System and (b) National Health Service payment records. The analysis includes:

- The supply of the medication as compared against the ongoing supply of that medication (e.g., when it is dispensed to a patient);
- The supply of medication as compared against the NHS payment files (reimbursement of the costs of goods and services);
- Product levels noted on the Timeline sheet, where the records on Columbus indicate more medication is supplied than required for the efficient operations within the Pharmacy;
- The Drug Counts Log, noting the date, name and time of the count, which can then be compared against supply and dispensing records (i.e., indicating the physical loss of medication).

25. In relation to the Stock Movement ["SM"] Table which was contained within bundle, Witness 1 explained that stock levels are managed across Boots as a business "*by checking the stock available against movement data and automatically creating orders if required and if movements were created against legally valid prescriptions...the*

system will monitor stock levels against pre-determined levels and create orders accordingly". Column K, titled *"Adjusted qty for operation/ QUANTITY MOVEMENT"* contains the SM by reference to specific dates, e.g., *"02/04/22...09:35:52...ORIGINAL QUANTITY '0', QUANTITY MOVEMENT '300'".*

26. In addition, the SM Table provides user information. Witness 1 states: *"Users can log in and manually enter their user details represented by the 4-digit store code along with their initials, represented by column F."*

27. This information, however, is not necessarily definitive of the fact that the entry has been made by the user. Witness 1 clarified that "o*nce a user is logged in to the system, there is a 3-minute window within which another user could potentially use the system. The details within column F are an indicator of the user at a particular point in time and are not definitive proof alone that the user indicated performed the operations recorded within column K."* He elaborated on this point in his second witness statement: *"With the Columbus dispensing system, it is likely, that on occasion, not all Boots employees will sign out when they are no longer using the computer. For instance, in scenarios whereby they assist a patient or complete another task. Given the 3-minute timeout, it is also likely that another employee may use the same computer without first checking to see who is logged on to the system."* Notwithstanding *"policies in place around computer security and employees are not allowed to share their password with anyone else or allow any unauthorised user to access and use Boots systems"*, Witness 1 accepted that *"it is...likely that not all employees and pharmacies adhere to the policy all the time – there is variance to policy between them all."*

28. In any event, the 4-digit number *"1627"* had been allocated to the Pharmacy and user *"1627.jd"* has been allocated to the Registrant. The information recorded on the Orders Table shows, in column F, that user *"1627.jd*" had placed manual orders on eight occasions between 4 March 2020 and 30 June 2020. This included two orders of *"co-codamol 30mg/500 mg effervescent tal CC"* on 1 April 2020 and 30 June 2020 respectively.

29. Column G on the Orders Table represents the reason for a manual order being entered. Witness 1 makes it clear that *"Patient Preference"* should only be selected *"when a patient has specifically requested an alternative brand to the default brand specified by Boots"*. In respect of all eight entries, between 4 March 2020 and 30 June 2020, for user *"1627.jd", "patient preference"* had been selected in column G. Witness 1's expectation, had *"patient preference"* been a correct manual order, would have been to see *"evidence within the data of a 'dispensing movement' recorded on the Stock Movement tab soon after the orders were created."*

30. Witness 1 states, in respect of these eight entries, *"the user '1627.jd' has ordered Boots default brand when the brand specified by the patient should have been ordered. This is in contravention of policy and an indicator of a 'red flag'...manual ordering forms a Key Performance Indicator (KPI) and stores are encouraged not to create manual orders as it can be an indicator of poor process"*. Furthermore, there are Standard Operating Procedures in place which cover this area and all *"relevant staff"* have been trained in the use of the Columbus system.

31. Between 20 April and 6 May 2020, Witness 1 noted that *no* co-codamol had been dispensed at the Pharmacy "1627". Notwithstanding this, on 6 May 2020, a stock adjustment of a quantity of 576 had been recorded as a *"delivery error – not received"* and the *"ORIGINAL QUANTITY"* (column J) reverted to "0". The system therefore created an order for a quantity of 200 (see QUANTITY MOVEMENT - column K) as a *"walk-in top up"*. Witness 1 was able to reach the conclusion that he *"can see no reason for these figures from the data"*. Put another way, there should have been a sufficient quantity of co-codamol, given the absence of dispensation between 20 April 2020 and 6 May 2020, hence no need for the system to adjust the stock in the way that appears in the data analysis which Witness 1 carried out.

32. In his second witness statement, Witness 1 explains the entry on 6 May 2020 by user '1627 [redacted]' in respect of the "-576" entry: "*If this adjustment related to a genuine adjustment, I would interpret this to mean that the user '1627 [redacted]' had*

noticed that 576 tablets of co-codamol had not been delivered by the supplier and that they had therefore corrected the stock file in the correct manner by completing the manual stock adjustment." However, Witness 1 points out that *"historically this method of manual stock adjustment has been utilised to falsely correct stock file as the products have gone missing or been stolen"*. Witness 1 makes it clear that the entry on 6 May 2020 by user 1627 [redacted] *"does not undermine my assessment of the data in any way as it is a correction of the stock file, whether it is an exception count or stock adjustment, it indicates the drugs cannot be accounted for"*.

