

**General Pharmaceutical Council**

**Fitness to Practise Committee**

**Principal Review Hearing**

**Remote videolink hearing**

**29 February 2024**

**Registrant name:** Nital Chandrakant Bhailalbhai Patel

**Registration number:** 2036409

**Part of the register:** Pharmacist

**Type of Case:** Misconduct

  

**Committee Members:** Sarah Hamilton (Chair)  
Pat North (Registrant member)  
Carolyn Tetlow (Lay member)

  

**Secretary:** Chelsea Smith

**Registrant:** Present and not represented

**General Pharmaceutical Council:** Represented by Gareth Thomas, Case Presenter

  

**Order being reviewed:** Suspension (nine months)

**Fitness to practise:** Impaired

**Outcome:** Indefinite suspension

## DETERMINATION

1. This is a Principal Review Hearing in respect of Mr Nital Chandrakant Bhailalbhai Patel (“the Registrant”), a pharmacist first registered with the Royal Pharmaceutical Society of Great Britain on 7 August 1989, and whose registration transferred to the General Pharmaceutical Council (‘the Council’) with registration number 2036409.
2. At the Principal Hearing which finished on 21 October 2020, a Conditions of Practice Order was imposed on the Registrant for a period of 12 months. A Principal Review hearing took place on 12 November 2021 when the Registrant’s fitness to practise was still judged to be impaired, and the Committee imposed a Suspension Order for nine months. This has been reviewed on two further occasions, and each time a further Suspension Order has been imposed for a period of nine months. The Committee is here today to carry out a further review.
3. The Registrant is present at this hearing and is not represented. The Council is represented by Mr Thomas. The Committee has received and read a bundle of documents submitted by the Council running to 405 pages, and its statement of case and skeleton argument. The Registrant has not provided any documents for this hearing. During the hearing the Committee also received copies of slides from the leadership training undertaken by the Registrant in May 2022 which had been omitted from the Council’s bundle. The Committee heard oral submissions from Mr Thomas and the Registrant.

### Background

4. The background to this case is helpfully set out in the Council’s skeleton argument. Particulars of Allegation (as amended) which were found proved at the Principal Hearing were as follows:

*“THE ALLEGATION AS AMENDED*

*“You, a registered Pharmacist, being the Superintendent Pharmacist for Targett Chemist, 172, Halfway Street, Sidcup (“the Pharmacy”):*

*1. On 13 February 2018, in the course of an inspection of the Pharmacy, failed to produce, when requested to do so by the General Pharmaceutical Council's ("the Council's") Inspector:*

*1.1. the Private Prescription record for the Pharmacy;*

*1.2. the Emergency Supply record for the Pharmacy;*

*1.3. the current CD registers for the Pharmacy.*

*2. On 13 February 2018 you informed the Council's Inspector that the following Pharmacy records were being kept at your home:*

*2.1. the Private Prescription record for the Pharmacy;*

*2.2. the Emergency Supply record for the Pharmacy;*

*2.3. the current CD registers for the Pharmacy.*

*3. On 13 February 2018 you informed the Council's Inspector that the current CD registers for the Pharmacy were not up to date.*

*4. Following the inspection of the Pharmacy on 13 February 2018 you completed an improvement action plan in which you undertook, by the end of February 2018, to ensure that:*

*4.1. the Private Prescription record for the Pharmacy was up to date;*

*4.2. the CD registers for the Pharmacy were up to date.*

*5. On 6 June 2018, in the course of an inspection of the Pharmacy, you failed to produce, when requested to do so by the Council's Inspector:*

*5.1. the Private Prescription record for the Pharmacy;*

*5.2. the Emergency Supply record for the Pharmacy;*

5.3. *the current CD registers for the Pharmacy;*

5.4. *the Pharmacy's standard operating procedures ("SOPs").*

6. *On 6 June 2018 you informed the Council's Inspector that the following Pharmacy Records were being kept at your home:*

6.1 *the current CD registers for the Pharmacy;*

6.2 *the Private Prescription record for the Pharmacy;*

6.3 *the Emergency Supply record for the Pharmacy.*

7. *On 6 June 2018 you informed the Council's Inspector that the following Pharmacy Records were not up to date:*

7.1 *the current CD registers for the Pharmacy relating to MST, Zomorph, Fentanyl and Concerta;*

7.2 *the Private Prescription record for the Pharmacy;*

7.3 *the Emergency Supply record for the Pharmacy.*

8. *On 17 July 2018, in the course of an inspection of the Pharmacy, you failed to produce, when requested to do so by the Council's Inspector the Pharmacy's SOPs.*

9. *[deleted]*

10. *On 17 July 2018 the Council's Inspector identified the following errors in the Pharmacy's CD registers:*

10.1 *the last entry made in the CD register for MST 10mg tablets was dated 27 February 2018. The Patient Medical Record showed that MST 10mg tablets were dispensed on 17 separate occasions between 27 February 2018 and 17 July 2018;*

*10.2 the last entry made in the CD register for Sevredol 10mg was dated 26 April 2018. The Patient Medical Record showed that Sevredol 10mg tablets were dispensed on 29 May and 2 July 2018.*

*11. On 5 September 2018 you informed the Council's Inspector that the current CD registers for the Pharmacy were not up to date.*

