

General Pharmaceutical Council

Fitness to Practise Committee

Review Hearing

Remote videolink hearing

Thursday 15 February 2024

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| Registrant name: | Dilip Dewa Modhvadia |
| Registration number: | 2050606 |
| Part of the register: | Pharmacist |
| Type of Case: | Misconduct |
| Committee Members: | Claire Bonnet (Chair) Sam Stephenson (Registrant member) Michael Glickman (Lay member) |
| Legal Adviser: | Neville Sorab |
| Committee Secretary: | Adam Hern |
| Registrant: | Present and represented by Paul Summerfield of Pharmaceutical Defence |
| General Pharmaceutical Council: | Represented by Lara Oseni, Case Presenter |
| Order being reviewed: | Suspension (4 months) |
| Fitness to practise: | Not impaired |
| Outcome: | Current order to lapse upon expiry (6 March 2024) |

Particulars of Allegation found proved at the Principal Hearing

You, a registered pharmacist: (2050606)

1. At all material times you worked as a locum pharmacist at the Rowlands Pharmacy (“the Pharmacy”). [ADMITTED]

2. You ordered medication using the Pharmacy’s PMR system:

2.1. On one or more occasions on a date or dates unknown; and/or [ADMITTED]

2.2. On or around 3 August 2019 Pradaxa x 10. [ADMITTED]

3. You took the following stock from the Pharmacy:

3.1. On or around 25 July 2019 Prograf 1mg; and/or [ADMITTED]

3.2. On or around 25 July 2019 Macrobid 1 x 100mg; and/or [ADMITTED]

3.3. On or around 25 July 2019 Januvia 1 x 25mg; and/or [ADMITTED]

3.4. On or around 25 July 2019 Metformin 150 ml 500mg/5ml; and/or [ADMITTED]

3.5. On or around 31 July 2019 Otomize ear spray; and/or [ADMITTED]

3.6. On or around 31 July 2019 Prograf 1 x 50 5mg; and/or [ADMITTED]

3.7. [WITHDRAWN]

4. Your actions at 2 and/or 3 above were inappropriate in that:

4.1. [WITHDRAWN]

4.2. There was no, or no adequate, audit trail; and/or [ADMITTED]

4.3. The medication was for use outside of the Pharmacy; and/or [ADMITTED]

4.4. You did not pay for the medication. [ADMITTED]

5. Whilst working as a locum at the Pharmacy you provided private prescriptions to patients including:

5.1. On or around 6 September 2019 15 Amoxicillin 500mg capsules to Patient A; and/or [ADMITTED]

5.2. On or around 13 July 2019 to Patient B: and/or

5.2.1.1. 2 Amlodipine 5mg tablets; and/or [ADMITTED]

5.2.1.2. 2 Atenolol 100 mg tablets; and/or [ADMITTED]

5.2.1.3. 2 Ramipril 10 mg capsules. [ADMITTED]

5.3. On or around 27 July 2019 a Ventolin 100micrograms/dose Evohaler to Patient C; and/or [ADMITTED]

5.4. On or around 6 September 2019 28 Valsartan 80mg to Patient D. [ADMITTED]

6. Your actions at 5 above were inappropriate in that:

6.1. You did not have permission from Rowlands Pharmacy Group to issue private prescriptions whilst working as a locum at the Pharmacy; and/or [ADMITTED]

6.2. You did not have indemnity insurance in place in respect of the issuing of private prescriptions whilst working as a locum at the Pharmacy; and/or [ADMITTED]

6.3. In relation to your conduct at 5.2 and/or 5.3 and/or 5.4 you did not supply the medications concerned under the emergency supply process. [ADMITTED]

7. In relation to the private prescriptions issued referred to at 6 above and/or one or more others you charged the patient a fee payable to you. [ADMITTED]

8. Your conduct at 7 above was inappropriate in that you did not have permission from Rowlands Pharmacy Group to charge a fee payable to you whilst working as a locum in the Pharmacy. [ADMITTED]

9. Your conduct in relation to 6.3 and 7 above was dishonest in that you knew that medications could have been supplied under the emergency supply process and in charging for a private prescription sought to make a financial gain for yourself at the patients' expense. [ADMITTED]

As a result of the matters set out above your fitness to practise is impaired by reason of your misconduct.