33. 80% of the manual orders were made by user *"1627.jd"* within the dataset. Witness 1 was able to conclude from the data available that *"there is no reason...for these orders to have been made"* and *"this is indicative to me of someone driving stock into a pharmacy which is then unaccounted for or has gone missing, likely via theft or unauthorised acquisition."*

34. In terms of the overall quantities of co-codamol supplied and the associated loss to the Pharmacy, Witness 1 explains his conclusions by reference to the *"Timeline Table Drug Variance by Year & Month*" [the "Timeline"].

35. This illustrates the difference between what has been supplied to the Pharmacy (through all order types) and what has been dispensed by the Pharmacy. The period of time covered in the Timeline is from January 2017 and September 2020 and the data demonstrates, according to Witness 1, that there was *"excessive supply against patient demand*". He does, however, also note that the data on the Timeline *"does not consider stock counts or stock adjustments*".

36. The Timeline also illustrates indicators of loss within the dispensing and payment variance, reflecting two loss points, set out in the *"Risk Family Table"*. The payment variance shows the monthly amount of credit received from the NHS from the dispensed medications sent to the NHS by the Pharmacy (electronically and in paper form). Where there is a *"negative [payment] variance"*, that means there has been a *"loss in that drugs supplied to the pharmacy have not been reimbursed by the NHS"*,

in other words, the second point of loss. The payment variance is therefore used to validate the dispensing variance. It is on this basis, from the dataset Witness 1 concluded a dispensing variance of *"-23577 tablets...amounting to a trade cost of £1912.83" and a payment variance of "-24616 tablets"*. Using the indicators of loss within the two variances, *"holistically investigated with a representative sample of other drugs 'Risk Family' tab which highlighted Co-Codamol as the drug family with the highest variance figure".*

37. As a result of the overall analysis from the dataset, Witness 1 felt it was *"reasonably sufficient for Boots to believe that the user '1627.jd' was responsible for the missing Co-codamol recorded between January 2017 and September 2020"*.

38. On 7 October 2020, the Registrant attended an Investigatory Interview arranged by Boots as part of an investigation into the stock loss of the Co-codamol tablets over a three-year period. The Registrant cooperated in the course of the interview. The Registrant began working for the Pharmacy in the early 1990s when he was 15 years old. He became a Pharmacy Technician in 1990 after which Boots acquired the Pharmacy. He explained the location of the Pharmacy meant *"no one else wants to come + work here"*. The Registrant was then asked and answered the following questions and points put to him in the investigation interview (extracts only):

...

Question:	*When did you first start taking drugs out of the dispensary?*
JD:	*What drugs?*
Question:	*...Do you remember when the first time was?*
JD:	*No.*
Question:	*Why?*
JD:	*Can't remember, not in the right frame of mind...[The Registrant then explained the status of his health [PRIVATE]*

...

Question:	*I need you to give me some more info. What drug?*
JD:	*Had some co-codomol.*
Question:	*What for?*

JD: *My head is just exploding. I have been prescribed it but forgot to order it or not got it on time. I've then put some of that back to replace what was taken.*

Question: *OK. Thank you for being open + honest. When were you prescribed from GP?*

JD: *From Longton, moved out of postcode area. November last year maybe. I got 3 months at a time, 336.*

Question: *How many take in a day?*

JD: *2-4 on days I can feel head exploding.*

...

Question: *So topping up from November?*

JD: *No, they prescribed 8 a day + I don't take that much.*

Question: *We have data. What about Solpadol. Have you ever taken Solpadol?*

JD: *No just co-codomol. 2-3 strips out of the pack and leave box on the shelf.*

Question: *Is it still ongoing?*

JD: *No not had any for a while now. Had the weaker ones 81500, not stronger ones.*

Question: *How long has it been stopped?*

JD: *Earlier in the year.*

Question: *What triggered the change?*

JD: *Not sure whats going on in my head. Me, thinking of 'what am I doing' and then feeling of 'its just not me'.*

Question: *....can you tell me when you've thought months when you stopped?*

JD: *Months, days gone by, hard to sense time.*

...

Question: *Hard to keep continuity of GP's.*

JD: *Yes and have a hard conversation in 5 minutes.*

39. The Registrant was asked to attend a further meeting on 8 October 2020 as the investigatory meeting was unable to conclude on 7 October 2020**.** However, on 11 October 2020, the Registrant emailed his employers, resigning from his post. No

reference was made in his resignation to the fact of the investigation or his remarks in the investigation interview, which had taken place a few days earlier, on 7 October 2020. However, it is apparent from the letter from Boots to the Registrant, dated 12 October 2020, confirming the resignation that the Registrant had informally met with his employers on 8 October 2020. It was noted in this correspondence that *"although we did not discuss the ongoing investigation you were visibly upset and felt that the right decision was to resign with immediate effect and that you would confirm this in writing"*. The Registrant did mention in his resignation email that the decision was *"by no means an easy"* one *"but the right one for me at the present time"*.