*12. On 5 September 2018, a pack of nine morphine sulfate 10mg/1ml vials (a Schedule 2 Controlled Drug) was found in the Consultation Room of the Pharmacy.*

*13. On 5 September 2018, in the course of an inspection of the Pharmacy, you failed to produce, when requested to do so by the Council's Inspector, the CD register for morphine sulfate 10mg/1ml vials.*

*14. On 5 September 2018, in the course of an inspection of the Pharmacy, you informed the Council's Inspector that the CD register for morphine sulfate 10mg/1ml vials was being kept at your home.*

*15. On 5 September 2018 the Council's Inspector identified the following errors in the Pharmacy's CD registers:*

*15.1 the last entry made in the CD register for MST 10mg tablets was dated 27 February 2018. Invoices showed that orders of MST 10mg tablets had been made for delivery to the Pharmacy on 5 July 2018, 24 July 2018 and 22 August 2018 but none of these deliveries had been recorded in the CD register for MST 10mg tablets;*

*15.2 there was a discrepancy between the running balance recorded in the CD Register for MST 30mg tablets (180 tablets) and the number of MST 30mg tablets stored in the Pharmacy's CD cabinet (120 tablets);*

*15.3 the last entry in the CD register for Equasym XL 20mg tablets was dated 4 June*

*2018. The Patient Medical Record showed that Equasym XL 20mg tablets had been dispensed on five occasions after 4 June 2018, but none of these five instances of Equasym XL 20 mg tablets being dispensed had been recorded in the CD register;*

*15.4 invoices showed that orders of Equasym XL 20 mg tablets had been made for delivery to the Pharmacy on 9 June 2018, 7 July 2018 and 31 July 2018, but none of these deliveries had been recorded in the CD register for Equasym XL 20mg tablets;*

*15.5 there were two open CD registers for Zomorph 10mg capsules.*

*16. On 5 September 2018:*

*16.1 [deleted]*

*16.2 the Emergency Supply records provided by you to the Council's Inspector did not record the nature of the emergency that gave rise to the emergency supply.*

*17. On 9 October 2019, in the course of an inspection of the Pharmacy, you failed to produce, when requested to do so by the Council's Inspector:*

*17.1. the Private Prescription record for the Pharmacy;*

*17.2. the Emergency Supply record for the Pharmacy;*

*17.3. the CD registers for the Pharmacy.*

*18. On 9 October 2019 you informed the Council's Inspector that the following Pharmacy Records were being kept at your home:*

*18.1. the Private Prescription record for the Pharmacy;*

*18.2. the Emergency Supply record for the Pharmacy;*

*18.3. the CD registers for the Pharmacy.*

*19. On 9 October 2019, in the course of an inspection of the Pharmacy, you informed the Council's Inspector that the following Pharmacy records were not up to date:*

*19.1. the Private Prescription record for the Pharmacy;*

*19.2. the Emergency Supply record for the Pharmacy;*

*19.3. the CD registers for the Pharmacy.*

*20. On 4 December 2019, in the course of an inspection of the Pharmacy, you failed to produce, when requested to do so by the Council's Inspector, the CD registers for the Pharmacy.*

*21. On 4 December 2019, in the course of an inspection of the Pharmacy, you informed the Council's Inspector that the CD registers for the Pharmacy were not up to date.*

*22. By keeping Pharmacy Records at your home as alleged in paragraphs 2, 6, 14 and 18 above, you risked breaching patient confidentiality.*

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

5. The Particulars of Allegation which were found proved can be summarised as follows:

- The Registrant (repeatedly) failed to produce records including Controlled Drugs ("CD") registers to the Council's inspectors during an inspection;
- Pharmacy records were (repeatedly) being kept at the Registrant's home and were in some cases (e.g. CD registers) not up to date;
- Errors were identified in the Pharmacy's CD registers – including missing entries;
- On one occasion, a schedule 2 CD was not being kept securely;

- Errors were identified in the Pharmacy's CD registers – including discrepancies between the running balance and drugs stored in the CD cabinet, deliveries not being recorded in the CD register, and there being two open CD registers;
  - There were deficiencies in the emergency supply records; and
  - By keeping Pharmacy records at home, the Registrant risked breaching patient confidentiality.
6. By way of background, on 13 February 2018 the Council's inspector carried out a routine inspection at the Pharmacy, which is owned by the Registrant. On this occasion, the Registrant did not produce the Private Prescription record, the Emergency Supply record, or the CD registers for the Pharmacy. He informed the Council's inspector that those records were being kept at his home and that the CD registers for the Pharmacy were not up to date. Following the inspection, the Registrant was required to implement an action plan. He was to update all CD and Private Prescription entries by the end of February 2018. In April and May 2018, the Registrant said that he was still bringing the Pharmacy records up to date. On 6 June 2018, the Council's inspector returned to the Pharmacy and again asked the Registrant to produce Pharmacy records and to show that they were up to date, but he was unable to do so. He said that some of the records were still being kept at his home.
7. In the weeks that followed the Council's inspector sought updates from the Registrant about when he would resolve the outstanding issues and remaining actions from the action plan. On 17 July 2018, the Council's inspector revisited the Pharmacy and spoke to the Registrant. In the course of this visit, the Registrant did not produce the Pharmacy's Standard Operating Procedures ("SOPs"). The Council's inspector looked through some of the CD registers and when he compared them to entries he found on the patient medication records, he found discrepancies.
8. The Council's inspector and the Controlled Drugs Liaison Officer revisited the Pharmacy again on 5 September 2018. The Registrant informed them that current CD registers for the Pharmacy were not up to date. In the consultation room (not in the CD cabinet) the inspector and the Controlled Drugs Liaison Officer found a pack of morphine sulfate