Documentation

Exhibit 1 – GPhC skeleton argument dated 31 January 2024

Exhibit 2 – GPhC hearing bundle

Exhibit 3 – Registrant's bundle

Exhibit 4 – Registrant's further testimonials

Introduction

1. This is the written determination of the Fitness to Practise Committee at the General Pharmaceutical Council (“the Council”).
2. The hearing is governed by *The Pharmacy Order 2010* (“the Order”) and *The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010* (“the Rules”).
3. The statutory overarching objectives for these regulatory proceedings are:
 - a. To protect, promote and maintain the health, safety and well-being of the public;
 - b. To promote and maintain public confidence in the professions regulated by the Council; and
 - c. To promote and maintain proper professional standards and conduct for members of those professions.
4. The Committee also has regard to the guidance contained in the Council’s *Good decision making: Fitness to practise hearings and sanction guidance* as revised March 2017.
5. At a Review Hearing the Committee must decide whether the registrant’s fitness to practise remains currently impaired and, if so, what should be the appropriate outcome. If the Committee find that the Registrant’s fitness to practise is no longer impaired the current order will lapse on expiry.

Service of Notice of Hearing

6. The Committee has seen a letter dated 12 December 2023 from the Council headed “Notice of Review Hearing” addressed to the Registrant. The Committee was satisfied that there had been good service of the Notice in accordance with Rules 3 and 16.

Application for the hearing to be held in Private

7. The Committee heard an application from the Registrant’s representative under Rule 39(3) to hold parts of the hearing in private in anticipation of references to health matters.
8. The Case Presenter agreed with the application.
9. The Committee accepted the advice of the Legal Adviser.
10. The Committee decided to hold certain parts of the hearing in private if there were references to health matters.

Application to admit further evidence

11. The Registrant's representative made an application under Rule 18(5) to admit two testimonials into evidence. The last testimonial was received by the Registrant yesterday and the Registrant did not want to give evidence to the Committee in piecemeal fashion.
12. The Case Presenter did not oppose the application.
13. The Committee accepted the advice of the Legal Adviser.
14. The Committee decided to admit the further documents into evidence. The Registrant cannot control the actions of third parties. Therefore, the delay was unavoidable and there was no delay on the part of the Registrant. The Committee decided that there were exceptional circumstances to admit the two testimonials into evidence, and that this evidence is relevant and fair.

Background and Context

15. On 9 August 2019 a member of the Superintendents Team at the Rowlands Pharmacy Group ("Rowlands") received notification of concerns about the Registrant who worked as a locum pharmacist for Rowlands at their pharmacy in Feltham ("the Pharmacy"). It was stated that the Registrant ordered a lot of stock into the Pharmacy, that the Registrant owned his own pharmacy and that the Registrant would take stock from the Pharmacy, saying he would bring it back. The caller was concerned the Registrant was taking stock for use in his own pharmacy. The caller did not know whether the stock was returned but raised concerns that the process had not been documented appropriately.
16. MSK, Quality and Clinical Governance Manager within the Superintendent's Team at Rowlands initiated an investigation. MSK was concerned that Rowlands did not have a wholesaler licence permitting the supply or sale of stock for distribution to other pharmacies. There was a Standard Operating Procedure ("SOP") in place for situations where there was an emergency and it was necessary to supply to a patient through another pharmacy. An audit trail would be available in such circumstances. It was alleged that no such trail existed in relation to the Registrant's alleged activities in ordering and transferring stock out of the Pharmacy.
17. It also appeared there had been no payment for the medication taken from Rowlands Pharmacy.
18. In the course of the investigation, the Registrant said he had replaced some of the stock he had taken from the Pharmacy but MSK was concerned this gave rise to further risks, primarily in respect of patient safety: Rowlands could not be sure of the source of the medication brought into the Pharmacy by the Registrant and whether it had been appropriately checked and vetted prior to entering Rowlands' supply chain.