40. In view of the Registrant's *"admittance"* to his employers that *that he had "stolen drugs" from Boots,* they informed him that *"this matter will be referred to the police and we will pursue civil recover. As a registrant we also reserve the right to refer the matter to the GPHC"***.**

41. Ms 2 did in fact refer the matter to the Council, in a letter dated 19 October 2020:

"Mr Davis was employed as the Store Manager at our Weston Super-Mare store. A stock loss of co-codamol tablets over a period of three years was detected by our Fraud Analytics team; Mr Davis was interviewed and admitted to the theft. The Police were informed and we understand their investigation is ongoing, crime reference 5220232967. Mr Davis subsequently resigned and we were unable to conclude our investigation. Whilst we are referring this matter for your urgent attention and any subsequent action that you consider appropriate, we would like to highlight our concern for the health and wellbeing of Mr Davis."

Further Accounts from the Registrant

42. Following the referral to the Council, the Registrant responded to questions posed by the Council, which were noted in a file note dated 9 December 2020, in respect of a telephone call with the Registrant on 8 December 2020. In summary, the Registrant confirmed he had taken medication *"about Feb-March 2020. I was going to replace*

them when I got the prescription from the GP...I took them twice a week in a 6 day working week". The Registrant explained that he worked long hours, was mentally and physically exhausted and the area in which the Pharmacy was located brought with it some difficulties, e.g., slashed tyres, being spat on by members of the public. The Registrant stated he wanted to *"pay for what I'd taken, I have tried to call the Area Manager, but she will not pick up*. *I also sent a letter to the GPhC to inform them that I had resigned from Boots"*. The Registrant confirmed that [PRIVATE] and had been prescribed co-codamol. He stated *"I took it from the pharmacy because I was not in the right frame of mind. I know what I did was wrong I held my hands up to them (Boots). I wasn't aware it was Solpadol (the brand) I just know it was co-codamol"*. In response to being asked whether he was self -medicating, the Registrant explained *"I wouldn't choose the word stealing, in my eyes I was borrowing them until I could get a prescription and then return them I suppose I would have got an extra prescription and not consumed as many and replace the ones I took from the pharmacy with the ones I didn't take from the prescription I would have got. He said, I wasn't thinking that far ahead, I was just thinking I would get a prescription and replenish it."* The Registrant became upset during the call when he stated *"I am not fit to work, [PRIVATE]*".

43. On 29 April 2022, the Registrant provided a further account to the Council. In this, he stated:

"I was working six days a week from 8 till gone 6pm and the surgery always asked to see you before releasing any prescriptions and this was impossible for me to do as I could not get any time off or leave the premises for this as most days it was just me and a pharmacist or rarely another staff member to help out. I had not had any holiday in the last 12 months and I was physically tired and mentally exhausted. What I did was done with no malice at all as I loved my job and the company I worked for and was going to be returned with the following prescriptions. The reason I have outlined all of the above is because it all had a part to play in my lack of professional judgement, it was an anomaly and a scary time to work in. It has impacted on my life immensely....I never had one complaint against me and I was always top in the area for my customer care."

Witness Evidence

44. Witness 1, having provided two witness statements which set out the results from his data analysis, gave oral evidence to the Committee. He explained what could be ascertained from the data analysis, and what, in his opinion, could be inferred. He explained that the period of alleged misconduct straddled two different computer systems at the Registrant's place of work: the former system could reveal orders for medications but could not show who at the pharmacy had placed the orders; however the newer system, Columbus, in operation from February/March 2020, was able to show more detail about stock orders and distribution, and which staff member at the Pharmacy had logged on at the time transactions were made. When first alerted to the potential issues with the Registrant in September 2020, he carried out data analysis and discovered that during February – June 2020 the Registrant had made eight manual orders for co-codamol which was in itself an unusual thing to do and had followed these up with stock takes by which he adjusted the stock record in the Pharmacy. During that period there was no evidence of dispensing the medication to patients. Witness 1 followed up that discovery with investigation back to 2017 and the results were included within the bundle. It appeared that quantities of co-codamol or its brand name equivalent Solpadol, as approximately specified in the Particulars of Allegation had been going missing at the Pharmacy since 2017. Witness 1 said that the evidence of manual ordering was "the most compelling evidence" against the Registrant; and it was, Witness 1 said, "reasonable" for his employer to have believed that the Registrant "may have been involved" in the variances revealed under the old computer system too, although that system was not itself capable of showing which member of staff had been involved.