10mg/ml vials (a Schedule 2 Controlled Drug). This was a pack of ten with one missing. The inspector did not find a register for this medicine on the premises. The Registrant indicated that he still had this register at his home. In the course of the visit, the Council's inspector found numerous errors in the CD registers.

9. On 9 October 2019, during an unannounced inspection the Registrant indicated that a range of Pharmacy documents were at home and not up to date. When asked to produce some of the records, he said that he could not. In the absence of CD registers, the Responsible Pharmacist on duty in the Pharmacy on that day (not the Registrant) said that he was writing down supplies of Controlled Drugs made. He produced a pile of prescriptions and invoices that he had kept in order that they could be entered when the registers were available. The inspectors returned to the Pharmacy on 4 December 2019. The CD registers were not available. The Registrant was asked to go and get the CD registers but declined to do so. He stated that he was about six weeks behind in making entries on the registers.

### **Principal Hearing**

10. At the Principal Hearing in October 2020 the Registrant admitted all of the Particulars of Allegation referred to above. The committee decided that the proven facts amounted to misconduct, and that the Registrant's fitness to practise was impaired by reason of that misconduct. The Committee considered Rule 5(2) of the General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010 ("the Rules") which provides:

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

*(a) presents an actual or potential risk to patients or to the public;*

*(b) has brought, or might bring, the profession of pharmacy into disrepute;*

*(c) has breached one of the fundamental principles of the profession of pharmacy; or*

*(d) shows that the integrity of the registrant can no longer be relied upon.”*

11. The Committee found that Rules 5(2) (a) – (c) were engaged in the circumstances of the case. It also found that the Registrant had breached Standard 2 (work in partnership with others), Standard 7 (respect and maintain the person’s confidentiality and privacy), Standard 8 (speak up when you have concerns or when things go wrong) and Standard 9 (demonstrate leadership).

12. It is worth quoting from the Committee’s original decision, which included the following:

*““In particular the Committee noted the extensive period over which the Registrant had failed to produce appropriate and expected Controlled Drugs registers, the fact that these were being kept at his home and that he had accepted they were not up to date. Further that on 17 July 2018 two registers (for MST 10mg tablets and Sevredol 10mg tablets) were inaccurate. On 5 September 2018 nine morphine sulphate 10mg/1ml vials were found not in the locked Controlled Drugs cabinet but in the pharmacy consultation room, registers for three Controlled Drugs (MST 10mg tablets, MST 30mg tablets and Equasym XL 20mg) were inaccurate and two registers, instead of one, were maintained for Zomorph 10mg capsules.*

*The lack of control over Controlled Drugs gave rise to a risk that they could be diverted from the regulated supply chain, without means of checking, which in turn gave rise to a risk of harm to the public.*

*In relation to the Controlled Drugs registers kept at home there was plainly a risk of breaching patient confidentiality as there was also in relation to the Private Prescription and Emergency Supply records also kept at home.”*

13. The committee then went on to consider what the appropriate and proportionate sanction should be. It identified the aggravating factors were as follows:

- The misconduct included the misadministration of controlled drugs
- The Registrant's failures to maintain up to date Controlled Drug registers led to him being interviewed by the police under caution
- The misconduct took place over many months
- The Registrant had not remedied matters when brought to his attention
- The Registrant failed to show leadership to the pharmacy team
- The Registrant put patient confidentiality at risk
- The Registrant's insight and remediation (including further training) was limited

14. By way of mitigation, the Committee noted the following:

- There was no previous fitness to practise history over a long career since 1989
- There were three supportive testimonials, two from fellow pharmacists
- The Registrant had shown remorse and had apologised
- The Registrant had not tried to cover up his failings
- The Registrant had admitted the allegations and had tried to assist the Committee by supplying further material during the hearing

15. The Committee concluded that the misconduct was remediable, and that there were workable conditions which would appropriately address the misconduct. It therefore imposed the following conditions for a period of 12 months:

*1. You must:*

- *tell the GPhC before you take on any position for which you must be registered with the GPhC*
- *give the GPhC details of the role and the hours you will work each week, including locum or relief work*

- *give the GPhC the contact details of your employer, superintendent pharmacist and/or pharmacy owner.*

*2. You must tell the following people in writing about the restrictions imposed on your pharmacy practice, if you are doing any paid or unpaid work for which you must be registered with the GPhC.*

*You should do this within two weeks of the date this order takes effect:*

- *all employers or contractors*
- *agents acting on behalf of employers and locum agencies*
- *superintendent pharmacists*
- *responsible pharmacists*
- *line managers*
- *workplace supervisors*
- *accountable officers for controlled drugs*