19. A further concern arose in September 2019 when the Pharmacy Manager, HS, notified the finance team of a cash shortage in the till. HS gave the reason for the shortage: the Registrant had been conducting private consultations and charging patients for these consultations on Saturdays; on some occasions the patients would pay for the consultations by card and the Registrant would remove the cash from the till. HS stated that, as the Registrant was an independent prescriber, when the Registrant was unable to provide over the counter medications to patients, he would conduct a private clinic and treat patients as his own private patients. HS reported that the Registrant would charge each patient £20 for the consultation and would keep the money for himself. The Registrant then self-dispensed the medications.
20. According to Rowlands the Registrant's alleged prescribing and dispensing activities were not authorised; it was not considered appropriate for the Registrant to provide an independent prescribing service to customers. Nor had the Registrant's private charges been authorised by Rowlands. Appropriate SOPs and insurance were not in place for such a service to customers. Furthermore, Rowlands was concerned that some of the medication prescribed by the Registrant was available over the counter without prescription (e.g. Hydrocortisone).
21. The Pharmacy was visited in the course of Rowlands' investigation. The regional leader for Rowlands, TM, a registered pharmacist, had conversations with HS and the Registrant. The Registrant is said to have admitted that he would order drugs for his own pharmacy through Rowlands PMR system and the Registrant disclosed a handwritten record of various specific drugs ordered and/or taken by the Registrant. TM noted that the list was placed on the wall in front of HS's checking area at the Pharmacy. The list was headed words to the effect: "Dilip owes".
22. The Registrant told TM that he ordered drugs when he was on locum shift as Responsible Pharmacist ("RP") and collected them from the Pharmacy on one of his days off when HS was on shift as the RP. He claimed that HS would provide him with the drugs he had previously ordered. The Registrant reported that he had not paid for any of the medication he had taken or ordered from the Pharmacy.
23. During the course of this visit the Registrant admitted to TM that he had issued private prescriptions and charged patients for the consultation; he was not aware the Pharmacy did not permit him to prescribe private prescriptions independently; he said that HS had been aware of his doing so. TM was provided by the Registrant with two prescriptions which he had issued privately; TM also located two further such prescriptions. On the date of this visit, none of these prescriptions had been noted in the private prescription book on the Pharmacy premises.
24. On 14 September 2019 TM spoke to the Registrant about patients being charged for emergency medication supplies. The Registrant admitted charging patients for private prescriptions. The practice at Rowlands was that the patient was only charged for the cost of the medication required, and not for the supply. However, the Registrant admitted charging patients £10 for emergency supplies on top of the Rowlands

pharmacy charge. The Registrant admitted he took the £10 personally and justified this as a fee for writing the patients a private prescription (as opposed to making an emergency supply).

Hearing history

- Principal Hearing (4-5 October 2023) – Suspension (4 months)
 - The current suspension order is due to expire on 6 March 2024
25. The Committee at the last hearing determined that the Registrant’s misconduct meant he was impaired on public protection and public interest grounds. In finding the Registrant impaired, that Committee referred to the Registrant’s:
- Lack of/insufficient insight
 - Lack of remediation
26. In particular, the Committee at the last hearing found: *“without evidence of the Registrant having reflected on and identified the trigger/s for his poor judgment the Committee is unable to conclude that he has demonstrated full remediation or full insight such that the dishonest conduct is highly unlikely to occur again.”*
27. The Committee at the last hearing determined the following with regard to sanction:
- “62. The Committee identified some aggravating factors, including:*
- a. The misconduct occurred in the course of the Registrant’s pharmacy practice. It constituted an abuse of trust between pharmacist and employer.*
 - b. There was a degree of repetition insofar as the requisitions and issue of private prescriptions were concerned albeit over a relatively short period.*
 - c. The Registrant put his own interests before those of his patients and colleagues.*
 - d. There were multiple breaches of professional standards.*
 - e. The Registrant acted for personal financial gain, albeit involving small sums.*
 - f. The Registrant did not stop the misconduct voluntarily. It might have continued unchecked had his actions not been reported by a junior colleague.*

63. The Committee identified some mitigating features including:

- a. The Registrant made early admissions to his employer, the Council and this Committee. He has been open and honest with the Committee.*
- b. He has apologised to all concerned. He has shown remorse and contrition.*
- c. He has demonstrated good, but insufficient, insight in relation to his dishonesty and full insight in relation to the professional practice issues.*
- d. The misconduct occurred over a relatively short period and on a limited number of occasions.*
- e. The Registrant has no adverse regulatory history over a long career of about 24 years. He is a man of otherwise good character. There are no subsequent fitness to practise concerns in the four years since the misconduct.*
- f. There is no evidence of actual harm to patients (other than to their financial wellbeing).*
- g. There are various positive informed testimonials and references. h. The personal financial gain involved small sums*

[...]

66. The Committee also considered the following factors to be relevant. The professional practice concerns are unlikely to be repeated. The Registrant's dishonest conduct was at the lower end of the spectrum of dishonesty and, somewhat unusually, occurred in plain sight of colleagues; it was not clandestine. It was opportunistic rather than calculated although it occurred in the course of a series of events: consultation with patients, issue of prescriptions and charging for those prescriptions. The Committee acknowledges the Registrant has reflected on his misconduct but the Committee remains concerned about the extent of the Registrant's insight, as set out above.