Submissions on behalf of the Council

45. Ms Khanna adopted her skeleton argument and reminded the Committee that it should consider all of the evidence in the round, including the Registrant's admission in interview with his employer, his communications with his GP, his subsequent resignation from work, and his admissions in his communications with the Council.

Decision on Facts

46. In reaching its decisions on facts, the Committee considered the documentation listed at the start of this determination, the oral evidence and the submissions made by Ms Khanna on behalf of the Council.

47. When considering each particular of allegation, the Committee bore in mind that the burden of proof rests on the Council and that particulars are found proved based on the balance of probabilities. This means that particulars will be proved if the Committee is satisfied that what is alleged is more likely than not to have happened.

Particular 1

1. Between February and March 2020, took an unknown amount of Co-codamol tablets twice a week from the pharmacy for personal use:

1.1. without permission and/or the consent of your employer

1.2. without a legally valid prescription.

48. The Committee took into account the data analysis provided by Witness 1 and his oral evidence. It also took into account the Registrant's comments in the investigatory interview with his employer which took place on 7 October 2020, and his subsequent admissions and explanation in the response statement which he sent to the Council dated 29 April 2022. In his response he wrote:

"It's all started in February 20[20] the pandemic had just started in Britain and it was a scary time. While most people were told not to go to work or stay indoors we were on the frontline. …. It became really difficult with doctor's surgeries as all of them in Weston closed their doors and became difficult to get medication for both customers and myself. I was working six days a week from 8 till gone 6pm and the surgery always asked to see you before releasing any prescriptions and this was impossible

for me to do as I could not get any time off or leave the premises for this as most days it was just me and a pharmacist or rarely another staff member to help out. I had not had any holiday in the last 12 months and I was physically tired and mentally exhausted. What I did was done with no malice at all as I loved my job and the company I worked for and was going to be returned with the following prescriptions. The reason I have outlined all of the above is because it all had a part to play in my lack of professional judgement, it was an anomaly and a scary time to work in [PRIVATE]. Previous to this I had worked in the industry for 30 years and progressed up from a delivery driver to technician to accuracy technician to store manager and i loved every single minute off it helping to care for people in the best way I could. In that time I never had one complaint against me and I was always top in the area for my customer care. I just hope you can see that I have more to give to the industry and I often reflect on what happened and have learnt immensely from it.

Kind regards Jason".

49. The Committee was of the view that the Registrant's responses, taken together with the evidence from Witness 1's data analysis connecting the Registrant's user ID to the manual entries ordering co-codamol, not supported by evidence of dispensing to patients at the relevant time, were sufficient to prove the stem of Particular 1. The Registrant had admitted in his phone conversation with the Council representative on 8 December 2020 that he had been taking the medication about twice a week. He said this occurred in February-March 2020. The Registrant clearly had no permission nor consent from his employer to take the co-codamol (Particular 1.1) and nor, as was apparent from the evidence of his contact with his GP on 2 July 2020, did he have a valid prescription (Particular 1.2).

This particular is found proved in its entirety.

Particular 2

2. Between January 2017 and September 2020, took approximately 23577 Co-codamol tablets to an approximate trade value of £1912.83 from the pharmacy for personal use:

2.1. without permission and/or the consent of your employer

2.2. without a legally valid prescription.

50. The Committee took into account all of the evidence before it. It noted that Witness 1 could not advise whether the co-codamol taken from the Pharmacy prior to the installation of the new computer system, Columbus, around February/March 2020, had been taken by the Registrant, but Witness 1 considered it was "reasonable" to believe that the Registrant may have been involved in the removal of the medication as alleged. The Committee observed that Particular 2 was not specific in relation to the dates alleged other than to state that they range from January 2017 to September 2020. The Committee noted that the data collected by Witness 1 in relation to the Registrant's Columbus ID being used to manually order co-codamol continued only into June 2020. The approximate amounts of medication taken, and their value was reached by Witness 1 aggregating all of the unusual orders since November 2017. However, the Committee was of the view, having considered all of the evidence, including the Registrant's apparent admissions and uncertainty in relation to dates, that it could not conclude that it was more likely than not that the Registrant was responsible for the discrepancies from 2017 and therefore it could not conclude that he was responsible for the missing approximate quantity and value of the medication as set out in Particular 2. In coming to this conclusion, the Committee took into account that the Registrant's admissions and the context he provided for them, had consistently related to his having begun taking the medication in around February 2020. It did not appear from the evidence before the Committee that dates from 2017 had been put to him by his employer, nor that he had made admissions in relation to any time prior to February 2020.

51. Accordingly, the Committee found Particular 2 not proved.

Particular 3

3. Your actions at paragraphs 1 to 2 above were dishonest, in that you:

3.1. knew you did not have permission and/or consent of your employer

3.2. knew you needed a legally valid prescription in respect of co-codamol 30/500mg tablets.