*You must send the GPhC a copy of this notification.*

*If you are applying for work, you must tell any prospective employer about the restrictions imposed on your pharmacy practice when you apply.*

*3. You must work with a mentor (who is a pharmacist) to draw up a personal development plan (“PDP”), specifically designed to deal with the shortcomings in the following areas of your practice:*

- *Record keeping*
- *Management of Controlled Drugs*
- *Leadership and managing teams*
- *Patient confidentiality*

*You must send a copy of your personal development plan to the GPhC within four weeks of the date this order takes effect.*

*4. You must arrange for the mentor listed in 4 to provide a report to the GPhC on your progress toward achieving the aims set out in your personal development plan every two months.*

*5. You must:*

- *find a workplace supervisor (who must be a registered pharmacist) and put yourself, and stay, under their close supervision*

- *ask the GPhC to approve your workplace supervisor before you start work as a registered pharmacist*
- *give the GPhC your permission to exchange information with your workplace supervisor about your efforts to improve your pharmacy practice*

*6. You must arrange for your workplace supervisor to send a report on your progress and development directly to the GPhC every two months or when the GPhC asks for one. The GPhC will act reasonably in how often it asks for reports.*

*7. You must arrange for your workplace supervisor to review the controlled drugs register for Targett Chemist and to provide a report to the GPhC on the following:*

- *That the registers are kept up to date and*
- *That balance checks are carried out at least monthly.*

*8. You must name a suitable pharmacist to act as your mentor. You must ask the GPhC to approve your choice of mentor within two weeks of the date this order takes effect. You must ask for advice from and keep up regular contact with your mentor about the following:*

- *Record keeping*
- *Management of Controlled Drugs*
- *Leadership and managing teams*
- *Patient confidentiality*

*This contact need not be face-to-face.*

*9. You must arrange for your mentor to write to the GPhC every two months to confirm that meetings are taking place and to describe your progress in fulfilling your PDP.*

*10. You must undertake further training in the following areas:*

- *Record keeping*
- *Management of Controlled Drugs*
- *Leadership and managing teams*
- *Patient confidentiality*

*The training is to be paid for by you. You must send the GPhC completion certificates. If you do not have these, you must arrange for written confirmation of completion from the course leader within 10 working days of the course being completed.*

11. *Should Targett Chemist Ltd have a licence to supply Controlled Drugs then you must carry out audits of the following area of your pharmacy practice every two months:*

- *Controlled Drugs tracking processes, namely the recording of receipt by the pharmacy, management within the pharmacy and dispensing to patients.*

*You must send a copy of your audits to the GPhC every two months, as well as to your workplace supervisor.*

12. *You must not work as a superintendent pharmacist or as a responsible pharmacist.*

13. *You must restrict your pharmacy practice to Targett Chemist, 172 Halfway Street, Sidcup, Kent DA15 8DJ*

14. *You must:*

- *employ a full-time pharmacist to act as responsible pharmacist at Targett Chemist*
- *ask the GPhC to approve the person before you re-commence work as a registered pharmacist at Targett Chemist*

15. *You must limit your practice as a registrant to four days a week.”*

16. The Committee ordered a review towards the end of the period of conditions, and stated that the reviewing committee might be assisted by:

*“the Registrant supplying it with any written reflections on his misconduct, on how that has impacted on the reputation of the profession in the eyes of members of the public and of fellow professionals, as well as reflections on the importance of maintaining the standards of the profession of pharmacy”.*

### **First Principal Review Hearing**

17. At the first review hearing in November 2021 the Registrant provided copies of reports from his workplace supervisor and his mentor, but the committee noted that none of these made any express reference to any of the conditions or requirements imposed on the Registrant at the Principal Hearing and were rather brief. The Registrant gave evidence which can be summarised as follows:

- He had not yet applied to have the restrictions on handling Controlled Drugs lifted because he had some health issues to address and because his supervisor had concerns about lifting the restrictions as that individual was not on site all the time. Therefore, the Registrant could not demonstrate compliance with condition 11.
- The inspection of the Pharmacy in April 2021 gave *'a clean bill of health'* and he had helped to achieve this by ensuring that all SOPs had been brought up to date.
- He had regular meetings with his workplace supervisor about where he had fallen short. This included discussions about working hours, prescriptions and making entries in the Patient Medication Record.
- He had not undertaken any of the training required by Condition 10 as he had spent a lot of time dealing with issues relating to the Covid-19 pandemic.
- The Pharmacy was permitted to handle some Controlled Drugs (those not requiring safe custody), however he had not asked his workplace supervisor to carry out an audit of registered entries in respect of those as required by Condition 11.
- The Registrant had not completed a Personal Development Plan, and this was an oversight.
- He had not passed on a copy of the Conditions to his mentor, and he was not sure if he had given a copy to his workplace supervisor.
- The Registrant admitted that if the public learned that he had not looked at the Conditions since December last year then their confidence in him and the profession both *'would be dented'*.
- He had not provided a reflective report because *'it had slipped his mind.'*
- He had filed, but not sent to the Council, the reports from his supervisor and mentor because he had not looked at the Order of Conditions.