[...]

70. The Committee finds that conditions would be sufficient to address the risks arising from the Registrant's poor pharmacy practice. For the reasons set out at the impairment stage the Registrant has sufficient insight now to recognise that adherence to SOPs and other guidance is essential to safe pharmacy practice. The Committee is in no doubt he would check and adhere to SOPs as a matter of routine in the future. 71. However, it is generally considered that the imposition of conditions is not appropriate where the risks arise from a Registrant's attitude of mind. This is such a case. As has been set out earlier, he exercised poor judgment in 2019 yet did not appear to appreciate what he was doing. To his credit he now does. The Committee's

outstanding concern is that he has not sufficiently demonstrated that he understands why he acted dishonestly. He has identified his actions as opportunistic but the trigger for that opportunism is not clear either to the Registrant or this Committee. The Registrant has engaged in self-reflection but has not fully addressed the reasons for his dishonesty. Until he does so his insight and remediation of his dishonest conduct is not yet complete.

[...]

73. The Committee is confident the Registrant would comply with conditions; he has been diligent in gathering evidence to demonstrate insight and remediation. He has made early admissions and has complied with these proceedings. It would be possible to impose conditions relating to the Registrant's previous poor pharmacy practice, namely his adherence to SOPs. These would be measurable and capable of being monitored. However, measurable conditions are not capable of being imposed to address the risks arising from the Registrant's attitude of mind and history of dishonesty. The Committee agrees with the parties that conditions would not be appropriate in this case. In any event, conditions would not be sufficient to address the wider public interest: upholding public confidence in the profession and the maintenance of professional standards. An informed member of the public would expect a more onerous sanction even in circumstances where the dishonesty was at the lower end of the spectrum. This is because it occurred in pharmacy practice and had a detrimental impact on patients.

[...]

78. The Committee has decided the appropriate and proportionate sanction is one of suspension for four months. It considers this a significant period of suspension which is appropriate and proportionate given the context of the Registrant's misconduct and the need to mark the public interest, including protecting the public, maintaining public confidence in the profession and maintaining proper standards of behaviour. It will give the Registrant time to reflect further on his dishonesty and its context, together with this Committee's determination. He can then decide on how he intends to remediate his dishonesty fully and to avoid any further breach of the standards required of him.

[...]

81. The Committee agrees with the parties that removal is not the appropriate or proportionate sanction in this case: the Registrant's dishonesty, being at the lower end of the spectrum, is not fundamentally incompatible with his registration as a pharmacist."

28. The committee at the last hearing suggested that today's Committee may be assisted by:

- a. *“Further self-reflection to include his understanding of why he acted dishonestly and any steps he has taken and will take in the future to ensure it is not repeated.”*
- b. *“A statement of his learning and reflections on the probity and ethics training he received in September 2023, with particular application to his own dishonest conduct.”*

Summary of the evidence

29. The Registrant gave the following evidence under affirmation:

- a. Following the Principal Hearing, it became very clear to the Registrant that he had monetised his qualification as a prescriber for his own financial gain and that he had not put the patient first. The stark realisation of this troubled the Registrant and so he began to write reflective accounts so that he could gain a deeper understanding of why he acted the way he did.
- b. During the time from the hearing to the suspension order coming into effect, the Registrant completely stepped back from all of his roles and hired a Superintendent Pharmacist for his own pharmacy company. He also resigned as a director of the company in order to embark upon a period of introspection and further learning which would allow him to have a total understanding of how both internal and external stressors can affect him.
- c. [PRIVATE]
- d. The Registrant has also kept up to date with his CPD and revalidation.
- e. The Registrant has undertaken shadowing of a prescribing pharmacist at a local surgery so that he can observe them and then reflect on their practice and how that can benefit the patients whom the Registrant comes into contact with as a pharmacist and also as a prescriber.
- f. The Registrant has revisited and will continue to revisit the Royal Pharmaceutical Society and the General Pharmaceutical Council prescribing frameworks so that he will always place the patient front and foremost in any actions that he undertakes as a pharmacist and / or a pharmacist independent prescriber.
- g. The Registrant is looking to expand his skillset in travel medicine by reading for the Diploma in Travel Medicine at Glasgow University.
- h. The Registrant is truly sorry for his actions and accepts that what he did was totally unacceptable and brought the profession into disrepute. He sets out that he should never have allowed his own financial needs to take precedence over the needs of patients. He assured the Committee, the General Pharmaceutical Council, his fellow registrants and the public that he has learned from this and will never allow it to be repeated.