52. The Committee took into account all of the evidence before it. It concluded, in relation to its findings of fact at Particular 1, that since the Registrant knew that he did not have permission nor a valid prescription to remove the medication, he must have known that he should not do so. He was, on the test set out in the case of Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67, dishonest when he took the co-codamol between February and March 2020, even if he intended, as he claimed, to return the medication at some date in the future.

53. This particular is found proved in relation to the facts alleged at Particular 1.

Impairment

54. Having found particular 1 proved, and particular 3 proved in that the Registrant was dishonest in relation to particular 1, the Committee went on to consider whether those facts amount to misconduct and, if so, whether the Registrant's fitness to practise is currently impaired by reason of his misconduct.

55. Article 54(1) of the Pharmacy Order 2010 provides:
"The Fitness to Practise Committee must determine whether or not the fitness to practise of the person in respect of whom the allegation is made (referred to in this article as "the person concerned") is impaired".

56. The Council's *Good decision making guidance March (2017)*. Paragraph 2.11 of 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…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."*

57. Misconduct is a "gateway" which may lead to a finding of current impairment. Article 51(1) of the Pharmacy Order 2010 provides that:

> *"A person's fitness to practise is to be regarded as "impaired" for the purposes of this Order only by reason of:*
> *(a) Misconduct*
> *(b) […etc]*

Submissions in relation to misconduct and impairment on behalf of the Council

58. Ms Khanna, on behalf of the Council, referred the Committee to the relevant case law and submitted that the Registrant's actions would amount to "*conduct which would be regarded as deplorable by fellow practitioners"* (**Meadow**). It could, she said properly be described as conduct that is morally blameworthy and that would convey a degree of opprobrium to the ordinary intelligent citizen (**Shaw**). The Registrant had breached Standards 6 and 8 of the *Council's Standards for Pharmacy professionals May 2017 ("the Standards")*; and by those breaches of the Standards, along with his dishonesty, the Registrant had breached fundamental principles of the pharmacy profession. Ms Khanna submitted that the Registrant's proven conduct fell far below the standards expected of Pharmacy professionals and amounts to misconduct.

59. In relation to current impairment, Ms Khanna submitted that the Registrant's conduct engaged Rule 5(2) (a) (b) (c) and (d), of the Rules, and that his fitness to practise is

currently impaired both on grounds of public protection and in the public interest. She submitted that patients coming to the pharmacy expecting to have prescriptions dispensed might suffer harm if the medication was not available, having been removed by the Registrant for his own use; and further that serious conduct of this type, from someone who is the gatekeeper of controlled drugs, which are prone to abuse if obtained unlawfully, will clearly bring the profession into disrepute. Ms Khanna submitted that the Registrant's admissions which could be said to be evidence of developing insight, were "wholly insufficient" in relation to the question of current impairment. The Registrant had provided no evidence of training or learning to suggest he had remediated or reflected on his dishonest conduct; and the personal mitigating factors he had outlined were of limited relevance at this stage. A finding of current impairment was necessary to uphold confidence in the Council as a Regulator and in the profession.

The Committee's Determination on Misconduct and Impairment

60. The Committee took into account the submissions on behalf of the Council and the relevant law and guidance. The Committee accepted the submissions of Ms Khanna in relation to the Council's Standards for Pharmacy Professionals (May 2017). It determined that there had been breaches of the following Standards:

I. **Standard 6: Pharmacy Professionals must behave in a professional manner:** This standard requires that pharmacy professionals are trustworthy and act with honesty and integrity. The Registrant knew full well that the medication he took was one which required a prescription. The Registrant demonstrated a complete lack of regard for the proper process for dispensing prescription only medication, by dispensing it to himself for personal use without a prescription. The Registrant's GP had made it clear to him that there was no prescription in place for at least a year. That did not deter the Registrant in taking the medications. Furthermore, he caused a loss to his employer, both financially and in terms of the medication as well.

II. **Standard 8**: **Pharmacy Professionals must speak up when they have concerns or when things go wrong.** This standard requires a Pharmacy professional to *"raise a concern, even when it is not easy to do so"*, "*to promptly tell their employer and all relevant authorities (including the GPhC) about concerns they may have"* and to be *"open and honest when things go wrong*". The Registrant has displayed a flagrant disregard for this Standard. The Registrant should have raised concerns about his working environment constructively and meaningfully. Instead, the Registrant remained silent until after his employers noted a stock loss of Co-codamol and raised the matter with him. The Registrant admitted to taking the medication without permission and with no prescription. The Registrant's conduct breached the principles enshrined in Standard 8.

61. 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). However, the Committee was of the view that the Registrant's proven conduct would have been considered deplorable by fellow practitioners: as gate-keeper of potentially harmful medication, he had dishonestly removed it for his own use without a valid prescription and did not admit to his wrongdoing until confronted by his employer. He had breached a number of fundamental tenets of his profession, the most basic of which is an expectation of honesty in relation to the responsibility to safeguard the use of medication. The Committee was in no doubt that his conduct was serious enough to amount to misconduct.