18. In terms of impairment, the committee concluded the following:

*"There had been a significant and serious lack of compliance with the Order of Conditions imposed upon the Registrant. The Registrant has confirmed in evidence that he knew of the Conditions and the timescales. He had given no adequate explanation as to why he had not complied with them. The Committee recognised and acknowledged that the Pharmacy was and continued to be busy and had been*

*especially busy January to March 2021. However, the Committee was clear that the Registrant simply had not made compliance a priority, as evidenced by the Registrant's very honest, but equally very startling admission that he had not troubled to look at the Order of Conditions since last December and had not passed these on to his mentor, nor possibly either, his workplace supervisor.*

*The Committee agreed with the Council's characterisation of the Registrant's approach as 'slipshod' (at best) and agreed also that there was a clear pattern of behaviour where the Registrant failed to learn from or take note of interventions by his Regulator. He had failed repeatedly to put things right at the Pharmacy and his repeated failings had led to the finding of misconduct at the Principal Hearing. The Committee concluded that there was therefore clear evidence of an underlying attitudinal issue. The Committee concluded that the Registrant had not remediated his impairment.*

*Furthermore, given the profound failure to comply with the Conditions, especially as regards undergoing training and the failure to prepare a Personal Development Plan, the Committee considered that the public, and fellow pharmacy professionals, would be shocked and dismayed to find that this serious regulatory intervention had been given, apparently, such low priority by this Registrant. The Committee concluded also therefore that a finding of impairment was necessary in order to uphold standards and the confidence of the public in the profession and the regulator.*

19. The committee decided that conditions of practice were no longer appropriate and imposed a Suspension Order upon the Registrant for nine months. It stated that the reviewing committee may be assisted by:

*"the Registrant providing in advance of that hearing written reflections on his misconduct, in particular on how that has impacted on the reputation of the profession in the eyes of members of the public and of fellow professionals, as well as reflections on the importance of maintaining the standards of the profession of pharmacy. He may also consider providing evidence that he has undertaken appropriate training."*

## Second Principal Review Hearing

20. At the second review hearing in August 2022 the Registrant again gave oral evidence, which can summarised as follows:

- He had returned to work in his Pharmacy acting as a dispenser, acting as delivery driver and undertaking the work of stock management (which had become more onerous in light of the serious shortages of generic drugs being experienced by all pharmacies);
- The period of suspension had allowed him to reflect. He had recognised his shortcomings and in this he had been assisted by undertaking a Root Cause Analysis which had led him to conclude that as the Pharmacy had become busier, he had taken on more and more of the workload and failed to delegate to staff;
- He had undertaken a course in leadership and coaching, from which he had benefited; he was now using the skills acquired to coach staff and consequently he was now delegating, and this gave him more time to focus on his professional responsibilities;
- He had taken on a full-time, substantive pharmacist who had assisted with risk assessments; all SOPs had been signed off by all the staff;
- He recognised that he had created risk to patients and that the confidence of patients and fellow professionals would have been undermined by his failures and shortcomings;
- He had bought a software package to assist with record-keeping and to support Controlled Drug management but because his Pharmacy was still under restrictions with regard to certain classes of Controlled Drugs, he had not as yet made this software operational;
- He had not undertaken any training in record-keeping, Controlled Drug management or in patient confidentiality – as had been required when he had been under an Order of Conditions – because despite looking online he could not find any. When asked by the Chair whether he had contacted the Council to seek assistance he stated that he had not done so but it *'would have been a good idea'*;

on the topic of patient confidentiality he had undertaken the 'annual toolkit' as was required of all pharmacies;

- He had not taken up the training on record-keeping offered by the supplier of the software, preferring to wait until that had been operationalised, which would be when the licence restrictions had been lifted (no date was mentioned as to when this might be);
- He had not provided any documentation to the committee regarding the Root Cause Analysis because he '*preferred this to be a verbal presentation*';
- When asked how he had trained and coached staff on record-keeping and patient confidentiality when he himself had not had any recent training, the Registrant replied that he knew what the issues were and how to correct them and doing courses was half the work, equally important was implementing what had been learnt;
- When asked why he had not supplied any of the written documentation, in particular why he had not submitted any written reflections beyond his brief email dated 12 August 2022 which the previous reviewing committee had indicated would likely be helpful to the second reviewing committee, no clear or cogent explanation was given, and he referred again to the Root Cause Analysis process.

21. The committee concluded that that the Registrant had not remediated his misconduct by any systematic or structured reflection upon his conduct and neither had he developed any plan for ensuring that there would be no repetition of the failings. In the absence of the necessary insight and in the absence of any effective remediation, the committee concluded that there was a real risk of repetition of the previous Controlled Drug management and record-keeping failures. That being so, the committee concluded that the Registrant remained impaired on the grounds of public safety. Given the harm that will have been caused to the public's confidence in the profession from the Registrant's failings and his continuing failure to remediate his misconduct, the committee concluded that the Registrant's fitness to practise remained impaired also on the ground of public interest.