Submissions

30. On behalf of the General Pharmaceutical Council, Ms Oseni submitted:
 - a. The Registrant has complied with the suspension.
 - b. The Registrant's testimony and evidence produced shows that he is no longer impaired.
31. On behalf of the Registrant, Mr Summerfield submitted:
 - a. During the last 4 or so months, the Registrant has engaged in extensive reflection over his misconduct and has engaged with other individuals to discuss the matters which led him to appear in front of a fitness to practise panel. The reflections that the Registrant has completed show a deep level of understanding of his role and responsibilities as a pharmacist independent prescriber. He does not hide from his misconduct. He is the author of his own misfortune.
 - b. Further, the Registrant has undertaken revalidation.
 - c. The Registrant has taken the opportunity to further develop as a pharmacist and prescriber by shadowing a fellow pharmacist who works within General Practice.
 - d. Pulling all of these strands together, the Registrant has developed genuine and full insight into why he acted the way he did when at Rowlands Pharmacy and, more importantly, is able to recognise his own flaws. Through reflection and a mixture of structured and unstructured learning, he has been able to self-appraise, self-criticise and form robust action plans to ensure that he does not find himself in the situation which brought him to the attention of the Council. He can assure this Committee, his fellow registrants and the public that he will never act in such a manner again.
 - e. The Registrant is a fit and proper person to return to unrestricted practice and that due to his extensive work during the period of suspension his fitness to practise is no longer impaired. It is further submitted that both the profession and public would be well served by allowing a passionate and competent practitioner to return to practice.

Decision on Impairment

32. The Committee considered whether the Registrant's fitness to practise remains impaired. The Committee has taken into account all of the documentation before it and submissions on behalf of the Council, and on behalf on the Registrant. The Committee heard oral evidence from the Registrant.
33. The Committee recognised and applied the following guidance in *Abrahaem v GMC [2008] EWHC 183*:

“...the review has to consider whether all the concerns raised in the original finding of impairment through misconduct have been sufficiently addressed to the Panel's satisfaction. In practical terms there is a persuasive burden on the practitioner at a review to demonstrate that he or she has fully acknowledged why past professional performance was deficient and through insight, application, education, supervision or other achievement sufficiently addressed the past impairments.”

34. The Committee accepted the advice of the Legal Adviser.
35. The Committee found the Registrant's current fitness to practise to no longer be impaired for the following reasons:
 - a. The Registrant had developed sufficient insight so that there is no longer a risk to the public should he return to practice unrestricted. The Registrant has gained sufficient insight through being open and honest about his misconduct; addressing his misconduct through reflection, understanding and engagement with other pharmacy professionals; and becoming aware of the effect of his conduct on patients, the profession, and the wider public.
 - b. The Registrant has sufficiently remediated his practice by:
 - i. Understanding that he did not put patients first;
 - ii. Understanding the circumstances in which his practice may become monetised;
 - iii. Finding ways in which to manage his stress levels (such as speaking to colleagues or a counsellor, and reducing his workload);
 - iv. Ensuring that his practice is appropriately indemnified;
 - v. Following relevant Standard Operating Procedures and Royal Pharmaceutical Society Guidelines; and
 - vi. Becoming able to self-reflect and self-analyse.
 - c. The Registrant's insight and remediation is supported by evidence of work carried out during his suspension period, including shadowing a prescribing pharmacist at a GP surgery, writing a number of reflective pieces, keeping up to date with CPD, and revalidation. He also continued to undertake counselling. He also provided a number of positive testimonials.
 - d. Consequently, although the Registrant brought the pharmaceutical profession into disrepute in the past, he is unlikely to do so in the future. Although he has in the past breached a fundamental tenet of the pharmaceutical profession, he is unlikely to do so in the future. Although he has acted dishonestly in the past, he is unlikely to act dishonestly in the future.

- e. The Committee considers that the public interest in marking the severity of the misconduct has been served by the four-month suspension and that it is now in the wider public interest to allow an experienced pharmacist to return to unrestricted practice.
- 36. The Committee therefore finds the Registrant's current fitness to practise to no longer be impaired on public protection or public interest grounds.
- 37. As the Committee has found that the Registrant's fitness to practise is no longer impaired, the current suspension will lapse on expiry, namely 6 March 2024.
- 38. This concludes the determination.