The Committee's Decision on Impairment

62. The Committee next went on to consider whether the Registrant's fitness to practise is currently impaired. Rule 5 of the Rules sets out the criteria which the Committee must consider when deciding, in the case of any Registrant, whether or not the requirements as to fitness to practise are met.

63. Rule 5(2) of the Rules states:

"In relation to evidence about the conduct or behaviour of the Registrant which might cast doubt on whether the requirement 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."

64. 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 doctor's fitness to practice is impaired that first his or her 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".*

65. Applying the considerations set out in the case of Cohen, the Committee was of the view that the facts found proved, particularly because they involve dishonesty, were not "easily remediable". The Registrant's principal job was to safeguard the unlawful dispensation of the very medication he stole for his own personal use. The discovery by Boots as to the stock loss of Co-codamol is the only reason the matter came to light. The Committee took into account that the Registrant admitted that he had been taking Co-codamol for his own use, and that what he was doing was wrong, and, one might say, resigned from his employment because he understood the seriousness of what he had done. However, it accepted the submissions of Ms Khanna to the effect that there is no evidence that the Registrant has understood the wider impact of his conduct, for example, on patients who trust pharmacy professionals to manage and appropriately dispense medication. There is no insight into the dishonest conduct beyond mere acceptance that the Registrant should not have done as he did. The Registrant's focus appears to be on the impact his conduct has had on him personally.

There is no evidence of remediation of his conduct before the Committee. In view of this, the Committee is concerned that there is a real risk of repetition of the same misconduct in the future.

66. The Committee next turned to consider whether any other sub-particulars of Rule 5(2) of the Rules are engaged by the Registrant's misconduct.

67. In relation to Rule 5(2)(a), the Committee bore in mind that Ms Khanna's submissions on behalf of the Council to the effect that the Registrant's conduct presented an actual or potential risk to patients or the public because he would have removed medication for his own use which would therefore not be available for patients if needed, and that therefore his fitness to practise ought to be found to be impaired on grounds of public protection. However, the Committee took into account that the data analysis and the oral evidence of Witness 1 suggested that the Registrant was making up the co-codamol he took by manually correcting stock counts and therefore arranging additional orders of the medication, to cover what he took: there was no evidence before the Committee that what he did in fact harmed or could potentially harm patients. The Committee concluded that Rule 5(2)(a) was not engaged by the facts which it had found proved.

68. In relation to Rule 5(2)(b), the Committee accepted the submissions on behalf of the Council and agreed that members of the Registrant's profession would consider his conduct to be deplorable, and that it would attract a degree of moral opprobrium. The Committee was satisfied that the Registrant's conduct in removing Co-codamol from his place of work for his own use without a valid prescription brought the profession of pharmacy technician into disrepute, and therefore Rule 5(2)(b) is engaged.

69. The Committee was also of the view that in breaching Standards 6 and 8, and by his dishonesty, the Registrant breached one or more fundamental principles of the profession and thus Rule 5(2)(c) is engaged. It noted in this context, and relied on, the case law which Ms Khanna had helpfully drawn to its attention.

70. Dishonesty has been held to constitute a breach of a fundamental tenet of the profession: *GMC v Igwilo [2017] EWHC 419 (Admin).* In terms of gravity, dishonesty has been considered to sit at the top end of the spectrum of the gravity of misconduct: *Patel v GMC Privy Council Appeal No.48 of 2002*.In the case of *GMC v Nwachuku [2017] EWHC 2085 (Admin),* Mrs Justice O'Farell reviewed the case law in the context of impairment in cases of dishonesty:

"45. Dishonesty encompasses a very wide range of different facts and circumstances. Any instance of it is likely to impair a professional person's fitness to practise: R (Hassan) v General Optical Council [2013] EWHC 1887 per Leggatt J at paragraph [39].
...
47. A finding of impairment does not necessarily follow upon a finding of dishonesty. If misconduct is established, the tribunal must consider as a separate and discrete exercise whether the practitioner's fitness to practise has been impaired: PSA v GMC and Uppal [2015] EWHC 1304 at paragraph [27].
48. However, it will be an unusual case where dishonesty is not found to impair fitness to practise: PSA v Health and Care Professions Council & Ghaffar [2014] EWHC 2723 per Carr J at paragraphs [45] and [46]."

71. Finally, in relation to Rule 5(2)(d) of the Rules, the Committee was also of the view, as submitted by Ms Khanna, that given its findings, and especially the lack of meaningful remediation from the Registrant, his integrity could no longer be relied on.

72. In relation to the public interest, the Committee bore in mind the well-known words of Mrs Justice Cox in the case of CHRE v NMC and Grant EWHC 927 (Admin) where 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.

73. The Committee considered a finding of impairment to be otherwise in the public interest in order to uphold standards and public confidence in the profession. The

conduct took place in the course of the Registrant's work and was in breach of the most basic of expectations of professional conduct for a person in his privileged position having access to medication which can be open to abuse and misuse if not supplied in accordance with valid prescription. He was well aware that was he was doing would be unacceptable to members of his profession and the public if they were to hear of it.