22. The committee decided to impose a further period of suspension for nine months, because *“it had no basis to assure itself that an order of conditions would be complied with. Indeed, it had every indication based on the Registrant’s previous behaviour that it would not be complied with.”* The committee advised that the next reviewing committee may be assisted by the following:

- *detailed written reflections on his misconduct, in particular on how that misconduct has likely impacted upon the reputation of the profession in the eyes of members of the public and of fellow professionals;*
- *reflections on the importance of maintaining the standards of the profession of pharmacy;*
- *explanation as to how he has remediated that misconduct and ensured that any repetition of the misconduct is highly unlikely;*
- *along with any evidence to show that relevant training has been undertaken and consequential action implemented to address the concerns identified by the Committee at the Principal Hearing.*

### **Third Principal Review Hearing**

23. The third review hearing took place on 31 May 2023. The Registrant told the committee that he was not providing any documentary evidence for the review hearing, and he would not be giving oral evidence but would make oral submissions. He did not oppose the Council’s submission that suspension of his registration should continue as he did not wish to practise currently, at least until the Pharmacy had been issued a licence to deal with CDs. He told the committee that the current Superintendent Pharmacist was leaving but would be replaced shortly once the Council had approved the new appointment. A new system of electronic recording of CDs was being installed at the Pharmacy and all staff would be trained in its use. The Registrant said he had undertaken *“a few courses”* including one on leadership. He had also *“gone through”* a few guides on the Royal Pharmaceutical Society website; those related to the safe custody, storage and management of CDs. When asked why he had not provided the information suggested by the previous reviewing Committee, the

Registrant said he did not want to be on the register at the moment and he “*can’t give any evidence*”. He did not feel able to do so until the new CD system was “*up and running*”. He said a secondary, although not major, issue had been that his father had had a fall a couple of weeks earlier and this had taken up his time. He said that once he was back on the register he would “*hit the ground running*”, without distractions and “*concentrate on getting back into practice*”. He would then have the confidence to demonstrate he was “*capable of going back on the register*” without issues of patient safety and performing the various duties expected of a pharmacist.

24. The third reviewing committee decided the following:

*“In the absence of any evidence at all from the Registrant, on whom the persuasive burden lies, the Committee has no option but to find that he has not remediated his misconduct or developed further insight into the impact of it on patient safety and the wider public interest. Nor has he demonstrated the misconduct is highly unlikely to be repeated. To the Registrant’s credit, he does not assert he is currently fit to practise.”*

25. The committee imposed a further Suspension Order for nine months, and stated the following:

*“The Registrant appears to be focussing on the management and running of the Pharmacy, in particular insofar as CDs are concerned. However, the management of CDs is but one aspect of his misconduct in 2018-19. The conditions imposed on his registration in October 2020 are indicative of the wide-ranging concerns of that Committee. This Committee is concerned that the Registrant has not, even at the third review hearing, focussed thus far on his own fitness to practise. Earlier Committees have been troubled by the Registrant’s chaotic approach and this concern has not been assuaged by the stance the Registrant has taken at this hearing. He has been given clear indications over the years of these proceedings as to what is required to demonstrate his fitness to practise (including in the list of conditions and the suggestions for preparation for review hearings) and yet has not used that information to structure his own involvement in these proceedings. He has not taken a systematic*

*approach to the review of his fitness to practise. He has instead focussed on a single issue, the management of CDs, as a means of demonstrating the prospect of his fitness to practise. As must be clear from earlier determinations, that is not enough. He needs to demonstrate his own fitness to practise rather than demonstrating the Pharmacy is run appropriately by the current SI.*

*The Committee accepts the submission for the Council that this is a situation which cannot continue indefinitely. The Registrant should be in no doubt that if he continues not to engage in a meaningful way with these proceedings, the next Committee will very likely give serious consideration to making an order for the indefinite suspension of his registration or the removal of the Registrant's name from the Register. The Committee intends that this should be a clear warning to the Registrant that he must engage meaningfully with these proceedings and consider carefully the previous determinations, taking the steps required of him to demonstrate he has fully remediated his misconduct, that he has genuine insight into the impact of that misconduct and that it is highly unlikely to be repeated. As has been said many times in the past, it is for the Registrant to do so. He needs to take a systematic approach to demonstrating he is fit to return to practise as a pharmacist.*

*The next reviewing Committee is likely to be assisted by his producing the following in advance of the hearing (the Committee's emphasis):*

- *detailed written reflections on his misconduct, in particular on how that misconduct is likely to have impacted the reputation of the profession in the eyes of members of the public and fellow professionals;*
- *detailed written reflections on the importance of maintaining the standards of the profession of pharmacy, by reference to each relevant standard. detailed written explanation as to how the Registrant has remediated his misconduct, by reference to each paragraph of the Particulars of Allegation, as found proved.*
- *detailed written explanation of the steps the Registrant has taken, and will take in future, to ensure that repetition of the misconduct is highly unlikely to occur.*
- *documentary evidence, such as CPD certificates and/or website screenshots, of training and professional courses undertaken since the misconduct occurred,*

*together with a written statement of consequential action implemented by the Registrant to address the concerns identified by the Committee at the Principal Hearing.*

### **Today's Evidence**

26. For today's hearing the Committee has seen a monitoring record from a Case Administrator at the Council, dated 6 February 2024, outlining the emails which have been sent to the Registrant. He confirmed that he has been compliant with his suspension. He has not provided the Council with any documentation.