74. For all the reasons set out above, the Committee finds the Registrant's current fitness to practise to be impaired on grounds that such a finding is otherwise in the public interest, that is, in order to uphold proper professional standards and public confidence in the profession.

Sanction

75. Having found the Registrant's fitness to practice to be currently impaired, the Committee went on to consider the matter of sanction. The Committee's powers are set out in Article 54(2) of the Order. The Committee considered the available sanctions in ascending order from the least restrictive, taking no action, to the most restrictive, removal from the register, in order to identify the appropriate and proportionate sanction that meets the circumstances of this case.

76. The Committee was aware that 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 and uphold professional standards. The Committee is therefore entitled to give greater weight to the public interest over the Registrant's interests.

Submissions

77. Ms Khanna referred the Committee to the Council's skeleton argument, and to the Council's sanctions Guidance relating to dishonesty. She set out the aggravating and

mitigating factors on behalf of the Council and made submissions in relation to sanction based on the findings of fact by the Committee. She submitted that removal from the Register remained the appropriate and proportionate sanction even though the Committee had not found particular 2 proved. She reminded the Committee of the guidance in relation to findings which include dishonesty and submitted that even though there had not been a finding of impairment based on public protection, the Committee's findings were serious enough to warrant removal from the register.

78. Ms Khanna drew the Committee's attention to the case of R (on the application of Darren Williams) v Police Appeals *Tribunal [2016] EWHC 2708 (Admin),* which considered personal mitigation, finding that this is of secondary importance to the purpose of ensuring public confidence in a profession. Whilst the Registrant had referred to his health, which may introduce some personal mitigation, she submitted, whilst these matters may be considered relevant by the Committee, there is no meaningful evidence before the Committee from the Registrant about them. Ms Khanna submitted that any weight given to these matters should be limited, because of the need to protect and uphold the public interest.

79. If the Committee did not agree that removal was the appropriate sanction, Ms Khanna submitted, then a 12 month period of suspension from the register with a review before its expiry in which the Registrant would have an opportunity to attend and demonstrate remediation, might be appropriate.

Decision of the Committee in relation to Sanction

80. The Committee took into account the submissions made by Ms Khanna and had regard to the Council's *'Good decision making: Fitness to practise hearings and sanctions guidance (2017)'* ("the Sanctions Guidance"), to inform its decision.

81. The Committee first considered what, if any, aggravating and mitigating factors there may be.

82. The Committee identified the following aggravating and mitigating factors:

Aggravating factors:

- The Registrant's conduct took place in a Pharmacy where he had held a position of trust for a number of years;
- He was a store manager at the time of the medications were removed, i.e., in a position of responsibility;
- The Registrant did not disclose his conduct to his employer until the employer approached him.

Mitigating factors

- The Registrant made admissions to his employer in 2020
- The Registrant made admissions to the Council in 2020 and 2022
- There are no previous FTP matters recorded against the Registrant.

83. Take no Action: The Committee first considered where it would be appropriate to take no action, however it was of the view that this outcome would not be sufficient to reflect the seriousness of the Registrant's misconduct.

84. Warning: The Council's Sanctions Guidance states that a warning may be appropriate in circumstances where:
"There is a need to demonstrate to a registrant, and more widely to the profession and the public, that the conduct or behaviour fell below acceptable standards. There is no need to take action to restrict a registrant's right to practise, there is not continuing risk to patients or the public and when there needs to be a public acknowledgement that the conduct was unacceptable."

The Committee had found that there was a real risk of the Registrant repeating his misconduct, because it had not been provided with evidence of remediation to satisfy it that there was no longer such risk. It considered that a warning would not

sufficiently protect the public interest against the Registrant repeating his misconduct; and in any case a warning would not sufficiently mark the seriousness of his dishonest conduct.

85. Conditions of Practice. The Committee next considered whether to impose conditions of practice. A Conditions of Practice Order would allow the Registrant to practise albeit with restrictions. However, the Committee was not able to formulate conditions which would deal with the Registrant's misconduct which related to his responsibilities as gatekeeper of medicines and amounted to flagrant disregard for his fundamental duty to prevent their diversion from legitimate supply. Furthermore, the need to uphold the public interest was too serious to be dealt with by conditions.

86. Suspension Order. The Committee next considered whether suspension would be a proportionate sanction. The Committee noted the Council's Sanctions Guidance which 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 unbefitting a member of the pharmacy profession. Also, when public confidence in the profession demands no lesser sanction.*"

87. The Committee took into account paragraphs 6.8 and 6.9 of the Sanctions Guidance in relation to dishonesty, relevant parts of which are set out below:
" 6.8…The GPhC believes that dishonesty damages public confidence, and undermines the integrity of pharmacists…However, cases involving dishonesty can be complicated – committees should carefully consider the context and circumstances in which the dishonesty took place. Therefore, although serious, there is not a presumption of removal in all cases involving dishonesty…
6.9 Some acts of dishonesty are so serious that the committee should consider removal as the only proportionate and appropriate sanction. This includes allegations

that involve intentionally defrauding the NHS or an employer, falsifying patient records, or dishonesty in clinical drug trials."