### **Registrants Submissions**

27. In his oral submissions today the Registrant told the Committee that a significant factor since the last review has been the health of his parents which has *"taken up a bit of time"*. [PRIVATE]. He has been the main carer for both of them and has not been able to focus on returning to practice. He accepts that his fitness to practise remains impaired. He said that for at least the next six months he will be concentrating on looking after his parents.

28. In terms of the Pharmacy, the Registrant said that in April 2021 *"everything was signed off"* by the inspectors, including the SOPs which he had re-written. The Pharmacy still does not have a licence for Controlled Drugs as the Superintendent Pharmacist is not prepared to sign this off, because she is not there full time. The Registrant has employed a Pharmacy Manager whom he intends to make the new Superintendent. Once this happens they will apply for the licence.

29. The Registrant has continued to work as a delivery driver and dealt with administration. For the past few months he has been involved in preparing the Pharmacy for "Pharmacy First", a new initiative whereby pharmacies will be able to prescribe for minor ailments.

30. In relation to remediation, the Registrant said that he had joined the Royal Pharmaceutical Society (“RPS”) so he could read material regarding CD management. He said that he did this around September 2023 (although the Committee noted that he said at the last hearing in May 2023 that he had been accessing training material from this website so he may be mistaken on the date).
31. In answer to questions from the Committee the Registrant said that he would not be able to do anything in terms of remediation for the next six months, but after that he would like to go back to practise as a Pharmacist one day a week. He would prefer the Committee to impose a further period of suspension rather than an indefinite suspension because he felt a period of two years before he could apply for the suspension to be lifted was too long.

### **Councils submissions**

32. Mr Thomas reminded the Committee that the onus is on the Registrant to satisfy it that his fitness to practise is no longer impaired. In its written skeleton argument, the Council stated that the concerns in this case are serious and relate to the Registrant’s lack of record keeping in relation to Controlled Drugs. The requirement to keep accurate and up to date records of the delivery, storage and supply of Controlled Drugs is part of a pharmacist’s role as a gatekeeper for medicine and it is also a legal obligation under The Misuse of Drugs Regulations 2001. The Council referred to the findings of the Principal Hearing Committee, namely that when records are not kept properly there is a risk that drugs could be diverted from the regulated supply chain, without the means of checking. In this case, the Registrant’s misadministration of drugs had continued despite various interventions from the Council, the Council’s Inspector, and the Controlled Drugs Liaison Officer.
33. The Council submitted in its skeleton argument that the Registrant has not discharged the persuasive burden upon him to demonstrate that his fitness to practise is no longer impaired. In his opening submissions Mr Thomas highlighted that the Registrant had

not provided any documentation as suggested by the previous committee. He submitted that conditions of practice would not be appropriate, taking into account the Registrant's previous non-compliance with these, and since 2021 his failure to comply with the various committees' suggestions. Mr Thomas highlighted that if the Committee is considering removal from the register, it should take into account that the misconduct related to performance based issues, which previous committees have judged to be capable of being remedied.

34. Mr Thomas also referred to the cases of *Annon v The Nursing and Midwifery Council [2017] EWHC 1879 (Admin)* and *Abbas v The Nursing and Midwifery Council [2019] EWHC 971 (Admin)* which highlighted that that a persistent failure to demonstrate insight and remediation could lead to the sanctions of indefinite suspension or removal, although he accepted that each case turns on its own facts.

35. Having heard the Registrant's oral submissions, Mr Thomas conceded that the Registrant has been facing challenges at home, but questioned whether he really could not find the time in the past nine months to meet the recommendations suggested by the previous committee. He submitted that the Registrant could have sketched out a Personal Development Plan and provided evidence of re-training, which may have taken "*a few hours*". He said that this must place a real question mark over whether the Registrant actually considers this to be a priority, and whether he would actually be able to do this in the future. Mr Thomas submitted that the previous pattern of behaviour tends to cast doubt on this.

### **Legislation and Case Law**

36. The Fitness to Practise Committee's powers in relation to reviewing this suspension are contained in Article 54(3)(a) of the Pharmacy Order which provides:

*(a) where the entry in the Register of the person concerned is suspended, give a direction that –*

*(i) the entry be removed from the Register,*

*(ii) the suspension of the entry be extended for such further period not exceeding 12 months as may be specified in the direction, starting from the time when the period of suspension would otherwise expire,*

*(iii) the entry be suspended indefinitely, if the suspension has already been in force throughout a period of at least two years,*

*(iv) in the case of an indefinite suspension, terminate the suspension, provided that the review takes place in the circumstances provided for in paragraph (4),*

*or*

*(v) on expiry or termination of the period of suspension (including a period of suspension that was expressed to be indefinite), the entry be conditional upon that person complying, during such period, not exceeding 3 years as may be specified in the direction as the Committee thinks fit to impose for the protection of the public or otherwise in the public interest or in the interests of the person concerned”.*

37. In the case of *Abrahaem v GMC [2008] EWHC 183 (Admin)*, Blake J said *“In practical terms there was 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 impairment....”*

38. The Committee has also considered the guidance set out by Silber J in the case of *Cohen v General Medical Council [2008]*, which states:

*“It must be highly relevant in determining a doctor’s fitness to practise is impaired that first his or her conduct that led to the charge is:*

*(a) easily remediable?*

*(b) been remedied?*

*(c) highly unlikely to be repeated?*

39. Finally, the Committee has considered the *Good Decision Making: Fitness to Practise hearings and sanctions guidance (March 2017)* which states that at a review hearing “The registrant is expected to provide evidence that any past impairment has been addressed.”

### **Decision on Impairment**

40. Today the Committee must first decide whether the Registrant’s fitness to practise is still impaired, pursuant to Article 54(3) of the Pharmacy Order. Only if there is such a finding does the Committee go on to consider the range of options in terms of sanction.

41. The Committee has considered the case of *Abrahaem v GMC* [2008] EWHC 183 (Admin) referred to above, and in particular Blake J’s comments regarding what the Registrant needs to show to persuade it that he has fully remediated and has addressed the finding of impairment at the previous hearing. Today the Committee must look at the evidence before it in order to make the assessment as to whether the failings have been remedied.

42. The Committee has considered the Registrant’s oral submissions. It was disappointing that there was no documentary evidence put forward by the Registrant. Even if there were no training certificates issued by the RPS, the Registrant could have written down what he learnt from his reading on the website about CD management. There was also no explanation as to why the Registrant was not able to produce written reflections as suggested by previous committees. Although he has been concentrating on looking after his parents in recent months, the previous hearing was nine months ago. As Mr Thomas indicated, it would not have taken that long to prepare a PDP and written reflections.

43. At a review hearing the Committee looks at what has changed since the last hearing. In this case the Registrant has been preparing the Pharmacy for Pharmacy First and is arranging for a new Superintendent Pharmacist to take over. The Pharmacy’s CD

licence is still restricted. However, these changes all relate to the Pharmacy, as opposed to the Registrant's own personal position and his fitness to practise.

44. So, this Committee is very much in the same position as the last committee. The Registrant has not provided any evidence of training undertaken in order to remediate the misconduct, or provided written reflections to assure this Committee that there is no longer a risk of repetition.

45. The Committee accepts that the Registrant has engaged with his regulator by attending this hearing. However, as he has previously been warned, that is not enough. This is now the fourth review hearing, and in effect the position has not changed with regards to the Registrant's own situation during the course of the previous three years. He has not provided any evidence of remediation, and the risk of repetition remains. The Committee has no option but to conclude that the Registrant has not discharged his persuasive burden, and that his fitness to practise remains impaired.

46. Turning now to sanction, in light of the Committee's assessment regarding the risk of repetition, it considers that taking no action or issuing a warning remain inappropriate sanctions, as they would not address the risk to the public. As far as conditions are concerned, the Registrant previously failed to comply with conditions, and there is no evidence before the Committee today which gives it confidence that he would do so going forward, particularly in light of his submissions that he would not be in a position to work as a pharmacist for the next six months. He has failed to take any steps or provide any documentation as suggested by the previous reviewing committees. For example, he has not provided a Personal Development Plan despite this being a condition imposed by the original Committee or provided any or any evidence of training regarding record keeping, CDs or patient confidentiality, despite an indication from the previous Committee that this would be of assistance.

47. The next sanction is a further period of suspension, limited to 12 months. However, the Registrant was put on notice by the previous committee that there would come a

time when the next committee might conclude that “*enough is enough*”, and that a further period of suspension would serve no purpose. This Committee considers that this point has now been reached. The Registrant has been given repeated opportunities to take proactive steps to put things right and has not done so. He has said today that he would not be able to commit any time for at least the next six months towards remedying his impairment. The Committee considers that if another period of suspension were imposed, at the next review it is highly likely that nothing will have changed. For whatever reason, the Registrant has been unable to take the steps which have been suggested for the past three years, and this Committee has no confidence that he will do so in the next 12 months (which is the maximum period of suspension permitted). It is not in the public interest to continue to periodically suspend the Registrant, which then means that the Council is put to the time and expense of monitoring the Registrant, and then conducting a further review hearing.

48. The Committee then considered whether an indefinite suspension was appropriate. This is sometimes appropriate where there is a likelihood that at some point in the future the Registrant would be able to prove that his or her fitness to practice is longer impaired, even if they cannot do so now - for example in a health case. The Committee has taken into account the Registrant’s caring responsibilities at this time. There may come a time in the future that he is able to concentrate his time and efforts into remediating the deficiencies in his practice. The Committee also took into account the Council's guidance regarding strike off, which would be the only remaining sanction if indefinite suspension were not imposed. The guidance states that:

*“Removing a registrant’s registration is reserved for the most serious conduct... The committee should consider this sanction when the registrant’s behaviour is fundamentally incompatible with being a registered professional.”*

49. As Mr Thomas indicated, the Registrant’s failings are capable of being remedied, as they relate to performance-based issues.

50. The Committee has concluded that erasure would be disproportionate in the current circumstances. The misconduct is not so serious as to be incompatible with remaining on the register as there remains a possibility that the Registrant will be able to remediate the misconduct when his circumstances change. The Committee has therefore decided that the appropriate and proportionate sanction is indefinite suspension. The Registrant will be able to apply for that sanction to be lifted two years after this order comes into effect. However, at that stage it will still be for the Registrant to prove to a committee that his fitness to practise is no longer impaired, and that he has remedied his failings.

51. This ends our determination.