88. The Registrant had maintained limited engagement with the Regulator, however, his account of events and the personal circumstances which led to his misconduct, had remained consistent since 2020 when he attended his employer's investigatory interview. The Committee took into account Ms Khanna's submissions to the effect that it ought to view with circumspection any apparent personal mitigation, given its responsibility to ensure that that the public interest is protected, however it considered that the overall seriousness of the Registrant's proved misconduct could only properly be assessed if considered in light of all the relevant circumstances prevailing at the time.

89. The Committee took into account the following factors. The Registrant had been employed in the same pharmacy for very many years, with no previous issues raised about his fitness to practise. It appeared that his misconduct coincided with the extreme situation created at the start of the global Covid-19 pandemic, when, as he stated in his response to the Council, and as the Committee well recalls, it had become very difficult for the public to maintain contact with health advisers and doctors; and the Committee accepted that the Registrant, himself working as a front line health professional, would have suffered particular stress at the time. He would, as he stated, given his own professional responsibilities during the pandemic, have found it particularly difficult to find time to attend his own GP's surgery.

90. The Committee carefully weighed the seriousness of the Registrant's proven dishonesty with the mitigating factors in this case, as set out above. Whilst his dishonesty was serious and would have led to the NHS and his employer being out of pocket, the Committee appreciated that it did not appear that his primary intention had been to defraud the NHS or his employer, and his proven conduct did not extend over a lengthy period of time. It appeared that he had begun taking the medication

which had earlier been prescribed to him, and, according to his evidence, it was to deal with the effects of a serious health condition.

91. The Committee considered it regrettable that it had not been presented with any evidence of the Registrant's reflections on his conduct or other remediation, for example by way of training, or a reflective document outlining his understanding of what went wrong and the effect his conduct would have had on the public's confidence in his profession and on professional standards, and he had therefore not yet remediated it. Nevertheless, taking all of the evidence into consideration, the Committee was of the view that his misconduct, though difficult to remediate, was in principle remediable.

92. The Committee is satisfied that a period of suspension will enable the Registrant to reflect on his conduct and undertake remediation work. It decided that suspension for a period of 12 months will properly and sufficiently mark the seriousness of his misconduct, maintain confidence in the profession and uphold professional standards.

93. Removal. Having concluded that a period of suspension would satisfactorily deal with the issues of public interest which it has identified, the Committee considered whether removal was in fact more appropriate. The Committee took into account that removal is to be reserved for the most serious failings. It was satisfied that, when all the facts of this case are properly weighed against the Registrant's right to practise in his chosen profession and the public need for a pharmacy technician who otherwise can boast a long and unblemished career, removal would be disproportionately punitive at this stage.

94. The Committee therefore directs that the entry in the Register of Mr Jason Davis (Registration number: 5010814), be suspended for a period of 12 months.

95. This is a case in which the Committee considers that a review before the expiry of the suspension is appropriate, at which point the Registrant will be able to demonstrate

to a reviewing committee that he has properly remediated his conduct so as to satisfy the public interest.

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

i) The Registrant's attendance at the review hearing;
ii) Evidence of CPD undertaken during the period of suspension to maintain his skills;
iii) A reflective document demonstrating that he fully appreciates the seriousness of his conduct and its effect on the public interest;
iv) Any independent medical evidence;
v) Any other documentation the Registrant considers will be helpful at that stage, for example testimonials in relation to his character or to paid or unpaid work.

Decision on interim measure

97. Ms Khanna, for the Council, made an application for an interim measure of suspension to be imposed on the Registrant's registration, to take effect from today's date, pursuant to Article 60 of the Pharmacy Order 2010, pending the coming into force of the Committee's substantive order. She submitted that in a case of dishonesty such as this case it is sensible for the Committee to consider imposing an interim measure to cover the appeal period because the Registrant's conduct directly impacted upon the confidence of the public. She submitted that an interim measure would be consistent with the substantive order imposed by the Committee.

98. The Committee carefully considered Ms Khanna's application. It took account of the fact that its decision to order a 12-month 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.

99. The Committee has found that there remains a risk that the Registrant might repeat his conduct of taking Co-codamol from work without a valid prescription, if permitted to return to work unrestricted. It accepts the submissions of Ms Khanna that his conduct would have had an impact on public confidence, and it was satisfied that it was necessary for an interim measure to be put in place to safeguard the public interest during the appeal period.

100. The Committee is satisfied that it is therefore appropriate for an interim measure to be in place prior to the taking effect of the substantive order.

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